

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0729**

Jade Joseph Nickels,
Appellant,

vs.

Drew Evans, Superintendent, Bureau of Criminal Apprehension,
Respondent.

**Filed July 10, 2023
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-CV-21-728

Bradford Colbert, Dylan Larson (certified student attorney), Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges summary judgment dismissing his civil claims related to his predatory-offender registration requirement. Appellant contends that the district court erred because (1) based on promissory estoppel and procedural due process, he is entitled

to specific performance of the state's alleged promise that he would not be required to register, (2) respondent violated his procedural due-process rights by requiring him to register as a predatory offender, (3) the predatory-offender registration statute violates his substantive due-process rights, and (4) the predatory-offender registration statute is an unconstitutional bill of attainder. We affirm.

FACTS

Appellant Jade Joseph Nickels is required to register as a predatory offender based on an incident that occurred more than 20 years ago. In June 1998, the State of Minnesota charged Nickels with first-degree criminal sexual conduct on allegations that he injected a woman with a mixture containing cocaine and then vaginally and orally penetrated her while she was saying, "No."

The state and Nickels entered into an agreement under which Nickels pleaded guilty to an amended charge of gross-misdemeanor fifth-degree criminal sexual conduct in exchange for the state's dismissal of the first-degree criminal-sexual-conduct charge. During the August 3, 1998, plea hearing, the parties discussed the agreement:

THE PROSECUTOR: A new amended complaint has been filed with the Court. The agreement that has been reached is as follows:

Criminal Sexual Conduct in the First Degree charge would be dismissed. In exchange for that, [Nickels] would be entering pleas to the two amended counts of Controlled Substance in the Fifth Degree and Criminal Sexual Conduct in the Fifth Degree, a gross misdemeanor. He would be sentenced concurrently on both of those. He would receive the Guideline sentence of 17 months, which would be a stay, but he is requesting that that would be executed and the one year gross misdemeanor sentence would be executed concurrently. As part of this, Your Honor, and one of the reasons for the

amended complaint, it is our purpose and intent that will alleviate [Nickels] of responsibility and obligation of having to register as a sex offender.

THE COURT: [Defense counsel], is that a correct statement of the plea agreement?

DEFENSE COUNSEL: It is, Your Honor.

Nickels then entered an *Alford* plea¹ to fifth-degree criminal sexual conduct. The district court accepted Nickels's plea and imposed a 17-month prison sentence.

Upon his 1999 release from prison, Nickels learned that he was required to register as a predatory offender for ten years pursuant to Minn. Stat. § 243.166 (1998) (the registration statute). Nickels was reincarcerated several times between then and 2009; each incarceration initiated a new ten-year registration period.² Minn. Stat. § 243.166, subd. 1b(a)(iii) (2022).

In 2010, Nickels moved to withdraw his guilty plea, asserting that it was inaccurate and involuntary. The state opposed the motion, arguing that it was untimely. The district court denied the motion, concluding that it was untimely and that Nickels's plea was accurate and voluntary.

In May 2019, Wadena County petitioned to terminate Nickels's parental rights to his daughter, A.A. In a supporting affidavit, a social worker described Nickels's criminal history and averred that termination was in A.A.'s best interests because of his "current probation issues, lack of chemical health treatment, lack of general stability, lack of

¹ An *Alford* plea permits a defendant to take advantage of a plea offer while maintaining their innocence. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009) (citing *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)), *rev. denied* (Minn. Apr. 21, 2009).

² Nickels's current registration period expires on February 26, 2030.

progress on his case plan, and his current status as a predatory offender.” Nickels voluntarily terminated his parental rights to A.A. But he still has parental rights as to another child.

In February 2021, Nickels commenced this action against respondent Drew Evans in his official capacity as superintendent of the Minnesota Bureau of Criminal Apprehension (BCA). He sought injunctive and declaratory relief under 42 U.S.C. § 1983 (2018), based on procedural and substantive due-process violations, promissory estoppel, and the theory that the registration statute is a bill of attainder. The BCA moved to dismiss the complaint or, in the alternative, for summary judgment. The district court granted the motion to dismiss.

Nickels appealed and asked the district court to reconsider its decision. At his request, this court stayed the appeal pending the motion for reconsideration. In a single order, the district court granted Nickels’s motion for reconsideration and the BCA’s motion for summary judgment. We then reinstated the appeal.

DECISION

Summary judgment is appropriate when the moving party shows that “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. We review a grant of summary judgment de novo, viewing “the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

I. Nickels is not entitled to relief based on the alleged breach of his 1998 plea agreement.

Pointing to the prosecutor’s 1998 statement that he would not have to register as a predatory offender if he pleaded guilty to the reduced charge, Nickels contends that the “doctrine[s] of promissory estoppel and constitutional due process estop the BCA from requiring Nickels to register.” Neither of these doctrines persuade us to reverse.

