

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ANDREA GANN,	:	APPEAL NO. C-090770
	:	TRIAL NO. SP-0900040
Petitioner-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
STATE OF OHIO,	:	
	:	
Respondent-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In Clermont County, Ohio, in 2007, petitioner-appellant Andrea Gann pleaded guilty to and was convicted of attempted unlawful sexual conduct with a minor. On June 28, 2007, the trial court entered an order adjudicating Gann a sexually-oriented offender under former R.C. Chapter 2950 (“Megan’s Law”). Under Megan’s Law, Gann was required to annually register as a sexual offender for ten years.

Gann received a notice from the Ohio Attorney General stating that she had been reclassified under Am.Sub.S.B. No. 10 (“Senate Bill 10”) as a Tier II sex offender and that she was required to register with the local sheriff every 180 days for 25 years. Gann filed an R.C. 2950.031(E) petition to contest her reclassification, challenging the constitutionality of Senate Bill 10. After a hearing, the trial court overruled Gann’s constitutional challenges to Senate Bill 10 and denied her R.C. 2950.031(E) petition.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Gann raises eight assignments of error for our review. Gann’s third assignment of error alleges that Senate Bill 10’s requirement that the Attorney General reclassify her as a Tier II sex offender violates the separation-of-powers doctrine inherent in Ohio’s Constitution.

In *State v. Bodyke*,² the Ohio Supreme Court held that “R.C. 2950.031 and 2950.032, which require the attorney general to reclassify sex offenders whose classifications have already been adjudicated by a court and made the subject of a final order, violate the separation-of-powers doctrine by requiring the reopening of final judgments.”³ Further, the court held that the statutes violate the separation-of-powers doctrine because they “impermissibly instruct the executive branch to review past decisions of the judicial branch.”⁴ The court severed the statutory provisions, holding that “R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under Megan’s Law, and the classifications and community-notification and registration orders imposed previously by judges are reinstated.”⁵

On June 28, 2007, the trial court entered an order adjudicating Gann a sexually-oriented offender under Megan’s Law. In accordance with *Bodyke*, Gann’s third assignment of error is sustained. Gann’s remaining assignments of error are made moot by our disposition of her third assignment of error.

The judgment of the trial court is reversed, and pursuant to *Bodyke*, Gann’s previous classification, community-notification, and registration orders are reinstated.

² ___ Ohio St.3d ___, 2010-Ohio-2424, ___ N.E.2d ___.

³ See *id.* at paragraph three of the syllabus.

⁴ See *id.* at paragraph two of the syllabus.

⁵ See *id.* at ¶66.

OHIO FIRST DISTRICT COURT OF APPEALS

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 11, 2010
per order of the Court _____.
Presiding Judge