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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A18-0311

A18-0312

A18-0313

City of Golden Valley, State of Minnesota,
Appellant (A18-0311),

Metropolitan Airports Commission, State of Minnesota,
Appellants (A18-0312),

City of Richfield, State of Minnesota,
Appellant (A18-0313),

vs.

J. L. H.,
Respondent.

**Filed November 13, 2018
Reversed and remanded
Connolly, Judge**

Hennepin County District Court
File Nos. 27-CR-05-058615; 27-CR-04-027615; 27-CR-07-002345

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Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellants challenge the district court's decision to grant respondent's petition for expungement, arguing that the district court (1) erred in determining that her 2004 and 2005 convictions were eligible for expungement, (2) improperly shifted the burden of proof to appellants, (3) abused its discretion in weighing the expungement factors, and (4) made factual findings not supported by the evidence presented. Because the district court improperly shifted the burden of proof to appellants, we reverse and remand.

FACTS

On April 24, 2004, respondent J.L.H. was arrested for driving while impaired (DWI) in Richfield. Respondent pleaded guilty to and was convicted of a misdemeanor fourth-degree DWI. The district court sentenced respondent to probation for two years. On June 15, 2006, she was discharged from probation on the 2004 conviction.

On July 17, 2005, respondent was arrested for DWI in Golden Valley. She pleaded guilty to and was convicted of gross misdemeanor operating a motor vehicle with an alcohol concentration of 0.10 within two hours and sentenced to probation for three years. On April 23, 2010, she was discharged from probation on the 2005 conviction.

On January 11, 2007, respondent was arrested for DWI near the Minneapolis-St. Paul International Airport. Respondent pleaded guilty to and was convicted of gross misdemeanor operating a motor vehicle with an alcohol concentration of 0.08 within two hours of driving. The district court sentenced her to probation for four years. On or prior to February 22, 2012, she was discharged from probation on the 2007 conviction.

On August 17, 2017, respondent filed a petition for expungement of the 2004, 2005, and 2007 DWI convictions pursuant to Minn. Stat. § 609A.02, subd. 3(a)(3)-(4) (2016). Appellants, the Cities of Golden Valley and Richfield and the Metropolitan Airports Commission, opposed respondent's petition for expungement of the DWI convictions. The district court granted respondent's petition for expungement of all three convictions. This appeal follows. Appellants argue that the district court erred in interpreting the statute and in misallocating the burden of proof to them.

DECISION

I.

We review the district court's interpretation of the expungement statute de novo as a question of law. *State v. C.W.N.*, 906 N.W.2d 549, 551 (Minn. App. 2018). The relevant portion of the expungement statute states:

(a) A petition may be filed under section 609A.03 to seal all records . . . if:

....

(3) the petitioner was convicted of or received a stayed sentence for a petty misdemeanor or misdemeanor and *has not been convicted of a new crime for at least two years since discharge of the sentence for the crime*; [or]

(4) the petitioner was convicted of or received a stayed sentence for a gross misdemeanor and *has not been convicted*

of a new crime for at least four years since discharge of the sentence for the crime[.]

Minn. Stat. § 609A.02, subd. 3(a)(3)-(4) (emphasis added).

While appellants are correct that there are at least two plausible interpretations of the requisite waiting period under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4), we recently concluded that the two- and four-year conviction-free periods must occur between the date of discharge of the sentence for the crime and the date of filing an expungement petition. *C.W.N.*, 906 N.W.2d at 553.

In reviewing respondent's 2004 and 2005 convictions using *C.W.N.*'s interpretation, we conclude that they are eligible for expungement. Minn. Stat. § 609A.02, subd. 3(a)(3)-(4); 906 N.W.2d at 553. Respondent was discharged from the misdemeanor 2004 conviction on June 15, 2006. Respondent was discharged from the gross misdemeanor 2005 conviction on April 23, 2010. Respondent filed a petition for expungement of the convictions on August 17, 2017. As more than two and four years have passed between the dates of discharges of the sentences and the date of filing the expungement petition, respondent's 2004 and 2005 convictions are eligible for expungement under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4). See *C.W.N.*, 906 N.W.2d at 553.

II.

We review whether the district court erroneously shifted the statutory burden of proof to appellants de novo. *Id.* at 551.

There are the two possible standards for applying the burden of proof under the expungement chapter. See Minn. Stat. § 609A.03, subd. 5(a) (2016) (providing the general standard and placing the burden on petitioner).

