



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY DISTRICT COURT
STATE OF OKLAHOMA **FILED**

SEP - 4 2015

Stephen Dale Barnes,)
Plaintiff,)
vs.)
Tulsa County District Attorney's Office;)
Steve Kunzweiler; Tulsa County Sheriff's)
Office; Stanley Glanz; Tulsa Police)
Department; Chuck Jordan,)
Defendants.)

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY
Case CV-2015-55

ORDER ON HEARING OF SUMMARY JUDGMENT

STATEMENT OF FACTS

1. Plaintiff Stephen Dale Barnes, referred to as Plaintiff, became subject to the Oklahoma Sex Offender Registration Act (SORA) due to a conviction in Oklahoma County on December 17, 1999, case number CF-1998-2410.
2. The defendants Tulsa County District Attorney's Office and the Honorable Steve Kunzweiler are specifically responsible for the prosecution of crimes committed in Tulsa County.²
3. Currently, Plaintiff resides at 1010 North Garnett Road, Tulsa, Oklahoma 74130.³
4. Plaintiff desires to reside with his mother at 14547 East 12th Place in Tulsa, Oklahoma.⁴

SALLY HOWE SMITH
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¹ See Plaintiff's Motion for Summary Judgment at 1.

² See Defendants Tulsa County District Attorney's Office and the Honorable Steve Kunzweiler's Response to Plaintiff's Motion for Summary Judgment at 1.

³ *Id.*

⁴ See Plaintiff's Motion for Summary Judgment at 2.

5. Plaintiff's mother's residence is located within 2000 feet of an area designated as a park, but is currently not developed.⁵
6. Plaintiff alleges that due to the proximity of his mother's home to the park, the Tulsa Police Department informed Plaintiff he would be arrested and prosecuted for violation of 57 O.S. § 590.⁶
7. Neither the defendants Tulsa County District Attorney's Office nor Steve Kunzweiler, who are directly responsible for the prosecution of Plaintiff, has had contact with Plaintiff. It was an unidentified member of the Tulsa Police Department has threatened Plaintiff with arrest for violating the SORA residency restrictions.⁷
8. At the time of plaintiff's conviction, there was no residency restriction under SORA, and the residency restriction was not implemented until 2003.⁸

PROCEDURAL HISTORY

1. On January 21, 2015 Plaintiff filed the original petition for injunctive relief and declaratory judgment to prevent retroactive application of the 2003 amendments to SORA.
2. The Defendants were successfully served on February 3, 2015.
3. Defendant Tulsa County Sheriff's Office submitted their answer to the petition, denying the need for injunctive relief and declaratory judgment for Plaintiff on February 18, 2015.

⁵ *Id.*

⁶ *Id.*

⁷ See Defendants Tulsa County District Attorney's Office and the Honorable Steve Kunzweiler's Response to Plaintiff's Motion for Summary Judgment at 2.

⁸ See Plaintiff's Motion for Summary Judgment at 2.

4. Defendants Tulsa County District Attorney's Office and the Honorable Steve Kunzweiler answered Plaintiff's petition on March 10, 2015.
5. April 15, 2015 Plaintiff files a Motion for Default Judgment against the Tulsa Police Department and Chuck Jordan, Chief of Police, praying for a judgment by default to be entered, and the relief requested in his petition to be granted.
6. Plaintiff filed a Motion for Summary Judgment on May 4, 2015, praying for an injunction and declaratory judgment.
7. Defendants Tulsa County District Attorney's Office and the Honorable Steve Kunzweiler filed a response to Plaintiff's Motion for Summary Judgment on May 15, 2015.
8. On May 20, 2015, a hearing was held with Judge Damon Cantrell on Plaintiff's Motion for Default Judgment against defendants Tulsa Police Department and Chuck Jordan.
9. Motion for Default Judgment entered for Plaintiff against defendants Tulsa Police Department and Chuck Jordan on May 21, 2015.
10. Plaintiff filed a Motion to Vacate Default Judgment against the Tulsa Police Department and Chuck Jordan on June 16, 2015.
11. Judge Cantrell granted the order to vacate Default Judgment against defendants Tulsa Police Department and Chuck Jordan on June 23, 2015.
12. On July 1, 2015, Plaintiff submitted an amended petition for injunctive relief and declaratory judgment.
13. Defendant City of Tulsa ex rel. Tulsa Police Department submitted an answer to Plaintiff's amended petition on July 15, 2015.

14. On July 23, 2015, defendants Tulsa County Sheriff's Office and Stanley Glanz submitted their answer to Plaintiff's amended Petition for Injunctive Relief and Declaratory Judgment.

