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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0512**

At Home Apartments, LLC,  
Respondent,

vs.

D. B., et al,  
Appellants.

**Filed January 14, 2019  
Reversed and remanded  
Smith, Tracy M., Judge  
Concurring specially, Connolly, Judge**

Washington County District Court  
File No. 82-CV-14-4702

Amanda Schmitz, St. Paul, Minnesota (for respondent)

Edwin H. Caldie, Calvin P. Hoffman, Kevin P. Kitchen, Stinson Leonard Street, LLP,  
Minneapolis, Minnesota (for appellants)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and  
Stauber, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## **UNPUBLISHED OPINION**

**SMITH, TRACY M., Judge**

Appellants D.B. and S.B. challenge the district court's denial of their motion to expunge the court records of an eviction action brought against them, arguing that the district court erred by failing to exercise its inherent authority to expunge judicial records of evictions. We reverse and remand.

### **FACTS**

Appellants began renting a residence from respondent At Home Apartments LLC (At Home) in 2010. When appellants failed to make rent payments for August and September of 2014, At Home filed an eviction action. Appellants settled with At Home, agreeing to vacate the home. Since then, appellants have struggled to find stable housing; they contend that the reason for their difficulties is the continuing public availability of the court records of the 2014 eviction action.

In 2017, appellants moved the district court for expungement of judicially held records relating to the eviction action. They asserted two theories justifying expungement. First, they argued that the records should be expunged under Minn. Stat. § 484.014, subd. 2 (2018). Second, they argued that the court should exercise its inherent authority to expunge the records.

After a hearing, the court denied the motion. In its order, the court correctly observed that Minn. Stat. § 484.014, subd. 2, allows expungement of the court records of an eviction action only if the plaintiff's case was "sufficiently without basis in fact or law." But the eviction action did have a basis in fact and law: appellants had not paid rent.

Because the settlement did not negate that basis, the district court held that “failure to meet the first requirement of the statute must result in the denial of the motion to expunge.” The district court did not address the argument about inherent authority.

Appellants requested permission to file a motion for reconsideration, asking to be allowed to present additional argument on the district court’s inherent authority to expunge the records. *See* Minn. R. Gen. Prac. 115.11 (prohibiting motions for reconsideration “except by express permission of the court”). The district court summarily denied the request.

This appeal followed.

## D E C I S I O N

Appellants do not challenge the district court’s conclusion that statutory expungement is unavailable. Instead, they argue that the district court erred by failing to address whether their eviction file should be expunged as a matter of the court’s inherent authority. Appellants ask that this court hold that they are entitled to expungement as a matter of law.

The parties agree that district courts have inherent authority to expunge eviction files. But this court is not controlled by the agreement of parties regarding questions of law. *Rayford v. Metro. Transit Comm’n*, 379 N.W.2d 161, 164-65 (Minn. App. 1985), *review denied* (Minn. Feb. 14, 1986). And no Minnesota published decision has held that courts have inherent authority to expunge judicially held eviction records.<sup>1</sup>

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<sup>1</sup> In one recent case, this court reversed an eviction expungement granted under inherent authority. *Sela Invs. Ltd. v. H.E.*, 909 N.W.2d 344 (Minn. App. 2018). However, the

Minnesota courts have inherent authority to expunge criminal records. *State v. Ambaye*, 616 N.W.2d 256, 258 (Minn. 2000). This authority derives from the Minnesota Constitution. *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981). It permits the courts to, among other things, “control court records . . . in order to reduce or eliminate unfairness to individuals,” even if that unfairness does not rise to the level of a constitutional violation. *Id.* To serve that end, expungement is permitted in appropriate cases if it “will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order.” *Id.*

The supreme court has suggested that expungement of judicially held criminal records to eliminate unfairness is within a court’s inherent authority when the petitioner was not convicted or the conviction no longer stands. *Id.* at 361; *see also State v. S.L.H.*, 755 N.W.2d 271, 277 (Minn. 2008) (distinguishing *C.A.*, in the context of records maintained within the executive branch, because *C.A.*’s conviction had been overturned). Specifically, the court in *C.A.* stated that a district court file could be expunged “upon the right kind of showing.” *C.A.*, 304 N.W.2d at 361. The supreme court did not spell out what that showing would be, nor did it explain why *C.A.* had failed to make the necessary showing, but cited to a pair of federal cases indicating that court records could be sealed where a person was not prosecuted or where a person was arrested without probable cause.

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reversal was based on the district court’s error in awarding default judgment after the landlord failed to obtain a transcript as required by Minn. R. Gen. Prac. 611. *Id.* at 349-50. *Sela* did not address whether the district court has inherent authority to expunge eviction records.

*Id.* (citing *Sullivan v. Murphy*, 478 F.2d 938 (D.C. Cir. 1973); *District of Columbia v. Hudson*, 404 A.2d 175 (D.C. 1979)).<sup>2</sup> The supreme court has not addressed the expungement of judicially held criminal records when the conviction stands. Published opinions of this court, however, indicate that the inherent power to expunge judicially held records does not depend on whether the petitioner’s conviction remains valid. *See, e.g., State v. N.G.K.*, 770 N.W.2d 177, 181 (Minn. App. 2009) (affirming expungement of judicially held records of a conviction that had not been overturned).

In the context of executive-branch criminal records, the supreme court has rejected the exercise of inherent authority to expunge criminal records when the person’s conviction stands. *State v. M.D.T.*, 831 N.W.2d 276, 281 (Minn. 2013) (“The unfairness issue we discussed in *C.A.* is simply not present in this case because M.D.T.’s conviction has not been set aside.”); *S.L.H.*, 755 N.W.2d at 277 (“Because S.L.H.’s conviction has not been set aside, the expungement of her criminal records held outside the judicial branch is not necessary to grant her full relief.”).

