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Minn. Stat. § 480A.08, subd. 3 (2010).

STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0048

In re the Matter of: A. S. K., a minor, by and through his parents J. K. and K. K.

Filed July 30, 2012
Reversed
Larkin, Judge

Ramsey County District Court
File No. 62-JV-CV-11-2

Thomas R. Hughes, Katrina E. Joseph, Hughes & Costello, St. Paul, Minnesota (for appellant City of New Brighton)

Amy J. Goetz, School Law Center, LLC, St. Paul, Minnesota (for respondents A.S.K., J.K., and K.K.)

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges the district court's order granting respondents' petition for expungement and awarding sanction-based attorney fees. We reverse.

FACTS

In January 2011, eleven-year-old respondent A.S.K. allegedly made a threatening statement on a school bus. A student reported the statement to school officials. The next

day, school officials convened a meeting with A.S.K. and his parents and invited a representative of the local police department to attend. A police officer attended the meeting, participated in the ensuing discussion, and prepared an offense/incident report describing the underlying incident, the meeting, and the officer's actions following the meeting. The offense/incident report identifies A.S.K. as a "suspect" and the primary offense as "disturbance-disorderly boys, girls, persons." The state did not pursue delinquency charges against A.S.K.

A.S.K. retained an attorney and repeatedly asked appellant City of New Brighton to seal, expunge, or return all copies of the offense/incident report and any other records regarding the incident referenced therein. A.S.K. cited Minn. Stat. § 299C.11, subd. 1(b) (2010) as support for the requests. When the city did not comply, A.S.K. petitioned for expungement of A.S.K.'s "police citation and the records of these proceedings pursuant to Minn. Stat. § 609A.03 (2010) and the [district] [c]ourt's inherent authority." A.S.K. also sought attorney fees as a sanction for the city's "lack of cooperation" with the "proper procedure" for informal expungement under Minn. Stat. § 299C.11, subd. 1(b).

On the day of the hearing on A.S.K.'s petition, an attorney filed a letter with the district court on the city's behalf, opposing A.S.K.'s request for expungement. The attorney wrote that he could not be present at the hearing due to scheduling conflicts, but he requested that his letter response to A.S.K.'s petition be provided to the district court for its consideration. The district court determined that the letter was "untimely filed" and therefore did not consider it. The district court granted A.S.K.'s request for expungement, reasoning that "[t]he arrest in this matter qualifies for expungement under

Minnesota Statute section 299C.11, subdivision 1(b) because no charges were ever filed." The district court did not determine whether A.S.K. is entitled to relief based on the grounds cited in his petition: Minn. Stat. § 609A.03 and the judiciary's inherent authority. The district court ordered the city to immediately pay attorney fees "as a sanction for its bad faith and non-compliance" with section 299C.11, subdivision 1(b). The city appeals.

D E C I S I O N

I.

We first address A.S.K.'s argument that the city lost its right to appeal because it did not file a timely objection in district court. A.S.K. contends that the district court essentially entered a default judgment when the city failed to properly contest A.S.K.'s petition and argues that the city's appeal should be dismissed because it did not ask the district court to vacate the judgment prior to bringing this appeal. *See* Minn. R. Civ. P. 60.02 (providing for relief from a judgment under certain circumstances). Even if the district court's order was entered by default, it does not mean that the city has lost its right to appellate review. Instead, the scope of review is limited: "a party in default may not raise procedural irregularities on appeal which were not raised below, provided that adequate and expeditious relief is available by motion in the [district] court." *Thorp Loan and Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990) (citing *Whipple v. Mahler*, 215 Minn. 578, 581-82, 10 N.W.2d 771, 774 (1943)), *review denied* (Minn. Apr. 13, 1990). But "there are a limited number of issues which may be raised for the first time on appeal from a default judgment. For example, a defendant in default may

argue for the first time on appeal that the plaintiff's complaint did not state a cause of action or that the relief granted was not justified by the complaint." *Id.* On appeal, the city argues that the relief granted by the district court was not justified by A.S.K.'s petition. That argument is properly before this court for review.

II.

We next address the city's argument that the district court erred in granting A.S.K.'s petition for expungement. The following standards govern our review. We review a district court's findings of fact for clear error. *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008). A finding is clearly erroneous if this court is left with a definite and firm conviction that a mistake was made. *Id.* We review a district court's conclusions of law de novo. *SCI Minnesota Funeral Services, Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2011). We review a district court's grant of statutory expungement relief for an abuse of discretion. *State v. J.R.A.*, 714 N.W.2d 722, 725 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006). A district court abuses its discretion when it misapplies the law. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010). We review a district court's application of a statute de novo. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). Although A.S.K. requested relief under both sections 609A and 299C.11 of the Minnesota Statutes, the district court's award of relief was based solely on section 299C.11. We therefore limit our review to the district court's grant of relief under section 299C.11. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that a reviewing court must generally

consider only those issues that were considered by the district court in deciding the matter before it).

Minn. Stat. § 299C.10 (2010) requires the collection of certain data from seven specific categories of individuals. *See* Minn. Stat. § 299C.10, subd. 1(a) (listing seven categories of individuals from whom data must be taken). The following data must be collected from these individuals and submitted to the bureau of criminal apprehension: finger and thumb prints, photographs, distinctive physical mark identification data, information on any known aliases or street names, and other identification data requested or required by the superintendent of the bureau. Minn. Stat. §§ 299C.10, subd. 1(a), .11, subd. 1(a) (2010). Identification data that is collected pursuant to section 299C.10 shall be returned to the subject of the data without the necessity of a petition for expungement under 609A if "the person has not been convicted of any felony or gross misdemeanor . . . within the period of ten years immediately preceding the determination of all pending criminal actions or proceedings in favor of the arrested person," and either "(1) all charges were dismissed prior to a determination of probable cause; or (2) the prosecuting authority declined to file any charges and a grand jury did not return an indictment." Minn. Stat. § 299C.11, subd. 1(b).

