STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0115

State of Minnesota, Commissioner of Human Services,
Appellant,

vs.

L. K. G.,
Respondent.

Filed September 9, 2013
Affirmed
Rodenberg, Judge

Hennepin County District Court
File No. 27-CR-08-24708

Lori Swanson, Attorney General, Seth E. Dickey, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Jonathan Geffen, Arneson & Geffen, PLLC, Minneapolis, Minnesota (for respondent)

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

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

RODENBERG, Judge

Appellant Minnesota Department of Human Services challenges the district court's supplemental order requiring appellant to seal files in its possession after statutory expungement of the record in respondent's dismissed criminal case. We affirm.

FACTS

In May 2008, respondent L.K.G. was charged with misdemeanor domestic assault. The case was continued for dismissal for one year on certain conditions. Because respondent successfully complied with the conditions of the continuance, the district court dismissed the charge on May 22, 2009.

Since 2006, respondent has sought employment in programs licensed by appellant or the Minnesota Department of Health (MDH). He was authorized to work in such licensed programs prior to his 2008 arrest and until July 18, 2011, when appellant disqualified him from working in positions involving direct contact with, or access to, persons being served by certain licensed programs. After his disqualification, respondent sought several set-asides[1] for programs that are licensed by appellant, which were denied. The MDH granted appellant a set-aside in October 2011.

In December 2011, respondent filed a Petition for Expungement under Minn. Stat. § 609A.03 (2010) seeking expungement of all records, including DHS records that related to the 2008 charge. On January 31, 2012, through the office of the Minnesota Attorney General, appellant objected to respondent's petition for expungement and asked the district court to exclude DHS records from the expungement order. Appellant stated that it had determined by a preponderance of the evidence that respondent had committed a domestic assault, which was sufficient to disqualify respondent from future positions in

[1] A set-aside allows a petitioner to work in a DHS program after being disqualified from such programs. Minn. Stat. § 245C.22 (2012). DHS may grant a set-aside upon a finding that a petitioner poses no risk of harm to any DHS program participant. *Id.*, subd. 4. Set-asides are generally limited to a specific program and can be rescinded. *Id.*, subds. 5, 6.

DHS programs. There were no other objections to respondent's petition for expungement.

The district court granted respondent's request for expungement, noting that, under Minn. Stat. § 609A.03, subd. 5(b), respondent is "presumptively entitled to expungement 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." The district court concluded that respondent is entitled to statutory expungement because "[n]o agency or jurisdiction whose records would be affected has provided clear and convincing evidence as to why the records should not be sealed." The order directed the Minnesota Attorney General to "seal all files and records relating to the offense, [and] refrain from disclosing to anyone without court order the fact that [respondent] was charged in connection with the case." The order did not specifically address DHS records.

In October 2012, respondent was notified that appellant continued to disqualify him from employment based on the dismissed 2008 charge. Respondent petitioned the district court for reconsideration of its expungement order, requesting that the order specifically require appellant to seal DHS records. Appellant received notice of respondent's petition and did not respond. By supplemental order dated November 11, 2012, the district court specifically ordered that "[t]he Commissioner of the Minnesota Department of Human Services shall seal all files and records relating" to the May 2008

charge, incorporating by reference the prior order of March 21, 2012. This appeal followed.

D E C I S I O N

Appellant argues that the district court abused its discretion by ordering it to seal records relating to respondent's 2008 assault charge despite "clear and convincing evidence, which was unique and particularized, that the public interest in retaining access to [respondent]'s criminal record outweighs the private disadvantage to [respondent]."

"Generally, the constitution empowers the legislative branch to legislate or make the laws, the executive branch to execute or carry out the laws, and the judicial branch to interpret and enforce the laws." *In re Welfare of J.J.P.*, 831 N.W.2d 260, 268 (Minn. 2013). Courts have the authority, both statutory and inherent, to grant expungement relief. *State v. Davisson*, 624 N.W.2d 292, 295 (Minn. App. 2001), *review denied* (Minn. May 15, 2001). But the judicial branch must afford deference to the other branches and "exercise restraint before invoking inherent expungement authority over records held outside the judicial branch." *State v. S.L.H.*, 755 N.W.2d 271, 279 (Minn. 2008). Our supreme court has not extended the separation-of-powers concerns related to *inherent* expungement authority to those situations when the district court exercises its *statutory* authority to expunge. *See J.J.P.*, 831 N.W.2d at 268. Here, the district court's orders granting expungement were based solely on statutory grounds.

