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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0844-MR

JOHN DOE — APPELLANT

v.

APPEAL FROM MERCER CIRCUIT COURT
HONORABLE KRISTIN CLOUSE, SPECIAL JUDGE
ACTION NO. 22-CI-00320

TED DEAN, IN HIS OFFICIAL CAPACITY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, COMBS, AND EASTON, JUDGES.

EASTON, JUDGE: The Appellant ("Doe") appeals the Mercer Circuit Court's Order dismissing his Complaint and Petition for Declaratory Judgment challenging the constitutionality of the "anti-grandfather clause" of Kentucky's Sex Offender

Registry residence restrictions. KRS[1] 17.545(3)(b). Doe named Ted Dean as the Defendant/Respondent. Dean is the Mercer County Attorney. In his official and prosecutorial capacity, Dean is a representative of the Commonwealth who could initiate criminal charges against Doe if Doe violates residency restrictions. Having been properly notified of a constitutional challenge, the Attorney General of Kentucky is participating in this case. Because of Dean's official capacity status, we will refer to the Appellee as the "Commonwealth."

Doe asserts numerous complaints relating to the anti-grandfather clause from vagueness to an uncompensated taking of his property. After a review of the undisputed circumstances, we will address the arguments in an order to keep some related concepts together before finally addressing the claim of a taking of Doe's property. Applying current law to the questions presented, we affirm.

FACTUAL AND PROCEDURAL HISTORY

In 2007, Doe pled guilty to one felony count of possession of matter portraying a sexual performance by a minor, in violation of KRS 531.335. He received a probated sentence. Doe was required to register as a sex offender for twenty years. KRS 17.520(3). Doe has not been subject to active supervision since 2010 and has had no reported violations of his probation or registry conditions.

[1] Kentucky Revised Statutes.

In January 2022, Doe and his wife purchased a home in Mercer County. At the time of the purchase, the home was located outside the 1,000 feet restriction imposed by KRS 17.545(1). Later in 2022, a daycare opened near Doe's home. The daycare is clearly within 1,000 feet of Doe's property. Doe was told he would have to move.

Doe filed this action in December 2022, seeking a declaration that KRS 17.545(3)(b) was unconstitutional for several reasons: (1) that the application of the anti-grandfather clause to him results in a violation of the takings clause pursuant to the Fifth and Fourteenth Amendments of the United States Constitution and Section 13 of the Kentucky Constitution; (2) it similarly violates his right to acquire and protect property under Section 1 of the Kentucky Constitution; (3) it is an "absolute and arbitrary state action" in violation of Section 2 of the Kentucky Constitution which is also inconsistent with due process; (4) it is a prohibited *ex post facto* law in violation of Article 1, Section 9 of the United States Constitution and Section 19 of the Kentucky Constitution; (5) it is a prohibited bill of attainder in violation of Article 1, Section 9 of the United States Constitution; and (6) it is void for vagueness.

The Attorney General's Office filed a motion to dismiss for failure to state a claim upon which relief can be granted. Doe filed a competing motion for summary judgment. The circuit court heard oral arguments in May 2023 and

subsequently entered its Order dismissing Doe's Petition on June 19, 2023, concluding that the statute is not unconstitutional. Doe timely filed this appeal.

STANDARD OF REVIEW

We begin our review by determining if this appeal is of a dismissal order for failure to state a claim or a summary judgment. "If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . . ." CR[2] 12.02. In its analysis, the circuit court commented on an expert report filed by Doe. We will review the order at issue as a summary judgment.

Whether of a dismissal for failure to state a claim or for summary judgment, our review is *de novo*. A dismissal for failure to state a claim may only be granted if the complaint states no possible avenue to success on the claims made. *Carruthers v. Edwards*, 395 S.W.3d 488, 491 (Ky. App. 2012). In such cases, the case must be dismissed because the law does not permit the claims to proceed. Summary judgment review is also *de novo* because there can be no questions of material fact remaining with only legal questions to be resolved. *Brown v. Griffin*, 505 S.W.3d 777, 781 (Ky. App. 2016).

[2] Kentucky Rules of Civil Procedure.

