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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0117**

In the Matter of the Welfare of: A. N. S., Child

**Filed October 1, 2012
Affirmed
Peterson, Judge**

Winona County District Court
File No. 85-JV-07-209

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Karin Sonneman, Winona County Attorney, Nelson Leo Rhodus, Assistant County Attorney, Winona, Minnesota (for respondent State of Minnesota)

David W. Merchant, Chief Appellate Public Defender, Leslie Joan Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant A.N.S.)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

Following appellant's third probation violation, the district court vacated a continuance for dismissal, adjudicated appellant delinquent, discharged him from probation, and required him to register as a sex offender. On appeal, appellant argues that the district court erred by (1) vacating the continuance for dismissal when appellant had completed treatment and had not committed another sexual offense and (2) requiring

appellant to register as a sex offender when it is not necessary to protect the public safety and is not in appellant's best interests. We affirm.

FACTS

In May 2007, appellant A.N.S., then age 13, was charged by petition with second-degree criminal sexual conduct. The parties entered into an agreement for a continuance for dismissal upon admission, under which appellant admitted to the elements of the charge and was placed on probation. The agreement stated that if appellant failed to abide by each and every probation term, a hearing would be held to determine whether appellant had committed a material violation of the agreement and, upon a finding of a material violation, the district court would enter a finding that the allegations in the May 2007 petition had been proved.

In June 2010, appellant admitted to violating probation by absconding from probation. Appellant stated that he left his grandmother's residence, where he was living, because he felt his grandmother was treating him like a younger child rather than like a typical high-school student. The district court accepted appellant's admission and reinstated the probation terms with clarifications, including the recommendation that appellant close his Facebook account and the requirements that appellant attend summer school, comply with counseling requirements, remain law abiding and of good behavior, obey his grandmother's household rules, and do 50 hours of community work service.

In January 2011, appellant admitted to violating probation by running away from home, failing to complete community work service, failing to attend school regularly, and failing to follow his grandmother's household rules. Appellant's Winona County

probation officer¹ recommended that probation be continued with conditions, including that appellant be placed on electronic home monitoring (EHM) for 30 days. The probation officer noted that if appellant continued to violate probation, he could face the consequence of having to register as a predatory offender. The prosecutor stated that continuing violations could not be tolerated and indicated that continuing violations could result in vacation of the continuance for dismissal. After explaining the consequences of having to register as a predatory offender, the district court reinstated the probation terms, placed appellant on EHM for 30 days, and maintained the continuance for dismissal.

In July 2011, appellant appeared before the district court on an alleged probation violation. Both the prosecutor and appellant's Winona County probation officer stated that appellant had been lying about where he had been staying. Appellant lying about where he was staying raised a concern that he might be staying at his mother's residence, where the victims of the criminal-sexual-conduct offense lived. Appellant denied the violation, and the district court set the case for hearing on September 6, 2011. The district court released appellant pending the hearing on the condition that he follow all probation terms and specifically instructed appellant to maintain contact with his probation officer.

Appellant did not appear for the September 6 hearing. He had gone out of town to visit friends five days earlier and claimed that car problems prevented him from returning to Winona for the hearing. Appellant's supervising probation officer in Olmsted County

¹ Appellant was originally placed on Winona County probation but was under court supervision in Olmsted County, where his grandmother resided.

stated that appellant had failed to attend an appointment on September 1 and that appellant was very difficult to supervise because his whereabouts were often difficult to determine. The district court denied a request for a warrant and rescheduled the hearing for October 4, 2011.

At the October 4 hearing, pursuant to the parties' agreement, appellant admitted to violating probation by failing to complete community work service, reporting late to his probation officer on July 21, 2011, using alcohol, and not being truthful about his work history. The state argued that appellant's pattern of dishonest and manipulative behavior was a material violation of the agreement for a continuance for dismissal. The Winona County probation officer noted that appellant had exhibited a pattern of noncompliance with probation.

The district court found:

You had a chance, and you've been told you got a chance to keep this off your record. It wasn't important enough to you to do what you were supposed to do . . . But you've been told, and you've been told, and you've been told. . . . You're not amenable to probation. For whatever reason you don't like it, and you just can't do it.

The court allowed the state to withdraw from the agreement for a continuance for dismissal, discharged appellant unsuccessfully from probation, and ordered him to register as a sex offender. This appeal followed.

DECISION

"When choosing the appropriate disposition in a juvenile-delinquency case, the district court . . . is afforded broad discretion. Therefore, absent a clear abuse of

discretion, we will affirm a revocation order and a disposition.” *In re Welfare of R.V.*, 702 N.W.2d 294, 298 (Minn. App. 2005) (citation omitted).

Minn. R. Juv. Delinq. P. 14.01, subd. 1, permits the prosecutor and the child’s counsel, subject to the district court’s approval, to agree to suspend a juvenile proceeding “for a specified period without a finding that the allegations of the charging document have been proved after which it will be dismissed as provided in Rule 14.07 on condition that the child not commit a delinquency or juvenile petty or juvenile traffic offense during the period of the continuance.” The parties’ agreement for a continuance for dismissal imposed additional conditions, including that appellant perform community service as directed by the district court, enter into a probation-supervision agreement and comply with all of its terms, comply with treatment recommendations, and comply with any additional conditions imposed by the court. *See* Minn. R. Juv. Delinq. P. 14.01, subd. 2 (permitting the imposition of additional conditions).

