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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0981**

State of Minnesota,
Appellant,

vs.

L. W. H., Jr.,
Respondent.

**Filed May 19, 2009
Reversed and remanded
Klaphake, Judge**

Kandiyohi County District Court
File No. 34-K7-91-000716

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Considered and decided by Bjorkman, Presiding Judge; Klaphake, Judge; and Peterson, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

The State of Minnesota appeals from an order granting respondent L.W.H., Jr.'s petition to expunge records of his convictions of burglary and forgery held at the Bureau of Criminal Apprehension (BCA). The state asserts that the district court incorrectly

relied on this court's decision in *State v. V.A.J.*, 744 N.W.2d 674, 678 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Because the district court has inherent authority to order expungement of records when the reason for expungement concerns core judicial functions, but failed to decide here if the BCA records met this standard, we remand the district court's order for a determination of whether the reason for expungement concerns core judicial functions.¹

D E C I S I O N

A district court's exercise of its inherent power to expunge records is a matter of equity, which this court reviews under an abuse-of-discretion standard. *State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000). A district court's findings of fact will not be set aside unless clearly erroneous. *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006). Whether a court has inherent authority is a question of law which this court reviews de novo. *V.A.J.*, 744 N.W.2d at 676.

Expungement of a petitioner's criminal records may be granted for two reasons. First, pursuant to statute, a party may petition for expungement if the criminal proceedings were resolved in favor of the petitioner. Minn. Stat. § 609A.02, subd. 3 (2008). Second, the court has inherent power to expunge criminal records in certain situations. *Ambaye*, 616 N.W.2d at 258. This inherent power may be exercised when "the petitioner's constitutional rights may be seriously infringed by retention of his records," or, if constitutional rights are not involved, when the court finds "expungement

¹ The state has not appealed the district court's order expunging records held by the judicial branch.

will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order.” *Id.* at 258 (quotation omitted).

“In order for a court to exercise its inherent authority [with respect to judicially generated records held by the BCA], however, ‘the relief requested by the court or aggrieved party [must be] necessary to the performance of the judicial function as contemplated in our state constitution.’” *S.L.H.*, 755 N.W.2d at 275 (quoting *In re Clerk of Lyon County Courts’ Comp.*, 308 Minn. 172, 180, 241 N.W.2d 781, 786 (1976)). The supreme court further advised that “[w]e do not resort to inherent authority to serve relative needs or wants of the judiciary, but only for practical necessity in performing the judicial function.” *Id.* (quotation omitted). Finally, the supreme court defined the judiciary’s inherent authority as governing only “that which is essential to the existence, dignity, and function of a court because it is a court.” *Id.* at 275 (quotation omitted). In *SLH*, the supreme court held the facts of that case counseled restraint in light of the balance of separation of powers and determined that the petitioner had failed to demonstrate that the expungement of her criminal records held outside the judicial branch was necessary to the performance of a core judicial function. *Id.* at 280. The supreme court placed great emphasis on its determination that separation of powers would be implicated under the facts of that case.² *Id.* at 278.

² The court noted that “courts must proceed cautiously” when invoking inherent authority, particularly when “our separation of powers jurisprudence requires that we give due consideration to the equally important executive and legislative functions.” *Id.* at 278. The court found it specifically relevant to their decision that the case implicated

In the present case, petitioner did not claim a statutory or constitutional basis for expungement but appealed to the inherent power of the court for relief. In 1991, respondent L.W.H., Jr., then age 18, pleaded guilty to second-degree burglary and offering forged checks. His sentence was stayed, and on June 1, 1993, when respondent was discharged from probation, the offenses were reduced to misdemeanors pursuant to the plea agreement. Thereafter, respondent married, received his bachelor's degree, had two children, has been gainfully employed as a real estate appraiser, and has had no other law infractions. Nearly 15 years after the discharge of his probation, respondent petitioned for expungement of his record for the purpose of being able to volunteer at his children's school and at community recreation activities—activities he claims he is prohibited from doing because background criminal checks reveal his criminal history.

The district court granted expungement by sealing³ all judicial and nonjudicial records, concluding that it was bound by this court's decision in *V.A.J.*, 744 N.W.2d at 678. The state appealed the district court's order pertaining to expungement of the criminal records maintained by the executive branch. The district court's decision and

legislative concerns, as expressed in the Data Practices Act, which include keeping criminal records held outside the judicial branch open to the public for a period of 15 years from the close of the sentence. *Id.* at 278-79 (citing and quoting Minn. Stat. §§ 13.82, subd. 2, 13.87, subd. 1(b) (2006)). The court acknowledged that “[t]he expungement of . . . criminal records held outside the judicial branch would effectively override the legislative determination that some of these records be kept open to the public.” *S.L.H.*, 755 N.W.2d at 279. In the present case, because respondent's discharge from probation occurred more than 15 years ago (June 1, 1993), this concern is not implicated here.

³ The district court did not consider whether sealing rather than destroying records creates less of a separation of powers issue.

the briefing on appeal were based solely on this court's decision in *V.A.J.*, without the benefit of the supreme court's decision in *S.L.H.*

The supreme court in *S.L.H.* set forth a framework for determining whether a court has inherent authority to order expungement of records held outside the judicial branch. Assuming the petitioner is not entitled to statutory expungement under Minn. Stat. § 609A.02, and does not claim that his case presents any constitutional violations, the court must determine whether the relief sought is necessary to the performance of the “core functions” of the judiciary. *SLH*, 755 N.W.2d at 277. The supreme court's pivotal focus was on this single issue: whether the expungement requested is necessary to the performance of its “unique judicial function.” *Id.* A court may order expungement only if it concludes the relief is “essential to the existence, dignity, and function of a court because it is a court.” *Id.* at 275 (quotation omitted). One example of core judicial function is reducing or eliminating unfairness by controlling court records after a conviction has been set aside. *Id.*

The supreme court has not yet squarely addressed the issue of the lack of fundamental fairness of permitting expungement of judicial records, while allowing court-generated BCA records to be maintained, resulting in an empty remedy. Nor has the court specifically addressed whether a court's core judicial function is impaired when its orders are rendered meaningless by permitting expungement of its judicially maintained records while not permitting expungement of records generated by the judiciary, but maintained by other agencies.

Factors pertinent to the evaluation of whether the balance of separation of powers would caution restraint include whether the executive agency expressed a specific need to maintain judicially created records, whether the records are available from some other source such as arrest records, whether the expressed needs of the agency can be accommodated by sealing rather than destroying judicially created records, thereby permitting a method to retrieve the records, and whether the agency has its own system for seeking expungement of its records. In addition, the court should consider if by simply sealing judicially created records rather than destroying, the “core judicial function of granting full relief (and thus eliminating unfairness) to the petitioner,” *S.L.H.*, 755 N.W.2d at 277 (quoting *State v. C.A.* 304 N.W.2d 353, 358 (Minn. 1981)), is better served without unduly violating the separation of powers doctrine.

Here, the district court did not determine whether the reason for the expungement request was necessary for performance of core functions of the judiciary or whether separation of powers warranted restraint. Accordingly, we reverse the order with respect to judicially generated records maintained by the BCA and remand for the district court’s determination consistent with this opinion.

Reversed and remanded.