Specifically, Doe seeks a determination that a law is unconstitutional. "In reviewing the constitutionality of a statute, we apply a *de novo* standard of review." *S.W. v. S.W.M.*, 647 S.W.3d 866, 873 (Ky. App. 2022), *discretionary review denied* (Aug. 16, 2022) (internal quotation marks omitted). "In considering an attack on the constitutionality of legislation, this Court has continually resolved any doubt in favor of constitutionality rather than unconstitutionality." *Id.* (citing *Hallahan v. Mittlebeeler*, 373 S.W.2d 726, 727 (Ky. 1963)).

ANALYSIS

KRS 17.500 through 17.580 is known as the Sex Offender Registration Act ("SORA"). It requires any person convicted of certain offenses after July 15, 1994, to register. The requirement of a sex offender to comply only with registration itself is constitutional even if applied to those convicted prior to subsequent revisions of SORA. *Hyatt v. Commonwealth*, 72 S.W.3d 566, 572 (Ky. 2002). The questions presented here are about what is required in addition to just the act of registration.

The specific statute challenged is KRS 17.545, which is a residency restriction enacted in 2006. The relevant portions of the statute are:

> (1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility. The measurement shall be taken in a straight

> line from the nearest property line to the nearest property line of the registrant's place of residence.
>
> . . .
>
> (3) For purposes of this section:
>
> > (a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and
> >
> > (b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.

Our Supreme Court invalidated this statute as applied to those convicted **before** its enactment as an unconstitutional *ex post facto* law. *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009), *cert. denied* 559 U.S. 992, 130 S. Ct. 1738, 176 L. Ed. 2d 213 (2010). In its *ex post facto* analysis, the Supreme Court determined that the residency restriction of KRS 17.545 was punitive in nature, despite any intent of the General Assembly to the contrary. *Baker*, 295 S.W.3d at 447.

We need not revisit[3] all the analysis in *Baker*, but much of it is still relevant. The Supreme Court determined that the residency restriction acted as a

[3] We note that no member of the Kentucky Supreme Court who participated in *Baker* remains on that Court. The dissenting justices rejected the idea of the residency restrictions as banishment. Since *Baker*, other states have rejected Kentucky's conclusion on this point. *See, e.g.*, *California v. Mosley*, 60 Cal. 4th 1044, 1062, 344 P.3d 788 (Ca. 2015).

form of banishment, and thus should be regarded as a punishment. The Supreme Court explicitly referenced the anti-grandfather clause stating "[i]t also expels registrants from their own homes, even if their residency predated the statute or arrival of the school, daycare, or playground. Such restrictions strike this Court as decidedly similar to banishment. We therefore conclude that the residency restrictions in KRS 17.545 have been regarded in our history and traditions as punishment." *Baker*, 295 S.W.3d at 444.

The residency restriction also acted as an affirmative disability or restraint. With the anti-grandfather clause, "[t]he registrant also faces a constant threat of eviction 'because there is no way for him or her to find a permanent home in that there are no guarantees a school or [other facility] . . . will not open within 1,000 feet of any given location.'" *Baker*, *supra*, at 445 (citing *Indiana v. Pollard*, 908 N.E.2d 1145, 1150 (Ind. 2009)).

Keeping in mind that the analysis in *Baker* was in the context of an *ex post facto* application, the Supreme Court also determined that the statute, as then written, did not bear a sufficient rational connection to a legitimate nonpunitive public purpose. Obviously, public safety and the protection of children from sex offenders is a legitimate public purpose. But when *Baker* was rendered, the version of the statute applied did not include any provisions prohibiting a registered sex offender from being in a school, daycare, or playground while

children were present. It did not prevent them from living with a minor victim. It only restricted them from residing within 1,000 feet of a school, daycare, or playground.

Since the *Baker* opinion, the General Assembly has amended the statute several times. *See Commonwealth v. Nash*, 338 S.W.3d 264, 267-68 (Ky. 2011). The current version of the statute attempts to rectify some of the Supreme Court's criticism of the previous versions. It now includes a provision that a registered sex offender may not be on the grounds of a "high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned or leased playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500." KRS 17.545(2). It also includes a restriction that an adult offender who committed an offense against a minor may not have the same residence as a minor, unless the registrant is a family member of a minor, and that minor was not the victim of the registrant's crime. KRS 17.545(4)(a) and (b).