Appellant argues that the district court erred in vacating the continuance for dismissal when appellant had completed treatment and had not committed another sexual offense. The district court “may” order a rule-14 agreement “terminated and the juvenile proceeding resumed if . . . the court finds that . . . the child has committed a material violation of the agreement.” Minn. R. Juv. Delinq. P. 14.04, subd. 2(B). Like the decision to revoke probation and determine an appropriate disposition, the decision whether to terminate a rule-14 agreement is committed to the district court’s discretion. *See* Minn. Stat. § 645.44, subd. 15 (2010) (stating that “may” is permissive).

Whether a violation is material is a question of fact. *Cf. Sitek v. Striker*, 764 N.W.2d 585, 593 (Minn. App. 2009) (“Whether an act or omission constitutes a material breach of a contract is a fact question.”), *review denied* (Minn. Jul. 22, 2009). This court reviews a district court’s factual findings for clear error. *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996). In the context of probation revocation, a continuing failure to comply with probation terms can justify revocation. *See State v. Theel*, 532 N.W.2d 265, 267 (Minn. App. 1995) (upholding revocation when defendant failed to pay restitution to one of two families despite being warned in writing at least twice that failure to pay could result in revocation and stating that continuing failure to comply with probation term indicated that probation was not succeeding), *review denied* (Minn. July 20, 1995), *abrogated in part on other grounds*, *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005).

Appellant admitted to committing multiple probation violations at probation-violation hearings in June 2010 and July 2011. At the second probation-violation hearing, appellant was warned that continuing violations could result in vacation of the continuance for dismissal, and the district court explained the consequences of appellant having to register as a predatory offender. Appellant then failed to appear for the third probation-violation hearing and, at the continued hearing, admitted to additional probation violations. Appellant’s numerous probation violations, particularly his failure to remain where he was supposed to reside and his failure to account for his whereabouts, which made it difficult for his probation officer to supervise him, showed a serious disregard for the terms of his probation. The district court did not clearly err in finding

that appellant committed a material breach of the agreement for a continuance for dismissal and did not abuse its discretion in allowing the state to withdraw from the agreement.

Citing the rule governing a disposition order in a juvenile case, appellant next argues that the district court erred in requiring him to register as a sex offender when it is not necessary to protect the public safety and it is not in appellant's best interests. See Minn. R. Juv. Delinq. P. 15.05, subd. 2(A)(1) (requiring court to make findings supporting disposition ordered, including "why public safety and the best interests of the child are served by the disposition ordered"). But appellant's objection is to the requirement that he register as a sex offender.

It is well established in Minnesota that the requirement to register as a predatory offender is not punitive or a sentencing issue, but rather a civil and regulatory matter, the purpose of which is to increase public safety by requiring a specific class of offenders to provide information to law enforcement authorities to assist in keeping track of them.

State v. Jedlicka, 747 N.W.2d 580, 585 (Minn. App. 2008) (quotation omitted).

Minn. Stat. § 243.166, subd. 1b(a)(1)(iii) (2010), requires a juvenile who is adjudicated delinquent of second-degree criminal sexual contact to register as a predatory offender. The supreme court has held that Minn. Stat. § 243.166 is regulatory, not punitive. *Boutin v. LaFleur*, 591 N.W.2d 711, 717-18 (Minn. 1999); see also *In re Welfare of C.D.N.*, 559 N.W.2d 431, 248 (Minn. App. 1997) (stating that applying Minn. Stat. § 243.166 to juveniles did not alter statute's nonpunitive purpose of assisting law-enforcement investigations and "is consistent with the confidentiality of juvenile

proceedings because the information remains private data”), *review denied* (Minn. May 20, 1997). The predatory-offender registration requirement is mandatory. *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 247-48 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). Because the statutory registration requirement is mandatory and regulatory, the rule governing findings required to support a disposition order does not apply.² The district court did not err in requiring appellant to register as a sex offender.

Minn. R. Juv. Delinq. P. 14.04, subd. 2(B), authorizes the district court, upon finding a material violation, to terminate an agreement for a continuance for dismissal and to order the juvenile proceeding resumed. In this case, the district court did not order the juvenile proceeding resumed. Rather, under paragraph six of the agreement for a continuance for dismissal, the court found that the allegations in the petition had been proved and proceeded to disposition. Because the parties do not challenge the procedure agreed to in paragraph six, we do not determine whether that procedure is permissible under Minn. R. Juv. Delinq. P. 14.04, subd. 2(B).

Affirmed.

² We note that, although the district court referred to community notification at the January 25, 2011 hearing and defense counsel referred to the information being provided to schools and potential employers, Minn. Stat. § 243.166, subds. 7-7a (2010), provide that data provided under the statute are private absent noncompliance with the statute.