STATE OF MINNESOTA
IN COURT OF APPEALS
A09-850

State of Minnesota,
City of Crystal,
Appellant,

vs.

M. E. M.,
Respondent.

Filed March 9, 2010
Affirmed in part and reversed in part
Kalitowski, Judge
Concurring specially, Stauber, Judge

Hennepin County District Court
File No. 27-CR-07-039846

Lori Swanson, Attorney General, David James Koob, Assistant Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota (for appellant State of Minnesota)

Peter A. MacMillan, Michele R. Wallace, MacMillan, Wallace, Athanases & Patera, P.A., Minneapolis, Minnesota (for appellant City of Crystal)

M.E.M., Brooklyn Park, Minnesota (pro se respondent)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

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

KALITOWSKI, Judge

Appellant City of Crystal challenges the district court's order granting respondent M.E.M.'s petition for expungement of her criminal records, arguing that (1) the district court abused its discretion in granting respondent's petition for expungement of judicial records, and (2) the district court exceeded its inherent authority when it ordered expungement of records outside the judicial branch. We affirm the expungement of judicial records but reverse the expungement of records maintained by the executive branch.

D E C I S I O N

Respondent pleaded guilty to one charge of disorderly conduct in July 2007. The district court stayed imposition of sentence and placed respondent on probation for one year. Respondent's probation was discharged in July 2008. Respondent filed a petition for expungement in district court in January 2009, requesting expungement of the records of four cases: (1) a July 2007 disorderly conduct conviction; (2) a 1995 conviction of issuance of a dishonored check; (3) a charge of unemployment fraud that was dismissed in 1998; and (4) a 1996 conviction of issuance of a dishonored check.

Following a hearing on the petition, the district court expunged the disorderly conduct conviction, the 1998 unemployment fraud charge, and the 1995 dishonored check conviction, but declined to expunge the 1996 dishonored check conviction. The district court's order directed the court administrator to notify the following entities of the expungement order: the Hennepin County Attorney, the Crystal Police Department, the

Minnesota Attorney General, the Crystal City Attorney, the county sheriff, the Bureau of Criminal Apprehension (BCA), Probation/Court Services Department, and the Minnesota Department of Corrections.

I.

Appellant city argues that the district court abused its discretion when it granted respondent's petition for expungement of judicial records because the demonstrated benefit to respondent is not commensurate with the disadvantages to the public and the courts. We disagree.

A district court's exercise of its inherent power to expunge is a matter of equity reviewed by this court for an abuse of discretion. *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006). A district court's findings of fact will not be set aside unless clearly erroneous. *Id*. Findings are clearly erroneous when they are "manifestly contrary to the weight of the evidence or not supported by the evidence as a whole." *Id*.

A district court may order expungement of criminal records pursuant to Minn. Stat. Chapter 609A.01-.03 (2008) or, as it did here, based on its inherent judicial authority. *State v. S.L.H.*, 755 N.W.2d 271, 274 (Minn. 2008). A district court may order expungement of judicial records based on its inherent authority when (1) expungement is necessary to prevent serious infringement of constitutional rights, or (2) "expungement 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." *H.A.*, 716 N.W.2d at 363 (citation omitted). In determining whether expungement yields a benefit to the petitioner commensurate with

the disadvantages to the public and courts, the district court considers the following factors: (1) the extent that a petitioner has demonstrated difficulties in securing employment or housing as a result of the records sought to be expunged; (2) the seriousness and nature of the offense; (3) the potential risk that the petitioner poses and how this affects the public's right to access the records; (4) any additional offenses or rehabilitative efforts since the offense; and (5) other objective evidence of hardship under the circumstances. *Id*. at 364.

