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IN THE
COURT OF APPEALS OF INDIANA

N.H.,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent,

December 13, 2022
Court of Appeals Case No.
22A-XP-1026
Appeal from the Elkhart Superior
Court
The Honorable Teresa L. Cataldo,
Judge
Trial Court Cause No.
20D03-2111-XP-124

Robb, Judge.

Case Summary and Issue

- [1] N.H. filed a petition to expunge his criminal convictions and arrest record which the trial court granted. However, N.H. then filed a motion to correct error claiming the trial court omitted required language in its order granting

expungement. The trial court denied N.H.’s motion to correct error. N.H. now appeals, raising one issue for our review which we restate as whether the trial court erred by striking language included in Indiana Code section 35-38-9-10(c) from its order granting expungement. Concluding the trial court erred, we reverse and remand.

Facts and Procedural History

[2] On November 10, 2021, N.H. filed a petition for expungement of his criminal convictions and arrest records in Elkhart County. N.H. filed a proposed order that included a verbatim quotation of Indiana Code section 35-38-9-10(c), which provides:

the civil rights of a person whose conviction has been expunged shall be fully restored, including the right to vote, to hold public office, to be a proper person under IC 35-47-1-7(2), and to serve as a juror.

[3] On February 24, 2022, the trial court held a hearing on N.H.’s expungement petition. At the hearing, the trial court stated that it would use N.H.’s proposed order but that it would be striking the “proper person” portion. Transcript, Volume II at 6. The trial court explained, “I generally don’t have all the

information necessary under that statute to determine whether or not [N.H. is] a proper person. So I always strike that portion.”¹ *Id.*

[4] With the trial court’s permission, N.H. submitted an amended proposed order which contained the following provision:

7. Petitioner’s civil rights shall be fully restored, including the right to vote, to hold public office, *to be a proper person under IC 35-47-1-7(2) to the extent that any matter expunged herein previously disqualified Petitioner as a proper person*, and to serve as a juror.

Appellant’s Appendix, Volume 2 at 38 (emphasis added). However, the trial court did not accept the amended proposed order, finding that “the proper person is still in paragraph 7 with what attempts to be qualification . . . [and] it falls short.” *Id.* at 5. N.H. then submitted another amended proposed order that provided:

7. Petitioner’s civil rights shall be fully restored as set forth in Ind. Code § 35-38-9-10(c).

Id. at 48. The trial court declined to use this amended proposed order as well.

[5] On March 4, 2022, the trial court entered its order granting N.H.’s petition for expungement of criminal convictions and arrest record. The trial court, in relevant part, ordered the following:

¹ Indiana Code section 35-47-1-7 lists the requirements to be considered a “proper person” for purposes of obtaining a license to carry a handgun or to obtain a retail handgun dealer’s license.

7. Petitioner’s civil rights shall be fully restored, including the right to vote, to hold public office, _____, and to serve as a juror.

Id. at 58. In doing so, the trial court used N.H.’s initial proposed order but whited out the “proper person” language originally included.

[6] N.H. then filed a motion to correct error arguing the trial court erred by striking the proper person language present in Indiana Code section 35-38-9-10(c) from its order. The trial court denied N.H.’s motion to correct error, concluding:

There are fourteen (14) criteria that must be met in order for someone to be a proper person as defined under IC 35-47-1-7. Most of those conditions would not be known by a Court that is simply considering a Petition for Expungement. Not having a felony conviction is merely one (1) of the fourteen (14).

Accordingly, based on the breadth of the term “proper person” and its implications as applied in IC 35-47-2-3, only in the event that a Petitioner has provided evidence and proven that he or she meets *all* the criteria set out in IC 35-47-1-7(1)-(14) and is indeed a proper person as that term is defined *in every subsection*, not just subsection (2), would including such language in an Order of expungement be appropriate.

Id. at 9 (some emphasis added). N.H. now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

- [7] Generally, rulings on motions to correct error are reviewable under an abuse of discretion standard. *Ind. Bureau of Motor Vehicles v. Charles*, 919 N.E.2d 114, 116 (Ind. Ct. App. 2009). However, we review de novo any question of law in the trial court's application of a statute. *Adams v. State*, 960 N.E.2d 793, 797 (Ind. 2012). Questions of statutory interpretation constitute questions of law. *Id.*
- [8] When conducting statutory interpretation we examine the statute as a whole, avoiding excessive reliance on a strict literal meaning or the selective reading of words. *In re J.J.*, 912 N.E.2d 909, 910 (Ind. Ct. App. 2009) (citation omitted). Where the language of the statute is clear and unambiguous, there is nothing to construe. *Id.* However, where the language is susceptible to more than one reasonable interpretation, the statute must be construed to give effect to the legislature's intent. *Id.* The legislature is presumed to have intended the language used in the statute to be applied logically and not to bring about an absurd or unjust result. *Id.* Thus, we must keep in mind the objective and purpose of the law as well as the effect and repercussions of such a construction. *Id.*

