

**ARKANSAS COURT OF APPEALS**DIVISION IV  
No. CACR12-409

T.S.C.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**OPINION DELIVERED** OCTOBER 31, 2012APPEAL FROM THE LONOKE  
COUNTY CIRCUIT COURT,  
[NO. CR-2011-431]HONORABLE SANDY HUCKABEE,  
JUDGE

AFFIRMED

**ROBERT J. GLADWIN, Judge**

T.S.C. was charged with battery in the first degree for the alleged stabbing of Mr. James Lohnes. T.S.C. was sixteen-years old at the time the event was alleged to have occurred. After a juvenile-transfer hearing was held, the trial court decided that it would retain jurisdiction. As required, a written order was prepared. T.S.C. submits that the trial court erred in its written findings in that the trial court failed to make any findings of fact related to factors set forth in Arkansas Code Annotated sections 9-27-318 and 9-27-503 (Repl. 2009). Instead, the trial court issued only a conclusory statement of law. Because the issue was not preserved, we affirm.

A trial court's decision to retain jurisdiction of criminal charges against a juvenile must be supported by clear and convincing evidence. Ark. Code Ann. § 9-27-318(h)(2). Clear and convincing evidence is that degree of proof that will produce in the trier of fact a firm

conviction as to the allegation sought to be established. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997). On review, the trial court's denial of a transfer is not reversed unless the decision is clearly erroneous. *Beulah v. State*, 344 Ark. 528, 42 S.W.3d 461 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been committed. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004).

For reversal, T.S.C. argues that the trial court erred in failing to comply with sections 9-27-318(g) and (h)(1), which require that the trial court make written findings on all of the factors set forth in subsection (g) of the section. Subsection (g) lists all factors the trial court must consider in determining whether to transfer a matter to juvenile court or whether to retain jurisdiction. A trial court does not have to give equal weight to each factor. *Landrum v. State*, 63 Ark. App. 12, 971 S.W.2d 278 (1998).

In this instance, at the juvenile-transfer hearing on March 19, 2012, the trial court announced that, based on the testimony and the evidence presented and in consideration of the factors set forth in the applicable statute, it found that the State had met its burden of proof.<sup>1</sup> The trial court stated that the matter would remain in circuit court and denied the motion to transfer the case to juvenile court. The trial court's written findings were issued one day later on March 20, 2012, again stating only that the court considered the testimony,

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<sup>1</sup>We note that the trial court applied the wrong burden of proof in its ruling, because as the moving party, T.S.C. had the burden of proving by clear and convincing evidence that the case should be transferred to the juvenile division of circuit court. *D.D.R. v. State*, 2012 Ark. App. 329, \_\_\_ S.W.3d \_\_\_.

evidence presented, and the factors set forth in the statute, and found that the State met its burden of proof to keep the case in circuit court. The trial court made no written findings of fact regarding any of the factors listed in subsection (g).

Although a court must consider all of the factors enumerated in subsection (g) of this section, the court is not required to make written findings with regard to all of those factors; the court is required to make written findings, but the extent of the written findings is not specified. *Beulah, supra*. Appellant claims that, although *Beulah* does not require the trial court to address each factor individually, the trial court is required to make written findings of fact, not conclusions of law. He notes that the order issued in this instance fails to do so, and he claims that this is clear error. Accordingly, appellant requests that the order denying the transfer to juvenile court be reversed and remanded to the trial court and a new hearing granted.

We hold that T.S.C.'s argument is not preserved for review because it was not raised below. In *Box v. State*, 71 Ark. App. 403, 30 S.W.3d 754 (2000), this court expressly held that the right of a defendant to written findings in a transfer case, like any other procedural right, can be waived by failure to timely object. In order to preserve an argument on appeal, there must be an objection to the trial court that is sufficient to apprise the trial court of the particular error alleged, so that the trial court has an opportunity to correct the error. *Leach v. State*, 2012 Ark. 179, \_\_\_ S.W.3d \_\_\_.

Furthermore, constitutional issues will not be heard for the first time on appeal. *Williams v. State*, 96 Ark. App. 160, 164, 239 S.W.3d 44, 48 (2006). The State acknowledges

that in this case, the trial court did not make the appropriate written findings on the factors set forth in section 9-27-318(g). However, because T.S.C. never raised the issue of noncompliance with the statutory provision to the trial court, we are barred from considering the issue on appeal.

Affirmed.

GLOVER, J., agrees.

GRUBER, J., concurs.

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RITA W. GRUBER, Judge, concurring. I concur that the trial court's decision must be affirmed based on our standard of review and on this court's ruling in *Box v. State*, 71 Ark. App. 403, 30 S.W.3d 754 (2000), where we expressly held that the right of a defendant to written findings in a transfer case can be waived by failure to timely object, like any other procedural right. In this particular case, the trial court did not make written findings on any of the factors set forth in Ark. Code Ann. § 9-27-318(g) (Repl. 2009) as required by statute, and simply opined that "based on the testimony and evidence presented, and upon consideration of the factors set forth in the applicable statute, the Court finds that the State has met its burden of proof and that this case shall remain in Circuit Court . . . ." Unfortunately, appellant never raised the issue of noncompliance with the statutory requirement to the trial court, and appellant's failure to object now bars consideration of this point on appeal.

Nevertheless, I would emphasize that the better practice for the circuit court would have been to make written findings on all of the factors set forth in Ark. Code Ann. § 9-27-318(g) as required by subsection (h) of the aforementioned statute. I urge all circuit courts to do their best to comply with statutory provisions in future rulings. In addition, the burden of proof in juvenile-transfer hearings must be met by the moving party, in this case the juvenile defendant. See *Magana-Galdamez v. State*, 104 Ark. App. 280, 291 S.W.3d 203 (2009).

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