DISCUSSION

I. Summary Judgment

A court may issue summary judgment when there is "no substantial controversy as to the material facts," and when one of the parties is entitled to judgment as a matter of law."⁹ A fact is material for summary judgment purposes if the fact's validity will "have the effect of establishing a critical element to the cause of action."¹⁰ A motion for summary judgment determines whether there is a genuine issue of material fact, by allowing trial courts to look at evidence beyond the original pleadings. If the court finds there is an issue of material fact, the case must be submitted to a jury.¹¹ Thus, the court cannot simply "weigh evidence," but only may determine whether an issue of fact exists.¹²

Even if on the surface there seems to be no disputed facts, if reasonable people may reach differing conclusions on the material facts, summary judgment should be denied.¹³ All materials submitted to the court must be viewed in the light most favorable to the non-moving party, which in this case, are the are the defendants Tulsa County District Attorney's Office and the Honorable Steve Kunzweiler (hereafter

⁹ Okla. Stat. Ann. Tit. 12 § 2, App. Rule 13(e)

¹⁰ *Buck's Sporting Goods, Inc. of Tulsa v. First Nat'l Bank & Trust Co. of Tulsa*, 868 P.2d 693, 698 (Okla. 1994).

¹¹ *Flanders v. Crane Co.*, 693 P.2d 602, 605 (Okla. 1984).

¹² *Flanders v. Crane Co.*, 693 P.2d 602, 605 (Okla. 1984).

¹³ *Bucks Sporting Goods*, 868 P.2d at 697-698.

“Defendants”).¹⁴ For Plaintiff to prevail, Plaintiff needs to prove there is no substantial controversy with the material facts as to any of the non-moving parties’ position on whether Plaintiff should receive injunctive or declaratory relief.

In this case, the Defendants argue Plaintiff is subject to the current residency restrictions of the Oklahoma Sex Offenders Registration Act (SORA). Additionally, Defendants assert Plaintiff is not entitled to receiving declaratory judgment or an injunction to protect Plaintiff from prosecution from Defendants, as Plaintiff’s claims are merely speculative and an injunction from Defendants would not prevent Plaintiff from potential arrest with Tulsa Police Department. Plaintiff moves for summary judgment on the grounds that the residency restrictions of SORA do not apply to him, as his date of conviction was prior to the 2003 amendments, which added the residency restriction to SORA. Lastly, Plaintiff also moves for summary judgment on the grounds that declaratory judgment and an injunction are necessary to allow Plaintiff to move in with his mother, and protect Plaintiff from prosecution and criminal charges.

II. Residency Restriction

In 2003, SORA was amended, placing a residency restriction on registered sex offenders. The restriction prohibits registered sex offenders from residing temporarily or permanently within 2000 feet of any “. . . playground or park that is established, operated or supported in whole or in part by city, county, state, federal or tribal government institution . . .”¹⁵ In *Starkey v. Oklahoma Department of Corrections*, the plaintiff challenged the Oklahoma Department of Corrections retroactive increase of his sex

¹⁴ *Id.* at 698.

¹⁵ Okla. Stat. Ann. Tit. 57 § 590 (West 2003).

offender registration period, based on amendments made to SORA after his conviction.¹⁶ The court held in *Starkey* the provisions in OSORA for the level assignments of sex offenders did not apply retroactively, the amendment to registration periods did not apply retroactively, and the amendment to the retroactive application of the registration period violated the ex post facto clause of the Oklahoma Constitution.¹⁷ The court explicitly stated in *Starkey*, they were not making “any determination of the constitutionality of any of the individual registration requirements,” which included the residency restrictions placed on sex offenders.¹⁸ Although the court compared the residency restriction to the punishment of “banishment,” the court did not make a determination on the constitutionality of the residency restrictions SORA places on sex offenders, and did not determine that the residency restrictions must be applied retroactively.¹⁹

Plaintiff argues that because he was convicted in 1999, the residency restrictions of SORA should not be applied retroactively, because they were not in place at the time of Plaintiff’s conviction.²⁰ Defendants assert however, the residency restrictions do apply to Plaintiff because the individual amendments of SORA were not challenged in *Starkey*, therefore the residency restriction should apply to Plaintiff.²¹ Since there are no disputes as to the material facts of this case, with both parties agreeing Plaintiff’s conviction was prior to the amendments creating the residency restriction, there is only a question of the interpretation of law, and summary judgment is proper. Significantly, at the hearing on

¹⁶ *Starkey v. Oklahoma Dep’t of Corr.*, 305 P.3 1004, 1008, 1015, 1017 (Okla. 2013).

¹⁷ *Id.* at 1030-31

¹⁸ *Id.* at 1025,

¹⁹ *Id.*

²⁰ See Plaintiff’s Motion for Summary Judgment at 4.

