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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1361**

State of Minnesota,
Respondent,

vs.

L. A. A.,
Appellant.

**Filed April 17, 2017
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CV-16-342

Lori Swanson, Attorney General, Marsha Eldot Devine, Assistant Attorney General,
St. Paul, Minnesota (for respondent)

L.A.A., South St. Paul, Minnesota (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Stauber,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant argues that the district court abused its discretion by partially denying her
request for expungement of a kidnapping arrest. We affirm.

FACTS

On July 14, 2010, appellant L.A.A. had an argument with her friend J.G. Shortly thereafter, L.A.A. took J.G.'s five-year-old child with her to another friend's home without J.G.'s permission. Police officers found the child unharmed but arrested L.A.A. for kidnapping. One week later, J.G. decided not to pursue charges against L.A.A., and a police sergeant changed the status of the investigation to "pended." L.A.A. was never charged or convicted, and the police closed the case in May 2012.

Since July 2010, the Minnesota Department of Human Services (DHS), which conducts background studies on individuals who seek employment providing direct care to patients, has conducted five background studies on L.A.A. for prospective employers. After the first background study, DHS conducted a review of the facts of the kidnapping arrest and determined by a preponderance of the evidence that L.A.A. committed the kidnapping. This determination disqualified L.A.A. from working in positions allowing direct contact with, or access to, persons being served by programs licensed by DHS. As a result, L.A.A. was disqualified from employment with the five prospective employers who requested background studies after July 2010. After each notice of disqualification, L.A.A. requested that the Minnesota Department of Health (MDH) reconsider and set aside her disqualification, but MDH denied her requests.

L.A.A. petitioned the district court to expunge the kidnapping arrest from her record. MDH and DHS objected to L.A.A.'s request. The district court granted in part and denied in part L.A.A.'s petition, determining that MDH and DHS met their burden by clear and convincing evidence that the interests of the public and public safety outweigh the

disadvantages to L.A.A. of not sealing the records. The district court therefore ordered that the records of L.A.A.'s kidnapping arrest be expunged from all agencies except DHS and MDH. This appeal follows.

D E C I S I O N

L.A.A. contends that the district court abused its discretion by partially denying her petition for expungement. “The exercise of a court’s inherent power to expunge is a matter of equity, and we therefore review the district court’s conclusion under an abuse of discretion standard.” *State v. Ambaye*, 616 N.W.2d 256, 261 (Minn. 2000). “Under an abuse of discretion standard, [appellate courts] will not overrule the district court unless the court exercised its discretion in an arbitrary or capricious manner or based its ruling on an erroneous interpretation of the law.” *State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012). It is not our role to reweigh the evidence presented to the district court. *Vangsness v. Vangsness*, 607 N.W.2d 468, 475 (Minn. App. 2000). An appellate court’s “duty is performed when [it] consider[s] all the evidence . . . and determine[s] [whether] it reasonably supports the [district court’s] findings.” *Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951). “A district court’s findings of fact will not be set aside unless clearly erroneous. Clearly erroneous means manifestly contrary to the weight of the evidence or not supported by the evidence as a whole.” *State v. H.A.*, 716 N.W.2d 360, 363 (Minn. App. 2006) (quotation and citation omitted).

The district court found that L.A.A. qualifies for expungement under Minn. Stat. § 609A.02, subd. 3(a)(1) (2014), which provides that a person may petition for expungement of records of an arrest if “all pending actions or proceedings were resolved

in favor of the petitioner.” The statute further states that the district 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.” Minn. Stat. § 609A.03, subd. 5(b) (2014). In making that determination, the district court must consider 12 statutory factors. *Id.*, subd. 5(c) (2014).

The first factor requires the district court to analyze “the nature and severity of the underlying crime.” *Id.*, subd. 5(c)(1). The district court determined that the first factor did not weigh in L.A.A.’s favor. It noted that the underlying crime was the kidnapping of a five-year-old child, which is “extremely serious.” L.A.A. contends that the police report indicating that she took another person’s child without permission is false, but she did not provide any evidence in support of that claim. DHS and MDH provided the district court with incident reports from three officers who collectively stated that L.A.A. had taken a five-year-old child without her parent’s permission and brought her to a friend’s house. The district court’s findings regarding the severity of the offense are supported by the record.