A. Nickels’s promissory-estoppel claim fails as a matter of law.³

“Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact.” *Javinsky v. Comm’r of Admin.*, 725 N.W.2d 393, 398 (Minn. App. 2007). To establish promissory estoppel, a plaintiff must prove that: (1) there was a clear and definite promise; (2) the promisor intended to induce reliance, and the promisee relied to their detriment; and (3) the promise must be enforced to prevent injustice. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001). Promissory estoppel “may be applied against the state to the extent that justice requires.” *Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 564 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Sept. 25, 2012).

We recently rejected the invitation to apply promissory estoppel to bind a party other than the promisor under circumstances almost identical to this case. *Lange*, 2022 WL

³ The BCA argues that Nickels’s promissory-estoppel claim fails because his sole remedy is plea withdrawal. But the cases that the BCA cites do not so hold. And this court has considered the merits of a promissory-estoppel argument in a nearly identical case. *See Lange v. Evans*, No. A21-1546, 2022 WL 2438634, at *3-4 (Minn. App. July 5, 2022), *rev. denied* (Minn. Oct. 18, 2022).

2438634, at *3.⁴ Lange sued to prohibit the BCA from requiring him to register as a predatory offender, arguing that his plea of guilty to fifth-degree criminal sexual conduct was premised on the prosecutor’s promise that he would not be required to register. *Id.* We noted that no Minnesota precedent supports applying promissory-estoppel principles against an entity other than the promisor. *Id.* at *4.

Nickels contends that *Lange*’s reasoning is “inexplicable,” citing a case in which our supreme court collaterally estopped parties in privity with an actor. *See Willems v. Comm’r of Pub. Safety*, 333 N.W.2d 619, 621 (Minn. 1983). And Nickels argues that the Eighth Circuit applied promissory estoppel to a party in privity with the promisor in *Maitland v. Univ. of Minn.*, 43 F.3d 357 (8th Cir. 1994). Neither contention is persuasive. *Willems* presented the question of whether the commissioner of public safety could—in a license-reinstatement proceeding—relitigate the validity of a traffic stop previously decided in a license-revocation proceeding. *Willems*, 333 N.W.2d at 621. Resolution of the issue turned on general principles of collateral estoppel, which, by their terms, apply to both a party and those in privity with a party to the prior adjudication. *Id.* And, as we pointed out in *Lange*, *Maitland* did not apply privity to a promissory-estoppel claim. *See Maitland*, 43 F.3d at 364 (reviewing the district court’s conclusion that the plaintiff’s claim was barred by “general principles of estoppel”); *Lange*, 2022 WL 2438634, at *4.

⁴ While *Lange* is a nonprecedential decision, it is highly persuasive because it is a recent case and involves nearly identical facts. Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating “nonprecedential opinions may be cited as persuasive authority”).

Even if privity could be invoked in the context of promissory-estoppel claims, Nickels has not established privity between the prosecutor and the BCA. Our analysis is guided by *State v. Lemmer*, in which our supreme court considered whether the state and the commissioner of public safety were in privity for collateral-estoppel purposes. 736 N.W.2d 650, 660-61 (Minn. 2007). The court looked at the commissioner’s and the state’s “functions and responsibilities,” determining the two were not in privity because the licensing and safety responsibility of the commissioner is distinct from the state’s duty to prosecute crimes. *Id.* at 661.

In *Lange*, we relied on *Lemmer* to similarly conclude that the state and the BCA were not in privity. *Lange*, 2022 WL 2438634, at *4. We analyzed their respective “functions and responsibilities” and noted that the BCA performs “such functions and duties as relate to statewide and nationwide crime information systems,” which includes the maintenance of the registered predatory-offender database. *Id.*; *see also* Minn. Stat. §§ 299C.01, subd. 4, .093 (2022). In contrast, the state and county attorneys prosecute felonies and other crimes. *See Lange*, 2022 WL 2438634, at *4; Minn. Stat. § 388.051, subd. 1(3) (2022). We see no reason to depart from *Lange*’s persuasive reasoning.