This case involves judicially held eviction records. No published decision holds that judicially held eviction records—whether the eviction stands or not—may be expunged under the courts’ inherent authority. Appellants argued to the district court, first, that expungement was justified under Minn. Stat. § 484.014, subd. 2, and, second, that expungement was justified under the district court’s inherent authority. The district court

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<sup>2</sup> The supreme court has also approved of criminal-record expungements when the person was acquitted of the offense. *See State v. R.H.B.*, 821 N.W.2d 817, 819, 824 (Minn. 2012). But such expungements are authorized by statute, so they provide little guidance as to the extent of courts’ inherent authority. *See Minn. Stat. § 609A.02, subd. 3(a)(1)* (2018).

held that “failure to meet the first requirement of the statute must result in the denial of the motion to expunge.” We cannot tell if the district court concluded that it did not have inherent authority to expunge appellants’ eviction records or if it found that it had the authority but the facts of this case did not satisfy the standard for expungement.

A reviewing court “must generally consider only those issues that the record shows were presented *and considered* by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (emphasis added) (quotation omitted). Additionally, because the parties agree that the district court had inherent authority to expunge appellants’ eviction records, the issue was not briefed to the district court or to this court. In these circumstances, we will not decide in the first instance whether inherent authority authorizes expungement in this case. In addition, if the district court denied expungement because it decided that, while expungement was within its inherent authority, the standard for expungement was not satisfied here, we cannot review that decision without a record of the district court’s findings of fact. *See In re Estate of Eckley*, 780 N.W.2d 407, 415 (Minn. App. 2010) (observing that findings of fact are necessary to an appellate court’s review).

On remand, the district court should determine whether it has inherent authority to expunge the records of the eviction action and, if it does, whether the facts support expungement. The district court should provide a written record of its findings and conclusions.

**Reversed and remanded.**

**CONNOLLY**, Judge (concurring specially)

I concur with the majority’s opinion that the district court erred by failing to squarely address whether expungement of D.B. & S.B.’s eviction records was warranted under its inherent authority. I write separately because I would reach the inherent authority issue and hold that courts have the inherent authority to expunge judicial records of eviction actions—despite the district court’s failure to properly consider it.

“A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). But a well-established exception to *Thiele* allows such decisions if they are “plainly decisive of the entire controversy,” and there is “no possible advantage or disadvantage to either party in not having had a prior ruling by the [district] court on the question,” particularly where the facts are not in dispute. *Holen v. Minneapolis-St. Paul Metropolitan Airports Comm’n*, 84 N.W.2d 282, 286 (Minn. 1957). Here, the facts are not in dispute, the parties agree that the district court had inherent authority to grant expungement, and such a decision is decisive of the entire controversy because if the district court lacks such authority, there is nothing left to be decided on remand. Accordingly, the well-established exception applies here.

Two essential judicial functions underlie a court’s inherent authority to expunge judicial records of civil eviction actions. First, is a court’s power to control its own records, which extends equally to civil as well as criminal records. See *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 202 (Minn. 1986) (“Every court has supervisory power over its own records and files, and access has been denied where court files might

have become a vehicle for improper purposes.” (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 598, 98 S. Ct. 1306, 1312 (1978))). Though published cases on inherent expungement authority appear only in the context of criminal records, the language used in many of those cases is not specific to criminal records. See *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981) (“Part of [a court’s essential] function is to control court records . . . .”); *State v. T.M.B.*, 590 N.W.2d 809, 811 (Minn. App. 1999) (“[T]he courts may exercise their inherent authority to issue expungement orders affecting court records.”). Thus, judicial control over judicial records is not limited to records of criminal cases, and inherent expungement authority may extend to records of eviction actions.

Second, is a court’s inherent authority to expunge records, which derives from the essential judicial function of “reduc[ing] or eliminat[ing] unfairness to individuals.” *C.A.*, 304 N.W.2d at 358. This function is equally applicable in the context of a civil action when the continued existence of a record could create a hardship that is unfair given the facts that led to the creation of that record. Caselaw construes this function narrowly in the context of criminal-record expungements, in part because of concerns over intrusion into the proper functions of other branches. See *State v. M.D.T.*, 831 N.W.2d 276, 280-82 (Minn. 2013) (holding that inherent judicial authority over judicial records does not include the authority to order the expungement of records held by the executive branch). But those concerns are not present when the records at issue are judicially held records of an expungement action.

Our caselaw has established that the district court may expunge criminal records when “expungement will yield a benefit to the petitioner commensurate with the disadvantages to the public from elimination of the record and the burden on the court in

issuing, enforcing, and monitoring an expungement order.” C.A., 304 N.W.2d at 358. C.A.’s language is equally applicable to eviction record expungements as it is to criminal record expungements. In considering whether expungement of eviction records is warranted, the district court should weigh the potential “benefit to the petitioner” against the potential “disadvantages to the public” from expungement and any “burden on the court” from granting the petition. *Id.* Finally, I believe that in evaluating whether an expungement is justified under its inherent authority, the district court should consider all relevant facts including but not limited to: (1) whether any back-rent is owed, how much is owed, and if there is a payment plan in place—although I do not believe that an expungement should be automatically denied solely because any rent owing has not been paid; (2) a petitioner’s eviction history; (3) the cause for the nonpayment of rent—whether it was due to economic hardship or a mere willful refusal; (4) the length of time since the petitioner’s last eviction; (5) whether the eviction was for a material breach of the lease other than nonpayment of rent (e.g., conducting illegal activity on the leased premises); (6) the number of evictions with the same landlord as opposed to different landlords; and (7) the term of the lease. *See State v. H.A.*, 716 N.W.2d 360, 364 (Minn. App. 2006) (describing analogous factors for criminal-record expungements).