Here, there is evidence in the record to support the district court's finding that expunging the judicial records would yield a benefit to petitioner commensurate with the disadvantages to the public and the court based on the *H.A.* factors. With regard to the first *H.A.* factor, difficulty in securing employment, respondent stated in her petition that since her disorderly conduct conviction, she has been turned down for jobs, was terminated from an after-school program working with first graders, and was unable to recertify as a daycare provider. Notably, respondent described specific examples where the criminal records sought to be expunged impeded her ability to secure employment. *See id.* at 364 (stating that the first factor did not weigh in favor of expungement where petitioner was seeking to obtain a specific position with airport security but failed to indicate a history of unsuccessful employment attempts). Thus, the first *H.A.* factor supports expungement of the disorderly conduct charge.

With regard to the second *H.A.* factor, disorderly conduct is a nonviolent misdemeanor. *See* Minn. Stat. § 609.72 (2008). Issuance of a dishonored check is also a nonviolent offense. *See* Minn. Stat. § 609.535 (2008). And the unemployment fraud

charge was dismissed. Thus, the nature and seriousness of the three offenses support expungement. *See State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000) (stating that the public had a compelling interest in accessing petitioner's "record of violence" where the underlying offense was first-degree murder).

Regarding the third *H.A.* factor, the public's right to access the information in light of the risk posed by petitioner, respondent indicated that she wishes to work with children. Thus, a potential employer's interest in accessing records relevant to respondent's criminal background weighs against expungement. *See H.A.*, 716 N.W.2d at 365 (stating that the third factor weighed against expungement where petitioner was seeking employment in airport security, "a position of authority involving access to individuals' persons and property").

Regarding the fourth *H.A.* factor, additional offenses and rehabilitative efforts, respondent has had no convictions since the 2007 disorderly conduct conviction. Moreover, respondent stated in her petition that she completed the Diversionary Work Program through Hennepin County, obtained a tax preparation certificate, participated in credit counseling, and participated in the Minneapolis Public School Connecting Parents to Education Opportunities Program for her daughter. Thus, this factor supports expungement.

Lastly, regarding the fifth factor considering "other objective evidence of hardship under the circumstances," respondent testified that she was trying to support her ten-year-old daughter, and wished to stay off public assistance. This factor also supports expungement.

In sum, we conclude that the district court's determination that there was clear and convincing evidence that sealing the judicial record would yield a benefit to petitioner commensurate with the disadvantages to the public and courts was not clearly erroneous based on the five-factor *H.A.* analysis. Therefore, the district court did not abuse its discretion in granting respondent's request for expungement of judicial records.

II.

Appellant argues that the district court exceeded its inherent authority by ordering expungement of records held by executive authorities, citing *S.L.H.* We agree.

The district court's inherent authority to expunge records derives from the express and implied constitutional provisions mandating a separation of powers. *See* Minn. Const. art. III, § 1; *S.L.H.*, 755 N.W.2d at 275. Thus, for a court to grant expungement of records held outside the judicial branch based on its inherent authority, the relief requested 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 (citation omitted); *see City of Crystal v. N.G.K.*, 770 N.W.2d 177, 182 (Minn. App. 2009) (interpreting *S.L.H.* to override the judicially-created-public-record analysis in *State v. V.A.J.*, 744 N.W.2d 674 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008), and to define the court's inherent authority more narrowly). And in exercising its inherent authority, the district court must proceed cautiously to avoid interfering with the "equally unique authority of the executive and legislative branches of government over their constitutionally authorized functions." *S.L.H.*, 755 N.W.2d at 276 (citation omitted).

In *S.L.H.*, the petitioner requested expungement of records held outside the judicial branch on the ground that it was necessary for her to achieve her employment goals. *Id*. at 277. The Minnesota Supreme Court held that helping individuals achieve employment goals was not necessary to the performance of the judicial function. *Id*. at 277-78. The supreme court distinguished that purpose from the one in *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981), where expungement was necessary to the performance of the judicial function because criminal records were unfairly impacting the petitioner after his conviction had been set aside. *Id*. The supreme court further noted that the expungement of criminal records held outside the judicial branch would override the legislative classification of some of these records as public. *Id*. at 278 (discussing the Minnesota Government Data Practices Act's presumption that government data are public, specifically data created or collected by law enforcement agencies and data maintained by the BCA).