Nickels urges us to find privity between the BCA and the criminal prosecutor because doing so would not implicate separation-of-powers concerns, citing *State v. Mosher*, No. C6-00-816, 2000 WL 1809083 (Minn. App. Dec. 12, 2000). But this would be contrary to *Lemmer*’s instruction to consider the “functions and responsibilities” of the government actors. *See Lemmer*, 736 N.W.2d at 661. Moreover, the BCA has no authority regarding plea agreements, and the prosecutor had no authority to vary the terms of the

registration statute when negotiating the plea agreement. Minn. Stat. § 299C.093, subd. 4; *see In re McGuire*, 756 N.W.2d 517, 519 (Minn. App. 2008) (stating that “estoppel cannot be applied when doing so would cause an agency to act outside the bounds of its authority”). On this record, Nickels’s promissory-estoppel claim fails as a matter of law.

B. Nickels does not have a due-process right to specific performance of the prosecutor’s alleged promise.

The United States and Minnesota Constitutions prohibit the state from depriving persons of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. We review whether the government has violated an individual’s due-process rights de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012).

Citing *Santobello v. New York*, 404 U.S. 257 (1971), Nickels argues that the BCA should be enjoined from requiring him to register. In *Santobello*, the Supreme Court held that “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” 404 U.S. at 262. Our supreme court has likewise concluded that permitting a prosecutor to break a promise on which a plea agreement was based violates due process. *See State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (holding that if a criminal defendant pleaded guilty based on a promise or agreement of the prosecutor, and there is a subsequent breach of the plea agreement, the district court may “allow withdrawal of the plea, order specific performance, or alter the sentence if appropriate”); *see also James v. State*, 699 N.W.2d 723, 728-29 (Minn. 2005).

Nickels cites no binding caselaw for the proposition that *Santobello* supports permitting a person to enforce a plea agreement in a civil action.⁵ We rejected this contention in *Lange*, explaining that the remedies of plea withdrawal and specific performance are available to criminal offenders in a postconviction action. *Lange*, 2022 WL 2438634, at *7 (citing Minn. Stat. § 590.01 (2020)). Accordingly, we held that due process does not require relief in a civil action. *Id.*

Because Nickels appropriately pursued the relief he now seeks in a postconviction proceeding, due process does not require an opportunity to obtain relief in a civil action based on promissory estoppel.

II. The registration requirements do not violate Nickels’s procedural due-process rights.

Courts make two inquiries when addressing procedural due process: (1) “is there a liberty or property interest with which the state has interfered” and (2) “were the procedures used constitutionally sufficient”? *Werlich v. Schnell*, 958 N.W.2d 354, 372 (Minn. 2021)

⁵ Nickels relies on many cases from other jurisdictions that discuss *Santobello* and one civil case in which the Ninth Circuit notes that

in individual cases where the state has made an explicit promise to a defendant that the defendant would be exempt from registration as a condition of his guilty plea, that promise—whether memorialized in the terms of the written plea agreement or otherwise proven—is entitled to be enforced against the State.

Am. C.L. Union of Nevada v. Masto, 670 F.3d 1046, 1061 (9th Cir. 2012). But the Ninth Circuit did not apply this concept to the facts of that case.

(quotation omitted). We review de novo whether the government violated an individual's procedural due-process rights. *Sawh*, 823 N.W.2d at 632.

In cases such as this, involving interference with a person's reputational interests, we apply the "stigma-plus" test. Under this test, a liberty interest is implicated when "a loss of reputation is coupled with the loss of some other tangible interest." *Boutin v. LaFleur*, 591 N.W.2d 711, 718 (Minn. 1999) (citing *Paul v. Davis*, 424 U.S. 693, 710 (1976)). Boutin asserted that being required to register as a predatory offender met the "stigma-plus" test because it resulted in a loss of reputation, and it was a burden to comply with the registration statute. *Id.* The supreme court rejected Boutin's arguments, concluding that requiring a person to update their address information poses a "minimal burden" and "is clearly not the sufficiently important interest the 'stigma-plus' test requires." *Id.*

At the time the supreme court decided *Boutin*, the registration statute required persons to provide personal information, fingerprints, and a photograph to law enforcement; annually verify their address by mail; and notify law enforcement five days before changing their address. Minn. Stat. § 243.166, subds. 3-4 (1998). The legislature has since amended the registration statute, imposing additional requirements. Minn. Stat. § 243.166, subds. 3-4b (2022); *see also Werlich*, 958 N.W.2d at 361, 374 (noting that *Boutin* does not foreclose all constitutional challenges to the registration statute). The current statute requires registrants to provide law enforcement with their primary and secondary addresses; the addresses of property they own, lease, or rent; all locations where they are employed and schools where they are enrolled; the year, make, model, color, and

license-plate number of all the motor vehicles they own or regularly drive and the expiration date of motor-vehicle tabs for the motor vehicles they own; and all telephone numbers. Minn. Stat. § 243.166, subd. 4a(a) (2022). It also requires registrants to disclose their registration status before admission to a healthcare facility. *Id.*, subd. 4b(b).

