COURT OF APPEALS
DECISION
DATED AND FILED

May 16, 2019

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2018AP2313 **Cir. Ct. No. 2018SC6016**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DENICE MORGAN,

APPELLANT,

V.

CIRCUIT COURT FOR DANE COUNTY AND THE HONORABLE FRANK D. REMINGTON PRESIDING,

RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: FRANK D. REMINGTON, Judge. *Reversed and cause remanded with directions*.

¶1 KLOPPENBURG, J.[1] This appeal raises the question of whether the circuit court properly denied Denice Morgan's motion to redact her name from

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

the record of this eviction action on the Wisconsin Circuit Court Access website after the eviction action was dismissed.[2] The circuit court concluded that "no law or legal precedent" gave it the authority to make such a redaction. Morgan argues that because the court found that failing to redact her name from the court access website threatened Morgan's ability to obtain safe and secure housing in the future, the court had inherent authority to redact her name. Applying the test set out in controlling case law, I agree. Accordingly, I reverse and remand.

BACKGROUND

¶2 Morgan's landlord filed this eviction action against her. The parties reached a settlement, agreeing to dismiss the action with prejudice and to allow Morgan to stay in her apartment. The landlord also agreed "to not object to any motion to redact [Morgan's] name from public display on the Wisconsin Circuit Court Access (WCCA/CCAP) system website." The circuit court entered an order dismissing the action with prejudice.

¶3 Morgan subsequently filed a motion to redact her name "from public display on [the] Wisconsin Circuit Court Access website" in order to protect "her ability to secure safe and secure housing." The circuit court scheduled a hearing on the motion, at which it heard from both Morgan and her counsel; the landlord did not take any position on the motion or appear at the hearing. The court found

[2] "'Redact' means to obscure individual items of information within an otherwise publicly accessible document." WIS. STAT. § 801.21(1)(a).

The Wisconsin Circuit Court Access website is a public-access website that contains information entered by circuit court staff on activity in the circuit courts. ***State v. Bonds***, 2006 WI 83, ¶6, 292 Wis. 2d 344, 717 N.W.2d 133. Except when I am quoting other sources, I will refer to this website as "the court access website."

that grounds existed to grant the redaction requested but ruled that the court lacked authority to do so.

¶4 The court entered an order denying Morgan's motion, and Morgan appealed. The landlord informed this court that it would not participate in the appeal. Morgan then filed a petition for a supervisory writ against the circuit court and a motion to consolidate the writ action with the appeal. This court entered an order denying the writ petition and the motion to consolidate, and substituting the circuit court as the respondent in the appeal.[3]

DISCUSSION

¶5 Morgan challenges the circuit court's denial of her motion to redact her name from the record of this eviction action on the court access website. That challenge presents a question of law that this court reviews de novo. ***Krier v. EOG Envtl., Inc.***, 2005 WI App 256, ¶10, 288 Wis. 2d 623, 707 N.W.2d 915.

¶6 A litigant's name is reported in the circuit court's record, and our legislature has provided that the clerk of circuit court shall open all court records to public examination. WIS. STAT. § 59.20(3)(a). Interpreting this statutory language, our supreme court has ruled that the public has an "absolute right" to access to court records, reflecting "a basic tenet of the democratic system that the people have the right to know about operations of their government, including the judicial branch." ***State ex rel. Bilder v. Delavan Tp.***, 112 Wis. 2d 539, 553-54, 334 N.W.2d 252 (1983) (discussing WIS. STAT. § 59.14 (1979-80), renumbered

[3] The caption lists "Circuit Court for Dane County and The Honorable Frank D. Remington presiding" as the respondents. These "respondents" are represented by the Wisconsin Department of Justice. For ease of reading, I refer simply to "the respondent."

§ 59.20 as of 1995). However, this absolute right is subject to three exceptions: (1) a statute authorizes closure of the court record; (2) disclosure of the record would infringe on a constitutional right; and (3) the circuit court exercises its inherent power "to limit public access to judicial records when the administration of justice requires it." ***Id.*** at 554-56; ***Krier***, 288 Wis. 2d 623, ¶9; ***State v. Stanley***, 2012 WI App 42, ¶29, 340 Wis. 2d 663, 814 N.W.2d 867.

¶7 As to the first exception, Morgan in her appellant's brief argues that the circuit court here had statutory authority to grant her motion to redact her name from the court access website under WIS. STAT. § 801.21. However, Morgan's argument is supported by neither the language in the statute nor the case law she cites. As Morgan effectively concedes in her reply brief, § 801.21 governs only the procedure to be followed when a party files a motion to redact; it does not give the circuit court authority to redact a name from the court access website in an eviction action. *See* WIS. STAT. § 801.21(2) and Comment, 2015 ("This section defines the procedural prerequisites for" restricting part or all of a document from public access.). Thus, Morgan's argument based on the first exception, statutory authority, fails.

¶8 Morgan does not argue that the second exception, a violation of a constitutional right, applies here.

¶9 The gravamen of Morgan's challenge is grounded on the third exception, the circuit court's inherent authority "to limit public access to judicial records when the administration of justice requires it." ***Bilder***, 112 Wis. 2d at 556. Our supreme court has set out the following test for invoking this exception:

> To overcome the legislatively mandated policy favoring [public] records and to persuade the circuit court to exercise its inherent authority, the party seeking to close

> court records bears the burden of demonstrating, with particularity, that the administration of justice requires that the court records be closed. If the party seeking closure sufficiently demonstrates the need to close the records, the court should … determine whether in light of the reasons specified for closing the documents, the administration of justice requires restricting public access. Even then [a closure] order is appropriate only when there is no less restrictive alternative available.