RESIDENCE IS NOT VAGUE

The crux of Doe's vagueness argument is with KRS 17.500(7)'s definition of "reside." This provision reads: "'Residence' means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address." Doe claims a literal reading of the statute means that he and every other registered sex offender is unable to stay even one night in a hotel. If rendered unconscious due to anesthesia at a hospital, Doe argues the registrant would be "asleep" and must report the incident with the hospital as a residence.

The Kentucky Supreme Court summarized the law applicable to a vagueness challenge in *Tobar v. Commonwealth*, 284 S.W.3d 133, 135 (Ky. 2009):

> A statute is vague if "men of common intelligence must necessarily guess at its meaning." *State Bd. For Elementary and Secondary Educ. v. Howard*, 834 S.W.2d 657, 662 (Ky. 1992) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973)). To satisfy the void for vagueness doctrine a statute must: 1) provide fair notice to those targeted by the statute, "by containing sufficient definiteness so that ordinary people can understand what conduct is prohibited" and 2) it must have been drafted in such a way to discourage arbitrary and discriminatory enforcement. *Wilfong v. Commonwealth*, 175 S.W.3d 84, 95 (Ky. App. 2004). A statute is unconstitutionally vague if those individuals who are affected by it cannot reasonably understand what the statute requires. *Gurnee v. Lexington-Fayette Urban County Government*, 6 S.W.3d 852, 856 (Ky. App. 1999).

In *Tobar*, the Court addressed a vagueness argument with respect to the application of sex offender registration for homeless people. The Court noted the requirement was only to advise of a "change" in residence, not necessarily to give a street address for a new residence. The vagueness challenge was rejected.

Doe similarly disregards the context of sleeping with the word "residence" itself. The use of the word "change" also implicates a decision by the registrant to alter his or her usual sleeping place. Doe cited to no actual application of the statute as he suggests, such as a registrant being required to report his "change" of residence because he became unconscious in a hospital or stayed one night in a hotel.

The applicable regulation incorporates forms for registrants to use. 502 KAR[4] 31:020. None of the forms created through the applicable regulation requires a registrant to report consistent with Doe's strained interpretation. Doe is required to fill out a form once a year to confirm his residence unless he "changes" it.

While Kentucky has not seen Doe's particular challenge before, other states have held that the word "residence" is not vague. The word "reside" by itself is not vague and means "to dwell permanently or for a considerable time." *People v. Gonzales*, 183 Cal. App. 4th 24, 35 (Cal. App. 2010). The California

[4] Kentucky Administrative Regulations.

court even suggested a jury instruction: "'Reside' or 'residence' connotes more than passing through or presence for a limited visit. As used in the instruction, the term 'reside' or 'residence' means a temporary or permanent place, which one keeps and to which one intends to return, as opposed to a place where one rests or shelters during a trip or a transient visit. Depending upon the circumstances, one may have a single place of residence or more than one place of residence." *Id*. at 35. *See also Oregon v. Reigard*, 259 P.3d 966 (Or. App. 2011) ("residence" is not vague).

Applying the phrase "living accommodation," an Alabama court used a combination of dictionary definitions to state that the phrase was not vague. The phrase: "means any overnight lodging, either temporary or permanent." *Sellers v. Alabama,* 935 So.2d 1207, 1213 (Al. App. 2005). Note the use of the word *lodging*, the common understanding of which would preclude an overnight hospital stay.

In Kentucky, the General Assembly used the word *residence* and further defined it to say a residence is where a person sleeps. In other words, we are to apply the concept of residence with the criteria of where a person sleeps. Whatever other complaints Doe may have about the statute, vagueness has not been established.

We also note that Doe does not suggest that the statute is vague as applied to him. Doe was clearly aware of what constitutes his residence. It includes the home which he intended to use as his usual residence with his wife and where he intended to regularly sleep at night. Doe does not argue that he is unaware of what the residence restriction actually requires of him in this situation. If the statute is otherwise valid, Doe would have to move from his current residence because of the new daycare facility.

THE ANTI-GRANDFATHER CLAUSE IS NOT A BILL OF ATTAINDER

"[T]he Bill of Attainder Clause prohibits any 'law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.' That is, the Supreme Court has identified three elements of an unconstitutional bill of attainder: (1) 'specification of the affected persons,' (2) 'punishment,' and (3) 'lack of a judicial trial.'" *ACORN v. United States*, 618 F.3d 125, 135-36 (2d Cir. 2010) (internal quotation marks and citations omitted).