In *Bedeau v. Evans*, we held that these additional requirements did not lead to the loss of a liberty interest under the “stigma-plus” test. 926 N.W.2d 425, 432 (Minn. App. 2019), *rev. denied* (Minn. June 26, 2019). We rejected Bedeau’s arguments that the healthcare notification requirement burdened her liberty interests and that the other additional registration requirement made it difficult to obtain housing and employment. *Id.* at 432-33. The record did not persuade us that Bedeau had been or was likely to be deprived of healthcare and demonstrated that she had, in fact, been able to obtain housing and employment. *Id.* at 433. We reasoned that the expanded registration requirements imposed “only a minimal burden on offenders.” *Id.* at 432; *see also Thibodeaux v. Evans*, 926 N.W.2d 602, 608 (Minn. App. 2019), *rev. denied* (Minn. June 26, 2019); *Lange*, 2022 WL 2438634, at *6.

Nickels asserts that the expanded requirements impermissibly burden his liberty interests in four ways. First, he contends the requirements significantly impact his ability to obtain admission to residential or inpatient treatment facilities. Nickels avers that “*some* residential treatment facilities have denied [him] admission based on [his] predatory offender status.” (Emphasis added.) But the affidavit in support of the termination of parental rights petition shows that he, in fact, gained admittance to a treatment facility on at least one occasion. As in *Bedeau*, Nickels’s actual ability to obtain inpatient treatment

defeats his contention that the registration requirement burdens the kind of important interests that the “stigma-plus” test contemplates. *See Bedeau*, 926 N.W.2d at 433.

Second, Nickels argues that the registration requirements resulted, in part, in the termination of his parental rights. While a social worker identified his predatory-offender status as a factor in the assessment that Nickels was not “amenable to positive and stable parenting,” it was far from the only contributing factor. Nickels ultimately agreed to terminate his parental rights to A.A. on a voluntary basis. And he still has parental rights to another child. On this record, Nickels has not demonstrated that registration burdens his right to parent.

Third, Nickels contends that the registration requirements impact his ability to find employment and housing. To support this argument, Nickels cites residency restrictions enacted by different Minnesota cities based on registration status. But he does not explain how any of these specific restrictions have affected *his* ability to obtain housing or how the additional requirements enacted since *Boutin* have affected *his* ability to find a job or housing. *See id.* (agreeing with the district court’s conclusion that the plaintiff “failed to provide sufficient evidence to suggest that the registration requirement was the primary cause of her difficulties, rather than her recent conviction and prison incarceration”).

Finally, Nickels asserts that he has a liberty interest in being free from the threat of prosecution, and the registration requirements expose him to such a threat in the event that he violates one of the terms. But this possibility existed at the time of *Boutin*, and the supreme court nonetheless held that the registration statute was constitutionally valid. *See*

Minn. Stat. § 243.166, subd. 5 (1998) (outlining the criminal penalties for failure to register and follow registration requirements).

In sum, Nickels has not presented evidence that the current version of the registration statute led to his loss of any tangible interest and is more than “a minimal burden.” *See Bedeau*, 926 N.W.2d at 432. The registration statute does not violate Nickels’s right to procedural due process. *See Sawh*, 823 N.W.2d at 632 (“If the government’s action does not deprive an individual of [a protected] interest, then no process is due.”).

III. The predatory-offender registration requirement does not violate Nickels’s substantive due-process rights.

Substantive due process protects against “certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.” *State v. Hill*, 871 N.W.2d 900, 906 (Minn. 2015). When considering a substantive due-process challenge to a statute, we first determine whether the law implicates a fundamental right. *Boutin*, 591 N.W.2d at 716. If it does, the state must establish “a legitimate and compelling interest for abridging that right.” *Id.* If it does not, we consider whether the law has a rational basis. *Id.* We review de novo whether the government violated Nickels’s substantive due-process rights. *Sawh*, 823 N.W.2d at 632.