II. Order Granting Petition for Expungement

[9] N.H. argues the trial court’s rationale for striking the “proper person” language from its expungement order is contrary to law.² Appellant’s Brief at 14. The trial court stated that it struck the provision related to N.H.’s status as a proper person because:

There are fourteen (14) criteria that must be met in order for someone to be a proper person as defined under IC 35-47-1-7. Most of these conditions would not be known by a Court that is simply considering a Petition for Expungement. Not having a felony conviction is merely one (1) of the fourteen (14).

Appellant’s App., Vol. 2 at 9. N.H. contends that although this is true, there is “only one criterion for being a proper person under I.C. § 35-47-1-7(2) – and that criterion was fully established upon the expungement of N.H.’s felony convictions[.]” Appellant’s Br. at 14-15. Pursuant to Indiana Code section 35-47-1-7(2), a person cannot “have a conviction for a crime for which the person could have been sentenced for more than one (1) year” and be considered a proper person.

[10] The trial court’s omission of the phrase “to be a proper person under IC 35-47-1-7(2)” in paragraph 7 of its order was error. Contrary to the trial court’s explanation in its order denying N.H.’s motion to correct error, because the

² Because we conclude the trial court erred by striking the proper person language, we need not determine whether the trial court should have incorporated N.H.’s proposed amendments.

phrase is specifically limited to subsection 7(2) it does not implicate the remaining subsections of section 35-47-1-7. The inclusion of the phrase does not require that the trial court make a determination as to whether a defendant is a proper person pursuant to the entirety of Indiana Code section 35-47-1-7, it merely acknowledges that a defendant's previous convictions, now expunged, no longer prevent him from being determined to be a proper person.

Interpreting Indiana Code section 35-38-9-10(c) to be a referendum on all fourteen subsections of Indiana Code section 35-47-1-7 when it explicitly includes only subsection 7(2) would be illogical. *See In re J.J.*, 912 N.E.2d at 910 (“The legislature is presumed to have intended the language used in the statute to be applied logically and not to bring about an absurd or unjust result.”).

[11] The trial court also states the following:

[I]t is not prudent for the Court to draw the conclusion necessary to make the statement espoused in IC 35-47-1-7(2) that the Petitioner does not have a conviction for a crime for which the person could have been sentenced for more than one (1) year as the Court has insufficient information to make that statement other than as related to the Petition in front of it.

Appellant's App., Vol 2 at 8. The expungement process only covers the convictions listed in the petition, and only convictions in that county. Ind. Code § 35-38-9-9(h). However, it appears from the record that the only convictions on N.H.'s criminal record were being expunged by the trial court's order. *See* Appellant's App., Vol. 2 at 14-18. Further, if the trial court did not have sufficient information regarding the proper person language, then it similarly

did not have sufficient information to declare the remaining rights restored because they too could be affected by other convictions or circumstances that fall outside the purview of the expungement order. Again, this would be an illogical rendering of the statute. *See In re J.J.*, 912 N.E.2d at 910. The inclusion of language from Indiana Code section 35-38-9-10(c) in an expungement order simply denotes that the convictions expunged in the order no longer preclude a defendant from exercising the enumerated rights. It does not blindly restore rights to a defendant.

[12] We conclude that the trial court erred by omitting a portion of Indiana Code section 35-38-9-10(c)'s language from its order granting expungement.³

Accordingly, we reverse and remand with instructions for the trial court to re-issue its order and either include the proper person language it omitted or exclude paragraph 7 altogether.

Conclusion

³ We note that the trial court was not required to include the language of Indiana Code section 35-38-9-10(c) in its order. Pursuant to Indiana Code section 35-38-9-6(h), if the court issues an order granting a petition for expungement, "the court shall include in its order the information described in section 8(b) of this chapter." Indiana Code section 35-38-9-8(b) does not include the language from section 10(c) nor does it include any rights restored by the expungement. However, we conclude that the trial court's inclusion of some rights enumerated by Indiana Code section 35-38-9-10(c) and its improper exclusion of one right constitutes reversible error.

[13] We conclude the trial court's omission of language from Indiana Code 35-38-9-10(c) in its order granting expungement constituted error. Accordingly, we reverse and remand with instructions.

[14] Reversed and remanded.

Mathias, J., and Foley, J., concur.