

UPDATED: 7:43 p.m. November 21, 2007

Ga. court overturns restrictions on where sex offenders live

By BILL RANKIN, RHONDA COOK

The Atlanta Journal-Constitution

Published on: 11/21/07

The Georgia Supreme Court on Wednesday declared unconstitutional a provision of a 2006 state law that prohibits registered sex offenders from living within 1,000 feet of day care centers, schools, churches and other places where children congregate.

In striking down the residency restrictions, the justices said they can amount to an "illegal taking" because they force sex offenders who are homeowners to abandon their homes if a place where children congregate is suddenly built nearby.

"Sex offenders face the possibility of being repeatedly uprooted and forced to abandon homes in order to comply with the [law's] restrictions," Justice Carol Hunstein wrote.

"It is apparent that there is no place in Georgia where a registered sex offender can live without being continually at risk of being ejected," Hunstein added.

According to the Georgia Bureau of Investigation, there are almost 15,000 sex offenders on the state's sex offender registry. While the court's ruling focused on the issue of sex offenders who are homeowners, it appears to also extend to all sex offenders because the entire residency restrictions were stricken.

The unanimous decision was a legal victory for Anthony Mann of Clayton County, who researched neighborhoods before he and his wife bought a house in Hampton in 2003. A day care center later opened nearby. When Mann's probation officer told him to quit his barbecue business and move from his home, he filed suit.

Mann is a registered sex offender for a 2002 conviction in North Carolina for "taking indecent liberties with children." Once part-owner of a barbecue restaurant located in a restricted area, he also challenged the state law that restricts where he can work. But the court ruled against him on that issue.

"He gets to stay in his home and he's very happy," said Mann's lawyer, Bailey Wallace of Jonesboro. "This was a severely myopic law that didn't pass the smell test. It turns people into nomads. Where was he going to live? Under a bridge? Under a trestle? Out in the open?"

House Majority Leader Jerry Keen (R–St. Simons), the lead sponsor of the sweeping 2006 law, condemned the ruling, saying the state Supreme Court had thwarted the will of the people.

"Obviously, it's extremely disappointing," he said. "In throwing out the residency requirement in total, based on one situation, the effect of their ruling is that now convicted felony sex offenders are free to live anywhere they want to in Georgia, whether it's a park, playground or day care center next door."

Keen said he anticipates revisiting the residency portion of the law when the Legislature reconvenes in January.

Russ Willard, a spokesman for Attorney General Thurbert Baker, said his office was "reviewing the decision to decide the extent to which the court has limited law enforcement's ability to enforce the sex offender restrictions."

In the state Supreme Court decision. Hunstein wrote that the law essentially places the state's police powers into the hands of third parties who decide to establish or operate a place where children congregate. This makes any registered sex offender living within a restricted 1,000-foot buffer area at odds with the law and having to decide whether to abandon their homes or face a minimum 10-year prison sentence.

"While this time it was a day care center," Hunstein wrote, referring to Mann, "next time it could be a playground, a school bus stop, a skating rink or a church."

Other areas where children congregate, under the law, include parks, gyms, swimming pools and any of at least 300,000 school bus stops across the state. The ruling does not affect restrictions on where sex offenders can work or loiter.

As for the Manns in Clayton County, Hunstein wrote, they could not legally live in their home under the law. Even if Mann could have found another home, "he is faced with the financial burden of maintaining both

residences until he and his wife can rent or sell" their Clayton County home, the decision said.

Even if the Manns could rent their property to others, the sex-offender registry law forces the couple to "become lessors, an unwelcomed and unanticipated role for which they are ill-equipped," Hunstein wrote.

Sarah Geraghty, a lawyer for the Southern Center for Human Rights in Atlanta, heralded the ruling.

"This is the court saying we value property rights in this state and the Legislature cannot arbitrarily snatch them away," Geraghty said. "This is a sloppily drafted law that came into being because of election-year pandering. No other state in the United States, except Georgia, saw fit to retroactively evict thousands of people from their homes."

Geraghty is one of a number of lawyers representing sex-offender plaintiffs in a federal lawsuit that seeks to declare the entire registry law unconstitutional. That case is now pending before U.S. District Judge Clarence Cooper in Atlanta.

In March, Cooper issued a ruling allowing many facets of the lawsuit to go forward. But he viewed the burden on sex-offenders who own homes differently than the state Supreme Court justices did Wednesday and dismissed claims that sought to hold the law unconstitutional because homeowners would be uprooted from their homes if a child care center or some other place where children congregate was built nearby. Cooper agreed with state attorneys who said the economic impact on sex-offender homeowners was minimal because they could continue to own the property or sell it.

The federal lawsuit's challenges that are still alive include a claim that the 1,000-foot residency and workplace restrictions should not be applied on those who were convicted before the law was enacted. The suit also attacks the residency restrictions for those who are in nursing homes and those who are homeless. It also raises a First Amendment challenge to the prohibition against sex offenders working or volunteering at a church.

Twenty-nine sex offenders who were living in a Cobb County extended-stay lodge were recently told they have to leave by Dec. 1 because a church is under construction nearby, Geraghty said. "These people were there as a last resort."

The lead plaintiff in the federal case, Wendy Whitaker, was forced to move from her home in Harlem, Ga., in early 2006. She lives in South Carolina now and has been paying rent there while also paying the mortgage for the Harlem residence.

Whitaker, now 28, is on the sex offender registry because at age 17 she engaged in consensual oral sex with a 15-year-old boy on school property.

Whitaker said she was pleased with Wednesday's ruling. She said she never would have moved if she had not been required to. But now, she said, she's not sure whether she will return.

"My husband and I had decided it was in our best interest to leave the state of Georgia," she said. "I don't know if we'll return, given everything we've been through."

Staff writer Jim Galloway contributed to this article.

Source:

http://www.ajc.com/search/content/metro/stories/2007/11/21/offenders_1122.html