

THE ARKANSAS SUPREME COURT HOLDS THAT THE PLAIN
LANGUAGE OF ARKANSAS CODE ANNOTATED § 5-14-129 DOES
NOT PRECLUDE A LEVEL 3 OR 4 SEX OFFENDER FROM WORKING
AROUND CHILDREN

In *Newman v. State*,¹ the Arkansas Supreme Court held that section 5-14-129 of the Arkansas Code² does not preclude level three or four sex offenders from working around children so long as they are not “work[ing] or interact[ing] ‘in the first place’ and ‘in a straightforward manner’ with children under the age of sixteen.”³

Early in 2007, Joe Newman pled nolo contendere to a violation of section 12-12-904 of the Arkansas Code⁴ for failing to comply with sex offender registration requirements and was sentenced to twenty-four months of probation.⁵ In an October 28, 2008 petition, the State sought to revoke Newman’s probation for violating terms of the sentence, namely failing to pay registration fees and violating section 5-14-129 by working at a daycare facility.⁶ At the September 8, 2009 hearing on the petition, Newman’s probation officer testified that Newman did indeed admit to working at the daycare while children were present.⁷ After hearing arguments by both parties, “the circuit court revoked Newman’s probation and sentenced him to six years’ imprisonment.”⁸ Newman appealed from this order.⁹

Newman contends the lower court erred in revoking his probation because he did not violate section 5-14-129.¹⁰ Specifically, Newman states that no evidence indicates “he worked or interacted with any child under . . . sixteen.”¹¹ Even if he did violate the statute, Newman asserts that the statutory provisions were not part of the probation conditions, which were never

-
1. 2011 Ark. 112, ___ S.W.3d ___.
 2. ARK. CODE ANN. § 5-14-129.
 3. *Newman*, 2011 Ark. 112, at 6, ___ S.W.3d at ___.
 4. ARK. CODE ANN. § 12-12-904 (Supp. 2003).
 5. *Newman*, 2011 Ark. 112, at 2, ___ S.W.3d at ___.
 6. *Id.* at 2, ___ S.W.3d at ___.
 7. *Id.*, ___ S.W.3d at ___.
 8. *Id.* at 3, ___ S.W.3d at ___.
 9. *Id.* at 4, ___ S.W.3d at ___.
 10. *Id.*, ___ S.W.3d at ___.
 11. *Newman*, 2011 Ark. 112, at 4, ___ S.W.3d at ___.

introduced by the State.¹² In response, the State focused on legislative intent to establish Newman's violation of the statute.¹³

To revoke probation, the State has the burden of proving a violation of the probation conditions by a preponderance of the evidence.¹⁴ The lower court's findings will be upheld unless they are clearly against a preponderance of the evidence.¹⁵ Because the circuit court found that Newman violated section 5-14-129, the sole question which needed to be answered by the court was whether the interpretation of section 5-14-159(a) precluded Newman from performing carpentry work in a daycare with children present.¹⁶

Issues of statutory interpretation are reviewed de novo.¹⁷ To resolve the question, the court outlined rules of statutory construction and interpretation: Basic rules of statutory construction give effect to the intent of the legislature;¹⁸ however, "if the language of the statute is plain and unambiguous" after giving the words their ordinary meaning, there is no need "to resort to rules of statutory interpretation."¹⁹ Looking at the language of the section 5-14-129(a), the court determined that "primarily" and "directly" were the two key words in determining what type of conduct the statute prohibited.²⁰ The court found that the plain meaning of "primarily" to be "first of all" or "in the first place,"²¹ and the meaning of "directly" to be "[i]n a straightforward manner," "[i]n a straight line or course," or "[i]mmediately."²²

After establishing the plain meanings of "primarily" and "directly," the court restated that the only evidence of "Newman's work at the daycare consisted of putting up baseboards and doors."²³ Because the "carpentry work was in no way work or interaction 'in the first place' and 'in a straightforward manner' with children under sixteen," the circuit court's finding

12. *Id.* at 4, ___ S.W.3d at ___.

13. *Id.* at 4-5, ___ S.W.3d at ___. The State suggested that the legislative intent was obviously "to keep dangerous sex offenders from assuming authority or caretaking positions with children." *Id.* at 4, ___ S.W.3d at ___.

14. *Id.* at 5, ___ S.W.3d at ___ (citing *Bradley v. State*, 347 Ark. 518, 521, 65 S.W.3d 874, 876 (2002)).

15. *Newman*, 2011 Ark. 112, at 5, ___ S.W.3d at ___ (citing *Bradley*, 347 Ark. at 521, 65 S.W.3d at 876).

16. *Newman*, 2011 Ark. 112, at 5, ___ S.W.3d at ___.

17. *Id.* at 5 (citing *Singleton v. State*, 2009 Ark. 594).

18. *Newman*, 2011 Ark. 112, at 5, ___ S.W.3d at ___ (citing *Singleton*, 2009 Ark. 594).

19. *Newman*, 2011 Ark. 112, at 5, ___ S.W.3d at ___ (citing *Singleton*, 2009 Ark. 594).

20. *Newman*, 2011 Ark. 112, at 6, ___ S.W.3d at ___.

21. *Id.* at 6 (citing WEBSTER'S THIRD NEW INT'L DICTIONARY 1800 (2002)).

22. *Newman*, 2011 Ark. 112, at 6, ___ S.W.3d at ___ (citing BLACK'S LAW DICTIONARY 527 (9th ed. 2009)).

23. *Newman*, 2011 Ark. 112, at 7, ___ S.W.3d at ___.

“was clearly against the preponderance of the evidence.”²⁴ Consequently, the court reversed the conviction and sentence.²⁵

In his concurrence, Justice Gunter put the General Assembly on notice, suggesting that it may want to amend or revise the statute so that level three and four sex offenders cannot work in an environment where children are present, regardless of absence of any interaction.²⁶

Until this decision, it was thought that Arkansas Code Annotated, Section 5-14-129 precluded any level three or four sex offenders from working or volunteering where children under sixteen years of age are present.²⁷ After *Newman*, section 5-14-129 did not prohibit sex offenders from working in the presence of children under sixteen. Although the new interpretation of section 5-14-129 would have had a significant impact on the ability of sex offenders to work in daycare or other facilities where children were present, the General Assembly responded promptly. Section 1, act 1023 of the 2011 Arkansas Acts added an additional provision to section 5-14-129, making it unlawful for a level three or four sex offender to “[a]ccept work as a self-employed person, an independent contractor, or an employee or agent of a self-employed person or independent contractor that is to be performed at a private daycare facility when the privately owned daycare facility has in its care a child.”²⁸

* *David Jung*

24. *Id.* at 6-7, ___ S.W.3d at ___.

25. *Id.* at 7, ___ S.W.3d at ___.

26. *See id.* at 7-8, ___ S.W.3d at ___ (Gunter, J. concurring).

27. *Id.* at 4-5, ___ S.W.3d at ___.

28. ARK. CODE ANN. § 5-14-129 (Supp. 2011).