

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA 11-1169

DAVID BROWN

APPELLANT

V.

ARKANSAS DEPARTMENT OF
CORRECTION (SEX OFFENDER
SCREENING AND RISK ASSESSMENT)
APPELLEE

Opinion Delivered May 9, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. CV-10-1773]HONORABLE STEPHEN TABOR,
JUDGE

REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

Appellant David Brown appeals the order of Sebastian County Circuit Court that affirmed an administrative finding made by default against him. Because Brown did not appear at the sex-offender assessment, the Sex Offender Screening and Risk Assessment committee (“SOSRA”)¹ reviewed the available evidence and assigned a default “Level 3” community notification level to him. Brown contended that he did not receive notice to appear for his assessment interview, necessitating that another assessment interview be set. At administrative review, the agency affirmed the earlier decision, and Brown appealed to circuit

¹This State agency has different names, depending upon the level of review, including the Arkansas Sex Offender Assessment Committee (“SOAC”) and Sex Offender Screening and Risk Assessment committee (SOSRA). Because the terms all refer to the State agency making or reviewing the sex-offender level, we will refer to SOSRA for simplicity.

court, which affirmed the agency decision. This appeal followed. We reverse and remand with directions.

Review of administrative agency decisions, by both the circuit court and appellate court, is limited in scope. *Seiz Co. v. Ark. State Hwy. & Transp. Dep't*, 2009 Ark. 361, 324 S.W.3d 336. On appeal from the circuit court, our review of administrative decisions is directed to the decision of the administrative agency, rather than the decision of the circuit court. *Id.* Our court is to ascertain whether there is substantial evidence to support the agency decision and whether the decision is arbitrary, capricious, or characterized by an abuse of discretion. *Id.* We defer to the credibility determinations made at the administrative level, if there are any to be made. *See Ark. Beverage Retailers Ass'n v. Langley*, 2009 Ark. 187, 305 S.W.3d 427.

Here, the material facts are not in dispute. Brown was subject to sex-offender assessment in Arkansas in 2008. On September 16, 2008, Brown verified his residential address on a Sex Offender Registration Form as Warrior of the Lord,² 1415 N. 21st Street, Fort Smith, AR, 72901. The one-page document was completed by an employee of the Arkansas Department of Correction. All information was typed into the form, with the exception of Brown's handwritten signature and date. On that same date, Brown also signed a Sex Offender Acknowledgment Form, which at paragraph five states that

[a]ll offenders are required to submit to a risk assessment to be completed by the Department of Correction Sex Offender Screening and Risk Assessment Program

²Warrior of the Lord is a halfway house.

(SOSRA). The offender will be notified by certified mail of the location, date and time of the assessment. It is a Class C Felony to fail to appear for assessment or to not fully submit to the assessment process. The offender will be assessed as a default level 3 should this occur.

Notification letters were twice sent by certified mail to him at 1415 North 21st Street in Fort Smith, Arkansas, informing him to attend a SOSRA assessment interview. The first letter was mailed on December 5, 2008, informing him of an assessment interview scheduled for December 30, 2008, but it came back, marked:

RETURN TO SENDER
ATTEMPTED—NOT FOUND
UNABLE TO FORWARD

He did not appear. The certified letter regarding the second assessment interview, set for February 12, 2009, was mailed on January 27, 2009, but it came back, marked:

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD

On February 12, 2009, SOSRA considered Brown's criminal history in Oklahoma and Arkansas dating back to 2000 that included several charges of lewd and indecent criminal behavior. The decision noted that Brown did not appear for either appointment for an interview. On that basis, SOSRA determined that the default Level 3 assessment for community notification was appropriate.³ Brown presented to the probation office to change his address to 1526 North 21st Street in Fort Smith in March 2009.

³There are four levels of sexual offender classification, one being considered the lowest and least dangerous to the community and four being considered the highest and most dangerous to the community.

The formal notification that included the February findings was sent by certified mail to Brown in August 2009. Brown received notice of this decision on August 28, 2009, signing for the letter addressed to him at 1526 North 21st Street in Fort Smith. The letter informed him of his right to administrative review, wherein he would be required to state a basis, such as that the rules and procedures were not followed, that documents or information was not available that should be considered, or that the assessment was not supported by substantial evidence. *See* Ark. Code Ann. § 12-12-922(b)(3) (Repl. 2009). Brown petitioned for administrative review by letter postmarked on September 8, 2009. His primary contention was that he was not provided notice of the assessment interview; he claimed the address (1415 North 21st Street) was typed incorrectly and that the proper address was 1514 North 21st Street, where Warriors of the Lord is actually located. On review by the higher level of SOSRA, it upheld the earlier decision, outlining Brown's criminal history and noting Brown's complaint that the notification letter was sent to the wrong address by mistake. It is this order that is on appeal.

We hold that the administrative decision does not contain sufficient findings of fact or conclusions of law for us to review. The agency's decision merely states Brown's complaint about there being a slight mistake in the address on the form he signed in September 2008, but it does not make any findings as to the responsible party for the error or the legal consequence of any such error. We can only conduct review of findings of fact applied to the law, so we reverse and remand the matter to the circuit court with directions to remand it to the appropriate committee for it to make sufficient findings for appellate review. *Twin Rivers*

Health & Rehab, LLC v. Ark. Health Servs. Permit Comm'n, 2012 Ark. 15; *Munson v. Ark. Dep't of Corr. Sex Offender Screening & Risk Assessment*, 369 Ark. 290, 253 S.W.3d 901 (2007).

Reversed and remanded.

MARTIN and HOOFFMAN, JJ., agree.