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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0272**

State of Minnesota,
Appellant,

vs.

N. O. S.,
Respondent

**Filed December 18, 2017
Stauber, Judge*
Reversed and remanded**

Kandiyohi County District Court
File No. 34-TX-00-000783

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for appellant)

Daniel B. Mohs, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Stauber,
Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's order granting expungement, appellant-State argues that the district court erred by shifting the burden of proof from respondent-petitioner to appellant and abused its discretion by failing to make specific factual findings as to the factors listed in Minn. Stat. § 609A.03, subd. 5(c) (2016). Because we conclude that the district court erroneously shifted the burden of proof to appellant and failed to make the necessary findings of fact, we reverse and remand.

FACTS

Respondent N.O.S. was convicted of violating an order for protection in 2000, and violating a restraining order in 2009. Respondent petitioned the district court in 2016, pursuant to Minn. Stat. § 609A.02, subd. 3(a)(3) (2016), to expunge records of both convictions. Along with his petition, respondent submitted a proposed order titled "Order Concerning Sealing/Expunging of Records[.]" which was a standardized form listed on the Minnesota Judicial Branch website that reflected that it was last revised in January 2015. Paragraph seven of that proposed order allowed the district court to check a box indicating that "[t]he law enforcement agency, government agency, or jurisdiction whose records would be affected" either has or has not "established by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the [p]etitioner of not sealing the record."

In April 2015, the standardized form titled "Order Concerning Sealing/Expunging of Records" listed on the Minnesota Judicial Branch website was revised. The new form

distinguishes between petitions filed pursuant to Minn. Stat. § 609A.02, subd. 3(a)(3)-(5), in which the petitioner bears the burden of proof, and petitions filed pursuant to Minn. Stat. § 609A.02, subd. 3(a)(1)-(2), in which a law enforcement agency, government agency, or jurisdiction bears the burden of proof.

Appellant objected to respondent's petition, and the district court held a hearing. At no point did counsel for either party, or the district court explicitly articulate which party bore the burden of proof. The district court took the matter under advisement.

The district court subsequently filed two orders granting respondent's petition with respect to both the 2000 and 2009 convictions. These orders were completed using the standardized form respondent submitted. The district court checked several boxes and filled in several blank spaces. These orders contain no findings of fact. In both orders, the district court concluded that appellant "ha[d] not established by clear and convincing evidence that the interests of the public and public safety outweigh[ed] the disadvantages to the [p]etitioner of not sealing the record[.]" This appeal followed.

DECISION

Burden of proof

Appellant argues that the district court improperly held it to the burden of proof in opposing respondent's expungement petition. An appellate court reviews the district court's decision whether to expunge criminal records for an abuse of discretion. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013). However, the proper construction of the expungement statute is a question of law that is reviewed de novo. *State v. Ambaye*, 616

N.W.2d 256, 258 (Minn. 2000). We therefore review whether the district court erroneously shifted the burden of proof to appellant de novo.

There are the two possible standards that a district court may apply in determining whether to grant a petition for expungement under the expungement chapter, 609A. *See* Minn. Stat. § 609A.03. First, section 609A.03, subdivision 5(a) provides the general standard:

[E]xpungement of a criminal record is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of:

- (1) sealing the record; and
- (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.

Second, section 609A.03, subdivision 5(b) provides that if the petitioner seeks to seal a criminal record pursuant to Minn. Stat. § 609A.02, subd. 3(a)(1)-(2), “the court shall grant the petition to seal the record 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 parties agree that respondent should have borne the burden of proof in support of his expungement petition because he sought relief under Minn. Stat. § 609A.02, subd. 3(a)(3) and that the district court’s order granting respondent’s petition mistakenly indicated that appellant, rather than respondent, bore the burden of proof. Despite these admissions, respondent argues that the district court’s error is merely “technical” and does not warrant reversal.

Respondent relies upon *Steinbauer v. Stone*, in which the supreme court declined to reverse the district court despite the substitution of the word “or” for “and” in jury instructions because the error was not prejudicial to the defendant and could not have misled the jury. 85 Minn. 274, 277, 88 N.W. 754, 755 (1902). Unlike the error in *Steinbauer*, the district court’s error in this case fundamentally altered the nature of its analysis, erroneously holding appellant to a burden of proof that it should not have borne.

Respondent also argues that we should not reverse because the district court’s error was inadvertent and did not affect appellant’s rights. Respondent compares the present case to *State v. Stafford*, 368 N.W.2d 364, 366 (Minn. App. 1985) in which the district court imposed a consecutive sentence that violated the statutorily prescribed order. This court declined to reverse or remand sentencing for “this technical error” because “[t]he result would almost certainly be the same.” *Id.* Unlike the error in *Stafford*, the district court’s error here improperly shifted the burden of proof to appellant, thus undoubtedly prejudicing appellant. Further, the record does not establish that the district court intended to apply the correct standard and erred by simply filling out the incorrect form. We conclude that the district court erred by holding appellant to the burden of proof in opposition to respondent’s expungement petition and that this error necessitates reversal.

Findings of fact

Appellant argues that we should remand this case for further findings and proceedings because the district court failed to make findings of fact regarding the factors listed in the expungement statute. When the district court fails to make specific findings, the reviewing court is unable to determine whether the district court abused its discretion,

and reversal and remand for findings is necessary. *State v. A.S.E.*, 835 N.W.2d 513, 517 (Minn. App. 2013).

To determine whether expungement is appropriate, the district court “shall consider” the following factors:

- (1) the nature and severity of the underlying crime, the record of which would be sealed;
- (2) the risk, if any, the petitioner poses to individuals or society;
- (3) the length of time since the crime occurred;
- (4) the steps taken by the petitioner toward rehabilitation following the crime;
- (5) aggravating or mitigating factors relating to the underlying crime, including the petitioner’s level of participation and context and circumstances of the underlying crime;
- (6) the reasons for the expungement, including the petitioner’s attempts to obtain employment, housing, or other necessities;
- (7) the petitioner’s criminal record;
- (8) the petitioner’s record of employment and community involvement;
- (9) the recommendations of interested law enforcement, prosecutorial, and corrections officials;
- (10) the recommendations of victims or whether victims of the underlying crime were minors;
- (11) the amount, if any, of restitution outstanding, past efforts made by the petitioner toward payment, and the measures in place to help ensure completion of restitution payment after expungement of the record if granted; and
- (12) other factors deemed relevant by the court.

Minn. Stat. § 609A.03, subd. 5(c). In the absence of any findings, it is impossible for this court to conclude that the district court considered the statutory factors. *See State v. K.M.M.*, 721 N.W.2d 330, 335 (Minn. App. 2006) (remanding because the district court failed to make sufficient findings pursuant to Minn. Stat. § 609A.03, subd. 5 (2004)).

We have previously reversed and remanded other expungement cases because the district court simply checked boxes on a template order and failed to make the necessary findings of fact. *See In re Welfare of J.T.L.*, 875 N.W.2d 338, 338 (Minn. App. 2015); *A.S.E.*, 835 N.W.2d at 517. That is precisely what occurred in this case. We hold that the district court abused its discretion by failing to make any specific findings of fact, and we reverse and remand for application of the relevant statutory factors.

Reversed and remanded.