STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2037

State of Minnesota,
Respondent,

vs.

G. R. K.,
Appellant.

Filed August 31, 2020
Reversed
Florey, Judge

Washington County District Court
File Nos. 82-CR-18-41; 82-CV-18-4

Keith Ellison, Attorney General, Zurizadai Balmakund, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Jon Geffen, The Reentry Clinic, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

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

FLOREY, Judge

Appellant seeks review of the district court's order denying her petition to expunge elements of her criminal record with respect to two record-holding agencies, arguing that the district court did not conform to procedural requirements of the controlling statute. We reverse.

FACTS

In 2018, appellant G.R.K. was charged with three crimes in two separate cases. In January, G.R.K. was charged with domestic assault by strangulation; and in July, felony terroristic threats and misdemeanor DANCO violation. G.R.K. never pleaded to any of the charges. G.R.K.'s domestic partner—the alleged victim in both cases—avoided service of subpoenas in both cases, so both cases were continued for dismissal and later dismissed. G.R.K. subsequently petitioned the district court for expungement of these charges.

G.R.K. argued in her petition that both cases were resolved in her favor under Minn. Stat. § 609A.02, subd. 3(a)(1) (2018), that none of the charges were disqualified from expungement, and that she was therefore presumptively entitled to expungement. She argued further that the charges interfered with her ability to obtain housing, as at least one potential landlord denied her application as a result of these non-conviction charges.

Several entities opposed the expungement, including the Minnesota Department of Human Services (DHS), and the Minnesota Department of Health (MDH)—the respondents herein.[1] Respondents submitted a memorandum of law to support their opposition to the expungement, but they did not appear at the hearing on the petition. In their memorandum, respondents argued ultimately that, because G.R.K. is a licensed nurse, she might in the future apply for a job in which she would have care of or access to children

[1] While the district court denied G.R.K.'s expungement petition with respect to the records held by respondents, it granted that same petition with respect to a number of other entities, including the Washington County District Court, the Minnesota Bureau of Criminal Apprehension, the Minnesota Department of Corrections, three law-enforcement departments, and three prosecutorial offices.

and/or vulnerable adults. Because respondents screen and qualify applicants for certain positions, and because the conduct alleged by the records associated with the dismissed charges against G.R.K. would potentially be disqualifying for employment in such positions, respondents argue, they have a compelling interest in maintaining access to those records. G.R.K. is currently on permanent disability and not working any job. The district court, noting in the memorandum accompanying its order that respondents "have a compelling interest in reviewing and approving any such application," exempted respondents from the expungement order. G.R.K. appealed.

D E C I S I O N

Relevant to this appeal, expungement of criminal records is provided for by statute. *See* Minn. Stat. § 609A.03 (2018). The statute provides different schemes of analysis for different situations, and the parties do not dispute that the applicable provision here is subdivision 5(b)—specifically in its reference to section 609A.02, subdivision 3(a)(1)—which provides for situations in which the petitioner received a "favorable result" on the matters for which expungement is sought. Here, all parties agree that the dismissal of the charges at issue in the petition constitute a favorable result under the statute. We review "favorable result" expungement decisions under an abuse-of-discretion standard. *State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012).

Section 609A.03, subdivision 5(b), creates a burden-shifting framework, the starting-point of which is the presumption that the petitioner is entitled to expungement. *R.H.B.*, 821 N.W.2d at 821. "But the statutory presumption created under step one is not absolute. Rather, it is a rebuttable statutory presumption that shifts the burden of

persuasion to the opposing party." *Id.* (quotations omitted). If an agency or other record-holding entity objects to the expungement, it may "prevent expungement if [it] . . . 'establishes by clear and convincing evidence' that the public's interest in keeping the records unsealed 'outweigh[s] the disadvantages to the petitioner of not sealing the records.'" *Id.* (quoting Minn. Stat. § 609A.03, subd. 5(b)).

The statute further guides the analysis by enumerating twelve factors for the district court to consider when deciding whether the record-holding agency has met its burden of demonstrating with clear and convincing evidence that the public's interest in keeping the records available outweighs the disadvantages of the same to the petitioner. The enumerated factors are:

> (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).

Here, the district court noted each of these factors and provided its consideration of each in the memorandum accompanying its order. Under the heading for the second factor, after observing that it calls for consideration of the risk that the petitioner poses to individuals or society, the district court found that respondents failed to show that G.R.K. posed such a risk. The district court ends its consideration of this factor by concluding that respondents have a compelling interest in maintaining access to the records and "have met their burden under Minn. Stat. 609A.03, subd. 5(b)." On appeal, G.R.K. raises a number of specific contentions with respect to the district court's findings, analysis, and conclusions—the central thrust being that the district court's order does not conform to the statutory framework. We agree.

