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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0097**

State of Minnesota,
Respondent,

vs.

C. M. B.,
Appellant.

**Filed December 17, 2018
Reversed and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-16-29656

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

Susan L. Segal, Minneapolis City Attorney, Sarah Kerrigan, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Peter W. Gorman, Assistant
Public Defender, Michelle Fournier (certified student attorney), St. Paul, Minnesota (for
appellant)

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

ROSS, Judge

The district court dismissed a criminal charge against C.M.B. that had alleged that he violated a harassment restraining order, and C.M.B. then petitioned the district court to order the expungement of records related to the charge. The district court denied the

petition, relying substantially on the City of Minneapolis's characterization of evidence that was not in the record. Because a lawyer's second-hand characterization of an event is not evidence, the district court erred by relying on the characterization to render its findings of fact. We reverse and remand for the district court to evaluate C.M.B.'s petition based on admissible evidence.

FACTS

The district court granted a petition for an ex parte harassment restraining order against C.M.B., and five days later, police arrested C.M.B. for violating the order. The state dismissed the charge due to lack of evidence, and C.M.B. petitioned the district court to order expungement under Minnesota Statutes, section 609A.03 (2018). The Minneapolis City Attorney sent a letter opposing the expungement, but included no evidence. Neither the city nor C.M.B. called any witnesses to testify at the expungement hearing.

The district court denied C.M.B.'s petition, finding that the state had met its burden of showing clear and convincing evidence that the public's interests outweighed any disadvantage to C.M.B. The district court relied substantially on statements in the city attorney's letter describing C.M.B.'s alleged violation of the restraining order. C.M.B. appeals the district court's denial of his expungement petition.

DECISION

C.M.B. argues that the evidence is insufficient to support the district court's decision denying his expungement petition. We review a district court's denial of an expungement petition for an abuse of discretion. *State v. M.D.T.*, 831 N.W.2d 276, 279 (Minn. 2013). This standard restrains us from reversing the district court's decision unless it was arbitrary,

capricious, or based on an erroneous interpretation of the law. *State v. R.H.B.*, 821 N.W.2d 817, 822 (Minn. 2012). We review the district court’s findings of fact for clear error. *State v. A.S.E.*, 835 N.W.2d 513, 517 (Minn. App. 2013).

C.M.B. argues that the district court abused its discretion by relying on factual statements unsupported by evidence. The statute allows for a petition for expungement when “all pending actions or proceedings were resolved in favor of the petitioner.” Minn. Stat. § 609A.02, subd. 3(a)(1) (2018). The district court must presume that an expungement order is appropriate when the underlying criminal action is resolved in the petitioner’s favor. Minn. Stat. § 609A.03, subd. 5(b) (2018). To rebut the presumption, the agency whose records would be affected by the expungement order must show, by clear and convincing evidence, that the public’s interests outweigh any disadvantages to the petitioner caused by a denial. *Id.* The agency can meet this standard only by presenting more than a minimal amount of evidence to support its position, and generalized statements that might fit any expungement case fall short of this standard. *See State v. R.H.B.*, 821 N.W.2d 817, 822–23 (Minn. 2012). On this framework, C.M.B. argues that the district court clearly erred by relying on the city attorney’s evidentially unsupported factual statements about the incident to reject his expungement request.

C.M.B.’s argument is well founded. Attorney statements not based on personal knowledge lack evidentiary value. *See State ex rel. Sime v. Pennebaker*, 9 N.W.2d 257, 258–59 (Minn. 1943). The only description of the alleged incident came from the parties’ attorneys. The incident may have occurred exactly as the city attorney described it, but still, the description is not evidence. The city asserts that an expungement proceeding is an

“informal” one, but it offers no support for its suggestion that, in informal judicial proceedings, an attorney’s unsupported second-hand account is evidence. The district court clearly erred by relying on facts not supported by evidence.

We remand for the district court to evaluate C.M.B.’s petition based on admissible evidence.

Reversed and remanded.