2022 WL 467787
Only the Westlaw citation is currently available.
United States District Court, N.D. Florida,
Tallahassee Division.

Douglas LINDSEY, Plaintiff,
v.
Richard L. SWEARINGEN, Defendant.

Case No. 4:21cv465-RH-MAF
|
Signed 01/24/2022

Attorneys and Law Firms

Ann Marie Fitz, Law Office of Ann Fitz, West Palm Beach, FL, for Plaintiff.

Karen Ann Brodeen, Office of the Attorney General, William Edward Chorba, Florida Office of The Attorney General, William Henry Stafford, III, Tallahassee FL, for Defendant.

ORDER OF DISMISSAL

Robert L. Hinkle, United States District Judge

***1** This case presents two questions. The first is whether Florida may require a new resident to register as a **sex offender** based on a crime committed in a state where the individual lived previously, even though a court in that state terminated that state's **registration** requirement. The second is whether Florida may keep the individual's Florida **registration** publicly available after the individual moves out of Florida. The answer to both questions is yes.

I

The plaintiff Douglas Lindsey was convicted in his home state of Oklahoma in 1999 of offenses including statutory rape and lewd molestation of a 15-year-old. As required by Oklahoma law, he registered there as a **sex offender**. But as allowed by Oklahoma law, a state court terminated the **registration** requirement in 2009 based on an individualized finding that Mr. Lindsey posed a low risk of recidivism.

Mr. Lindsey moved to Florida in 2011. He did not register as a **sex offender**. In 2017, the Florida Department of Law Enforcement, which maintains the Florida **sex-offender registry**, informed Mr. Lindsey that Florida law required him to register. He registered. But in 2019, he requested FDLE to remove him from the **registry** based on the 2009 Oklahoma court order. FDLE denied the request.

In 2020, Mr. Lindsey moved back to Oklahoma. He is no longer required to update his Florida **sex-offender registration**. But the prior Florida **registration**, including information provided before his departure from Florida, remains publicly available, including over the internet.

Mr. Lindsey filed this action under 42 U.S.C. § 1983 asserting the Florida **registration** requirement, as applied to him, is unconstitutional—that it violates the United States Constitution's Full Faith and Credit Clause and Equal Protection Clause. Mr. Lindsey filed the action in the Southern District of Florida, within whose geographic boundaries he lived while in Florida, and named a single defendant, the FDLE Commissioner in his official capacity. The Commissioner is the proper defendant in a § 1983 action challenging the Florida **registration** requirement.

The Commissioner moved to dismiss for improper venue, lack of subject-matter jurisdiction over the Full Faith and Credit claim, and failure to state either a Full Faith and Credit or Equal Protection claim on which relief can be granted. The Southern District transferred the case to this court and denied the motion to dismiss as moot. This court reinstated the motion to dismiss and allowed supplemental briefing. The motion is ripe for a decision.

II

The Commissioner's subject-matter jurisdiction argument confuses jurisdiction with the merits. Mr. Lindsey asserts that because of the Oklahoma court's ruling, the Florida **registration** requirement, as applied to him, violates the Full

Faith and Credit Clause, as well as the Equal Protection Clause. He seeks relief under 42 U.S.C. § 1983. He has named as the defendant the state official responsible for enforcing the challenged requirement; that makes this a proper action under *Ex parte Young*, 209 U.S. 123 (1908).

***2** The Commissioner might well be correct that a Full Faith and Credit violation, *without more*, is not actionable under § 1983. *See* *Thompson v. Thompson*, 484 U.S. 174, 182 (1988) ("[T]he Full Faith and Credit Clause ... does not give rise to an implied federal cause of action."); *Adar v. Smith*, 639 F.3d 146, 153-54 (5th Cir. 2011) (en banc); *Stewart v. Lastaiti*, 409 F. App'x 235, 236 (11th Cir. 2010). But here there is more—FDLE's allegedly unconstitutional executive action. Mr. Lindsey plainly has standing to challenge that executive action. And even if it were true that an individual claim could never lie for a constitutional violation imputed in whole or in part to the Full Faith and Credit Clause, this would mean only that Mr. Lindsey's § 1983 claim would fail on the merits—that it would fail to state a claim on which relief can be granted. A claim may arise under the Constitution and laws of the United States—and so be within a district court's 28 U.S.C. § 1331 "arising under" or "federal question" jurisdiction—even if the claim fails on the merits. Mr. Lindsey's Full Faith and Credit claim is weak, but not so weak that it cannot trigger the court's arising-under jurisdiction. *See* *Bell v. Hood*, 327 U.S. 678, 681-82 (1946).