²¹ See Defendants Tulsa County District Attorney’s Office and the Honorable Steve Kunzweiler’s Response to Plaintiff’s Motion for Summary Judgment at 2.

summary judgment, counsel for the city and DA's office **agreed that the residency statute would not apply to Plaintiff as a matter of law.**

III. Declarative Relief

The purpose of declaratory judgment is "simply the ascertainment of uncertain rights" and the Declaratory Judgment Act must be construed liberally to obtain its purpose.²² According to the *Oklahoma Statutes Annotated* "district courts may, in cases of actual controversy, determine rights, status or other legal relations, including . . . a determination of the construction or validity of any . . . statute."²³ Additionally, the "determination may be made either before or after there has been a breach of any legal duty or obligation; and it may be either affirmative or negative in form and effect . . ."²⁴ Therefore, Plaintiff is allowed to bring forth his question to this Court of whether or not registration requirements of SORA are applicable to plaintiff. Although Plaintiff has not moved into his mother's residence, which would be a breach of the residency requirements of SORA, Plaintiff is entitled to a determination of rights before he has even breached his legal duty.²⁵ No question of material fact exists between the two parties, but rather a question of the interpretation of the law; therefore, this Court should grant Plaintiff's Motion for Summary Judgment, and Plaintiff should receive Declaratory Judgment. As noted, all counsel agree on this point of law as applied to Plaintiff.

IV. Injunctive Relief

²² *Oklahoma ex rel. Board of Examiners in Optometry v. Lawton*, 523 P.2d 1064, 1066 (Okla.1974).

²³ Okla. Stat. Ann. Tit. 12 § 1651 (West 2004).

²⁴ *Id.*

²⁵ See Plaintiff's Motion for Summary Judgment at 2.

An injunction is an “extraordinary remedy,” not to be “granted lightly,” and it is within the discretion of the trial court to grant or deny injunctive relief to a party.²⁶ Clear and convincing evidence must be established in the trial court in order for an injunction to be granted.²⁷ Additionally, the type of injury, which the party is seeking injunctive relief for, “must not be nominal, theoretical or speculative.”²⁸ A party must have more than a fear of injury to receive an injunction, and there must be a reasonable probability, that without an injunction, the injury will occur.²⁹ To receive an injunction from a civil court to prevent the enforcement of a criminal statute, the party must demonstrate the “1) statute or ordinance is void or unconstitutional; 2) if a criminal proceeding is allowed . . . property rights would be destroyed; and 3) irreparable injury would be inflicted without an injunction.”³⁰

There is no dispute as to the material facts of the case between parties; therefore it is proper for this Court to rule on Plaintiff’s motion for summary judgment. The Court declines to issue an injunction against Defendants because Plaintiff’s claim is speculative in nature. Plaintiff has yet to be arrested by the Tulsa Police Department, and has had no contact with Defendants.³¹ Additionally, Plaintiff’s claim for injunctive relief does not meet the three standards set out in *Edmondson*. First, Plaintiff has made no claim against the constitutionality of the residency restrictions, and the residency restrictions placed on

²⁶ *Sharp v. 251st Street Landfill, Inc.*, 925 P.2d 546, 549 (Okla. 1996).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Edmondson v. Pearce*, 91 P.3d 605, 614 (Okla. 2004).

³¹ See Defendants Tulsa County District Attorney’s Office and the Honorable Steve Kunzweiler’s Response to Plaintiff’s Motion for Summary Judgment at 5, 6.

registered sex offenders has yet to be made void.³² Second, because Plaintiff does not currently own the property of 14547 East 12th Place in Tulsa, Oklahoma, he would not be losing any property rights, and therefore does not meet the second requirement to receive an injunction.³³ There would not be an irreparable injury without an injunction because only if Tulsa Police Department arrests Plaintiff, then would Defendants have to make a determination on whether or not to press charges against Plaintiff or dismiss his case.³⁴ ***Finally, as counsel for the City of Tulsa indicated at hearing on summary judgment, (see exhibit produced) there is a directive to all City officers not to arrest offenders such as Plaintiff without a warrant, so the determination of whether the residency requirement applies can be made on a case by case basis.***

Thus, Plaintiff's Motion for Summary Judgment requesting injunctive relief against Defendants is hereby denied because the claim is merely speculative, and created based on fear of prosecution. However, request for Declaratory Judgment is granted, essentially by agreement of all counsel, that the residency requirement does not apply to Plaintiff.

Dated: September 3, 2015



Daman H. Cantrell
District Court Judge

³² See Defendants Tulsa District Attorney's Office and the Honorable Steve Kunzweiler's Response to Plaintiff's Motion for Summary Judgment at 9.

³³ See Plaintiff's Motion for Summary Judgment at 2.

³⁴ See Defendants Tulsa District Attorney's Office and the Honorable Steve Kunzweiler's Response to Plaintiff's Motion for Summary Judgment at 7.

Certificate of Mailing

I hereby certify that I have on September 3rd, 2015, mailed a true and correct copy of the above decision to the following persons, and a true and correct copy was filed in the above case:

John Dunn
616 S. Main, Suite 206
Tulsa, Ok

Justin Grose
313 NE 21st Street
Oklahoma City, OK 73105

Matney Ellis
500 S. Denver, Suite 800
Tulsa, OK 74103

Gerald Bender
175 E. 2nd Street, Suite 685
Tulsa, OK 74103

A handwritten signature in black ink, appearing to read "Melissa Norris", written over a horizontal line.

Melissa Norris, Deputy Court Clerk