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October 25, 2020

South Carolina Court of Appeals
Jenny Abbott Kitchings
Post Office Box 11629
Columbia, South Carolina 29211

RE: RE: James W. Brewer
Case No.: 2020-001381

To Whom It May Concern:

Enclosed herewith please find the electronically filed Order issued in the Circuit Court for the above matter.

If there are any questions, please feel free to give me a call.

With kind regards,

Sincerely,

Charles T. Brooks, III
CTB,III/jlm
Enclosures as stated
cc: Office of SC Attorney General
ATTN: Harley L. Kirkland
Post Office Box 11549
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA COUNTY OF AIKEN James W. Brewer, *Plaintiff,* v. Mark Keel, Director, South Carolina Law Enforcement Division (SLED) and the State of South Carolina, *Defendants.*	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT Case No.: 2018-CP-02-02098 **ORDER**

This matter is before the Court on Defendants Chief Mark Keel, the South Carolina Law Enforcement Division ("SLED"), and the State of South Carolina's motion for summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. Plaintiff James Brewer has filed this action seeking to be removed from South Carolina's Sex Offender Registry. Plaintiff claims that he should no longer be required to register in South Carolina since he is no longer required to register on the Sex Offender Registry of Colorado. However, South Carolina's Sex Offender Registry compels registration based upon the offense committed—not whether registration is required in another state. Further, Plaintiff has failed to satisfy any of the three required avenues for removal and must still register in South Carolina. The attempt to invoke the Full Faith and Credit Clause of the U.S. Constitution is unavailing. Accordingly, the motion of the Defendant for summary judgment is granted.

BACKGROUND

Plaintiff James W. Brewer was convicted of unlawful sexual contact in violation of Colorado Code § 18-3-404(1)(a) on August 15, 2001. *See* Compl. ¶6. He subsequently moved to

Aiken, South Carolina where he was required to register as a sex offender pursuant to the South Carolina Sex Offender Registry Act ("SORA"). Compl. ¶6–7. Plaintiff contends he is now entitled to removal from the South Carolina Sex Offender Registry by virtue of a Colorado Order to Discontinue Sex Offender Registration in Colorado. Compl. ¶9. In addition to moving to South Carolina, and being required to register in South Carolina, Petitioner also moved to Florida, where he is still required to register on the Florida Sex Offender Registry. *See* Attachment D, Florida Sex Offender Registry Page for James W. Brewer.

On or about September 7, 2018, Plaintiff filed this "Petition for Declaratory Judgment" against Defendants Chief Keel, SLED, and the State of South Carolina, seeking to be removed from the South Carolina Sex Offender Registry. Plaintiff contends the Full Faith and Credit Clause of the U.S. Constitution requires South Carolina to "recognize the judgment of the State of Colorado discontinuing the Petitioner's requirement to register as a sex offender" and he seeks to have the Court order that he be removed from the South Carolina Sex Offender Registry.

STANDARD OF REVIEW

"Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." Rule 56(c), SCRCP; *Knight v. Austin*, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Englert, Inc. v. Leafguard USA, Inc.*, 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008). In determining whether summary judgment is appropriate, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166

(2013). "Whether an individual must be placed on the sex offender registry is a question of law." *Lozada v. S.C. Law Enforcement Div.*, 395 S.C. 509, 512, 719 S.E.2d 258, 259 (2011).