III

To survive a motion to dismiss for failure to state a claim on which relief can be granted, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For purposes of a motion to dismiss, the complaint's factual allegations, though not its legal conclusions, must be accepted as true. *Id.*; *see also* *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Here the facts are not in dispute; the case turns on legal issues that can be fully and properly addressed on the motion to dismiss.

A

The Supreme Court has upheld **sex-offender registration** requirements. *See, e.g.,* *Smith v. Doe*, 538 U.S. 84 (2003) (holding a state **registry** constitutional even as applied to offenses committed before the **registry** was created). The Eleventh Circuit has applied this ruling to the Florida statute at issue here. *See, e.g.,* *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005) (holding Florida's **registry** constitutional). The Florida statute's **registration** requirements have changed at the margins since *Doe v. Moore* was decided, but not in ways that affect the issues here. These decisions are fatal to Mr. Lindsey's claims.

B

Mr. Lindsey asserts, though, that under the Full Faith and Credit Clause, the Oklahoma court's decision establishes that he is not required to register—that he is free from the **registration** requirement not just in Oklahoma, but in Florida, too. That is incorrect.

The Oklahoma court applied Oklahoma law. The court assessed the individual risk posed by Mr. Lindsey—a factual issue that Oklahoma law made relevant. Applying Oklahoma law, the court concluded the Oklahoma **registration** requirement was due to be terminated.

But the relevant provision of Florida law is different—it makes **registration** turn only on the offense of conviction, not on any individualized assessment of risk. *See* Fla. Stat. § 943.0435(1)(h)1.a. The Full Faith and Credit Clause makes the Oklahoma court's rulings binding in Florida and other states—but findings on irrelevant matters remain irrelevant. The Oklahoma court did not purport to apply, let alone to change, Florida law.

The Full Faith and Credit Clause does not require the State of Florida to adopt the same laws as Oklahoma. The Full Faith and Credit Clause does not require FDLE to apply Oklahoma law instead of Florida law to Florida residents, even if they previously lived in Oklahoma. And the Full Faith

and Credit Clause does not extend to matters a court does not address. *See* *Rosin v. Monken*, 599 F.3d 574, 576-77 (7th Cir. 2010) (holding that Illinois could require **sex-offender registration** based on a New York conviction and could do so even if the New York court had purported to hold, in approving a plea agreement, that **registration** would not be required anywhere); *United States v. Paul*, 718 F. App'x 360, 364 (6th Cir. 2017) (upholding a conviction for failing to register federally as required based on a Tennessee conviction even though the Tennessee judgment said **registration** would not be required—but without saying where).

***3** Here, the Oklahoma court had no occasion to apply Florida law or to determine whether, if Mr. Lindsey later moved to Florida, he would be required by Florida law to register without regard to any individualized assessment of risk. Nor did the Oklahoma court have occasion to determine whether any such requirement to register in Florida, based only on the offenses of conviction and without regard to any individualized assessment of risk, would be constitutional.

Because the Oklahoma court did not address these issues, its ruling did not control FDLE's treatment of these issues. And the Oklahoma court's ruling also does not control these issues as now presented in this court.

C

Florida law requires **registration** based on an individual's offense of conviction without any individualized assessment of risk. *See* Fla. Stat. § 943.0435(1)(h). *Smith v. Doe* and *Doe v. Moore* make clear this is not unconstitutional. For individuals who, like Mr. Lindsey, were convicted—or even just released from resulting sanctions—on or after October 1, 1997, the Florida **registration** requirement applies to anyone convicted under listed Florida statutes or "similar offenses in another jurisdiction." Fla. Stat. § 943.0435(1)(h)1.a.(I). One of the listed statutes is Florida Statutes § 800.04, which prohibits sexual acts and lewd conduct of specified kinds with children ages 12 through 15. This provision applies to Mr. Lindsey's Oklahoma offenses. He does not assert the contrary.

Had Mr. Lindsey committed the same offenses in Florida as he admittedly committed in Oklahoma, at the same time, and had he been charged and convicted under the governing Florida criminal statute just as he was charged and convicted under the governing Oklahoma criminal statute, he would have been required to register as a **sex offender** in Florida. There would have been no individualized assessment of risk. Under settled law, including *Smith v. Doe* and *Doe v. Moore*, the **registration** requirement would have been constitutional. It was not unconstitutional for Florida to treat Mr. Lindsey, when he was a newcomer to Florida, precisely the same as Florida treated its lifelong residents.

As set out above, the Full Faith and Credit Clause is not to the contrary. Neither is the Equal Protection Clause. The Constitution does not require Florida to engage in an individualized assessment of risk rather than requiring **registration** based on an offense of conviction. Mr. Lindsey says the **registration** requirement violates his right to travel, but it does not. Mr. Lindsey was free to travel to Florida and take up residence here—but upon doing so, he could properly be required to comply with the same **sex-offender-registration** statute applicable to all other Florida residents.

