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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1015**

Charles W. Belcher, petitioner,
Appellant

vs.

Robert Fletcher,
Ramsey County Sheriff,
Respondent.

**Filed May 6, 2008
Affirmed
Lansing, Judge**

Ramsey County District Court
File No. C8-06-10224

Gregory M. Pennella, Suite 200, 7616 Currell Boulevard, Woodbury, MN 55125 (for appellant)

Susan Gaertner, Ramsey County Attorney, Thomas E. Ring, Assistant County Attorney, Suite 560, 50 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and Peterson, Judge.

UNPUBLISHED OPINION

LANSING, Judge

Charles Belcher appeals from an order affirming the Ramsey County Sheriff's Office denial of Belcher's application for a permit to carry a pistol. Because the Ramsey County Sheriff's Office did not violate an expungement order when it considered evidence related to Belcher's 2003 arrest for criminal sexual conduct and because the evidence is sufficient to support the district court's determination, we affirm.

FACTS

Charles Belcher twice applied to the Ramsey County Sheriff's Office for a permit to carry a pistol. He first applied in January 2004. The Ramsey County Sheriff's Office conducted an investigation and denied the application based on its determination of a substantial likelihood that Belcher would be a danger to himself or others if authorized to carry a pistol under a permit.

The sheriff's office based its determination on a February 2001 conviction for purchasing and possessing marijuana; a July 2001 incident of making terroristic threats; a January 2002 citation for possession of drug paraphernalia and a radar-jamming device; and a June 2002 police report that Belcher was intoxicated and disorderly in a public place.

On Belcher's March 2004 request for reconsideration, the sheriff's office affirmed the permit denial based on the first three of the previously listed incidents; on Belcher's eleven traffic violations within six years; and also on Belcher's arrest in Chisago County in July of 2003 for an "alleged incident of Criminal Sexual Conduct (1st Degree)."

Following the permit denial, Belcher filed a petition with the Chisago County District Court, seeking to expunge the records related to the July 2003 arrest for criminal sexual conduct. In June 2005, the district court ordered the Chisago County District Court Administrator, the Chisago County Attorney, the Chisago County Sheriff, the Chisago County Community Corrections Department, and the Minnesota Bureau of Criminal Apprehension to seal all files and records relating to the July 2003 arrest.

About a year after the court issued the expungement order, Belcher submitted a second application to the Ramsey County Sheriff's Office for a permit to carry a pistol. The sheriff's office reviewed the records it had obtained in 2004 and again denied the permit. In a letter dated August 16, 2006, the sheriff's office informed Belcher that the denial was based on a February 2001 conviction for possession and purchase of marijuana, a July 2001 sheriff's office investigation of Belcher's making terroristic threats, a January 2002 citation for possession of drug paraphernalia and possession of a radar-jamming device, multiple complaints in 2002 and 2003 about Belcher allowing dangerous dogs to roam unrestrained, Belcher's numerous driver's license suspensions, and Belcher's July 2003 arrest for criminal sexual conduct.

Belcher filed a petition in the district court to appeal the permit denial. He argued that the 2005 expungement order prohibited the sheriff's office from relying on the records related to the July 2003 arrest and that the sheriff's office's evidence was insufficient to support the permit denial. The parties agreed to submit the issues to the district court based on stipulated exhibits and written closing arguments.

The district court determined that the sheriff's office had established by clear and convincing evidence that "there exists a substantial likelihood that [Belcher] would be a danger to himself or to the public if he is authorized to carry a pistol." In reaching that determination the district court specifically found that the July 2003 criminal-sexual-conduct arrest could be relied on for the permit denial because the alleged misconduct had been investigated and documented, the records of the investigation had been properly maintained in the sheriff's office, and the subsequent expungement did not prevent the sheriff's office from using these records. Belcher now appeals the district court's order sustaining the sheriff's office's denial of Belcher's application for a permit to carry a pistol.

DECISION

On a petition for review of the sheriff's office's denial of a permit to carry a pistol, the district court must hold a hearing and issue written findings of fact and conclusions of law on the issues submitted. Minn. Stat. § 624.714, subd. 12(a), (b) (2006). Belcher submitted two issues. The first issue is whether the expunged felony charge for criminal sexual conduct could be considered as a basis for the denial of a permit to carry a pistol. The second issue is whether the expunged felony charge, alone or in conjunction with the other incidents, is sufficient to establish by clear and convincing evidence that Belcher would be a danger to himself or the public if authorized to carry a pistol.