ANALYSIS

I. Mr. Brewer's registration is proper, constitutional, and in accordance with South Carolina Law.

Mr. Brewer's current registration in South Carolina was triggered by three separate statutory mechanisms, each individually requiring registration on South Carolina's Sex Offender Registry. First, his Colorado crime is similar to the South Carolina crime of Criminal Sexual Conduct Third Degree, which is a mandatory registration offense in South Carolina. SORA requires that "[a]ny person, residing in the State of South Carolina . . . . who has been convicted of . . . an offense described below, or who has been convicted . . . in any comparable court in the United States . . . *of a similar offense* . . . shall be required to register pursuant to the provisions of this article." S.C. Code Ann. § 23-3-430(A) (emphasis added). Mr. Brewer was convicted of unlawful sexual conduct in violation of Colo. Rev. Stat. § 18-3-404(1)(a). This section is a similar offense to S.C. Code Ann. § 16-3-654, criminal sexual conduct in the third degree, which is a mandatory registry offense pursuant to S.C. Code Ann. §23-3-430(C)(3). This ground for inclusion revolves entirely around the offense committed by Plaintiff—which has not been affected by the Colorado Order stating he no longer has to register in Colorado. Therefore, his registration in South Carolina is proper.

Second, his crime is an offense specified by Sex Offender Registration And Notification Act, which requires registration on South Carolina Sex Offender Registry. Under SORA, an individual must register on the South Carolina Sex Offender registry if their underlying offense is "specified by Title 1 of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA)." S.C. Code Ann. § 23-

3-430(C)(23). Here, Plaintiff's offense under Colo. Rev. Stat. § 18-3-404(1)(a) is considered a Tier I offense under SORNA. *See, e.g., Groom v. State*, 2015-Ohio-3447, 2015 WL 5042323 (Ohio Ct. App. Aug. 26, 2015) (slip copy) (recognizing that Colo. Rev. Stat. § 18-3-404(1) falls under the Tier I SORNA classification). Notably, this ground for inclusion is in no way connected to Plaintiff's registration in another state. It revolves entirely around the offense committed by Plaintiff—which has not been affected by the Colorado Order stating he no longer has to register in Colorado. Therefore, his registration in South Carolina is proper.

Third, Plaintiff's crime required him to register in Colorado at some point in the past, which requires registration in South Carolina. SORA requires that "[a]ny person, residing in the State of South Carolina . . . . who has been convicted . . . . of an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article." S.C. Code Ann. § 23-3-430(A) (emphasis added). It is undisputed that Mr. Brewer was convicted of unlawful sexual conduct in violation of Colo. Rev. Stat. § 18-3-404, and that he was required to register for that conviction in Colorado. S.C. Code Ann. § 23-3-430(A) was written in the past tense such that any individual who was convicted and was required to register in the state of conviction, as in the case of Mr. Brewer, must register in accordance with SORA. The intent of the South Carolina Legislature is clear and unambiguous: if an individual has ever been required to register in the state of conviction, that individual must register in South Carolina. Plaintiff's Colorado Order removing him from the Colorado registry *going forward* does not impact this ground of registration under SORA *looking backwards*. Accordingly, Mr. Brewer's ongoing registration is proper, constitutional, and in accordance with South Carolina Law.[1]

[1] It is worth noting that SORA mandates lifetime registration. See S.C. Code Ann §23-3-460 ("A person required to register pursuant to this article is required to register . . . for life."). Accordingly, even though Mr. Brewer no longer resides in South Carolina, his continued registration is required

II. Mr. Brewer's does not meet any of the statutory mechanism for removal from the South Carolina Sex Offender Registry.

SORA lists only three mechanisms or avenues by which an individual can be removed from the Sex Offender Registry. First, "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." S.C. Code Ann. § 23-3-430(E). Second, an offender who receives a pardon "based on a finding of not guilty specifically stated in the pardon" shall be removed from the sex offender registry. S.C. Code Ann. § 23-3-430(F). Third, individuals exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial must be removed from the sex offender registry. S.C. Code Ann. § 23-3-430(F). These statutorily enumerated avenues are the only lawful means by which an individual who is properly placed on the Registry can be removed.