Doe is unable to meet this burden. Doe confuses the right to have a determination of guilt of a crime through a judicial process with a legislative enactment which may have permissible subsequent consequences due to a prior judicial determination of committing a crime. Doe could not be convicted of violating the residency restrictions without the opportunity for a judicial

determination, which would include his right to challenge the validity of the law. The bill of attainder clause does not provide a basis for a challenge to the anti-grandfather clause. *See Hyatt*, *supra*, at 580. *See also Iowa v. Willard*, 756 N.W.2d 207 (Iowa 2008).

THE RESIDENCY PROVISIONS ARE NOT ARBITRARY AND DO NOT VIOLATE DUE PROCESS

Doe additionally argues the statute violates his due process rights under both the Kentucky Constitution and the United States Constitution because the statute does not have a rational relationship to a legitimate state interest. We consider this due process argument together with the claim of arbitrary action by the General Assembly in violation of § 2 of the Kentucky Constitution. Both require us to evaluate the presence of a rational basis for the residency requirements.

Kentucky's SORA has survived a post-*Baker* due process claim. First, we are not dealing with procedural due process. Any punishment for violation of the residency requirements may only be imposed after a determination through a judicial process. The claim made is about substantive due process. *See Moffitt v. Commonwealth*, 360 S.W.3d 247, 252-53 (Ky. App. 2012).

"In examining a substantive due process claim, we must first determine what level of scrutiny applies. 'Currently, there are three levels of review [:] rational basis, strict scrutiny, and the seldom used intermediate scrutiny,

which falls somewhere between the other two.'" *Moffitt, supra,* at 253 (citing *Natural Res. and Env't Prot. Cabinet v. Kentec Coal Co., Inc.*, 177 S.W.3d 718, 725 (Ky. 2005)). Despite Doe's contention that "a more searching form of rational basis review" is appropriate, the proper scrutiny to be applied in this case is rational basis review. Under this review, "a statute passes constitutional muster if it is rationally related to a legitimate state purpose." *Id.* (internal quotation marks and citations omitted).

Doe claims that the statute is irrational because it only prohibits him from sleeping within 1,000 feet of a childcare facility, and sleeping is typically at night when children are not present. But this definition referring to sleeping is not all the statute actually prohibits. The restriction disallows Doe and other registered sex offenders from *residing* within 1,000 feet of such facility. While the definition of "residence" is "any place where a person sleeps," the act of "residing" somewhere is not limited to just sleeping.

A person's residence is typically where that person spends a large part of their time especially if they work from home. It is not illogical to assume that when an individual is not working, they spend a substantial amount of time at their home. This would include times when children are present at a school, playground, or daycare. Anyone who has ever driven by a public playground is aware that weekends and after school are a prime time for children to be at a

playground. The obvious goal of the definition of residence is to decrease the opportunities for registered sex offenders to have access to children.

Doe argues "unsubstantiated fears about a class of people cannot serve as a rational basis[.]"[5] He attached the report of Kelly M. Socia, Ph.D., who has concluded that there is no evidence that residence restrictions work to reduce recidivism of individuals with prior sex crimes convictions and that the belief that sex offenders have a high recidivism rate is a myth that is not supported by research evidence. The criticisms of Dr. Socia may be thought provoking. Legislators may benefit from taking a serious look at what does and does not work in the context of residency restrictions, since we now have had decades of experience to consider results and future best practices.

But, as a court and not a legislature, our task is to review for any rational basis, not demand the best possible practice or even a good "fit." "[A] statute does not have to be perfect to pass constitutional muster." *Cornelison v. Commonwealth*, 52 S.W.3d 570, 573 (Ky. 2001). We agree with the Commonwealth that the residency restrictions are at least rationally related to the legitimate state interest of protecting children. It does not offend due process and is not an arbitrary exercise of state authority. We note that the weight of authority

[5] Appellant Brief, Page 9.

nationally is in accord on this point. *See Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005) (applying Iowa law).

THE ANTI-GRANDFATHER CLAUSE IS NOT AN *EX POST FACTO* LAW

We return then to the *ex post facto* issue. "An *ex post facto* law is any law, which criminalizes an act that was innocent when done, aggravates or increases the punishment for a crime as compared to the punishment when the crime was committed, or alters the rules of evidence to require less or different proof in order to convict than what was necessary when the crime was committed." *Buck v. Commonwealth*, 308 S.W.3d 661, 664 (Ky. 2010). Doe argues that requiring a registered sex offender to move from a residence that was compliant with SORA when he purchased the property allows a new punishment that was not authorized at the time of the offense.

