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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1290-21

IN THE MATTER OF
REGISTRANT S.R.

Submitted January 25, 2023 – Decided March 14, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. ML-1400.

Joseph E. Krakora, Public Defender, attorney for appellant S.R. (Olivia Nardone, Assistant Deputy Public Defender, of counsel and on the brief).

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent State of New Jersey (David M. Liston, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

S.R. appeals from a November 22, 2021 Law Division order denying his request that his personal identifiers be removed from the Sex Offender Internet Registry (registry), pursuant to N.J.S.A. 2C:7-12 to -18. We reject all of S.R.'s arguments and affirm.

I.

On January 13, 2003, S.R. pled guilty to two counts of third-degree endangering the welfare of a child and was later sentenced to an aggregate five-year custodial sentence. According to his pre-sentence report, the charges related to an August 2001 incident when, as an eighteen-year-old, he pulled up in his car and confronted two victims, then thirteen and fourteen years old, while they were standing at a bus stop. S.R. "lifted up his hips and with his pants down, . . . exposed his penis . . . and [stated], what do you think of this? Either of you two girls want to jerk me off?" S.R. drove away only to return shortly thereafter to say "sorry, it was a dare." At that point, one of the victims recorded the license plate number of the car S.R. was driving, leading to his apprehension and arrest.

S.R. was also sentenced to "community supervision for life" and required to register as a sex offender under Megan's Law, N.J.S.A. 2C:7-1 to -23. At some point, S.R. relocated to Middlesex County and the State sought an order designating him as a Tier II registrant with the attendant requirement that his personal information remain on the registry.

On November 12, 2021, the court held a testimonial hearing to address S.R.'s application to have his personal identifying information removed from the

registry. S.R. testified at the hearing about a series of physical and verbal assaults in which he had been threatened and harassed by individuals who allegedly learned of his 2003 conviction on the internet.

S.R. specifically recounted that on May 19, 2020, an individual discovered his Megan's Law status from the registry and left a handwritten note on his door stating, "You Gotta Go Child Molester." After S.R. removed the note and entered his residence, the individual continued to verbally harass S.R. and attempted to gain entry by repeatedly striking the door with a baseball bat. S.R. called the police and, after an investigation, the individual was arrested and prosecuted.

At the conclusion of the hearing, the court issued an oral decision denying S.R.'s request. Relying on the Attorney General Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Community Notification Laws (rev'd Feb. 2007) (Guidelines), and N.J.S.A. 2C:7-16(d), the court concluded S.R. did not allege circumstances entitling him to remove his personal information from the registry, temporarily or permanently. The court issued a conforming order on November 22, 2021.

Separately, on January 26, 2022, the court issued an order confirming S.R.'s status as a Tier 2 registrant.¹

II.

We begin with a review of the applicable law. "Megan's Law is intended 'to protect the community from the dangers of recidivism by sexual offenders.'" In re Registrant B.B., 472 N.J. Super. 612, 618 (App. Div. 2022) (quoting In re Registrant C.A., 146 N.J. 71, 80 (1996)); N.J.S.A. 2C:7-2(a). In fact, "[t]he expressed purposes of the registration and notification procedures [under Megan's Law] are 'public safety' and 'preventing and promptly resolving incidents involving sexual abuse and missing persons.'" In re Registrant A.A., 461 N.J. Super. 385, 394 (App. Div. 2019) (citing N.J.S.A. 2C:7-1). "The law is remedial and not intended to be punitive." Ibid. (citing Doe v. Poritz, 142 N.J. 1, 12-13 (1995)).

Depending on the type and time of the offense, Megan's Law requires certain sex offenders register with local law enforcement agencies and mandates community notification. In re Registrant T.T., 188 N.J. 321, 327-28 (2006)

¹ The parties have not included in the record any testimony or documentation related to S.R.'s January 2022 tier classification, or any earlier classification. As S.R. does not challenge his classification, we deem these omissions inconsequential to our decision.

(citing N.J.S.A. 2C:7-2). Offenders from other states who relocate to New Jersey are also subject to the registration requirement. N.J.S.A. 2C:7-2(c)(3).