The Minnesota expungement statute expressly authorizes the expungement of criminal records if all pending actions and proceedings were "resolved in favor of the

petitioner." Minn. Stat. § 609A.02, subd. 3 (2012).[2] "[W]hen a petitioner's misdemeanor charges have been continued for one year without a guilty plea and subsequently dismissed, the dismissal is a determination in the petitioner's favor for expungement purposes." *State v. C.P.H.*, 707 N.W.2d 699, 703 (Minn. App. 2006). A petitioner is presumptively entitled to expungement of criminal records "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) (2012). Clear and convincing evidence requires "more than a preponderance of the evidence but less than proof beyond a reasonable doubt," and the standard is satisfied when "the truth of the facts asserted is 'highly probable.'" *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). We review a district court's determination that DHS failed to sustain its burden of persuasion for an abuse of discretion. *See State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012) (determining that when the district court weighs the equities in a balancing test, the appropriate standard of review is abuse of discretion).

Appellant argues that its January 2012 letter of objection provided the district court with "unique and particularized" evidence showing that sealing respondent's records would harm the public's interests. That letter provided an overview of respondent's employment history with licensed facilities, restated the allegations against respondent in the 2008 matter, and included respondent's purported admission that he

[2] The statute contains an exception, not relevant here, for criminal actions subject to Minn. Stat. § 299C.11, subd. 1(b) (2012).

had thrown a piece of mirror and a computer at the alleged victim in that case. The letter also documented that respondent had been disqualified from working in DHS-licensed programs because of the "recent nature of the domestic assault and the risk of potential harm that a history of assaultive conduct may pose to vulnerable individuals who had a wide range of needs and can present challenging behavior to a caregiver." But appellant provided no affidavits or testimony sufficient to convince the district court by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to respondent of not sealing his DHS record. The submissions to the district court by appellant, while setting forth facts that were "unique and particularized" to the case, did not identify how respondent's dismissed charge presented any potential for harm to persons in DHS programs licensed by appellant. *See R.H.B.*, 821 N.W.2d at 822–24. We conclude that the district court did not abuse its discretion in concluding that the presumption of respondent's entitlement to expungement of DHS records was not overcome.

Next, appellant argues that respondent's private interest in obtaining expungement of his criminal record is minimal because he can seek a set-aside under Minn. Stat. § 245C.22, subd. 4. But set-asides are restrictive and can be rescinded. *Thompson v. Comm'r of Health*, 778 N.W.2d 401, 406 (Minn. App. 2010) (citing Minn. Stat. § 245C.22, subd. 5, which states that a set-aside "is limited solely to the licensed program, applicant, or agency specified in the set aside notice"). Respondent obtained a set-aside for an MDH program in October 2011 but was denied several applications for set-asides for DHS programs. Moreover, the district court is charged with weighing the

relative benefits and harms in assessing an expungement petition under the statute and will be reversed only for an abuse of discretion. *R.H.B.*, 821 N.W.2d at 822. We see no abuse of discretion here, despite the potential availability of a set-aside as an alternative source of relief for respondent.

Finally, appellant argues in its reply brief that the district court failed to engage in the factual analysis required by the expungement statute. Although the district court's written analysis could perhaps have been more thorough, the order need only demonstrate that the district court weighed the respective interests of respondent and the public. *See id.* We conclude that it did. The March 21, 2012 order identifies the presumption established by the legislature in section 609A.02, subdivision 3, by expressly concluding that the presumption was not overcome by clear and convincing evidence. The appealed-from November 17, 2012 order incorporates by reference the district court's earlier order. That the district court "could have augmented its cursory analysis with more specific findings and conclusions" is not a basis for reversal. *Id.* at 823.

In sum, the district court did not abuse its discretion in granting expungement under Minn. Stat. § 609A.03, subd. 5(b), including the records maintained by DHS.

Affirmed.