For a law to be prohibited as *ex post facto*, "it must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it." *Hyatt v. Commonwealth*, 72 S.W.3d 566, 571 (Ky. 2002). The version of the statute first applicable to Doe took effect in 2006, and Doe pled guilty in 2007. In *Baker*, the defendant pled guilty to the crime for which registry was required **before** the enactment of the residence restrictions.

Doe was aware of the requirements of the applicable version of the SORA when he pled guilty. At no point since his guilty plea have his restrictions substantively changed. The Supreme Court has already determined the residency restriction is punitive, and there is no doubt that Doe is disadvantaged by the anti-grandfather clause in the statute. The question then becomes, is it a *new* punishment when Doe has always known the circumstances he finds himself in were always a possibility? We conclude that it is not.

The Kentucky Supreme Court rejected an *ex post facto* claim in *Buck, supra*. In *Buck*, the legislature increased the punishment for a registration violation from a misdemeanor to a felony. The change in the law allowing increased punishment was prospective. It applied only if the registrant committed a violation in the future. The same is true here. Only if Doe violated the residency restrictions by not moving would an additional punishment apply. Again, there may be issues with this law, but it is not an *ex post facto* law.

Since his guilty plea, Doe has been unable to live within 1,000 feet of specified childcare facilities. That restriction has not changed, and his potential future punishment has not been changed. The fact that he was previously able to reside at this specific property does not make this an unconstitutional *ex post facto* law.

Ignored in this argument is the fact that changes may occur which make more properties permissible as Doe's residence. A school or daycare may close. Simply put, the changing "zones" of where a sex offender may reside because of changing events after conviction is not within the contemplation of *ex post facto* jurisprudence.

As we proceed to move to the novel argument about a taking of property, we note that Georgia, which is the source for Doe's argument on that point, clearly rejected the *ex post facto* argument as applied to the situation of having to move if a residence became too close to a daycare center. *Denson v. Georgia*, 600 S.E.2d 645 (Ga. App. 2004).

THE IMPACT ON DOE'S PROPERTY BECAUSE OF THE RESIDENCY RESTRICTIONS IS NOT A TAKING

Doe finally argues that the application of KRS 17.545(3)(b) effectively operates as an uncompensated taking of his privately owned property. In this respect, we choose to combine the argument about property rights under § 1 of the Kentucky Constitution.

Doe relies on a case from the Georgia Supreme Court, which found a compensable taking under a similar statute. *See Mann v. Georgia Dep't of Corr.*, 653 S.E.2d 740 (Ga. 2007). The facts of *Mann* are similar to the facts of this case. Both Doe and Mann were registered sex offenders who purchased homes with their spouses that were initially compliant with the respective states' residency

restrictions. At some point after their purchase of the properties, childcare facilities opened up within the restricted distance from their homes, and they were forced to move in order to avoid criminal prosecution.

In *Mann*, the Georgia Supreme Court did not find an *ex post facto* violation rather finding the result to be an unconstitutional regulatory taking of Mann's property without just and adequate compensation under Georgia law. Doe asks this Court to reach the same conclusion, while the Commonwealth argues that *Mann* is distinguishable.

The Georgia statute contained several more restrictions than the Kentucky statute, such as registrants could not reside or "loiter" at a location within 1,000 feet from any childcare facility, church, school, or area where minors congregate, and could not be employed by any business or entity within 1,000 feet of any childcare facility, church, or school. The Georgia statute also had substantially harsher penalties (ten-year minimum sentence) for a violation.

The Commonwealth suggests *Mann* is an outlier that misapplied the test enunciated in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978). In *Penn Central*, the United States Supreme Court listed several factors to consider when determining if a "taking" has occurred. It considered: "[t]he economic impact of the regulation on the claimant," "the extent to which the regulation has interfered with distinct

investment-backed expectations," and "the character of the governmental action." *Id.* at 124, 98 S. Ct. at 2659.