Nickels argues that the registration statute violates his fundamental right to parent because the state terminated his parental rights, in part, because he must register as a predatory offender. *See SooHoo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007) (stating “[a] parent’s right to make decisions concerning the care, custody, and control of his or her

children is a protected fundamental right”). The BCA contends that “Nickels cannot show that his registration status interfered with his right to parent” because his status as a predatory offender was only a small part of the termination case. We agree with the BCA. Nickels’s predatory-registration status was only one of many reasons stated for recommending termination; the other reasons were his “extensive criminal history,” failure to comply with an out-of-home placement plan, lack of chemical-health treatment, and lack of general stability. Nickels voluntarily terminated his parental rights to A.A., and the termination proceeding did not affect his right to parent his other child. Thus, the registration statute did not implicate Nickels’s fundamental right to parent.⁶

Because the registration statute does not implicate a fundamental right, we consider whether it “provide[s] a reasonable means to a permissible objective” or whether it is “arbitrary or capricious.” *Boutin*, 591 N.W.2d at 716. Although Nickels does not address the rational-basis test, he challenges the “fundamental premise underlying the [registration] statute” in connection with his argument that the law does not serve a compelling interest. This contention is unavailing. The supreme court held in *Boutin* that the registration statute did not violate the constitutional right to substantive due process because “the “primary

⁶ Nickels asserts that in *Werlich*, the supreme court “held that the registration statute affected a person’s fundamental right to parent.” We disagree. The issue in *Werlich* was whether a mandatory investigation for threatened sexual abuse affected his fundamental right to parent his child. *Werlich*, 958 N.W.2d at 371. The court held that Werlich *sufficiently alleged* facts to “establish that the investigation mandated as a result of his registration status” affected his fundamental right to parent by disturbing the presumption that he is a fit parent, but remanded for the commissioner to show that the statute requiring an investigation advances a compelling government interest and is narrowly tailored to serve that interest. *Id.*

purpose of the [registration] statute is to create an offender registry to assist law enforcement with investigations” and “[k]eeping a list of such offenders is rationally related to the legitimate state interest of solving crimes.” *Id.* at 717-18. Accordingly, the registration statute does not violate Nickels’s substantive due-process rights.

IV. The registration statute is not a bill of attainder.

The United States and Minnesota Constitutions prohibit bills of attainder. U.S. Const. art. I, § 9, cl. 3; Minn. Const. art. I, § 11. A bill of attainder is a law that “specifically singles out an identifiable group or individual for the infliction of punishment by other than judicial authority.” *Rsrv. Mining Co. v. State*, 310 N.W.2d 487, 490 (Minn. 1981). The prohibition against bills of attainder is grounded in separation-of-powers concerns. *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 469 (1977).

Nickels contends that the registration statute is a bill of attainder because being required to register is punishment. To determine whether the registration statute has a punitive purpose, we assess: “(1) whether the law imposes punishment such as death, imprisonment, banishment, confiscation of property, or barring participation in certain employment or occupations; (2) whether the law furthers a non-punitive legislative purpose; and (3) whether the legislative body had a punitive motive in passing the law.” *Council of Indep. Tobacco Mfrs. of Am. v. State*, 685 N.W.2d 467, 474-75 (Minn. App. 2004), *aff’d*, 713 N.W.2d 300 (Minn. 2006).

The supreme court answered this question in *Boutin*, holding that the registration statute is regulatory, and not punitive. *See Boutin*, 591 N.W.2d at 717 (concluding Minn. Stat. § 243.166 is a “civil, regulatory statute” because it “does not promote the traditional

aims of punishment”). We recently relied on *Boutin* in *Nguyen v. Evans*, holding that the registration statute is not a bill of attainder because it is civil regulatory rather than punitive. No. A21-1319, 2022 WL 1210277, at *9 (Minn. App. Apr. 25, 2022), *rev. denied* (Minn. July 19, 2022).⁷ We noted that the registration statute does not impose a punishment such as imprisonment, banishment, or confiscation of property, and the fact that the registration requirement may make it more difficult to obtain employment does not make the registration statute punitive. *Nguyen*, 2022 WL 1210277, at *9; *see also Werlich*, 958 N.W.2d at 369 (concluding that a defendant’s ineligibility for the Challenge Incarceration Program due to his status as a predatory offender was not punitive). The registration statute furthers the non-punitive legislative purpose of assisting law enforcement with investigations. *See Boutin*, 591 N.W.2d at 717 (stating “the primary purpose of the [registration] statute is to create an offender registry to assist law enforcement with investigations”).

Nickels urges us to depart from *Nguyen* because it is “simply not true” that the registration statute assists law enforcement with investigations because in the past the authorities discovered his wrongdoing during a “routine check[] of registered sex offenders.” We are not convinced to do so. The fact that the registration statute did not assist law enforcement in investigating Nickels on one occasion does not alter its primary purpose. It is not designed to and does not impose punishment. It is not an unconstitutional bill of attainder.

⁷ *Nguyen* is persuasive because it is a recent case and involves similar facts. *See* Minn. R. Civ. App. P. 136.01(c).

In sum, the district court did not err by granting summary judgment dismissing this action.

Affirmed.