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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1789**

Commissioner of the Minnesota Department of Human Services,  
Appellant,

vs.

M. D. K., a/k/a M. D. K.-S.,  
Respondent.

**Filed August 3, 2010  
Reversed  
Minge, Judge**

Hennepin County District Court  
File Nos. 27-CR-87-910042,  
27-CR-88-900163, 27-CR-91-084480, 27-CR-93-084824

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Minnesota (for appellant)

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Willis,  
Judge.\*

**UNPUBLISHED OPINION**

**MINGE**, Judge

Appellant Minnesota Department of Human Services challenges the district  
court's order granting respondent M.D.K.'s petition for expungement of her criminal

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

records, arguing that the order violates separation of powers and exceeds the district court's inherent judicial authority. We reverse.

## **FACTS**

Between 1987 and 1994, respondent M.D.K. was convicted of prostitution, passing forged checks, disorderly conduct, and first-degree felony controlled-substance crime. Respondent has no convictions since that time. Respondent has successfully recovered from chemical dependency, has obtained a bachelor's degree in human services, and is enrolled in a master's degree program.

In April 2009, respondent requested expungement of her criminal records. The basis for the request was that she had been unable to obtain employment or housing because these convictions show up in background checks. Mainly, she had been disqualified for positions with service organizations licensed by the Department of Human Services (DHS).

The district court granted the petition under its inherent judicial authority. It ordered various executive offices, including DHS, to seal the records. DHS appeals.

## **DECISION**

DHS argues that the district court exceeded its inherent authority by ordering executive records sealed. There are two bases for expunging criminal records—Minn. Stat. ch. 609A<sup>1</sup> and inherent judicial authority. *State v. Ambaye*, 616 N.W.2d 256, 257 (Minn. 2000). Inherent judicial authority derives from express and implied provisions of

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<sup>1</sup> We note that the house and senate recently passed legislation to modify and expand the scope of statutory expungement. S.F. 560 (2009-10). The measure was vetoed by the governor on May 27, 2010.

the state constitution. *Id.* at 258. This court reviews whether there is inherent authority to seal records de novo as a question of law. *State v. N.G.K.*, 770 N.W.2d 177, 181 (Minn. App. 2009). It reviews the use of that authority for an abuse of discretion. *Ambaye*, 616 N.W.2d at 261.

The standard for reviewing inherent authority to seal records differs depending on the possessor of the records. The district court has discretion to expunge records held by the judicial branch; the exercise of that discretion when constitutional rights are not involved, however, requires the district court to balance factors relating to the benefits to the petitioner and the harm to the public. *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006). For records held by the executive branch, the district court must “proceed cautiously . . . in order to respect the equally unique authority of [the other branches] over their constitutionally authorized functions.” *State v. C.A.*, 304 N.W.2d 353, 358-59 (Minn. 1981). In such situations, expungement authority is limited to where it essentially serves “the existence, dignity, and function of a court because it is a court.” *N.G.K.*, 770 N.W.2d at 181 (quoting *State v. S.L.H.*, 755 N.W.2d 271, 277-78 (Minn. 2008) (plurality opinion)).

The judiciary’s core or essential interests include: (a) that the petitioner’s rights have been violated by an executive agent’s abuse of discretion, *State v. T.M.B.*, 590 N.W.2d 809, 812 (Minn. App. 1999); (b) that expungement “is necessary or conducive to fashioning a meaningful remedy,” *State v. P.A.D.*, 436 N.W.2d 808, 810 (Minn. App. 2004); or (c) that not expunging would result in a palpable wrong or absurdity,” *S.L.H.*, 755 N.W.2d at 278 (quotation omitted). Caselaw has established that helping people

become employed is not a core judicial function. *N.G.K.*, 770 N.W.2d at 181; *State v. M.L.A.*, \_\_\_ N.W.2d \_\_\_, 2010 WL 2813523 (Minn. App. July 20, 2010). Nor is it a core function to expunge executive records merely because they were created by the judicial branch. *N.G.K.*, 770 N.W.2d at 182. The judiciary also resists invoking inherent expungement authority when statutes require that the records be used or kept open. *Id.* at 183.

In this case, the district court completed a checklist form expunging records from various state and local agencies related to respondent's prior convictions. Respondent had primarily argued that she was denied employment in DHS-licensed services because of her criminal history. Following established caselaw, we are obligated to conclude that this purpose—namely, to help someone secure employment—is not sufficiently tied to a core judicial function. *Id.* at 181. Respondent's claim fails for this reason alone. In reaching this conclusion, we note that due to the passage of time, respondent's criminal records are no longer public and that DHS is not to disqualify respondent based on her stale criminal records.<sup>2</sup>

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<sup>2</sup> The Government Data Practices Act classifies as private certain criminal records, including those held by the Bureau of Criminal Apprehension that are more than 15 years old. *See* Minn. Stat. § 13.87, subd. 1-2 (2008). The Department of Human Services Background Studies Act disqualifies persons with certain convictions within 15 years from holding any position that allows direct contact with persons receiving DHS-licensed services. Minn. Stat. § 245C.14, subd. 14 (2008). Respondent's convictions are now over 15 years old and stale under both provisions. We have no reason to believe that DHS would use relator's records in a way that goes beyond what the statutes provide for.

Because the district court exceeded its authority, we reverse its order requiring respondent DHS to seal its records.

**Reversed.**

Dated: