**IN THE COURT OF APPEALS OF IOWA**

No. 0-545 / 09-1270
Filed September 9, 2010

**IN THE INTEREST OF G.G.,**
**Minor Child,**

**G.G., Minor Child,**
Appellant.

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Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

G.G. appeals from the order of the juvenile court requiring him to register with the sex offender registry. **AFFIRMED.**

Dai Gwilliam of Stein, Moore, Egerton & Weideman, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Janet M. Lyness, County Attorney, and Patricia Weir, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**MANSFIELD, J.**

G.G. appeals the juvenile court's order requiring him to register as a sex offender. He contends the hearing that led to his placement on the sex offender registry violated his due process rights. He further contends the juvenile court erred in applying the 2007 version rather than the 2009 revision of the sex offender registry law. We find that G.G. has failed to preserve his arguments for appeal, and thus affirm.

**I. Facts and Prior Proceedings.**

In September 2007, the State filed a delinquency petition alleging G.G. committed several acts of sexual abuse while he was thirteen and was babysitting the three small children of a family friend—twin two-year-old girls and a four-year-old boy. The acts involved all three of these young children. G.G. was initially granted a consent decree, but it was revoked due to his failure to cooperate with outpatient treatment. On May 15, 2008, G.G. was adjudicated delinquent for second-degree sexual abuse. G.G. entered a residential treatment facility the following day.

G.G. made progress in the residential treatment facility. At a review hearing on May 14, 2009, the State commented that "if and when [G.G.] successfully completes the . . . program, and I think it's—we all believe that he will do that very soon, the State's recommendation will be that [G.G.] not have to register." The juvenile court stated that a separate hearing would be scheduled "on the issue of Sex Offender Registry." It ordered that G.G. would not be required to register until further order of the court, so that G.G. would not automatically be required to register upon release from residential treatment.

On June 12, 2009, G.G. was discharged from the residential treatment facility. According to his therapist, outpatient treatment did not go well. G.G. was reported not to have taken responsibility for his sexually offending behaviors, instead blaming the victims, while at the same time admitting he was sexually attracted to small children. The therapist, also noting that G.G. now had a nine-month-old half-brother in his home, opined that G.G. "remains a significant risk to re-offend if given the opportunity to do so" and recommended he be placed on the sex offender registry.

The sex offender registry hearing was held on August 20, 2009, in conjunction with a review hearing. At the outset of the hearing, the court acknowledged receiving a review report from the juvenile court officer (JCO). The report had been prepared two days before the hearing and filed with the court the day before. In the report, the JCO requested that G.G. be required to register on the sex offender registry, noting both G.G.'s therapist and the residential treatment director concurred in the recommendation.

G.G.'s counsel objected to the report on several grounds. First, G.G.'s counsel objected generally to having received the report at 2 p.m. the day before, leaving him insufficient time to prepare. The court then stated it would grant counsel an additional ten days to file any written objections. G.G.'s counsel also objected to the report as containing hearsay. He challenged several specific statements in the report relating to G.G.'s progress and compliance. The court thereupon received the report subject to the objections.

The hearing proceeded with the JCO as the only witness. Before G.G.'s attorney had finished his cross-examination of the JCO, the court ended the

hearing early due to docket time restrictions. No objections were raised at this point. The court then made an oral finding that "based upon the nature of his offense, the number of victims, [and] the history of his course of treatment," G.G. should be required to register. On August 24, 2009, the juvenile court entered a formal written order requiring G.G. to register as a sex offender. G.G. appeals.

**II. Standard of Review.**

Our review of both juvenile proceedings and constitutional challenges is de novo. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996).

**III. Analysis.**

**A. Due Process.**

G.G. argues he was denied his due process rights at the August 20 hearing because he only received twenty-four hours' notice that the State would be seeking to place him on the sex offender registry, and because he did not get time to adequately cross-examine the JCO or to present evidence of his own. However, after a careful review of the record, we find G.G. failed to make a proper record below on his complaints, and thus has not preserved error for our review. *See In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.").

As to notice, the record shows the hearing had been set since August 7, 2009. While G.G. contends he only received twenty-four hours' notice of the *position* the State would be taking at the hearing, his counsel made only a general objection at the beginning of the hearing asserting insufficient time to prepare. The juvenile court then granted counsel the opportunity to file written

objections to the JCO's report within ten days of the hearing. No written objections were ever filed. G.G.'s counsel never reasserted or clarified his general objection, did not ask for a continuance, did not seek to reopen the record, and did not argue his client's due process rights were being violated. Accordingly, we find the due process notice issues have not sufficiently been preserved. *K.C.*, 660 N.W.2d at 38.

More troubling, perhaps, was the juvenile court's decision to terminate the hearing during cross-examination of the JCO because of time constraints. Ordinarily, testimony should not be on a time clock.[1] But yet again, G.G.'s counsel never asked the court to reschedule the completion of the hearing to a later date, did not make a record of the evidence he still needed to provide to the court, and did not assert a due process objection. Therefore, we again find G.G. has failed to preserve the issue for appellate review. *Id*.

**B. Revised Statute.**

G.G. also argues on appeal that the juvenile court applied the wrong version of the sex offender registry statute in its placement order. The juvenile court applied the 2007 version of the sex offender statute in its order. G.G. argues the 2009 revision of the sex offender registry statute applies to this case. *See* 2009 Iowa Acts ch. 119 (codified at Iowa Code §§ 692A.101-.130). Upon our review, we also find this argument has not been preserved for our review.

G.G. never raised this issue with the juvenile court, despite the juvenile court's express references to the 2007 version of the statute both in its verbal

[1] We note, however, that the juvenile court did allow forty-five minutes for the hearing, and the cross-examination of the JCO by G.G.'s counsel took up approximately fourteen of the thirty-six hearing transcript pages.

findings on August 20 and in its August 24 formal written order. Findings and conclusions of law may be enlarged or amended and the judgment or decree modified upon timely post-trial motion. Iowa R. Civ. P. 1.904(2). Although a rule of civil procedure, this rule has been held applicable in juvenile court proceedings. *See In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994) (holding rule applicable in child-in-need-of-assistance proceedings); *In re A.R.*, 316 N.W.2d 887, 889 (Iowa 1982) (making rule applicable in termination proceedings). Yet G.G. never questioned the juvenile court's reliance upon the 2007 law, even by filing a post-trial motion. We find G.G.'s claim to be waived upon appeal. *See A.M.H.*, 516 N.W.2d at 872 ("An overlooked issue, called to the trial court's attention, might be resolved so as to avoid an appeal.").

Moreover, it is not clear that the 2009 revision of the statute covers this case. Iowa Code section 692A.125(2)(a) (2009) states that it applies to offenders convicted before July 1, 2009, (including juvenile offenders such as G.G.) if the offender was "required to be on the sex offender registry as of June 30, 2009." G.G. was *not* required to be on the sex offender registry as of June 30, 2009. Nor do we see any relevant difference in the standards that would be applied under the two statutes. Under old section 692A.2(6), a juvenile such as G.G. had to register "unless the juvenile court finds that the person should not be required to register." Under new section 692A.103(3), a juvenile such as G.G. has to register "unless the juvenile court waives the requirement and finds that the person should not be required to register." Either way, the juvenile court's summary of the law was accurate: "With respect to the issue of

Sex Offender Registry, the status of the law is that [G.G.] is required to register unless the Court finds that he should not be required to register."

For the foregoing reasons, we affirm the order of the juvenile court requiring G.G. to register with the sex offender registry.

**AFFIRMED.**