When the language of a statute is clear and free from ambiguity, courts apply its plain meaning. *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007). Under the plain language of chapter 299C, data is not recoverable under 299C.11 unless it is of the type described in the statute and it is collected from one of the individuals described in the statute. Neither condition is met in this case.

Only two of the seven categories of individuals described in section 299C.10 are arguably applicable here: "juveniles arrested for . . . or alleged to have committed felonies or gross misdemeanors as distinguished from those committed by adult offenders" and "juveniles referred by a law enforcement agency to a diversion program for a felony or gross misdemeanor offense." Minn. Stat. § 299C.10, subd. 1(a)(2), (6). Although the district court found that A.S.K. was "arrested," the finding is clearly erroneous. "Arrested" is not defined in chapter 299C. Traditionally, "[a]n arrest takes place when officers restrain a suspect's liberty of movement." *State v. Lohnes*, 344 N.W.2d 605, 610 (Minn. 1984). "The ultimate test to be used in determining whether a suspect was under arrest is whether a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984). There is no indication in the record that A.S.K.'s "liberty of movement" was restrained. The offense/incident report indicates that a police officer attended a meeting at A.S.K.'s school with the school principal, A.S.K., and his parents. The officer advised A.S.K. and his parents that she "would be writing a police report." But the officer did not tell A.S.K. that he was under arrest or that he was not free to go. Nor did she restrain his liberty of movement in any way. In sum, A.S.K. was not arrested in any sense of the word.

The term "alleged" is also undefined in chapter 299C. We observe that the term is used in the context of formal charging in juvenile-delinquency proceedings. *See* Minn. R. Juv. Delinq. P. 6.03, subd. 1 ("A child alleged to be delinquent because of a felony or gross misdemeanor offense . . . shall be charged by petition."). Moreover, the statute

provides no indication that the term encompasses the type of allegation here, namely, the report of a possible law violation to the police, as opposed to a charge in a juvenile-delinquency petition. For these reasons, we conclude that A.S.K. was not "alleged" to have committed a felony or gross misdemeanor offense, as that term is used in Minn. Stat. § 299C.10, subd. 1(a)(2).

Lastly, A.S.K. was not referred to a diversion program. The responding police officer advised A.S.K.'s parents that the "ACE" program might assist A.S.K. But the officer later learned that A.S.K. was ineligible for the program because he was 11 years old. The officer contacted A.S.K.'s parents and gave them information regarding another program, "Project Assist." But there is no indication in the record that any law enforcement agency referred A.S.K. to a diversion program based on the reported offense.

In sum, the record does not establish that A.S.K. falls within any of the categories of individuals from whom identification data must be collected under section 299C.10. Moreover, the primary object of A.S.K.'s petition for relief—the offense/incident report—is not among the identification data that must be collected under section 299C.10 and that must be returned under section 299C.11. Although the supreme court has said that section 299C.11 "implicitly includes . . . arrest records," *In re R.L.F.*, 256 N.W.2d 803, 805 (Minn. 1977), this court has previously concluded that police reports are not "subject to expungement" under section 299C.11 because "they merely summarize the facts surrounding an event and constitute a necessary log of police activity." *State v. L.K.*, 359 N.W.2d 305, 308 (Minn. App. 1994). The offense/incident report in this case is

a "necessary log of police activity" and therefore is not subject to expungement under section 299C.11.

Because the offense/incident report was not collected pursuant to the requirements of section 299C.10 and because it is not among the identification data that is subject to expungement under section 299C.11, as interpreted by this court in *L.K.*, the district court abused its discretion in ordering expungement under section 299C.11. We therefore reverse the district court's order for expungement.

III.

Lastly, we review the district court's award of attorney fees. "Attorney fees are available by statute and by court rule." *Peterson v. 2004 Ford Crown Victoria*, 792 N.W.2d 454, 461 (Minn. App. 2010). "In addition to the statutory and rule-based authority to impose sanctions, district courts possess inherent authority to impose sanctions as necessary to protect their vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws." *Id.* at 462 (quotation omitted). "This includes awarding attorney fees." *Id.* "Attorney fees may be an appropriate sanction when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* (quotation omitted). "A finding of bad faith is necessary before awarding attorney fees under the court's inherent power." *Id.*

The district court granted A.S.K.'s motion for attorney fees as a sanction for its noncompliance with Minn. Stat. § 299C.11, finding that the city acted in bad faith. "We review the district court's award of attorney fees or costs for abuse of discretion."

Brickner v. One Land Dev. Co., 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008).

As explained in section II of this opinion, A.S.K. is not entitled to expungement under Minn. Stat. § 299C.11. Thus, the city was not required to comply with A.S.K.'s request for expungement under Minn. Stat. § 299C.11 and did not act in bad faith when it refused to do so. The district court therefore abused its discretion by granting A.S.K.'s motion for attorney fees. For these reasons, we reverse the district court's award of attorney fees and reject A.S.K.'s assertion that the award should be increased to include the fees and costs incurred on appeal.

Reversed.