As in *S.L.H.*, respondent's primary basis for requesting expungement was her inability to secure employment. Thus, the purpose of the relief requested was not necessary to the core judicial function. And because respondent remained convicted of disorderly conduct and issuance of a dishonored check, the judicial function of eliminating unfairness to individuals is not at issue. *See id.* at 277 (stating that because petitioner continued to stand convicted, the unfairness concern at issue in *C.A.* was not implicated).

In addition, because respondent indicated that she sought employment working with children and was denied a daycare license, expungement of records held by

executive authority would implicate the legislatively mandated background study and disqualification procedures set forth in Minn. Stat. §§ 24C.01-.34 (2008). *See* Minn. Stat. § 13.87, subd. 1 (2008) (classifying data maintained by the BCA as public for 15 years following discharge of the sentence); Minn. Stat. § 13.82, subd. 2 (2008) (classifying certain data created or collected by law enforcement agencies as public); Minn. Stat. § 245C.03 (setting forth individuals subject to a background study by the commissioner of human services); Minn. Stat. § 245C.15 (listing disqualifying crimes and conduct).

Following *S.L.H.*, we conclude that the district court's order granting expungement of executive branch records exceeded its inherent authority because it did not involve the core judicial function. Because the district court exceeded its authority, we reverse the court's order requiring executive branch agencies to expunge respondent's criminal records. *See N.G.K.*, 770 N.W.2d at 183-84 (requiring reversal with regard to each executive branch entity where only the City of Crystal appealed).

Affirmed in part and reversed in part.

STAUBER, Judge, concurring specially

I concur in the result, but write separately to express my concern about the limitations that have apparently been placed on the judicial branch's ability to effectively expunge the criminal records of deserving individuals. The judiciary is bestowed with both statutory and inherent equitable authority to expunge criminal records, but without the ability to expunge executive branch records that were created only by virtue of our judicial records, expungement becomes an illusory remedy. Although most judicial records are public information, historically, the judiciary has, by its inherent authority, retained ultimate control over the use of its records, including the right to terminate our "loan" of these records to the executive branch. Unfortunately, our friends in the executive branch seem to claim ownership of these records and take license in controlling the information.

Recent judicial decisions have also taken a narrow view of judicial power over judicial records shared with the executive branch. In *State v. S.L.H.*, 755 N.W.2d 271 (Minn. 2008), the supreme court held that expungement of judicial records held by the executive branch is prohibited unless such action is necessary to a core judicial function or one that is "essential to the existence, dignity, and function of a court because it is a court." *State v. S.L.H.*, 755 N.W.2d 271, 275, 277 (Minn. 2008) (quoting *State v. C.A.*, 304 N.W.2d 353, 358 (1981)). But the scope of the judiciary's authority over executive branch records remains unsettled. In *S.L.H.*, Justice Anderson, joined by Justices Page and Meyer, concurred in the result, but seemed to advocate a more expansive view of the judiciary's authority over executive branch records. Justice Anderson also went to great

lengths discussing the inherent authority of the judiciary to expunge records, as was previously recognized in *C.A.* Justice Anderson expressed concern that inherent authority "as explained in *C.A.*, could in the future be construed more narrowly than it ought to be based on the wording of the majority opinion." *Id.* at 282.

The concurrence in *S.L.H.* highlights the overarching problem with inherent authority precedent. Though courts are instructed that inherent judicial authority is expansive to some degree, there has been little definitive guidance and much deference to the executive branch. In my view, it would be a perverse result and an affront to the judiciary to allow executive branch records that emanate from judicial branch records to stand after a judicial expungement. I also believe it is fundamentally unfair to an individual who presents a valid and compelling reason for expungement to restrict the scope of the expungement to records maintained by the judicial branch. But until the supreme court has definitively spoken, district courts will struggle to ascertain the scope of their expungement power.