STATE OF MINNESOTA
IN COURT OF APPEALS
A10-641

State of Minnesota,
Commissioner of Human Services,
Appellant,

vs.

A. B. C.,
Respondent.

Filed January 11, 2011
Affirmed
Kalitowski, Judge

Hennepin County District Court
Minneapolis Police Department No. MP-07-406847

Lori Swanson, Attorney General, Matthew D. Schwandt, Assistant Attorney General, St. Paul, Minnesota (for appellant)

John N. Akwuba, Akwuba & Associates, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KALITOWSKI, Judge

In this expungement appeal, the state argues that the district court abused its discretion by granting respondent's petition to expunge his criminal arrest records and by considering the victim's statement supporting expungement. We affirm.

D E C I S I O N

I.

Under the Department of Human Services Background Studies Act (the Act), the Minnesota Department of Human Services (DHS) is required to conduct a background study of an individual who provides direct-contact services to persons through DHS-licensed facilities or programs. Minn. Stat. §§ 245C.03-.04 (2010). In conducting the background study, DHS is required to review the individual's records as identified in Minn. Stat. § 245C.08 (2010), including information from the Bureau of Criminal Apprehension. Minn. Stat. § 245C.08, subd. 1(a)(4).

Respondent A.B.C. held two licenses, one in Hennepin County and one in Ramsey County, to provide in-home family-support services to people with disabilities. DHS conducted a background study related to respondent's licensure, as required by statute. The background study revealed that in December 2007 respondent was arrested for (but never charged with) felony domestic assault by strangulation against his ex-wife. In November 2008, DHS notified respondent that his licenses were revoked because it found, based on a preponderance of the evidence, that respondent had committed an act

(felony domestic assault by strangulation) that met the definition of a permanent disqualifying characteristic under the Act. *See* Minn. Stat. § 245C.15, subd. 1(a) (2010).

Respondent petitioned the district court to have his criminal arrest records expunged. An expungement hearing took place on October 30, 2009. Respondent's ex-wife, the victim of the alleged domestic assault, was present at the hearing, in support of expungement. The district court granted respondent's petition and ordered that his arrest records be sealed.

A district court may expunge criminal records in two ways: (1) by statute or (2) under its inherent power, when "necessary to prevent serious infringement of constitutional rights." *State v. S.L.H.*, 755 N.W.2d 271, 274 (Minn. 2008). This court reviews the district court's decision to expunge a petitioner's criminal record for an abuse of discretion. *State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000). But the "proper construction of [the expungement] statute is a question of law," which this court reviews de novo. *Id.* at 258.

The district court has statutory authority to expunge all arrest records "if all pending actions or proceedings were resolved in favor" of the person petitioning for expungement. Minn. Stat. § 609A.02, subd. 3 (2010); *State v. J.Y.M.*, 711 N.W.2d 139, 141 (Minn. App. 2006). If the petitioner qualifies for expungement, "the court shall grant the petition to seal the record unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record." Minn. Stat. § 609A.03, subd. 5(b) (2010).

Respondent was arrested, but not charged, for the domestic-assault incident. The state concedes that this resulted in a proceeding that was "resolved in favor" of respondent, giving the district court statutory authority to order expungement of the arrest. *See* Minn. Stat. § 609A.02, subd. 3. On appeal, the state argues that the district court abused its discretion in granting expungement because it (1) did not make appropriate findings to satisfy statutory requirements for expungement, and (2) did not properly weigh the interests of the public and public safety against the disadvantages to respondent in denying expungement. We disagree.

The state argues that the district court's findings are "neither detailed nor specific, and do not provide an adequate basis for its conclusions of law," such that they do not satisfy Minn. R. Civ. P. 52.01, which states that the district court is required to "find the facts specially and state separately its conclusions of law." The state asserts that the district court should have indicated in its findings that although respondent was never charged, DHS determined, by a preponderance of the evidence, that respondent committed the act of felony domestic abuse by strangulation. The state also argues that the district court should have detailed the nature of the incident in its findings.

Contrary to the state's arguments, the district court addressed many of the items the state argues that it should have noted or considered in its findings of fact. The district court acknowledged that the state had expressed concerns about sealing respondent's records, including that it "would jeopardize the safety and welfare of vulnerable persons served by programs licensed by [DHS]," and that respondent's "arrest record information is relevant to [his] fitness to provide services and requires disqualification from providing

direct contact [services] under the [Act]." The district court also found that expungement would assist respondent in obtaining employment. Thus, the findings articulated by the district court, although not extensive, are sufficient to satisfy the statutory requirements and to allow the district court to conduct the requisite balancing test.

The state also argues that the district court did not appropriately weigh the interests of the public and public safety against the disadvantages to respondent of not sealing his records. We disagree.

The state relies on *State v. Ambaye* to support its assertion that the district court did not afford proper weight to the seriousness of the domestic assault. *See Ambaye*, 616 N.W.2d at 261 (affirming the district court's decision to deny expungement and noting that the public had a strong interest in maintaining the petitioner's "record of violence," particularly because it included a charge of first-degree murder).

