

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 22971
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CV-930
v.	:	
	:	(Civil Appeal from
ANTHONY L. LEGNER	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 19<sup>th</sup> day of June, 2009.

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MATHIAS H. HECK, JR., by DOUGLAS M. TROUT, Atty. Reg. #0072027, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellee

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Attorney for Defendant-Appellant

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FAIN, J.

{¶ 1} Defendant-appellant Anthony L. Legner appeals from an order of the trial court denying his petition for a declaratory judgment that the Attorney-General of Ohio was without authority to classify him as a Tier II offender under S.B. 10, the Adam Walsh Act, which amends Chapter 2950 of the Ohio Revised Code. Legner contends that the

Act may not constitutionally be applied to him, and that, in any event, he should have had a hearing on his contention that the community-notification provisions in the Act should not apply to him.

{¶ 2} Legner's contention that the Act is unconstitutional is overruled on the authority of *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774. Because Legner was classified as a Tier II offender, the community-notification provisions in the Act do not apply to him, so the trial court did not err in declining to set a hearing on Legner's petition. The judgment of the trial court is Affirmed.

I

{¶ 3} In 1999, Legner pled no contest to Corruption of a Minor. He was classified as a Sexually Oriented Offender. In November, 2007, Legner received notice from the Attorney-General of Ohio of his classification as a Tier II offender, beginning January 1, 2008, under Chapter 2950 of the Ohio Revised Code, as amended by S.B. 10.

{¶ 4} Legner filed a petition for a declaratory judgment, in the Montgomery County Common Pleas Court, seeking a declaration that the provisions in R.C. Chapter 2950 for his reclassification violate provisions of the Ohio and United States constitutions. His petition was denied, without a hearing. From the denial of his petition, Legner appeals.

II

{¶ 5} Legner's First Assignment of Error is as follows:

{¶ 6} "THE TRIAL COURT ERRED IN FINDING THAT S.B. 10 COULD

CONSTITUTIONALLY BE APPLIED RETROACTIVELY TO APPELLANT SEVENTEEN YEARS AFTER CONVICTION AND TEN YEARS AFTER A PRIOR JUDICIALLY DETERMINED DESIGNATION AS AN [SEXUALLY] ORIENTED OFFENDER.”

{¶ 7} Legner contends that the retroactive application of the registration requirements of R.C. Chapter 2950 violates the Ex Post Facto clause in Article I, Section 10 of the United States Constitution, and the prohibition against retroactive laws set forth in Article II, Section 28, of the Ohio Constitution. These arguments were addressed and rejected in *State v. Barker*, supra, which we approve and follow.

{¶ 8} Legner’s First Assignment of Error is overruled.

### III

{¶ 9} Legner’s Second Assignment of Error is as follows:

{¶ 10} “THE TRIAL COURT ERRED AND COMMITTED AN ABUSE OF DISCRETION IN DENYING APPELLANT AN EVIDENTIARY HEARING PURSUANT TO R.C. 2950.11 ON HIS MOTION FOR RELIEF FROM COMMUNITY NOTIFICATION.”

{¶ 11} R.C. 2950.11(F)(2) provides that an offender who is subject to community-notification provisions may request a hearing to determine whether the community-notifications should be applicable to him or to her. Legner requested a hearing under R.C. 2950.11(F)(2), but the trial court did not set a hearing.

{¶ 12} R.C. 2950.11(F)(1) imposes community-notification requirements on Tier III sex offenders. It does not impose community-notification requirements on sex offenders in tiers I or II. Legner has been classified as a Tier II sex offender. Therefore, the community-notification provisions do not apply to him, and the trial court did not err in declining to set a hearing on whether they should apply to him. There is nothing in the

notice Legner received from the Attorney-General of Ohio to suggest that community-notification provisions apply to him.

{¶ 13} Legner's Second Assignment of Error is overruled.

IV

{¶ 14} Both of Legner's assignments of error having been overruled, the order of the trial court from which this appeal is taken is Affirmed.

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BROGAN and FROELICH, JJ., concur.

Copies mailed to:

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Hon. Mary Lynn Wiseman