The second factor requires the district court to analyze “the risk . . . the petitioner poses to individuals or society.” *Id.*, subd. 5(c)(2). The district court characterized the circumstances of the incident as “chilling,” and determined that this factor was “neutral at best.” The district court noted that L.A.A. has a long history of police contacts. L.A.A. was convicted of gross misdemeanor receiving stolen property in 2005, but this conviction was expunged. L.A.A. was charged with misdemeanor theft in 2007, but the charge was

later dismissed after she completed a diversion program. In 2008, L.A.A. was convicted of public urination. L.A.A. was charged but not convicted of two misdemeanor theft offenses and disorderly conduct in 2010. She had offenses in 2014 that were continued for dismissal or dismissed after a stay of adjudication. And she had four petty misdemeanor traffic-offense convictions. L.A.A. contends that she is not a threat to vulnerable adults or children. She claims that at the time of the convictions she was spending time with the wrong people who were leading her down the wrong path and that she has since gone back to school and is looking for a stable job and housing.

The third factor requires the district court to analyze “the length of time since the crime occurred.” *Id.*, subd. 5(c)(3). L.A.A. contends that she has changed her lifestyle. But the district court concluded that this factor does not weigh in L.A.A.’s favor because the offense occurred less than six years from the date of its order and L.A.A. has had multiple police contacts in that period of time.

The fourth factor requires the district court to analyze “the steps taken by the petitioner toward rehabilitation following the crime.” *Id.*, subd. 5(c)(4). While L.A.A. claims that she has ended relationships with people who were not good influences in her life, that she has pursued education, that she has a strong support system, and that she has learned from her mistakes, the district court concluded that L.A.A.’s police contacts neutralized her rehabilitation efforts.

The fifth factor requires the district court to consider “aggravating or mitigating factors relating to the underlying crime, including the petitioner’s level of participation and context and circumstances of the underlying crime.” *Id.*, subd. 5(c)(5). The district court

concluded that there are no mitigating factors. It reiterated that the victim was a five-year-old child, that L.A.A. took the child without his mother's permission, that L.A.A. acted alone, and that she failed to accept responsibility for her actions. The district court characterized L.A.A.'s actions as "quite brazen and concerning." This finding is supported by the record.

The sixth factor requires the district court to analyze "the reasons for the expungement, including the petitioner's attempts to obtain employment, housing, or other necessities." *Id.*, subd. 5(c)(6). L.A.A. stated that she is seeking expungement for employment and housing purposes, that her applications for several jobs and housing options have been denied, and that she was unable to complete the education required to become a nurse because of her criminal record. The district court concluded that this factor was neutral at best. The district court found that L.A.A. has only indicated "an inability to obtain employment or education of her choice, but there is no evidence that this arrest, in and of itself is preventing her from employment."

The seventh factor requires the district court to consider "the petitioner's criminal record." *Id.*, subd. 5(c)(7). After reciting her criminal history, the district court concluded that this factor does not weigh in L.A.A.'s favor.

The eighth factor requires the district court to consider "the petitioner's record of employment and community involvement." *Id.*, subd. 5(c)(8). The district court concluded that this factor does not weigh in L.A.A.'s favor because she did not present any evidence of either employment or community involvement.

The ninth factor requires the district court to consider “the recommendations of interested law enforcement, prosecutorial, and corrections officials.” *Id.*, subd. 5(c)(9). The district court was not presented with any information on this factor and concluded that it was neutral.

The tenth factor requires the district court to consider “the recommendations of victims or whether victims of the underlying crime were minors.” *Id.*, subd. 5(c)(10). The district court concluded that this factor does not weigh in L.A.A.’s favor because the child she kidnapped was five years old.

The eleventh factor requires the district court to consider “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.” *Id.*, subd. 5(c)(11). The district court found this factor to be inapplicable.

The twelfth factor requires the district court to consider “other factors deemed relevant by the court.” *Id.*, subd. 5(c)(12). The district court found no other factors to be relevant.

In its analysis of the interests of the public and public safety, the district court also considered the statutory framework that permits DHS to perform background studies. DHS shall conduct background studies for individuals who seek employment from licensed programs where the individual will have direct contact with or access to vulnerable adults or children. Minn. Stat. § 245C.03, subd. 1(a)(3) (2016). A person is disqualified from working at those programs if “a preponderance of the evidence indicates the individual has

committed an act or acts that meet the definition of any of the crimes listed in section 245C.15,” which includes the crime of kidnapping. Minn. Stat. §§ 245C.14, subd. 1(a)(2), .15, subd. 1(a)(2) (2016). This framework balances the state’s need to protect vulnerable adults and children against an individual’s due-process rights.

After a thorough analysis of the 12 statutory factors, the district court denied the petition for expungement as it applied to DHS and MDH because these agencies “demonstrated, by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to [L.A.A.] of not sealing their records.” Because the evidence in the record supports the district court’s determination that none of the 12 factors weighs in L.A.A.’s favor and that there is a strong interest in protecting vulnerable adults and children, we conclude that the district court properly exercised its discretion.

Affirmed.