I

We first address Belcher's argument that the sheriff violated the Chisago County District Court's 2005 expungement order when, in 2006, it relied on the information relating to Belcher's arrest and charge for criminal sexual conduct.

Under Minn. Stat. §§ 609A.01-.03 (2006), a petitioner may seek an expungement of criminal records, including records relating to an arrest. The remedy available under the statute "is limited to a court order sealing the records and prohibiting the disclosure of their existence or their opening." Minn. Stat. § 609A.01. The record in this appeal does not contain a copy of Belcher's expungement petition, and the Chisago County District Court's expungement order does not indicate whether Belcher requested expungement under the statute or under the district court's inherent powers. *See generally State v. Schultz*, 676 N.W.2d 337, 342-43 (Minn. App. 2004) (identifying and distinguishing two separate legal bases that provide for expungement of criminal records). Because the district court's order grants the broader form of relief that is available under Minn. Stat. §§ 609A.01-.03, we will assume for purposes of our analysis that Belcher petitioned under the statute.

The district court determined that the expungement order did not preclude the sheriff's office from relying on the records of the criminal-sexual-conduct arrest and charge because Minnesota law gives the sheriff's office authority to maintain records or data relating to an applicant for a period of six years after the date of a permit denial. *See* Minn. Stat. § 624.714, subd. 14(b) (2006) (providing that sheriff may retain data collected on applicant for six years after date of permit denial or revocation). The district

court reasoned that the Ramsey County Sheriff's Office had obtained the criminal-sexual-conduct-arrest information in 2004, a year before the order for expungement had been issued, and, under section 624.714, the sheriff's office could legally retain and rely on the information when it denied Belcher's permit two years later in 2006. Belcher argues that section 624.714 cannot prevail against the expungement order. But the terms and scope of the expungement order weigh against his argument.

To obtain an expungement order under the statute, a petitioner must "serve by mail the petition for expungement and a proposed expungement order on . . . [all] state and local government agencies and jurisdictions whose records would be affected by the proposed order." Minn. Stat. § 609A.03, subd. 3(a). Each "agency or jurisdiction whose records would be affected" then has an opportunity to establish "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." *Id.*, subd. 5(b). If the agency or jurisdiction does not meet its burden of proof, the court "shall grant the petition to seal the record" and "[t]he court administrator shall send a copy of an expungement order to each agency and jurisdiction whose records are affected by the terms of the order." *Id.*, subds. 5(b), 8.

Belcher has not presented any evidence that he served the Ramsey County Sheriff's Office with the petition for expungement, that the sheriff's office had an opportunity to challenge the expungement, or that the sheriff's office received a copy of the expungement order. In fact the terms of the expungement order demonstrate that it did not. The order contains six numbered paragraphs, each directing a separate person or entity to seal records. The first five paragraphs issue orders to (1) the Chisago County

District Court Administrator, (2) the Chisago County Attorney, (3) the Chisago County Sheriff, (4) the Chisago County Community Corrections Department, and (5) the Acting Superintendent of the Minnesota Bureau of Criminal Apprehension (BCA). The sixth paragraph orders the acting superintendent of the BCA to request the Federal Bureau of Investigation to return identification data to the BCA and to seal the returned data. The expungement order does not mention the Ramsey County Sheriff's Office.

Because the terms of the expungement order are not directed to the Ramsey County Sheriff's Office and because the only sheriff's office listed in the expungement order is the Chisago County Sheriff's Office, we conclude that the order does not apply to records that are maintained for the statutorily authorized six-year period by the Ramsey County Sheriff's Office. Therefore the sheriff's office did not violate the expungement order when it based the 2006 permit denial on records related to Belcher's 2003 arrest and charge for criminal sexual conduct.

Belcher makes two additional arguments about the effect of the expungement order. He argues that even if the expungement order did not prohibit the Ramsey County Sheriff's Office from relying on the 2003 arrest records to deny the permit, the de novo-review standard prohibited the district court from examining the records in the review hearing. *See* Minn. Stat. § 624.714, subd. 12(a) (2006) (stating that district court should review permit denial de novo). This designation of the district court's review standard does not preclude the district from examining the contents of the underlying record including the 2003 arrest information or require a further court order. It merely provides that the district court review that evidence without deference to the sheriff's office's

ruling or decision. *See Black's Law Dictionary* 106 (8th ed. 2004) (defining “de novo [review]” or “appeal de novo” as appeal in which reviewing court uses available record but reviews evidence and law without deference to previous decision-maker).

