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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1330**

State of Minnesota,
Appellant,

vs.

Arthur John Wittebort,
Respondent.

**Filed December 22, 2009
Affirmed
Stauber, Judge**

Washington County District Court
File No. 82CR09963

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Marie Wolf, Interim Chief Public Defender, Mark D. Nyvold, Special Assistant Public Defender, Suite W-1610, First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for respondent)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's order dismissing the complaint for lack of probable cause, appellant State of Minnesota argues that the district court erred in concluding that respondent complied with the predatory offender registration statute. Because the district court properly dismissed the complaint for lack of probable cause, we affirm.

FACTS

In November 2003, respondent Arthur Wittebort was convicted of false imprisonment and was required to register as a predatory offender pursuant to Minn. Stat. § 243.166 (2008). Predatory offender registration (POR) requirements mandated that respondent return address verification forms within ten days of receipt and notify POR of any changes of address at least five days prior to the address change. Minn. Stat. § 243.166, subds. 3(b), 4(e)(1)–(2).

On June 6, 2008, respondent completed a POR form stating that his primary address was 309 Queenan Avenue North in Lakeland (the Queenan address). Respondent indicated that his primary address was also the home of his sister and brother-in-law. Respondent further listed his mailing address as 6120 Oxboro Avenue North in Stillwater (the Oxboro address) and reported that his mailing address was also a secondary address.

In July 2008, Deputy Luke Garvey went to the Queenan address to conduct a residence check of respondent. Respondent's sister told Deputy Garvey that respondent was living at an apartment building in Oak Park Heights (the Oxboro address) and that

she had not seen him for three or four weeks. Respondent's sister also told Deputy Garvey that she did not want respondent to live at her home.

In late August 2008, law enforcement responded to a domestic disturbance at the Oxboro address. The Oxboro address was the residence of M.R., respondent's girlfriend. M.R. told the officer that she and respondent had been living together at the Oxboro address "on and off" for approximately six months. However, M.R. told the officer that she was afraid of respondent and that she no longer wanted respondent at her home.

The incident at the Oxboro address prompted law enforcement to investigate respondent's compliance with Minn. Stat. § 243.166. After an investigation into the matter, respondent was charged with a single count of predatory-offender-registration violation for allegedly failing to notify law enforcement that the Oxboro address was his primary address. Respondent subsequently moved to dismiss the complaint for lack of probable cause. The district court granted respondent's motion, concluding that respondent did not violate Minn. Stat. § 243.166, because he provided law enforcement with the two addresses at which he was staying. This appeal followed.

D E C I S I O N

A dismissal for lack of probable cause is appealable if it is based on a legal determination. *State v. Ciurleo*, 471 N.W.2d 119, 121 (Minn. App. 1991). Under Minn. R. Crim. P. 28.04, this court will only reverse a pretrial dismissal when the state demonstrates that (1) the district court erred in its judgment and (2) the error will have a critical impact on the ability to prosecute the case. *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005). Respondent concedes that the district court's dismissal of the

complaint has critically impacted the state's prosecution. Therefore, the only issue is whether the district court's ruling was erroneous.

The state argues that the district court erred in dismissing the complaint for lack of probable cause because respondent failed to comply with the predatory-offender-registration statute. A dismissal for lack of probable cause that is based on a legal determination, such as interpretation of a statute, is reviewed de novo. *State v. Larkin*, 620 N.W.2d 335, 336 (Minn. App. 2001).

Minn. Stat. § 243.166, subd. 3(b) (2008), provides that “at least five days before the person starts living at a new primary address . . . the person shall give written notice of the new primary address to the assigned corrections agent or to the law enforcement authority with which the person currently is registered.”

Here, the June 6, 2008, POR form completed by respondent lists respondent's primary address as the Queenan address,¹ and the Oxboro address as respondent's secondary address. But the state contends that based on the evidence in the record, the Oxboro address was actually respondent's primary address. Thus, the state argues that respondent failed to comply with the predatory-offender-registration statute by failing to notify the state that he changed the Oxboro address to his primary address.

We disagree. The predatory-offender-registration statute defines a “primary address” as the “mailing address of the person's dwelling.” Minn. Stat. § 243.166, subd. 1a(g) (2008). A “secondary address” is defined as the “mailing address of any place

¹ The POR form contains a clerical error in the Queenan address. The state, however, does not argue that this clerical error is the basis for the state's claim that respondent was not in compliance with Minn. Stat. § 243.166.

where the person *regularly* or occasionally stays overnight when not staying at the person's primary address." *Id.*, subd. 1a(i) (2008) (emphasis added).

Here, the complaint suggests that respondent had been living with his girlfriend at the Oxboro address for a few months prior to the late August domestic-dispute incident. Moreover, respondent's sister told Officer Garvey that she had not seen respondent for a few weeks. This evidence is consistent with the definition of a "secondary" address where a person "regularly" stays when "not staying at the person's primary address." Minn. Stat. § 243.166, subd. 1a(i). Although respondent had not stayed at his sister's address for a few weeks, this fact does not automatically make his girlfriend's apartment his primary address. As the district court found, respondent provided to law enforcement both addresses at which he was residing in August 2008. This is consistent with the statutory language of Minn. Stat. § 243.166.

The state cites several cases purporting to support its claim that respondent was not in compliance with the predatory-offender-registration statute. *See State v. Jones*, 729 N.W.2d 1 (Minn. 2007); *see also Longoria v. State*, 749 N.W.2d 104 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008). But the language from the cases cited by the state reiterates the statutory requirement of Minn. Stat. § 243.166 that a predatory offender is required to notify law enforcement of the offender's change in address prior to the offender changing his primary address. *See Jones*, 729 N.W.2d at 7 (stating that in 2003 when the legislature defined "primary residence" and "secondary residence," the legislature also clarified that an offender must immediately notify the proper authorities when the offender's primary address changes); *see also Longoria*, 749 N.W.2d at 107

(stating that predatory-offender-registration statute prohibits an identified predatory offender residing or moving without maintaining a current address registration with the proper authorities). Nobody disputes the plain language of the statute. Rather, the dispute centers on whether the evidence in the complaint suggests that respondent failed to notify the state of a change in his primary address. As discussed above, respondent never changed his primary address. Although, at all times relevant to the complaint, respondent “regularly” stayed at the secondary address, his conduct was still in compliance with the statute. Therefore, the district court did not err in dismissing the complaint for lack of probable cause.

Affirmed.