Cite as 2010 Ark. App. 695

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-1299

C.M. APPELLANT	**Opinion Delivered** October 20, 2010
V.	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. JV-06-471]
	HONORABLE RHONDA K. WOOD, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

RAYMOND R. ABRAMSON, Judge

This case began in September 2006, when a call was placed to the Child Abuse Hotline alleging that C.M., who was thirteen at the time, had raped his two-year-old brother. Apparently, C.M.'s mother discovered the rape in progress, and C.M. fled the scene. Police later arrested C.M. and placed him in the Faulkner County Juvenile Detention Center. Within a few days, C.M. was admitted to Lakeland Regional Hospital and was eventually transferred to Lakeland's sex-offense-specific treatment unit. In December 2006, C.M. entered a true plea to the charges of Class Y felony rape and fleeing. C.M. remained at Lakeland for more than a year and was ultimately discharged as a treatment failure. He was then committed to the Department of Youth Services.

DYS placed C.M. in residential sex-offense-specific treatment at Piney Ridge in Fayetteville. C.M. completed the program at Piney Ridge in June 2009 and moved into

Ridgeview—Piney Ridge's group home—pending his release into therapeutic foster care in December 2009. The State moved, in July 2009, to require C.M. to register as a sex offender. The court held a hearing on the motion about a month later and entered an order requiring C.M. to register as a sex offender shortly thereafter. C.M. appeals, arguing that his due process rights were violated and that the court's decision was clearly erroneous. We affirm.

On appeal, C.M. first argues that his due process rights, under Article 2, section 8 of the Arkansas Constitution, were violated. However, he did not raise this argument below. "Our law is well settled that issues raised for the first time on appeal, even constitutional ones, will not be considered because the trial court never had the opportunity to rule on them." *Callaway v. State*, 368 Ark. 412, 414, 246 S.W.3d 889, 890 (2007). Because C.M. did not make his due-process argument below, it is not preserved on appeal and we will not consider it.

C.M. next argues that the circuit court's decision requiring him to register as a sex offender was clearly erroneous. There are seven factors the circuit court must consider in deciding whether to require a juvenile to register as a delinquent sex offender: (1) the seriousness of the offense; (2) the protection of society; (3) the level of planning and participation in the alleged offense; (4) the previous sex offender history of the juvenile, including whether the juvenile has been adjudicated delinquent for prior sex offenses; (5) whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction; (6) the sex offender assessment and

any other relevant written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and (7) any other factors deemed relevant by the court. Ark. Code Ann. § 9-27-356(e)(2)(A)(i)–(vii) (Repl. 2009). The court must make written findings on each factor. Ark. Code Ann. § 9-27-356(f)(1). But no one factor is determinative—"the best indicator of need for registration is a synthesis . . . of the seven factors." *L.W. v. State*, 89 Ark. App. 318, 324, 202 S.W.3d 552, 555 (2005). The court's registration decision must be supported by clear and convincing evidence. Ark. Code Ann. § 9-27-356(f)(2).

On appeal, we review the circuit court's findings for clear error, giving due regard to the circuit court's credibility determinations. *L.W.*, 89 Ark. App. at 322, 202 S.W.3d at 554. "A trial court's decision is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with a definite and firm conviction that a mistake has been committed." *Ridenhour v. State*, 98 Ark. App. 116, 120, 250 S.W.3d 566, 569 (2007). But when there are two possible conclusions to be drawn from certain evidence, the circuit court's choice between the two possibilities cannot be clearly erroneous. *L.W.*, 89 Ark. App. at 322, 202 S.W.3d at 554.

As to the first factor, the court found that C.M.'s offense, brutally raping his two-year-old brother, was "a serious felony"—a fact that C.M. does not dispute. On the second factor, the court found that requiring C.M. to register is necessary to protect society. In support of this finding, the court noted C.M.'s long history of abuse (both as victim and perpetrator),

the fact that C.M. had no familial or community ties or support, C.M.'s highly manipulative nature, and C.M.'s lack of empathy for his victims. The court further stated that it was "gravely concerned" that C.M. "is highly likely to reoffend."