Belcher’s remaining argument is that the district court violated “principles of [j]udicial [c]omity” when it determined that the expungement order did not apply to the records of the Ramsey County Sheriff’s Office. But it is not the efficacy of the order that is at issue—only the scope of its terms. The expungement order did not address the information in the Ramsey County Sheriff’s Office’s files, and the sheriff’s office did not violate the order when it relied on that information to deny the pistol permit.

II

We now turn to the second issue submitted to the district court—whether the evidence was sufficient to support the permit denial. When a court receives a petition to review a sheriff’s denial of a permit to carry a pistol, the court must direct the sheriff to issue the permit “unless the sheriff establishes by clear and convincing evidence . . . that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit.” Minn. Stat. § 624.714, subd. 12(b) (2006). On a challenge to the sufficiency of the evidence to support a district court’s ruling, we determine whether the evidence, when viewed in a light most favorable to the ruling, is sufficient to permit the court to reach the conclusion that it did. *See, e.g., State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989) (describing appellate review as thorough analysis of record to determine whether evidence, when viewed in light most favorable to conviction, is sufficient).

In denying Belcher's petition, the district court relied on Belcher's 2001 petty-misdemeanor conviction for possession of a small amount of marijuana; a 2001 incident of making harassing phone calls to an ex-girlfriend; a 2002 citation for possession of a radar-jamming device; incidents in 2002 and 2003 involving aggressive conduct by his pit-bull terrier; his extensive traffic record that includes a 1997 underage drinking and driving offense; and the July 2003 criminal-sexual-conduct arrest and charge. The record contains evidence documenting each of these incidents.

A report from the Ramsey County District Court shows that Belcher pleaded guilty to possessing a small amount of marijuana in 2001. A report from the St. Paul Police Department shows that Belcher was arrested for possessing a radar-jamming device in 2002. The record also contains a statement submitted to the Ramsey County Sheriff's Office in July 2001 from a woman claiming she received twenty-five threatening calls from Belcher in one day and declaring that she felt "very scared that he will hurt my little sister, or myself, or my family." And a separate report shows that Belcher admitted to a police officer that he called this woman, who was his ex-girlfriend, several times a day and that he approached her at the beach and may have caused her to be alarmed. There are also reports in the record indicating that Belcher's pit-bull terrier attacked two people in October 2002 and aggressively pursued a third person in March 2003. Belcher's traffic report is also in the record and shows that he has received multiple traffic citations including one for underage drinking and driving in 1997.

The record also contains substantial evidence related to the July 2003 arrest. An investigative report prepared by the Chisago County Sheriff states that a 14-year-old girl

accused Belcher, then 24, of raping her. The report states that another person saw Belcher lying on top of the girl and that a sexual-assault exam performed on the girl revealed that she had what appeared to be seminal fluid in her vaginal vault. Additionally, an investigator who interviewed Belcher reported that Belcher said the girl “looked older than she really was.” Belcher in a later interview with a police officer regarding his permit to carry a pistol denied having sexual intercourse with the girl.

Viewing the evidence in the light most favorable to the district court’s conclusion, it demonstrates that Belcher has shown poor judgment on numerous occasions, that he lacks respect for the law and the rights of others, that he obsessively called and threatened an ex-girlfriend and caused her to fear for her safety and the safety of her family, and that he forced a teenage girl to have sexual intercourse with him. Therefore, the evidence is sufficient to support the district court’s conclusion that the sheriff’s office established by clear and convincing evidence that “there exists a substantial likelihood that [Belcher] would be a danger to himself or to the public if he is authorized to carry a pistol.” *See Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978) (stating that clear-and-convincing standard “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt”).

Belcher argues that no evidentiary basis exists for concluding that he actually harassed his ex-girlfriend or raped the girl. But the Ramsey County Sheriff’s Office submitted several pages of records indicating that Belcher committed the crimes of which he was accused, including several pages of investigative reports prepared by police. Belcher stipulated to the sheriff’s office’s exhibits and submitted his own exhibits,

including the expungement order, to establish that he did not commit the crimes of which he was accused. Belcher had the opportunity to testify or call witnesses on his behalf. *See* Minn. Stat. § 624.714, subd. 12(a) (stating that district court must hold hearing to review permit denial and hear matter de novo without jury). Belcher has not identified any authority indicating that the court could not weigh the conflicting evidence and conclude that the sheriff's office made a clear and convincing showing. We therefore conclude that there is no basis for reversal.

Affirmed.