After finding that G.R.K. did not pose a threat, but before concluding that respondents met their burden, the district court's analysis of the second factor progressed through the following findings and comments: (1) that the threat G.R.K. poses to her domestic partner is mitigated by other factors; (2) that a purpose of the respondent departments involves screening applicants for certain positions involving vulnerable people; (3) that G.R.K. is licensed as a nurse but does not currently work due to a disability and that it is unknown if she ever will work; (4) that respondents would have a "compelling interest in reviewing and approving" an application from G.R.K. if she did submit one;

(5) that G.R.K. would have alternate avenues of potential recourse if respondents denied her hypothetical application; (6) that an unrelated statute might authorize DHS to obtain certain records; (7) that it finds that respondents should maintain their own records "if" G.R.K. were to submit an application to a relevant position; and (8) that respondents might have alternative avenues of access to G.R.K.'s criminal record even if it were to be sealed. As G.R.K. points out, these matters provide little, if any, support or explanation for the court's conclusion that respondents have met their ultimate burden—showing by clear and convincing evidence that G.R.K.'s interests are outweighed by the public's. Minn. Stat. § 609A.03, subd. 5(b).

First, the existence of alternative means by which the parties here might be able to attain what they seek lacks any relevance to the balance of the interests between G.R.K. and the public. Even if such considerations were relevant, they are unhelpful to the analysis given that the alternative means of recourse for respondents identified by the district court would be present in any case pursuant to this statutory framework and therefore do little to distinguish this case from any other. Further, even if we were to assume that the district court had sufficient reason to find that respondents have a compelling interest in preserving the records, that finding alone does not answer the question posed to the court—whether the public's interests, compelling as they might be, outweigh G.R.K.'s—and answering that question would be the only way to conclude that the respondents have "carried their burden." *R.H.B.*, 821 N.W.2d at 823. Ultimately, we conclude that the district court's findings on the second factor do not sufficiently support its conclusion that respondents

have met their burden; but this fact alone does not necessarily mean that the district court abused its discretion.

We continue our review by considering the court's handling of the remaining factors. A finding that a petitioner does not pose a risk to individuals or society is not necessarily outcome-determinative. The risk factor is only one of eleven relevant factors specifically identified by the statute, and the district court may also consider any other relevant factors—any one or more of which could theoretically subordinate a petitioner's interests to those of the public. Here, however, the district court provided insufficient findings and legal analysis to permit effective appellate review. *Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986) (stating that even where the record might support a district court's decision, "it is nevertheless inadequate if that record fails to reveal that the trial court actually considered the appropriate factors").

In its consideration of the remaining factors, the district court only listed several uncontested facts in the record that might be relevant. It did not explain whether or to what extent those facts are incorporated into the statutorily required balancing of the interests. While it is possible that the district court silently factored any number of considerations into its undisclosed analysis of the extent to which respondents fulfilled their burden, we cannot know whether it did and therefore cannot review that analysis. Therefore, because the district court's order contained insufficient findings and indicates a failure to abide by the statutory framework, we conclude that the district court abused its discretion. *State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808, 817 (Minn. 2014).

Finally, we note that our review of the record reveals that respondents could not have met their burden under the proper analysis. They exerted minimal effort in opposing G.R.K.'s petition, submitting a brief that contained "mere generalities" and failing to appear at the hearing. In *R.H.B.*, the supreme court concluded that the "the State failed to establish by clear and convincing evidence" that the public's interests outweighed the petitioner's because the opposing departments submitted only three affidavits from their officials which briefly stated how maintenance of criminal records generally can be advantageous to their goals. *Id.* at 822. The court characterized the state's evidence as "little more than generalities," stating that "[t]hese statements are unremarkable and generalized and could be submitted in nearly every expungement case. . . . the State presented almost no evidence that sealing R.H.B.'s criminal record would present a unique or particularized harm to the public." *Id.* at 822-23. Here, while respondents' brief was more substantial, it was still "little more than generalities" in substance. Respondents provided more detail with respect to their intended purposes and the potential implications of the nature and perceived severity of the dismissed charges against G.R.K., but they did not explain how the expungement of *G.R.K.'s* dismissed charges would "present a unique and particularized harm to the public." *Id.* This, in tandem with the facts that the district court found that G.R.K. did not pose a risk to others and that there was no indication that she would apply for a job for which respondents are responsible for screening applicants, renders the evidence brought by respondents less than clear and convincing.

Reversed.