Id. at 556-57.

¶10 As I interpret the briefing, the respondent appears to concede that, under ***Bilder***, a circuit court has the inherent authority to redact a name from the record of an eviction action on the court access website if the test set out in ***Bilder*** is satisfied.[4] However, the respondent argues that the ***Bilder*** test is not met here because Morgan has not demonstrated that the administration of justice requires redaction of her name from the record on the court access website. As I now explain, I conclude that Morgan has met her burden of demonstrating, with particularity, that the administration of justice requires that her name be redacted from the record on the court access website. Further, redacting her name from the court access website is the least restrictive alternative available.

¶11 Morgan argues that the ***Bilder*** test is satisfied because an online record of this eviction action will harm her ability to obtain safe housing in the future, and because redacting her name from the court access website is the least

[4] In one portion of its brief, the respondent appears to argue that the circuit court's inherent authority extends only to court records, not to what information appears on the court access website. However, the respondent fails to support this proposition with any citation to legal authority, and, therefore, I decline to consider it further. *See* ***Industrial Risk Insurers v. American Eng'g. Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("Arguments unsupported by legal authority will not be considered, and we will not abandon our neutrality to develop arguments." (citations omitted)).

restrictive remedy. On appeal, as she did in the circuit court, Morgan notes that a landlord is permitted by statute to review court records with respect to a prospective tenant. *See* WIS. STAT. § 66.0104(2)(a)1.c. Morgan then cites secondary authorities showing the detrimental effect of an eviction filing, regardless of its outcome, on a prospective tenant's ability to obtain safe and secure housing. The circuit court acknowledged the prejudicial nature of even a dismissed eviction action on Morgan's online case record and found that Morgan will "most likely" suffer harm from the existence of that record. Specifically, the court found that the existence of this dismissed eviction action "fundamentally affects [Morgan's] ability to house … and take care of [herself]." Furthermore, as the court acknowledged and as Morgan continues to stress on appeal, Morgan seeks only redaction of her name from the record on the court access website, not from the record available for inspection in the clerk of circuit court's office.

¶12 Given these facts, the circuit court determined that the administration of justice requires redaction. I agree. As the circuit court found, an online record of this eviction action will harm Morgan's ability to secure safe housing in the future. Thus, Morgan has met her "burden of demonstrating, with particularity, that the administration of justice requires that the court records be closed." ***Bilder***, 112 Wis. 2d at 556-57. Also, as the respondent implicitly concedes, the relief Morgan seeks—the redaction of her name from the record on the court access website—is plainly less restrictive than the alternative relief of redacting her name from the record available at the clerk of circuit court's office. In sum, Morgan has shown that the ***Bilder*** test permits the redaction of her name from the record on the court access website here.

¶13 The respondent's three arguments to the contrary do not persuade. First, the respondent argues that Morgan's stated need for the redaction is

speculative, in that she is not at risk of losing her ability to obtain safe and secure housing because "she remains in the apartment that was the subject of the eviction action and has not been searching for housing." This argument ignores the circuit court's finding that the existence of this dismissed eviction action "fundamentally affects [Morgan's] ability to house … and take care of [herself]." The respondent fails to show that the court's finding is clearly erroneous. *See* ***State v. Rissley***, 2012 WI App 112, ¶8, 344 Wis. 2d 422, 824 N.W.2d 853 ("we review the [circuit] court's findings of fact under the clearly erroneous standard").

¶14 Second, the respondent argues that Morgan's stated need for the redaction is insufficient because "[t]here is no concern for Morgan's safety, and concern for her reputation and future rental prospects is not enough." The respondent mischaracterizes Morgan's concern: it is not her reputation, but her ability to obtain safe and secure housing, and that ability directly implicates her safety, as the circuit court found. Moreover, because Morgan lives in subsidized housing for persons with disabilities, the court reasonably inferred that the existence of her name on the record of the eviction case does not merely affect her future rental prospects, but "fundamentally affects [her] ability to house … and take care of [herself]." The respondent does not argue that this finding is clearly erroneous, and the finding plainly implicates Morgan's safety, as opposed to her reputation.

¶15 Third, the respondent argues that Morgan should direct her "public policy argument," that tenants "would be better off if their names were not publicly available on the [court access] website," to the legislature, not the courts. The respondent cites to WIS. STAT. § 66.0104(2), which prohibits municipalities from placing certain restrictions on landlords, as indicative of the public policy that, the respondent argues, "override[s]" Morgan's position here. The respondent

again mischaracterizes Morgan's argument. She seeks relief not for tenants generally, but for herself specifically, a person subject to an eviction action that was dismissed with prejudice. And, she seeks that relief pursuant to controlling case law that states the test for obtaining such relief. Whether she has met that test is precisely for the courts to determine.

¶16 In sum, the respondent fails to show that the ***Bilder*** test was not met here.

CONCLUSION

¶17 For the reasons stated, I conclude that the circuit court had the inherent authority to grant Morgan's motion to redact her name from the record of this eviction action on the court access website. Accordingly, I reverse and remand with directions to grant the motion.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.