STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0840, A12-0841

State of Minnesota,
Respondent,

vs.

S. P.,
Appellant (A12-0840),

Y. K.,
Appellant (A12-0841).

Filed November 5, 2012
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27-CR-05-013853

Michael O. Freeman, Hennepin County Attorney, Michael Q. Lynch, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

S.P., Minneapolis, Minnesota (pro se appellant)

Y. K., Minneapolis, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

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

STONEBURNER, Judge

In file A12-0841, appellant Y.K. challenges the district court's denial of a petition to expunge juvenile court records and all related records held by multiple government agencies and nonprofit organizations involving a child-protection proceeding and a termination-of-parental-rights proceeding that occurred in 2005. In file A12-0840, appellant S.P. challenges the denial of an identical petition relating to the same records. The appeals have been consolidated. Because appellants have not demonstrated that there is any statutory authority for granting the relief requested and have not demonstrated that the district court abused its discretion by declining to exercise its inherent authority to grant the relief requested, we affirm.

FACTS[1]

In January 2005, respondent Hennepin County Human Services and Public Health Department (the county) received a report, alleging that a 14-year-old child (the child) had been physically and sexually abused by her stepfather, appellant S.P., in the presence of her mother, appellant Y.K. The county investigated the allegations and determined that, under Minn. Stat. § 626.556 (2004), the child had suffered maltreatment in the form

[1] We observe that many of the relevant juvenile-protection records are not in the record of the expungement proceeding. Usually, this court "may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). But this court has inherent power to take judicial notice of public records where the orderly administration of justice commends it. *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 530 (Minn. 2010). Accordingly, we take judicial notice of the relevant juvenile-protection records produced by the county on appeal without objection.

of "neglect and physical/sexual abuse." Appellants' requests for reconsideration of the determinations were denied, and they requested hearings pursuant to Minn. Stat. § 626.556, subd. 10i(b). But because appellants failed to appear for scheduled prehearing conferences, the appeals were dismissed.

On January 31, 2005, the county petitioned the juvenile court for a determination that the child was in need of protection or services (CHIPS). The district court appointed counsel for the child. On March 17, counsel petitioned for termination of Y.K.'s parental rights (TPR).[2]

After a March 25, 2005 combined pretrial hearing on the CHIPS petition and admit/deny/pretrial hearing on the TPR petition, the juvenile court issued an order denying in part, granting in part, and taking under advisement in part numerous motions made by Y.K.; ordering the county to discontinue services to appellants at Y.K.'s request; and ordering all parties to appear on April 29 for a continued pretrial conference and admit/deny hearing. On March 26, appellants purchased airline tickets to Russia and departed the following day.[3]

Y.K. failed to appear on April 29, 2005, and was found to be in default. On May 23, the juvenile court issued findings of fact, conclusions of law, and an order terminating

[2] Although not relevant to this appeal, the petition also sought termination of the parental rights of the child's father. Father subsequently voluntarily terminated his parental rights.
[3] On March 31, 2005, appellants were charged with criminal offenses based on the child's allegations. In 2010, after appellants' return to the United States, all criminal charges were dismissed, and, in August 2011, the district court granted appellants' petitions to expunge the criminal records to the extent provided by Minn. Stat. § 609A.03 (2010). Although appellants' current petitions for expungement reference further expungement of the criminal records, the only records they seek to expunge are records relating to the CHIPS and TPR proceedings, and the criminal records are not involved in this appeal.

Y.K.'s parental rights to the child. The child was adopted on May 12, 2006, and the juvenile court terminated its jurisdiction in this matter.

In January 2012, appellants each petitioned for expungement of all records relating to the CHIPS proceeding and the TPR proceeding. The petitions request expungement of related records maintained by the juvenile court and other government and nongovernment agencies, including the county, the state's health and human services departments, CornerHouse, and St. Joseph's Home for Children. The county objected to the petitions. The district court denied the petitions, and these consolidated appeals followed.

D E C I S I O N

Appellants argue that the district court erred by concluding that it lacks statutory authority under Minn. Stat. § 609A.03 to grant their expungement petitions and that it abused its discretion by declining to exercise its inherent authority to expunge their records. The proper construction of the expungement statute is a question of law, which this court reviews de novo. *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000). The exercise of the court's inherent power to expunge is a matter of equity, which this court reviews under an abuse-of-discretion standard. *Id.* at 261.

I. Statutory authority

Generally, "if all pending actions or proceedings were resolved in favor of the petitioner," an individual who is the subject of a criminal record may file a petition under Minn. Stat. § 609A.03 "to seal all records relating to an arrest, indictment or information, trial, or verdict[.]" Minn. Stat. §§ 609A.02, subd. 3, .03, subd. 1 (2010).