Mr. Brewer does not meet any of the statutory criteria that would entitle him to removal from the SORA registry, which requires lifetime registration. Mr. Brewer's Colorado Conviction was not reversed, overturned, or vacated on appeal. Mr. Brewer did not receive a pardon based on a finding of not guilty. Mr. Brewer was not exonerated after filing a petition for writ of habeas corpus or a motion for a new trial. The order that Mr. Brewer received from Colorado may be sufficient for him to be removed from the Colorado Sex Offender Registry, but it does not satisfy

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pursuant to SORA. Thus, because his initial registration was proper, constitutional, and in accordance with applicable South Carolina law, the decision in this matter turns on whether he meets any of the statutorily available avenues for removal from South Carolina's Sex Offender Registry.

any of the avenues for removal as enumerated by the South Carolina General Assembly in SORA. There is no legal basis for the Petitioner's removal from the Registry.

III. The Full Faith and Credit Clause does not apply to this case.

The Full Faith and Credit Clause of the U.S. Constitution has no application in this case. Under the Full Faith and Credit Clause, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. . . ." U.S.C.A. Const. art. IV, sec. 1. The Colorado Order dictates only that Mr. Brewer does not have to actively register in Colorado, which is not in dispute. The Colorado Order does not command SLED or the State of South Carolina to take any action and does not have any effect on the Applicant's continued listing on the South Carolina Sex Offender Registry.

Controlling precedent indicates that South Carolina's registration requirement is not affected by the registry laws of other jurisdictions. *Lozada v. S. Carolina Law Enf't Div.*, 395 S.C. 509, 719 S.E.2d 258 (2011).

Further, to the extent Plaintiff seeks to invoke a traditional Full Faith and Credit analysis it too fails. "The thrust of the Full Faith and Credit Clause of the United States Constitution is that courts of one state must give such force and effect to a judgment of a sister state as the judgment would have in the sister state." *Purdie v. Smalls*, 293 S.C. 216, 219, 359 S.E.2d 306, 308 (Ct. App. 1987) (finding a custody order was not entitled to full faith and credit when the mother was not given notice of the hearing on the father's claim). Unlike in the domestic relations context (where marriage or custody in one state is identical in all other states), here, states are permitted to enact their own unique sex offender registries. The Colorado Order provides that Plaintiff is not required to register in Colorado—not South Carolina. This recognition of the Colorado Order provides no support for Plaintiff's removal from South Carolina's Sex Offender Registry.

The South Carolina Sex Offender Registry is "offense-dependent" and not "registration-dependent." To the extent another state's sex offender registry is considered, it is only one of three possible grounds for inclusion on South Carolina's registry.

To the extent Plaintiff asks the Court to substitute the laws of Colorado for the laws of South Carolina, permitting removal from the registry outside of South Carolina's statutorily created procedure, the request is rejected. *Widenhouse v. Colson*, 405 S.C. 55, 59 n.2, 747 S.E.2d 188, 190 n.2 (2013) (noting an Order compelling a court in one state "to apply the law of another state in an action in its own courts" is not entitled to Full Faith and Credit); *see also Sun Oil Co. v. Wortman*, 486 U.S. 717, 722 (1988) ("The Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'" (citation omitted)). *Accord* S.C. Code Ann. § 15-35-960 ("The provisions of [the Uniform Enforcement of Foreign Judgments Act] do not apply to foreign judgments based on claims which are contrary to the public policies of this State.").

CONCLUSION

The Order of Colorado removing Plaintiff from the Colorado Sex Offender Registry does not compel South Carolina to remove him from its registry. Plaintiff has failed to demonstrate how he qualifies for removal under the existing statutory scheme of South Carolina. Since his sex offense conviction in Colorado still exists, he must continue to register in South Carolina. The Colorado Order is not entitled to Full Faith and Credit.

The motion of the Defendant for summary judgment is therefore **GRANTED** and this case is hereby **DISMISSED**.

IT IS SO ORDERED

September 21, 2020

Clifton Newman
Presiding Judge

Charles T Brooks III
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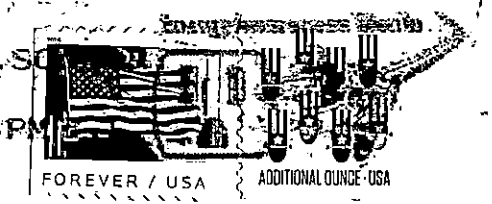

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