The extent of community notification chiefly results from a registrant's designation as a Tier I (low), Tier II (moderate), or Tier III (high) offender. N.J.S.A. 2C:7-8(a), (c)(1) to (3). Tier designations reflect a registrant's risk of re-offense, as determined by a judge assessing various information, including thirteen factors referenced in the registrant risk assessment scale (RRAS). A.A., 461 N.J. Super. at 402. The Guidelines, which contain the RRAS, have been upheld by the Court. C.A., 146 N.J. at 110.

As relevant to the issues before us, a "2000 amendment to the State's Constitution authorized the Legislature to enact legislation to include a sex offender's personal identifiers on the [registry]." B.B., 472 N.J. Super. at 621.

That amendment provides:

Notwithstanding any other provision of this Constitution and irrespective of any right or interest in maintaining confidentiality, it shall be lawful for the Legislature to authorize by law the disclosure to the general public of information pertaining to the identity, specific and general whereabouts, physical characteristics and criminal history of persons found to have committed a sex offense. The scope, manner and format of the disclosure of such information shall be determined by or pursuant to the terms of the law authorizing the disclosure.

[N.J. Const., art. IV, § 7, ¶ 12 (Paragraph 12).]

N.J.S.A. 2C:7-13 requires personal identifying information of registrants in tiers two or three be placed on the registry, unless exempted by N.J.S.A. 2C:7-13(d). Specifically, N.J.S.A. 2C:7-13(c) requires S.R.'s personal information be included on the registry, as he is an "offender[] whose risk of re-offense is moderate and for whom the court has ordered notification in accordance with [N.J.S.A. 2C:7-8(c)(2)]."

III.

S.R. argues his "personal information should be excluded from the [registry] given . . . he has been the victim of physical and verbal assaults because individuals find him on the [registry]." S.R. relies on language in In re Registrant G.B., 147 N.J. 62, 79 (1996), and the Guidelines, as providing judicial authority to exclude a Tier II offender's personal identifying information from the registry. He also cites two unpublished decisions in which we addressed and denied a registrant's application to have personal identifying information removed from the registry.

In G.B., which the Court decided before the enactment of N.J.S.A. 2C:7-13, the Court explained "[t]he determination of tier classification and scope of notification 'are best made on a case-by-case basis within the discretion of the

court.'" 147 N.J. at 78-79 (quoting C.A., 146 N.J. at 109). The Court also recognized a registrant can challenge his tier designation in several ways, including by "introduc[ing] evidence that the extent of notification called for by his tier categorization is excessive because of unique aspects of his case." Id. at 85.

In B.B., the trial court relied on G.B. and "conclude[d] . . . it ha[d] the authority to exclude a Tier II offender's personal identifiers from the [registry]." 472 N.J. Super. at 623. On appeal, however, we explained "[i]t is not readily apparent that the holding in [G.B.] applies to the question of whether a registrant's personal identifiers must be included on the [registry]," as that decision pre-dated Paragraph 12. Ibid. We also observed Paragraph 12 and N.J.S.A. 2C:7-13 could reasonably be interpreted as providing that "once a trial court establishes a registrant's tier designation and the scope of community notification after a hearing at which the registrant can challenge the necessary scope of notification, the Legislature has the sole authority to determine whether that registrant's personal identifiers must be included on the Internet Registry." Id. at 624.

We did not resolve in B.B. whether G.B. permits a Tier II registrant to challenge the registry requirement, as we concluded the registrant provided

insufficient evidence to support the trial court's decision to remove him from the registry in any event. Ibid. The registrant did not provide witnesses or expert testimony to show he no longer posed a risk of re-offending. Ibid. Rather, the trial court relied on evidence which showed he had "gone on with his life," "paid the price for [his] offenses," was married and employed, and aided law enforcement "with respect to these types of cases." Id. at 624-25. We concluded "[t]he evidence on which the trial court relied [was] not the type of expert opinion or other evidence specific to the unique aspects of B.B.'s offenses or character relevant to his risk of re-offense that the Court in [G.B.] held may warrant departure from a statutory notice provision." Id. at 625.

