

**IN THE COURT OF APPEALS OF IOWA**

No. 9-229 / 08-1030  
Filed May 29, 2009

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**JUDITH IVERSEN GRANT,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Woodbury County, Jeffrey A. Neary, Judge.

The State of Iowa appeals from the district court's ruling sustaining Judith Grant's motion to dismiss for lack of jurisdiction. **AFFIRMED.**

Thomas J. Miller, Attorney General, Martha Boesen Trout and Mary Tabor, Assistant Attorneys General, Patrick Jennings, County Attorney, and Mark Campbell, Assistant County Attorney, for appellant.

Mark C. Smith, State Appellate Defender, Martha Lucey, Assistant State Appellate Defender, Erin Grundy, Legal Intern, and Jennifer Solbert of Public Defender's Office, Sioux City, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

Wanda Callanan executed a power of attorney in South Dakota on February 17, 2004, designating Judith Grant as her attorney-in-fact. On January 15, 2005, Grant admitted Callanan to Bickford Cottage Memory Care Residence in Sioux City, Iowa. Callanan moved out of Bickford on February 14, 2006, and still owed the facility \$13,808 when she left. On August 1, 2006, Grant admitted Callanan to Sunrise Retirement Center in Sioux City. Grant told workers at Sunrise that payment would not be an issue for Callanan, but Sunrise never received payment for the cost of Callanan's care, which amounted to \$32,729.35. Though Grant had power of attorney over Callanan, she failed to pay for the cost of Callanan's care. However, between August 12, 2005, and November 2, 2006, Grant wrote checks to herself from Callanan's account amounting to \$146,720. Both Callanan's and Grant's bank accounts are outside of Iowa.

On May 2, 2007, the State charged Grant with dependent adult abuse in violation of Iowa Code section 235B.20(5) (2005) for the acts allegedly occurring between August 12, 2005, and November 2, 2006. On April 8, 2008, Grant filed a motion to dismiss based on Iowa's lack of jurisdiction. After a hearing on the matter, the district court sustained Grant's motion on May 14, 2008, finding no conduct constituting an element of the offense occurred in Iowa. The State

appeals, asserting the district court interpreted the statutes at issue too narrowly.<sup>1</sup>

## **II. Standard of Review**

We review issues of statutory interpretation for errors at law. *State v. Wagner*, 596 N.W.2d 83, 85 (Iowa 1999). We also review issues of jurisdiction for errors at law. *Id.*

## **III. Territorial Jurisdiction**

### **A. Jurisdiction Pursuant to Iowa Code Section 803.1**

Iowa Code section 803.1 prescribes the requirements for Iowa jurisdiction over a criminal offense. A person is subject to prosecution in this state for an offense the person commits within or outside this state if the offense is committed either wholly or partly within this state. Iowa Code § 803.1(1)(a). “An offense may be committed partly within this state if conduct which is an element of the offense, or a result which constitutes an element of the offense, occurs within this state.” Iowa Code § 803.1(2). The State has the burden of proving that it has territorial jurisdiction. *State v. Wedebrand*, 602 N.W.2d 186, 189 (Iowa Ct. App. 1999).

The elements of dependent adult abuse with which the State charged Grant are: (1) Grant was a caretaker of Callanan; (2) Callanan was a dependent adult; (3) the value of the property taken exceeded \$100; and (4) Grant exploited Callanan by an act or process of taking unfair advantage of Callanan’s financial resources for Grant’s personal profit, without Callanan’s consent by theft,

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<sup>1</sup> The State does not argue on appeal that the effects doctrine applies or that the dependent adult abuse statute is similar to statutes prohibiting non-support of dependents. Therefore, we decline to address these arguments.

deception, false representation, or false pretenses. See Iowa Code § 235B.2(5)(c); 235B.20(5).

The State cannot show that conduct constituting an element of the offense occurred in Iowa. The Iowa Supreme Court has differentiated *conduct*, as used in section 803.1, from *status*. See *Wagner*, 596 N.W.2d at 86. The supreme court defined “conduct” as “*behavior* in a particular situation or relation or on a specified occasion,” while it defined “status” as “the *condition* (as arising out of . . . crime . . . ) of a person that determines the nature of his legal personality, his legal capacities, and the nature of the legal relations to the state.” *Id.* (internal quotations omitted). The court in *Wagner* determined a statute that required the State to prove as an element of the crime that defendant had been convicted of a felony required only proof of defendant’s status as a felon, and did not include conduct as contemplated by section 803.1. *Id.* Thus, though the defendant had been convicted of a felony in Iowa, his status as a felon was not conduct, and the State lacked territorial jurisdiction under section 803.1. *Id.* at 86-87.

We agree with the district court that a similar analysis applies to the first three elements of the offense at issue. The fact that the funds allegedly taken totaled over \$100 does not constitute conduct. The State’s assertions that Grant was a caretaker of Callanan and that Callanan was a dependent adult, if true, do not constitute conduct within the scope of section 803.1, but rather fit within the definition of “status.” No conduct occurred in Iowa that rendered Callanan a dependent adult or established Grant as Callanan’s caretaker. The mere fact that such a relationship existed when Callanan moved to Iowa does not constitute conduct in Iowa. The State’s assertions that Grant was a caretaker of

Callanan, who was a dependent adult, are elements of status and do not establish jurisdiction under section 803.1.

While the fourth element involves conduct, no conduct satisfying the fourth element of the crime occurred in Iowa. The State asserts that Grant exploited Callanan by taking advantage of her financial resources for Grant's personal profit. Assuming this allegation is true, the State cannot meet its burden of proving that this exploitation occurred in Iowa. No conduct that would establish this element occurred in Iowa. Both Callanan and Grant's bank accounts were out of state.

The only connections between Iowa and Grant's actions are Grant's placement of Callanan in two Iowa nursing homes and Grant's failure to pay Callanan's nursing home bills. The State does not allege that either of these actions resulted in mistreatment of Callanan by the nursing homes. These actions do not constitute "conduct which is an element of the offense, or a result which constitutes an element of the offense" as required by section 803.1. Because the State cannot show that any such conduct occurred in Iowa, it has failed to establish territorial jurisdiction under section 803.1. We therefore determine that the district court's interpretation of the relevant statutes was not overly narrow, as the State asserts.

#### **B. Jurisdiction as a Continuing Offense**

The State also argues that the language of the statute makes it a continuing offense allowing Iowa jurisdiction over the offense. The State failed to raise this issue to the district court and has therefore not preserved error. We do not consider issues raised for the first time on appeal. *Meier v. Senecaut*, 641

N.W.2d 532, 537 (Iowa 2002). Because this issue was not raised or decided by the district court, we decline to address it.

**AFFIRMED.**