

[Cite as *In re D.L.W.*, 2010-Ohio-2486.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
NO. 94232

**IN THE MATTER OF
D.L.W., A MINOR**

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Court Division
Case No. 04105551

BEFORE: Rocco, P.J., McMonagle, J., and Dyke, J.

RELEASED: June 3, 2010

JOURNALIZED:

ATTORNEYS FOR APPELLANT, D.L.W.

Robert L. Tobik
Chief Public Defender

BY: Cullen Sweeney
Assistant Public Defender
310 Lakeside Avenue
Suite 200
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Daniel T. Van
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

KENNETH A. ROCCO, P.J.:

{¶ 1} D.L.W. appeals from an order of the common pleas court, juvenile court division, that denied his petition to contest the application of the Adam Walsh Act (“AWA”) to him. In ten assignments of error, D.L.W. challenges the court’s denial of his petition without a hearing and the court’s failure to reclassify him under the AWA and to relieve him of community notification. He also challenges the constitutionality of the AWA in various respects. We find the juvenile court erred by summarily denying D.L.W.’s petition. Accordingly, we reverse and remand for further proceedings.

{¶ 2} D.L.W. was adjudicated delinquent in October 2004 after the state proved beyond a reasonable doubt that D.L.W. had committed rape.¹ A dispositional hearing was conducted on November 16, 2004, after which the court ordered D.L.W. committed to the Ohio Department of Youth Services for a period of twelve months. The commitment order was stayed and later suspended, and appellant was instead placed under community control and ordered to attend counseling. He was further classified as a juvenile sex

¹In his brief before this court, D.L.W. asserts that he was adjudicated delinquent after he entered into a plea agreement. One of his assignments of error claims that the application of the AWA is a breach of his plea agreement and impairs an obligation of contract. However, the record reflects that the court found D.L.W. delinquent after a full evidentiary hearing.

offender registrant and was required to register with the sheriff's department annually for ten years.

{¶ 3} On July 27, 2009, D.L.W. filed a petition “pursuant to R.C. 2950.031(E) and R.C. 2950.032(E)” for a hearing to contest the application of the AWA. He alleged that he had registered as a juvenile sexually oriented offender, and that “[t]he Ohio Attorney General had now classified Petitioner as a Tier III juvenile sex offender under Ohio’s Adam Walsh Act.” D.L.W. submitted that this reclassification was “improper and unconstitutional,” and requested, “as a matter of right, a hearing to contest the application of Ohio’s Adam Walsh Act,” “[p]ursuant to R.C. 2950.031(E).” The state did not respond to this petition. The court denied the petition in an order entered October 8, 2009. D.L.W. timely appealed from this order.

Law and Analysis

{¶ 4} R.C. 2950.031(A)(2) required the Ohio Attorney General to send a registered letter to every delinquent child who had registered as a juvenile sex offender prior to December 1, 2007, notifying the child of his or her new classification under the AWA effective January 1, 2008, and of the fact that he or she was entitled to a hearing. The statute required this letter to be sent between July 1, 2007 and December 1, 2007. R.C. 2950.031(C) requires that “[t]he attorney general shall maintain the return receipts for all offenders, delinquent children, and parents of delinquent children who are

sent a registered letter under division (A) or (B) of this section,” and send a copy to the sheriff with whom the offender has most recently registered.

{¶ 5} With respect to the right to a hearing, R.C. 2950.031(E) provides, in pertinent part:

“* * * [A] delinquent child * * * may request as a matter of right a court hearing to contest the application to the * * * delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The * * * delinquent child may contest the manner in which the letter * * * specifies that the new registration requirements apply to the * * * delinquent child or may contest whether those new registration requirements apply at all to the * * * delinquent child. To request the hearing, the * * * delinquent child not later than the date that is sixty days after the offender or delinquent child received the registered letter sent by the attorney general pursuant to division (A)(2) of this section shall file a petition with the court specified in this division. * * * .

“ * * * *

“If * * * [a] delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the * * * delinquent child of the * * * delinquent child's right to a hearing under this division, and the * * * delinquent child is bound by the determinations of the attorney general contained in the registered letter sent to the * * * child. [Emphasis added.]”

{¶ 6} R.C. 2950.031 required the court to hold a hearing on the petition unless the petition was untimely and the hearing was therefore waived. Appellant’s petition does not disclose whether or when he received the registered letter from

{¶ 7} the Ohio Attorney General.² It was impossible for the court to have determined from the face of the petition that it was not timely filed, so the court could not have denied the petition on that basis. The court was required to hold a hearing to determine the petition on any other basis. The court erred by summarily denying appellant's petition without holding a hearing or otherwise ascertaining the timeliness of the petition. Therefore, we reverse and remand for further proceedings.

{¶ 8} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

CHRISTINE T. McMONAGLE, J., AND
ANN DYKE, J., CONCUR

²Under the terms of R.C. 2950.031(C), it appears that this information is readily available from the Ohio Attorney General and/or the sheriff's office.