Similarly, we need not decide whether G.B. permits S.R.'s challenge, as he has not presented expert testimony or "other evidence specific to the unique aspects of [his] offenses or character relevant to his risk of re-offense." Ibid. We acknowledge S.R. has alleged certain facts which may tend to show he no longer poses a risk of re-offense, such as his meaningful community engagement. S.R.'s primary contention, however, relates to alleged targeted verbal and physical assaults due to his Megan's Law status.

Although we are not unsympathetic to any alleged harassment S.R. has endured, we are not presented here with "the unusual case" contemplated in G.B.

such that a narrowing of his notification obligations is warranted. 142 N.J. at 84. Indeed, the trial court determined S.R. continues to pose a moderate risk of re-offense, a finding S.R. did not challenge and to which we defer. See B.B., 472 N.J. Super. at 619. In sum, we are satisfied that, even if G.B. permitted us to remove S.R. from the registry, the record before us is insufficient to warrant such relief.

IV.

S.R. also contends inclusion of his personal information on the registry is contrary to the Guidelines. We disagree.

The Legislature delegated to the Attorney General the responsibility to "promulgate guidelines and procedures for the notification required pursuant to the provisions of [Megan's Law]." N.J.S.A. 2C:7-8. Our Supreme Court has consistently enforced the Guidelines to the extent they are in accord with that delegated authority. See e.g., In re Registrant J.M., 167 N.J. 490, 503 (2001) (holding the Attorney General's decision to include certain information in the RRAS was "with[in] the scope of the Attorney General's delegated authority to devise an assessment tool for use in reliably and uniformly predicting risk of re-offense . . . so long as the Attorney General's exercise of discretion did not plainly transgress the statute"); C.A., 146 N.J. at 92-93 (sustaining the Attorney

General's inclusion of non-conviction offenses in the RRAS as "statutorily authorized and a rational implementation of the Attorney General's delegated power pursuant to N.J.S.A. 2C:7-8"). Under N.J.S.A. 2C:7-16(d), the Legislature also authorized the Attorney General to bring a civil action against a person or group of persons "[w]henver there is reasonable cause to believe that . . . person or group of persons is engaged in a pattern or practice of misuse of the information disclosed" in the registry.

Although the Guidelines provide, "[c]ircumstances may exist, such as the use or threatened use of information from the [registry] to harm, threaten, intimate, or harass a specific sex offender, which justify the removal of certain personal information," they also make clear "[s]uch personal information will be re-posted on the [registry] as soon as practicable." Guidelines at 47. Here, S.R. recounted numerous, unrelated incidents since 2007 in which individuals harassed him allegedly due to his Megan's Law status. The most recent of those incidents, however, took place in May 2020, eighteen months before his hearing. Moreover, the State prosecuted the perpetrator of that last incident and S.R. has not reported any problem since.

We thus cannot find S.R. demonstrated at the time of his hearing that any person or group of persons was misusing or threatening to misuse his personal

identifying information. Even assuming he might previously have been able to make that showing, the Guidelines' requirement of registry re-posting "as soon as practicable" would preclude relief here.

V.

S.R. also contends his "right to privacy and safety substantially outweighs the State's interest in protecting the public from his recidivism." On this point, he argues our Supreme Court in Doe, 142 N.J. at 19-20, upheld the constitutionality of Megan's Law's registration and notification provisions "with the expectation that the registrant's public information would be used appropriately," rather than to "threaten or cause harm to a registrant." S.R. maintains the public's misuse of his personal information renders his privacy interest greater than the State's interest in posting his personal information on the registry. Again, we disagree.

In Doe, the Court recognized the registration and notification requirements implicated the registrant's protected privacy interests. Id. at 82. It explained, however, "[b]ecause none of the information disclosed under the [r]egistration law is confidential, requiring disclosure of such information results in a minimal invasion of privacy." Id. at 90. The Court also noted, under

the statute's tier classification system, "the degree and scope of disclosure is carefully calibrated to the need for public disclosure." Id. at 89.