[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.

Id. This standard applies if the petitioner seeks to seal a criminal record pursuant to Minn. Stat. § 609A.02, subd. 3(a)(3)-(5) (2016), when the proceedings were not resolved in favor of the petitioner.

In contrast, section 609A.03, subdivision 5(b), shifts the burden to the “agency or jurisdiction whose records would be affected” if the petitioner seeks to seal a criminal record pursuant to Minn. Stat. § 609A.02, subd. 3(a)(1)-(2) (2016). Minn. Stat. § 609A.03, subd. 5(b) (2016); *State v. R.H.B.*, 821 N.W.2d 817, 821 (Minn. 2012) (noting that the burden of persuasion shifts to the opposing party once a petitioner meets the legal threshold in Minn. Stat. § 609A.02, subd. 3). A petitioner may seek to seal a criminal record pursuant to Minn. Stat. § 609A.02, subd. 3(a)(1)-(2) if “all pending actions or proceedings were resolved in favor of the petitioner” or “petitioner has successfully completed the terms of a diversion program or stay of adjudication and has not been charged with a new crime for at least one year since completion” Minn. Stat. § 609A.02, subd. 3(a)(1)-(2).

Here, the general standard applies because respondent sought relief under Minn. Stat. § 609A.02, subd. 3(a)(3)-(4). The proceedings were not resolved in her favor. The

parties agree that respondent bore the burden of proof in support of her expungement petition. The parties also agree that the district court's order granting respondent's petition mistakenly indicated that appellants, rather than respondent, bore the burden of proof. The district court misstated how to apply the burden of proof: "The law enforcement agencies or jurisdictions whose records would be affected have not established by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the [respondent] of not sealing the record per Minn. Stat. § 609A.03, subd. 5(b)." Because it was respondent, rather than the "agencies or jurisdictions," who needed to establish by clear and convincing evidence that sealing the record would yield a benefit to her commensurate with the disadvantages to the public and public safety, this is a clearly erroneous application of the statutory burden of proof. Minn. Stat. § 609A.03, subd. 5(a).

Respondent argues that, even if the district court's order appears to incorrectly place the burden of proof on appellants, "the entirety of the record" establishes that the district court applied the correct burden of proof in its determination. Respondent later highlights the number of times each party correctly stated the proper burden during briefs and oral arguments and "that the district court judge was actively engaged." This argument fails. The best place for the appellate court to review the factual findings, analysis, and legal conclusions of the district court is the order of the district court that contains its factual findings, analysis, and legal conclusions.

Next, respondent argues that district court cited and detailed the proper burden of proof when it stated:

In cases which meet the criteria set forth in Minn. Stat. § 609A.02, subd. 3(a)(3)-(5), expungement 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[.]

While this restatement of Minn. Stat. § 609A.03, subd. 5(a), shows that the district court was aware of the correct standard of proof, it does not address how to apply that burden of proof, and the district court misapplied that burden elsewhere in the order.

Finally, respondent argues that the district court weighed the relevant factors in a manner consistent with the correct burden of proof, despite its misstatement. But upon review, the district court did not use language clearly showing it placed the burden of persuasion on respondent in weighing the relevant factors. The district court found that “the agencies have presented no concerns that are specific to [respondent’s] case that would give the [c]ourt pause in its determination of whether hardship has outweighed the interests of the public.” This concerns us because it appears to rely on the reasoning of *State v. R.H.B.*, 821 N.W.2d at 823.

R.H.B. concluded that the state failed to overcome the presumption of expungement under Minn. Stat. § 609A.03, subd. 5(b), because it did not present evidence showing a “unique or particularized harm to the public.” 821 N.W.2d at 822-23 (noting that the statements provided by the state were “unremarkable and generalized, and could be submitted in nearly every expungement case”). This is distinguishable from respondent’s case, which places the burden on her under Minn. Stat. § 609A.03, subd. 5(a). The district

court's language about the agencies' failure to present specific concerns further supports the conclusion that it erroneously shifted the burden of proof to appellants.

Accordingly, we reverse and remand for further findings and legal analysis consistent with this opinion. Because we reverse and remand the order granting appellant's petition for erroneously shifting the burden of proof, we do not address appellant's alternative argument that the district court erred in its review of the evidence and application of the requisite factors under Minn. Stat. § 609A.03, subd. 5(c) (2016).

Reversed and remanded.