The court also found that C.M.'s actions showed a degree of planning. The court pointed to the fact that C.M. held his two-year-old brother in his lap using physical force, raped him, and held his hand over his brother's mouth to muffle his younger brother's screaming. During the subsequent investigation, C.M. also admitted to sexually abusing two of his other younger brothers, who were around six and seven years old at the time of the abuse. In these attacks, C.M. would wait until his stepfather was at work and his mother was playing on the computer before initiating the sexual contact. C.M. threatened to beat one of his brothers up when his brother warned C.M. that he was going to tell their mother about the abuse.

On the fourth factor, the previous sex-offender history, the court again pointed out C.M.'s admitted abuse of his two other younger brothers. C.M. fondled both of these children, performed oral sex on one of them, and had one of them perform oral sex on him. C.M. also admitted to fondling a male peer during his time at Lakeland. Moving on to the fifth factor, the court found that there were no additional facilities or programs available to rehabilitate C.M. In conjunction with this finding, the court noted that C.M. had been discharged from Lakeland as a treatment failure, but had completed his subsequent treatment at Piney Ridge.

Lastly, the court considered the community notification risk assessment performed by Diana Smith and other written reports and material related to C.M.'s mental, physical, educational, and social history. According to Smith's report, C.M. "poses moderate risk for further sexual misconduct." But the court found that Smith was "an unreliable witness" and that "her credibility was slim at best." The court therefore gave little weight to Smith's assessment, finding it "in error on the low side." The court pointed to C.M.'s discharge-summary report from Lakeland, which assessed C.M. as a high risk to reoffend, and to psychologist Paul Deyoub's assessment of C.M. Dr. Deyoub evaluated C.M. over three days in late 2007 and early 2008. Dr. Deyoub concluded, "[t]his is a disturbed adolescent who would be difficult to manage, he poses a threat to himself and possible suicidal risk, and he is also manipulative, histrionic, attention seeking, and I think a constant problem to manage even in a treatment facility." The court also noted that C.M. was in DHS custody because his parents would not allow him back into the home and no other relatives were willing to take him, leaving C.M. with no familial or community support. The court gave great weight to the fact that Ridgeview staff had contacted C.M.'s current employer to go over part of C.M.'s safety plan and to warn it against allowing C.M. to be alone with young children. The court found this fact probative of its conclusion that C.M. remained a risk to reoffend.

On appeal, C.M. argues that the court's decision to require him to register was not supported by clear and convincing evidence. C.M. presses that he has shown empathy for his sexual misconduct in various ways and that the court should have given more weight to

certain portions of Smith's community notification risk assessment. C.M. also points out that much time has elapsed since he abused his siblings, that he committed no sexual indiscretions during his time at Ridgeview, and that he had made great strides in his treatment and exhibited a willingness to face his issues. C.M. notes that it had been several months since Smith's evaluation and several years since he left Lakeland and was evaluated by Dr. Deyoub. C.M. points to the significant progress he has made in the intervening time, which he claims undercuts the import of those earlier evaluations. C.M. says too that there are other rehabilitative programs available to him—he was currently still receiving treatment at Ridgeview and was planning to move into a therapeutic foster home in a few months. Last, C.M. says that his safety plan, his recent employment, and his pending entry into therapeutic foster care are all examples of community support designed to aid him in his continuing rehabilitative process.

After carefully reviewing the circuit court's findings and considering C.M.'s arguments, we are not left with a definite and firm conviction that a mistake has been committed. There is evidence, to be sure, that weighs in C.M.'s favor. But remembering that no one factor is determinative and giving due deference to the circuit court's credibility and weight-of-the-evidence determinations, the circuit court's decision is not clearly erroneous. We therefore affirm the circuit court's decision requiring C.M. to register as a sex offender.

HENRY and BROWN, JJ., agree.