The Kentucky Supreme Court adopted *Penn Central*'s test in *Commonwealth, Natural Resorces & Environmental Protection Cabinet v. Stearns Coal & Lumber Co.*, 678 S.W.2d 378 (Ky. 1984). The Court identified several factors which it deemed relevant to determine if an act is a taking. "Such elements are (1) the economic impact of the law on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, (3) the 'character' of the governmental action, that is whether the action is a physical invasion versus a public program adjusting the benefits and burdens of economic life to promote the common good, (4) what uses the regulation permits, (5) that the inclusion of the protected property was not arbitrary or unreasonable, and (6) that judicial review of the agency decision was available." *Id.* at 381. These factors do not support Doe's claim of a taking.

We have previously held that in order to operate as a "taking," a regulation must deny "*all* beneficial uses of the property." *Bobbie Preece Facility v. Commonwealth, Dep't of Charitable Gaming*, 71 S.W.3d 99, 104 (Ky. App. 2001) (emphasis in original). A taking must "completely frustrate the landowner's rights and deprive him of the use of his property." *Stearns Coal & Lumber Co.*, *supra*, at 382.

While we acknowledge Doe's forced relocation may cause a negative economic impact on him, it does not rise to the level of a taking. The fair market value of the home has not necessarily been diminished. Doe has the option of either selling or renting the home. Similarly, he cannot show that the restriction has significantly interfered with his investment-backed expectations. While his expectation was to live in the home, Doe was always aware of the possibility that he may have to move if a childcare facility opened within 1,000 feet of the home. The restriction at issue here also only prohibits Doe from living in the home for a period of time. His twenty-year requirement expires in 2027.

The Illinois Supreme Court has very recently and thoroughly addressed this question. In *Kopf v. Kelly*, ___ N.E.3d ___, 2024 WL 1203138 (Il. 2024),[6] Illinois' highest court ruled that its state's residency restriction did not constitute a taking, because "where a child sex offender, like plaintiff, purchases land or a home after the Residency Restriction was in effect (Pub. Act 95-821 (eff. Aug. 14, 2008)), his property interest in the land and the house is already limited by the Residency Restriction." *Id.* at *9. Like the statute at issue here, Illinois' Sex Offender Registration Act required an offender to move if a qualifying childcare facility opened within the restricted distance, even if the offender owned

[6] While not yet assigned an official reporter designation, this decision is final. Rehearing was denied on May 28, 2024.

the property first. The court in *Kopf* cited *Vasquez v. Foxx*, 895 F.3d 515, 524 (7th Cir. 2018), *overruled on other grounds by Koch v. Village of Hartland*, 43 F.4th 747 (7th Cir. 2022), which affirmed "dismissal of plaintiffs' takings claims because residency restriction was 'on the books' when home was purchased and it was 'necessarily part of any property-rights expectations [that he] could have held[.]" *Id.*

The purpose of the statute is to promote the public safety of children, clearly a "common good." The goal is to reduce a sex offender's access to areas where multiple children gather together. "[T]he United States Supreme Court decided that since individual property rights in land were not absolute, the states could exercise their police powers and regulate land use and zoning if the regulations were reasonably related 'to the public health, safety, morals, or general welfare.'" *Sebastian-Voor Properties, LLC v. Lexington-Fayette Urb. Cnty. Gov't*, 265 S.W.3d 190, 193 (Ky. 2008) (citing *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S. Ct. 114, 121, 71 L. Ed. 303 (1926)).

Similarly, Doe argues the residency restriction is a violation of his right to acquire and protect property under Section 1 of the Kentucky Constitution. His sole citation to Kentucky case law is *Sprint Communications Co., L.P. v. Leggett*, 307 S.W.3d 109 (Ky. 2010). While this case makes a reference to the "strong constitutional underpinning of personal property rights in Kentucky" (*id.* at

115), the facts are completely distinguishable from the case at hand. In *Leggett*, a telephone company was sued for abuse of process for attempting to permanently deprive an owner of the entirety of his property, rather than obtain an easement by eminent domain as allowed by law. As with the taking argument, the sparse law under § 1 would appear to draw the line at an excessive taking of essentially all beneficial use of the property rather than an immeasurable and indirect burden to property value imposed by residency restrictions.

CONCLUSION

The application of the anti-grandfather clause of KRS 17.545(3)(b) does not violate Doe's constitutional rights. We AFFIRM the Mercer Circuit Court's dismissal of Doe's Complaint and Petition.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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