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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1600**

State of Minnesota,
Appellant,

vs.

B. G. S., n/k/a B. G. O.,
Respondent.

**Filed May 9, 2011
Affirmed in part and reversed in part
Kalitowski, Judge**

Isanti County District Court
File No. 30-CR-06-218

Lori Swanson, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul,
Minnesota (for appellant)

B.G.O., Isanti, Minnesota (pro se respondent)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and
Collins, Judge.*

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant State of Minnesota challenges the district court's order granting
respondent B.G.S.'s petition for expungement of her criminal records, arguing that the

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

district court exceeded its inherent authority when it ordered expungement of records outside the judicial branch. We affirm the expungement of respondent's judicial records but reverse the expungement of records maintained by the executive branch.

DECISION

On March 1, 2006, respondent pleaded guilty to fourth-degree driving while impaired (DWI), in violation of Minn. Stat. § 169A.20, subd. 1 (Supp. 2005). The district court sentenced her to two years of probation and required her to undergo a chemical-use assessment. Respondent was discharged from probation in 2007, one year early because she completed the conditions of probation and committed no new offenses.

In April 2010, respondent petitioned for expungement of her DWI conviction. In her petition respondent described her rehabilitation, her pursuit of a career as a peace officer in Harris County, Texas, and the fact that the Harris County Sheriff's Office informed her that she is not eligible for employment until ten years after the date of her DWI conviction. After a hearing on the petition, the district court ordered expungement and directed the court administrator to inform the following entities of the order: Isanti County District Court, Isanti County Sheriff, Bureau of Criminal Apprehension, Isanti County Attorney, Isanti City Police Department, and Isanti County Court Services. Additionally, the order states that it was "faxed to DPS," presumably referring to the Department of Public Safety.

Appellant does not challenge expungement of respondent's judicial records but argues that the district court exceeded its inherent authority when it ordered executive-branch agencies to seal their records. We agree.

A district court can issue an expungement order based on statutory authority or its inherent judicial authority. Minn. Stat. §§ 609A.01-.03 (2010); *State v. S.L.H.*, 755 N.W.2d 271, 274 (Minn. 2008). But expungement authorized by statute is limited, and respondent's records do not qualify for statutory expungement. See Minn. Stat. § 609A.02. We review de novo whether a district court has inherent authority to issue an expungement order affecting the executive branch, as a matter of law. *S.L.H.*, 755 N.W.2d at 274 (applying de novo review); *State v. N.G.K.*, 770 N.W.2d 177, 181 (Minn. App. 2009).

A court's inherent authority "grows out of express and implied constitutional provisions mandating a separation of powers and a viable judicial branch of government." *In re Clerk of Lyon Cnty. Courts' Comp.*, 308 Minn. 172, 180, 241 N.W.2d 781, 786 (1976). Consequently, 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 (quotation omitted). And a court's inherent authority is limited to those functions that are "essential to the existence, dignity, and function of a court because it is a court." *Id.* But courts "must proceed cautiously in exercising that authority in order to respect the equally unique authority of the executive and legislative branches of government over their constitutionally authorized functions." *Id.* at 276 (quotation omitted). Further, whether a court can order an executive agency to expunge criminal records does not depend on whether the records were created by the judicial branch or the executive branch. *N.G.K.*, 770 N.W.2d at 182.

In response to a petition in which no constitutional violation was presented and expungement was sought “on the ground that it is necessary for [petitioner] to achieve [petitioner’s] employment goals,” the Minnesota Supreme Court concluded that “helping individuals achieve employment goals is not essential to the existence, dignity, and function of a court because it is a court.” *S.L.H.*, 755 N.W.2d at 277-78 (quotation omitted). Here, respondent conceded in district court that her constitutional rights were not at issue. Instead, her petition was based on her employment prospects. Also, as in *S.L.H.*, respondent remains convicted and therefore her request does not implicate the judicial function of reducing or eliminating unfairness when criminal records could undermine the benefit of having a conviction set aside. *Cf. State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981) (recognizing elimination of unfairness arising from the use of criminal records despite conviction being set aside as core judicial function).

Additionally, respondent’s conviction is only five years old and is therefore subject to several statutes, mandating its continued vitality. The supreme court in *S.L.H.* expressed concern that expungement of convictions less than 15 years old would undermine the legislative classification of some of these records as public data and concluded that deference to this legislative determination was required. *S.L.H.*, 755 N.W.2d at 278-79 (citing the Minnesota Government Data Practices Act, now codified at Minn. Stat. § 13.87, subd. 1(b) (2010)). Respondent’s conviction also constitutes a “qualified prior impaired driving incident” and therefore can be an aggravating factor for a subsequent DWI conviction or the basis for a longer period of license revocation in the future. Minn. Stat. §§ 169A.03, subds. 3(1), 20, 22, .24-.26, .54, subd. 3 (2010). And

finally, the legislature has directed the Department of Public Safety (DPS) to retain drivers' records pertaining to alcohol-related convictions permanently and requires DPS to take previous DWI convictions, regardless of age, into account when determining whether to issue a limited license. Minn. Stat. §§ 171.12, subd. 3(4), .30, subds. 1(f), 2a (2010).

We are compelled by *S.L.H.* to conclude that the district court's order granting expungement of executive-branch records exceeded its inherent authority because it did not involve a core judicial function and would undermine numerous legislative directives to make these records public and to give them an ongoing effect. Because the district court exceeded its authority, we reverse its order requiring executive-branch agencies to expunge respondent's criminal records.

Affirmed in part and reversed in part.