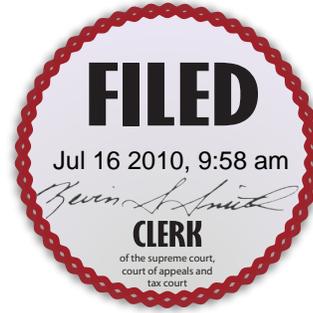


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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D.L.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0908-JV-781
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Gary Chavers, Judge Pro Tem  
The Honorable Scott B. Stowers, Magistrate  
Cause No. 49D09-0905-JD-1341

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**July 16, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

D.L. appeals his placement at Kokomo Academy. We affirm.

### **Issue**

D.L. raises one issue, which we restate as whether he was properly placed at Kokomo Academy.

### **Facts**

On June 4, 2009, D.L. admitted to a burglary allegation in Marion County. The allegation would have been a Class B felony if committed by an adult. On June 25, 2009, the trial court held a depositional hearing, and it decided to place D.L. at Kokomo Academy, a secure residential facility. D.L. now appeals.

### **Analysis**

D.L. argues that the trial court improperly placed him at Kokomo Academy without specifically determining whether a comparable facility existed in Marion County.

D.L. relies on Indiana Code Section 31-37-19-23, which provides:

A court may not place a child who is a delinquent child under IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal) in:

- (1) a community based correctional facility for children;
- (2) a juvenile detention facility;
- (3) a secure facility;
- (4) a secure private facility; or
- (5) a shelter care facility;

that is located outside the child's county of residence unless placement of the child in a comparable facility with adequate

services located in the child's county of residence is unavailable or the child's county of residence does not have an appropriate comparable facility with adequate services.

At the disposition hearing, however, D.L. did not object to his placement at Kokomo Academy on the basis that Marion County had a comparable facility. He only argued that he should not be placed outside of his home. In fact, D.L.'s counsel, referring to D.L.'s daughter and mother, asserted, "he could be a big benefit to them and we hope learn to be a productive member of our society. If he doesn't we still have opportunities to send him to Kokomo Academy if he fails in the slightest . . . ." Tr. p. 23. In the absence of a timely objection, this issue is waived. See B.R. v. State, 823 N.E.2d 301, 306 (Ind. Ct. App. 2005) (holding that where juvenile raised the issue of jurisdictional defect for the first time on appeal, the issue is waived); E.M.W. v. State, 762 N.E.2d 1283, 1284 (Ind. Ct. App. 2002) (holding that arguments regarding failure to provide juvenile with pre-dispositional report prior to hearing and failure of report to strictly comply with statutory requirements were waived because she did not raise the deficiencies during her hearing or ask for a continuance to prepare a rebuttal).

Waiver notwithstanding, D.L. argues that D.J. v. State, 798 N.E.2d 535 (Ind. Ct. App. 2003), trans. denied, is instructive because it demonstrates that a trial court must conduct an evaluation of the unavailability of a comparable facility before placing a juvenile out of county. In that case, the juvenile argued that the trial court should have placed him at Washington Place in Marion County because there was no evidence in the record to support a finding that it was not comparable to Kokomo Academy. D.J., 798 N.E.2d at 536. We disagreed that the two were comparable because the record showed

that Kokomo Academy was extremely secure and structured and Washington Place was a therapeutic group home. Here, however, the trial court was not considering placing D.L. at home or a facility less secure than Kokomo Academy. In fact, the trial court was considering whether to place D.L. at Kokomo Academy or the Department of Correction. Thus, although the trial court would have been required to consider whether a comparable facility in Marion County was available if D.L. had raised the issue, D.L.'s reliance on D.J. is otherwise unpersuasive.

### **Conclusion**

Because D.L. did not object to his placement at Kokomo Academy at the disposition hearing, the issue is waived. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.