The Court determined the incursion on the registrant's privacy interests was necessary for the protection and safety of the public. Id. at 90-91. Balancing the registrant's privacy interests, the infringement of those interests imposed by Megan's Law, and the substantial public interest in preventing sex offense recidivism, the Doe Court concluded "the state interest in public disclosure substantially outweighs [the] plaintiff's interest in privacy." Id. at 88, 90.

We acknowledge Doe was decided prior to the passage of Paragraph 12 and enactment of N.J.S.A. 2C:7-13, and therefore did not factor the internet registry into its analysis. In A.A. v. State, 384 N.J. Super. 481, 484-85 (App. Div. 2006), however, registrants challenged the registry as violative of their rights under the Federal Constitution, as, unlike the notification requirement, the registry requirement subjected them to "unlimited world-wide notification via the [i]nternet." They also argued "the [i]nternet postings provide far more access to registrant information and therefore constitute 'punishment' which was not involved in the original Megan's Law as sustained" in Doe. Id. at 491. We rejected the registrants' constitutional challenge and declined to disturb Doe's

holding "merely because Megan's Law disclosures are now on the [i]nternet."
Id. at 499.

Additionally, the same registrants had previously filed a motion in federal court to enjoin enforcement of Paragraph 12 based on identical arguments, which the Third Circuit denied. A.A. v. New Jersey, 341 F.3d 206, 214 (3d. Cir. 2003). The Third Circuit recognized the registry requirement interfered with the registrants' nontrivial privacy interest but concluded "whatever privacy interest the [r]egistrants ha[d] in their home addresses is substantially outweighed by the State's interest in expanding the reach of its notification to protect additional members of the public." Id. at 213.

Notably, the Legislature recognized "in some instances, countervailing interests support a legislative determination to exclude from the [registry] the registration information of certain sex offenders," N.J.S.A. 2C:7-12, and wrote exceptions to the registry requirement into the statute, N.J.S.A. 2C:7-13(d). Those exceptions apply when a moderate risk offender has committed only one offense and that offense: (1) was an adjudication of delinquency; (2) involved a violation of N.J.S.A. 2C:14-2 or -3 "under circumstances in which the offender was related to the victim by blood or affinity to the third degree or was a resource family parent, a guardian, or stood in loco parentis within the household"; or (3)

involved a violation of N.J.S.A. 2C:14-2 or -3 "in any case in which the victim assented to the commission of the offense but by reason of age was not capable of giving lawful consent." N.J.S.A. 2C:7-13(d)(1)-(3). S.R. does not satisfy any of these exceptions.

The Legislature also enacted provisions imposing civil and criminal liability for persons or groups of persons who misuse the registry. N.J.S.A. 2C:7-16(b), (d). Specifically, under N.J.S.A. 2C:7-16(b), it is a third-degree crime to use information disclosed on the registry to facilitate a crime and "[a]ny person who uses information disclosed pursuant to [Megan's Law] to commit a disorderly persons or petty disorderly persons offense shall be guilty of a disorderly persons offense and shall be fined not less than \$500 or more than \$1000[.]"

In light of these legislatively enacted safeguards to exclude certain registrants from the registry requirement and deter and respond to incidents of intimidation and harassment, we conclude the registry requirement does not violate S.R.'s right to privacy. As the Doe Court noted, the Legislature faced "a difficult problem, a question of policy, and it unquestionably decided that public safety was more important than the potential for unfair, and even severe, impact on those who had previously committed sex offenses." 142 N.J. at 110. We are

satisfied the Legislature, when it created the registry, enacted sufficient protections for registrants' privacy interests when weighed against the State's "clear and compelling" interest in protecting the community, Doe 142 N.J. at 89. Here, with respect to the May 2020 harassment, S.R. availed himself of these protections leading to the perpetrator's prosecution.

In sum, the court properly denied S.R.'s application to have his personal identifying information removed from the registry. To the extent we have not addressed any of defendant's remaining arguments, it is because we have concluded they are of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION