

Juvenile Law Case Summaries

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Requiring sex offender registration without requiring a finding of danger to society is constitutional [In re R.M.] (01-4-26).

On September 26, 2001, the San Antonio Court of Appeals held that due process of law is not violated by requiring a juvenile sex offender to register without also requiring a finding that he poses a danger to society.

01-4-26. In the Matter of R.M., UNPUBLISHED, No. 04-01-00011-CV, 2001 WL 1131421, 2001 Tex.App.Lexis ____ (Tex.App.-Tyler 9/26/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: R.M. pleaded true to indecency with a child. The trial court sentenced R.M. to two years probation with the first six months consisting of sex offender intensive supervision. R.M. appeals in four points of error claiming: (1) the trial court committed fundamental error in failing to admonish that he would be required to register as a sex offender prior to his plea; (2) the sex offender registration requirement violates the Fourteenth Amendment to the United States Constitution; (3) the sex offender registration requirement violates his rights under the Texas Constitution; and (4) the trial court erred in requiring him to register for twelve years as a sex offender when the juvenile court will lose its jurisdiction before twelve years.

Held: Affirmed.

Opinion Text: ADMONISHMENT OF SEXUAL OFFENDER REGISTRATION

R.M. contends that because the trial court failed to admonish him, his plea was rendered involuntary pursuant to Tex. Fam.Code Ann. § 54.03(b)(2) (Vernon 1996) and Tex.Code Crim. Proc. Ann. art. 26.13(a)(5) (Vernon Supp.2001). Although article 26.13(a)(5) directs the court to admonish a defendant regarding sexual offender registration, registration is considered remedial rather than punitive. See *Guzman v. State*, 993 S.W.2d 232, 236 (Tex.App.–San Antonio 1999, pet. ref'd), cert. denied, 528 U.S. 1161 (2000); *In re B.G.M.*, 929 S.W.2d 604, 606-07 (Tex.App.–Texarkana 1996, no writ). Because it is remedial, the consequences of registration are collateral. See *Guzman*, 993 S.W.2d at 236; *In re B.G.M.*, 929 S.W.2d at 606-07. Therefore, the court does not have an affirmative duty to admonish a defendant prior to his plea that he must register for sexual offender registration. See *Guzman*, 993 S.W.2d at 236; *In re B.G.M.*, 929 S.W.2d at 606-07. We hold there is no fundamental error and overrule point of error one.

In point of error four, R.M. contends that the trial court will lose its authority prior to the time the duty to register ends. However, the requirement to register is a collateral consequence and a matter of law. See Tex.Code Crim. Proc. Ann. art. 62.12(b)(1) (Vernon Supp.2001); *Guzman*, 993 S.W.2d at 236. The statute clearly states when the duty to register ends; it is not a matter of discretion by the trial court. Accordingly, we overrule point of error four.

DUE PROCESS UNDER THE UNITED STATES AND TEXAS CONSTITUTION

R.M. contends the Sex Offender Registration Program violates his due process rights under the United States and Texas constitutions because it constitutes a restraint on his liberty. He argues this restraint on his liberty further offends due process because it requires notification without any preliminary determination that he constitutes a continuing threat to society.

The applicable portion of the Fourteenth Amendment to the United States Constitution addressing due process states: "No State shall ... deprive any person of life, liberty, or property, without due process of law...." U.S. CONST. amend. XIV, § 1. The Texas due process provision found in article 1, section 19 states: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. 1, § 19. The due course of law clause provides general guaranties of due process. See *Odak v. Arlington Mem'l Hosp. Found.*, 934 S.W.2d 868, 871 (Tex.App.—Fort Worth 1996, writ denied).

R.M. contends the registration statute violates due process because it authorizes notification without any preliminary determination that he poses a continuing threat to society. See Tex.Code Crim. Proc. Ann. arts. 62.03(e), (g), 62.08 (Vernon Supp.2001). R.M. maintains that he will be stigmatized absent any showing that he poses a continuing threat to society. Additionally, his reputation and good name are at stake and will be affected into adulthood, which is a heavy burden on a juvenile.

Statutes are presumed to be constitutionally valid. See *HL Farm Corp. v. Self*, 877 S.W.2d 288, 290 (Tex.1994). The party attacking the constitutionality of a statute has the burden to show it is unconstitutional. See *City of Irving v. Dallas/Fort Worth Int'l Airport Bd.*, 894 S.W.2d 456, 466 (Tex.App.—Fort Worth 1995, writ denied). A statute not affecting a fundamental right or interest is valid if it bears a rational relationship to a legitimate state interest. See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985); *Texas Workers' Compensation Comm'n v. Garcia*, 893 S.W.2d 504, 525 (Tex.1995); *In re J.G.*, 905 S.W.2d 676, 680 (Tex.App.—Texarkana), writ denied, 916 S.W.2d 949 (Tex.1995). Even if a fundamental right is involved, some regulation of that right may be justified by a compelling state interest. See *Roe v. Wade*, 410 U.S. 113, 155 (1973) (citing *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621, 627 (1969)); *City of Sherman v. Henry*, 928 S.W.2d 464, 477 (Tex.1996).

To trigger the protections of the due process clause, R.M. must show that the notification requirements deprive him of some liberty or property interest. See Tex. Const. art. 1, § 19. In other words, R.M. must point to a right conferred by state law or the constitution that would justify nondisclosure of the registration information. R.M. argues that the stigma attached to registering and the effect on his reputation or good name creates a liberty interest and therefore triggers due process protection.

Mere injury to an adult sex offender's reputation alone has been held to be insufficient to implicate a liberty interest. See *In re M.A.H.*, 20 S.W.3d 860, 864 (Tex.App.—Fort Worth 2000, no pet.); *Alford v. City of Dallas*, 738 S.W.2d 312, 317 (Tex.App.—Dallas 1987, no writ) (reputation alone is not a liberty interest that is protected by the due process clause). Neither has there been such a right established in cases of juvenile sex offenders. See *In re M.A.H.*, 20 S.W.3d at 864. R.M. contends that the United States Supreme Court has established he has such an interest in *Goss v. Lopez*, 419 U.S. 565 (1975). We disagree; *Goss* deals with students who received temporary detention from their high school classes and is distinguishable from the case at hand. Although the juvenile justice system has placed great emphasis on the welfare of the child, sex offenders present special problems. See *In re M.A.H.*, 20 S.W.3d at 864. To address these special issues the Legislature enacted the registration and notification requirements to balance the interests of the child while protecting society from youth sex offenders. [FN1] See *id.* We conclude the registration and notification statutes bear a rational relationship to the State's interests that the legislation sought to protect and advance. We therefore overrule R.M.'s second and third points of error.

FN1. New legislation enacted by H.B. 1118 adds Tex.Code Crim. Proc. art. 62.13 to allow for a hearing to determine the need for the registration of a juvenile sex offender, taking into account various factors. This provision took effect on September 1, 2001, and did not affect the outcome of this case. See Tex. H.B. 1118, 77th Leg., R.S. (2001).