

IN THE COURT OF APPEALS OF IOWA

No. 7-479 / 06-1267
Filed October 12, 2007

**IN THE INTEREST OF D.L.N.,
Minor Child,**

**D.L.N., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Polk County, Karla J. Fultz,
Associate Juvenile Judge.

D.L.N. appeals the juvenile court's order requiring him to register with the
sex offender registry. **AFFIRMED.**

Charles S. Fuson of the Youth Law Center, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney
General, John P. Sarcone, County Attorney, and Faye Jenkins, Assistant County
Attorney, for appellee State.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

D.L.N. appeals the juvenile court's order requiring him to register with the sex offender registry pursuant to Iowa Code section 692A.2(4) (2005). Specifically, he argues placing the burden of proof on him to show he should be exempt from the sex offender registry violates his constitutional right to due process because (1) it is unfair for a juvenile to bear this burden and (2) it is impossible to meet this burden since there is no validated risk assessment tool. Additionally, D.L.N. argues it is fundamentally unfair and unconstitutional to apply the sex offender registry requirements of chapter 692A to juvenile delinquents. We affirm.

I. Facts and Prior Proceedings

On November 4, 2003, D.L.N. was alleged to have committed the delinquent act of sexual abuse in the second degree in violation of Iowa Code sections 709.1(3) and 709.3(2). He admitted to the charge on November 13, 2003, and was placed in the custody of juvenile court services for sex offender treatment. Review hearings were held every six months investigating the progress of D.L.N.'s treatment. The last review hearing was held on June 26, 2006, and was merged with a hearing as to whether D.L.N. would be placed on the sex offender registry. Rick Kirkman, the juvenile court officer, testified as follows:

I believe based upon the severity of the offenses that [D.L.N.] has been charged with, his behaviors subsequent to the filings of those separate petitions, the fact that one was a highly-serious, physically-aggressive episode and one was very serious sex abuse charges, again, his behavior subsequent to the filings of these petitions, his responses to his treatment that the juvenile court has offered this young man, there's no question in my mind, I

feel far more comfortable recommending this young man be placed on the sex offender registry than not.

....

But as I stated in my testimony as to why I believe registry is needed here, it has to be all encompassing. You have to consider everything, all of his charges, all of his treatments, all of his responses to treatments, the professionals' recommendations, the professionals' statements.

All of it has to be included in making a recommendation, and without a validated tool, I can't tell you that I'm ever completely comfortable when I make a recommendation. I will say based upon the read of this file, the level of physical aggression and sexually assaultive behavior and his response to treatment, I feel as comfortable with this recommendation as I ever have.

On July 21, 2006, the juvenile court ordered D.L.N. to register with the sex offender registry. D.L.N. turned eighteen in August 2006, and the juvenile court terminated its jurisdiction. D.L.N. now appeals the juvenile court's order requiring him to register with the sex offender registry.

II. Standard of Review

Our review of both juvenile proceedings and constitutional challenges is *de novo*. *In re N.W.E.*, 564 N.W.2d 451, 453 (Iowa Ct. App. 1997); *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998). We give weight to the fact findings because of the juvenile court's opportunity to assess the credibility of witnesses. Iowa R. App. P. 6.14(6)(g); *N.W.E.*, 564 N.W.2d at 453.

III. Merits

D.L.N. first argues his constitutional right to due process is violated by requiring him to bear the burden of rebutting the statutory presumption that he should be placed on the sex offender registry. D.L.N. also argues his constitutional right to due process was violated because it is impossible for him to meet the burden since there is no validated risk assessment tool. However, after

a careful review of the record, we conclude D.L.N. has failed to properly raise either issue in the juvenile court. 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.”). In D.L.N.’s written argument to the juvenile court he conceded that it is his burden to rebut the presumption that he must register with the sex offender registry. He made no clear argument that the constitution had been violated by placing this burden upon him, but instead argued he had met the burden. In addition, he makes general statements such as “kids are different.” However, as the State points out, he does not specifically allege what liberty or property interest is involved in his due process challenge. It is clear D.L.N. did not raise the same issue before the juvenile court that he raises now. “It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.” *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

In addition, a party’s failure to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 6.14(1)(c); *Pierce v. Staley*, 587 N.W.2d 484, 487 (Iowa 1998). D.L.N.’s argument to this court discusses the reasons for the perceived unfairness of this law but does little to support the argument with legal authority. We therefore conclude that in addition to failing to preserve the issues for appellate review, D.L.N. has also waived the issues on appeal. *State v. Piper*, 663 N.W.2d 894, 913 (Iowa 2003) (court will not undertake an appellant’s research and advocacy obligations where appellant fails to include any analysis of claims).

Finally, D.L.N. argues Iowa Code chapter 692A should be declared unconstitutional as applied to juveniles. Iowa Code section 692A.2 requires any person convicted of certain sex crimes, including adjudicated juvenile delinquents, to register with the sex offender registry. D.L.N. claims the statute wrongly punishes and treats juvenile delinquents the same as adult criminals by subjecting them to the sex offender registry. He failed, however, to make this specific argument to the juvenile court. While he generally argued the legislature was irrational in applying the law to juveniles, he provided the court with no legal standard for it to be judged. The issue was therefore not properly preserved. See *In re K.C.*, 660 N.W.2d at 38. D.L.N.'s argument to this court on appeal lacks this same support of legal authority and is therefore waived. Iowa R. App. P. 6.14(1)(c).

Even assuming, however, this argument had been preserved and not waived, the purpose of the sex offender registry and residency restrictions is the protection of society from repeat sex offenders, not punishment. *State v. Seering*, 701 N.W.2d 655, 668 (Iowa 2005); *In re S.M.M.*, 558 N.W.2d 405, 408 (Iowa 1997). This interest of preventing crime "persists undiluted in the juvenile context." *Schall v. Martin*, 467 U.S. 253, 264, 104 S. Ct. 2403, 2410, 81 L. Ed. 2d 207, 217 (1984). In addition, the State must prove the commission of a delinquent act beyond a reasonable doubt, the same high burden placed on the State to convict an adult sex offender. Iowa Code § 232.47(10). Requiring juvenile sex offenders to register on the sex offender registry does not hinder the goal of rehabilitation or further punish the delinquent. D.L.N. acknowledges that to prevail on this issue our court would be required to nullify the legislative

actions of the federal government and State of Iowa, as well as overruling a prior decision of our supreme court. See *In re S.M.M.*, 558 N.W.2d 405. We decline such action. We conclude D.L.N.'s argument is without merit.

AFFIRMED.