

2-2021

Wisconsin Appeals Court Finds Banning Transgender Sex Offender From Legal Name Change is Constitutional

Arthur S. Leonard

law was analogous to Title VII. 487 F.3d 208, 214 (4th Cir. 2007). With this view of the Maryland law, Judge Chasanow concluded that the elements of both the state law claim and the Title VII claim were almost completely the same. However, Maryland explicitly protected transgender employees, while Title VII protected transgender employees under its definition of sex discrimination.

Judge Chasanow finished her analysis by stating that Dr. Schwenke sufficiently alleged that the reasons for her termination were pretextual, so her Title VII claim survived. The judge noted that the state law claim survived because the Title VII claim survived. AWP's motion to dismiss was denied.

Dr. Chloe Schwenke was represented by Denise M. Clark. The Association of Writers & Writing Programs was represented by Lynn Perry Parker. ■

Corey L. Gibbs is a law student at New York Law School (class of 2021).



Wisconsin Appeals Court Finds Banning Transgender Sex Offender From Legal Name Change is Constitutional

By Arthur S. Leonard

In *State of Wisconsin v. C.G. (In the Interest of C.G.)*, 2021 WL 191606, 021 Wisc. App. LEXIS 18 (Ct. App. Wis., January 20, 2021), the Court of Appeals affirmed the trial court's rejection of a transgender teen's argument that the state's sex offender registry statute violates her constitutional rights by prohibiting her from legally changing her name.

Using the name "Ella," the transgender girl participated with another girl in holding down an autistic boy while performing oral sex on him over his protests. She was convicted and sent to a state institution for psychological treatment, as well as being required to register as a sex offender, a status that would disqualify her from legally changing her name – something she had hoped to do upon completion for her transition. She asked the court to stay the registration requirement, asserting that her 1st and 8th Amendment rights would be violated by imposing the name-change restriction on her, but Shawano County Circuit Judge William F. Kussel denied her request.

Wrote Judge Mark Seidl for the panel, "Ella argues that the name-change ban in the sex offender registry statute regulates her right to express female identity and is therefore an unconstitutional burden on her free speech. Ella contends that having a name consistent with her gender identity gives her 'dignity and autonomy that otherwise does not exist with her birth name.' She further contends that her ability to informally identify with a female-sounding name — as long as she notifies the registry that she uses such a name — is insufficient to protect her right to formally identify in that manner with a name other than her current legal name. This inability, according to Ella, prohibits her from truly identifying as a woman, and it also forces her to 'out herself as a male anytime she is required to present her legal name.'"

The court was not sympathetic, finding that the trial judge's refusal to stay the registration order was not an abuse of discretion, and specifically rejecting the argument that the denial of a name-change violates constitutional rights. "This court rejected a similar argument in *Williams v. Racine County Circuit Court*, 197 Wis. 2d 841 (Ct. App. 1995). There, the circuit court denied a prisoner's petition to change his name pursuant to WIS. STAT. § 786.36. On appeal, the prisoner argued that denying his requested name change violated his protected right to religious freedom and his First Amendment rights. We rejected that argument, reasoning that the prisoner had 'no positive right to a name change.'"

Seidl wrote that it was sufficient that Ella could use her preferred name informally, so long as her registration indicated that she was not using her legal name. The goal of registration of informing law enforcement and others of the whereabouts of convicted sex offenders would be undermined by allowing legal name changes. "Neither the fact that she may feel uncomfortable when having to use her legal name, nor that she feels 'outed' when she does use her legal name, renders the statute unconstitutional as applied to her," wrote Seidl. "Ella is capable of expressing herself and identifying herself consistent with her gender identity. Because the name-change ban in WIS. STAT. § 301.47 does not restrict Ella's ability to express herself, we need not utilize a First Amendment analysis because the statute does not implicate the First Amendment."

As to Ella's 8th Amendment challenge, Seidl wrote: "Ella's argument regarding the Eighth Amendment fails because our supreme court has held that Wisconsin's sex offender registration requirement does not constitute punishment at all."

The opinion does not indicate counsel for Ella. ■