It is well settled that Minn. Stat. §§ 609A.01-.03 (2010) provides a legal basis for the expungement of *criminal* records. *See Ambaye*, 616 N.W.2d at 257. But the legislature has determined that records "involving a child in need of protection or services, permanency, or termination of parental rights are accessible to the public as authorized by the Minnesota Rules of Juvenile Protection Procedure." Minn. Stat. § 260C.171, subd. 2(a) (2010). These rules establish a presumption of public accessibility to such records, except for specified elements including victims' statements and portions of photographs that identify a child. Minn. R. Juv. Prot. P. 8.01, .04. The district court may issue a protective order prohibiting public access to otherwise-accessible juvenile protection records only in "exceptional circumstance[s]." Minn. R. Juv. Prot. P. 8.07.

Because appellants' petitions request the expungement of juvenile-protection records, not criminal records, the district court did not err by concluding that it lacks statutory authority under Minn. Stat. § 609A.03 to grant the expungement petitions. And appellants do not cite any other statutory authority for expungement of child-protection records. In fact, Minn. Stat. § 626.556, subd. 11c(b) (2010), specifically mandates that "[a]ll records relating to reports which, upon investigation, indicate either maltreatment or a need for child protective services shall be maintained for at least ten years after the date of the final entry in the case record." And court records regarding the CHIPS and TPR cases must be maintained to comply with requirements of the Department of Human Services Background Studies Act, Minn. Stat. §§ 245C.01-.34 (2010), and requirements of the child protection provisions of the Juvenile Court Act, Minn. Stat. §§ 260C.001-

.501 (2010). Additionally, Minn. Stat. § 259.79 (2010), regarding adoption records, requires that those records contain copies of all relevant legal documents, which would include the TPR records in this case, and subdivision 3 provides that "[a]ll adoption records shall be retained on a permanent basis under a protected record system which ensures confidentiality and lasting preservation. Adoption records become public records on the 100th anniversary of the decree granting the adoption." There is no statutory authority for the relief appellants seek.

II. Inherent Authority

The district court may exercise its inherent authority to expunge *court* records in a *criminal* matter

> (1) when the petitioner's constitutional rights may be seriously infringed by retention of petitioner's records; or (2) if constitutional rights are not involved, when the court finds expungement will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing, and monitoring an expungement order.

State v. L.W.J., 717 N.W.2d 451, 456 (Minn. App. 2006) (quotation omitted). The district court's inherent authority to expunge records extends only to records held by the judicial branch. *State v. R.H.B.*, ___ N.W.2d ___, ___, 2010 WL 4897862, at *2 n.1 (Minn. Oct. 17, 2012). In this case, many of the records are held outside of the judicial branch and those within the judicial branch relate to juvenile-protection proceedings. Appellants have not provided, nor has this court discovered, any precedent for a district court's exercise of its inherent authority to expunge child-protection records, and

appellants have failed to show that the district court abused its discretion by declining to exercise whatever inherent expungement authority it might have in this case.

Appellants contend that the exercise of inherent expungement authority is required because their constitutional rights have been "seriously infringed." But the alleged infringements stem from the criminal records that are already the subject of two expungement orders and daughter's adoption, which will not be reversed by an expungement order. Because appellants have never alleged an infringement of their constitutional rights due to the retention of the records they seek to have expunged in these proceedings, the district court did not abuse its discretion by declining to exercise its inherent authority to expunge based, in part, on the district court's conclusion that neither appellant "has suffered a serious infringement of Constitutional rights as a result of the juvenile files."

Appellants also challenge the district court's finding that they failed to establish "that the expungement of these juvenile files will yield [appellants] a benefit commensurate with the disadvantage to the public from eliminating the record and the burden on the Court in issuing, enforcing and monitoring the Order." For the first time on appeal, appellants assert that the benefit they would gain by way of expungement is the receipt of positive background checks. But the petitions for expungement only articulate concerns regarding the previously expunged criminal records and substantive decisions from 2005 and 2006. In terms of disadvantage to the public, the district court concluded that the child's rights "could be adversely affected by [the records'] expungement."

Additionally, the district court found that appellants failed to sufficiently identify the documents they wished to be expunged. *See State v. C.A.*, 304 N.W.2d 353, 360 (Minn. 1981) ("Records and documents to be expunged or controlled should be described specifically by location, file number, book and page number, or similar description."). On this record, the district court did not abuse its discretion by declining to exercise its inherent authority to expunge unspecified juvenile-protection records relating to the child-protection and TPR proceedings held by the juvenile court and other government and nongovernment agencies.

Affirmed.