Mr. Lindsey also complains of FDLE's decision to keep his **registration** publicly available after his departure from the state. Mr. Lindsey does not explicitly assert that this violates Florida law, and any such claim in this court would be barred by the Eleventh Amendment. *See, e.g.,* *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984) (holding that the Eleventh Amendment bars any claim for injunctive relief based on state law against a state or against a state officer); *Huff v. Swearingen*, No. 4:19cv564-RH-CAS, 2000 WL 7134935, at *1 (N.D. Fla. June 8, 2020) (applying *Pennhurst* in a **sex-offender-registry** case and expressing no opinion on whether keeping a **registration** public after an offender leaves the state accords with Florida law). Regardless of whether FDLE has properly interpreted Florida law, it is clear that the *United States Constitution* does not require Florida to purge its otherwise-public **registration** records just because an offender has left the state. *See Huff* at * 3 (citing *Farmer v. Swearingen*, No. 4:15cv335-MW-CAS (N.D. Fla. July 6, 2016)).

***4** Finally, Mr. Lindsey points to an alleged inconsistency within the controlling Florida statute itself that he says violates the Equal Protection Clause. The inconsistency easily survives the applicable rational-basis scrutiny.

Under Florida Statutes § 943.0435(1)(h)1.a.(I), as set out above, **registration** is required based on an offense of conviction, whether under specified Florida statutes or similar laws of other states. But the requirement applies only if the offender was convicted—or released from resulting sanctions—on or after October 1, 1997. *See id.* § 943.0435(1)(h)1.a.(II). Upon moving to Florida, Mr. Lindsey was required to register under this provision.

Under Florida Statutes § 943.0435(1)(h)1.b, **registration** is required on a different basis: not an offense of conviction but another state's designation of the offender as a sexual predator or offender, if the designation required **registration** in the other state. This provision is not limited to offenders who were convicted—or released from resulting sanctions—on or after October 1, 1997.

An offender who has been required to register only under (h)1.b.—that is, only based on another state's designation of the offender as a sexual predator or offender—is no longer required to register if the other state's designation is terminated. *See id.* § 943.0435(11)(b). This makes sense: if the only basis for requiring **registration** no longer exists, there is no longer a basis for requiring **registration**.

Mr. Lindsey complains that there is no corresponding provision for termination of the requirement to register under (h)1.a., but that is not so. If the basis for **registration** under (h)1.a. ends—if the conviction triggering the **registration** requirement is vacated—the **registration** requirement also ends. *See id.* § 943.0435(11). This is the same principle that applies under (h)1.b.: if the only basis for requiring **registration** no longer exists, there is no longer a basis for requiring **registration**.

Mr. Lindsey suggests the Commissioner can simply choose to require **registration** under one of these provisions or the other—and that had the Commissioner chosen to require him to register under (h)1.b. rather than (h)1.a., he would no longer be required to register. But these provisions do not give the Commissioner discretion whether to require **registration**. The statutes are self-executing. An offender who meets the requirements of either or both of these provisions must register. Mr. Lindsey met the requirements of (h)1.a. and thus was required to register. The Commissioner was not free to abrogate the requirement. And Mr. Lindsey's complaint now is not that he is still required to update his **registration**—he is not. His complaint is that the prior **registration** is still public. As set out above, the Constitution does not require Florida to purge the **registration** that was proper when made.

IV

In sum, Florida law clearly required Mr. Lindsey to register as a **sex offender** when he moved to Florida. Having moved out of the state, Mr. Lindsey is no longer required to update the **registration**, as the Commissioner acknowledges. Whatever might be said of Florida law, the United States Constitution does not require Florida to purge or deny public access to the prior **registration**. Mr. Lindsey is not entitled to relief in this action.

***5** Mr. Lindsey has not asked for leave to amend his complaint, and any attempted amendment would almost surely be futile. He need not seek leave to amend to preserve his right to challenge on appeal this order's legal analysis. But if he believes, consistent with this order's legal analysis, that he can amend to state a claim on which relief can be granted, he may file a timely motion to alter or amend the judgment that will be entered based on this order. Any such motion should set out the facts sufficiently to allow a reasoned determination of whether amendment would be futile.

For these reasons,

IT IS ORDERED:

1. The motion to dismiss, ECF No. 17, is granted in part.

2. The clerk must enter judgment stating, "This action was resolved on a motion to dismiss. The complaint is dismissed for failure to state a claim on which relief can be granted."

3. The clerk must close the file.

SO ORDERED on January 24, 2022.

All Citations

Slip Copy, 2022 WL 467787