But *Ambaye* is inapplicable here because it involves an expungement case in which the initial proceedings were not resolved in favor of the petitioner. *See id*. at 260-61. When a district court exercises its inherent power to expunge, this court uses a different analysis than when a district court exercises its statutory authority to expunge. Although both involve a balancing test, the analysis under statutory authority starts with a presumption of expungement, putting the burden on the state to show by clear and convincing evidence that public interests outweigh the benefit to the petitioner. *Id.* at 257-58. Furthermore, the facts of the present case are significantly different from those of *Ambaye*. Unlike the petitioner in *Ambaye*, who was charged, tried, and found not guilty by reason of insanity, respondent was arrested for the offense but never charged.

See id. at 257. And unlike the petitioner in *Ambaye*, who was employed at the time of his expungement hearing, respondent lost his licensure and was consequently removed from his job. *See id*. at 261.

The state further argues that the district court did not adequately consider the "substantial" interests of the public and public safety, emphasizing the seriousness of the offense by indicating that it is one of the enumerated crimes in the Act that results in a permanent bar to providing direct-contact services through DHS-licensed programs. *See* Minn. Stat. § 245C.15, subd. 1(a) (including a felony domestic-assault offense). In terms of public safety, the state expresses concern about the way that respondent characterized the incident in his statements to law enforcement; specifically, that the incident reflects a pattern of physical confrontations between respondent and the victim that are the result of the victim's mental-health issues. The state asserts that persons with developmental disabilities can often exhibit difficult behaviors, including verbal and physical aggression, similar to what respondent claims the victim exhibited when the incident occurred, and argues that respondent's physically assaultive response to the victim's behavior shows that respondent "may very well resort to similar responses with clients."

The seriousness of the offense for which respondent was arrested is not disputed. But the district court articulated factors weighing in favor of granting expungement: (1) respondent was never charged for the incident; and (2) respondent has not been convicted of a felony in the last ten years. The state cites to nothing beyond its own generalizations to support its assertions regarding the correlation between domestic abuse and a person's behavior at work. Although the district court listed "obtaining

employment" as the only benefit to respondent, its findings and the record also indicate that the state did not present clear and convincing evidence to overcome the presumption of expungement.

Finally, the state again relies on *State v. Ambaye* to support its assertion that granting respondent's expungement request allows him to "circumvent the process by which [DHS] is required to evaluate the fitness of individuals who wish to work in direct contact with Minnesota's vulnerable populations." *See Ambaye*, 616 N.W.2d at 261 ("[T]he benefit [petitioner] stood to gain from expungement, if granted, would override the very purpose of the background check."). But the Act specifically recognizes the alleged circumvention of the background-study process through expungement. *See* Minn. Stat. § 245C.08, subd. 2(c) (2010) (stating that if the commissioner of DHS "received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner," DHS may not consider information from the Bureau of Criminal Apprehension in conducting a background study).

We conclude that the district court did not abuse its discretion by determining that the benefits to petitioner outweigh the interests of the public and public safety and by granting respondent's expungement petition.

II.

As the state acknowledges, Minnesota law directs a district court to "consider [a] victim's statement when making a decision" to grant or deny an expungement petition. *See* Minn. Stat. § 609A.03, subd. 4 (2010). The victim of an offense has a right to submit a statement at the time of the hearing to describe any harm suffered by the victim as a

result of the crime, and to recommend whether expungement should be granted or denied. *Id*. Here, the victim of the alleged domestic-abuse incident attended the expungement hearing and submitted a written statement in support of expungement.

The state argues that this court should strike the victim's written statement, which respondent included in his appendix and referenced in his brief, because the statement was never properly and officially received into evidence at the expungement hearing. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (concluding that an "appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below").

But our review of the record indicates that the victim's statement was part of the district court record. At the expungement hearing, respondent's attorney referenced Minn. Stat. § 609A.03, subd. 4, and submitted a copy of the victim's written statement to the district court. A copy of the statement was included in the district court file received by this court. Thus, the written statement is part of the record below and as such, this court need not strike it. Moreover, even if the written statement was not properly submitted, it was not referenced by the district court in its findings of fact, and we did not rely on it in reaching our decision to affirm the expungement.

III.

In the conclusion of his brief, respondent requests that he be awarded attorney fees and costs for this appeal because the state "has relentlessly and maliciously pursued an irrational action against respondent even when it knows it has no basis in law or in fact to do so." Minn. R. Civ. App. P. 139.06 states that "[a] party seeking attorneys' fees on

appeal shall submit such a request by motion under Rule 127." The motion must include "sufficient documentation" to enable this court to determine the appropriate amount of fees. Minn. R. Civ. App. P. 139.06, subd. 1. In the absence of a motion and sufficient documentation, the rules do not provide for a decision on attorney fees.

Affirmed.