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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1730-16T3

IN THE MATTER OF THE APPLICATION
FOR THE EXPUNGEMENT OF THE
CRIMINAL RECORD BELONGING TO J.W.

Submitted January 25, 2018 – Decided February 26, 2018

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County.

Dennis Calo, Acting Bergen County Prosecutor,
attorney for appellant State of New Jersey
(Ian C. Kennedy, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the briefs).

Galantucci, Patuto, De Vencentes, Potter &
Doyle, LLC, attorneys for respondent J.W.
(David J. Altieri, of counsel and on the
brief).

PER CURIAM

The State of New Jersey appeals from the November 17, 2016
Law Division order granting respondent J.W.'s petition for
expungement of all records relating to her arrest and conviction
for third-degree endangering the welfare of a child for causing

the child harm that would make the child an abused or neglected child, N.J.S.A. 2C:24-4(a). We conclude that the 2016 amendment to the expungement statute, N.J.S.A. 2C:52-2(b), prohibits expungement of J.W.'s conviction. Accordingly, we reverse.

J.W. was a nanny for two children, ages one and three. On August 10, 2007, she dosed the children with Benadryl, an antihistamine drug, by adding it to their apple juice. The incident came to light when a friend of J.W. divulged the incident to his therapist. J.W. was charged under N.J.S.A. 2C:24-4(a) with two counts of second-degree endangering the welfare of a child by abuse or neglect. On February 27, 2008, J.W. pled guilty to one count of third-degree endangering the welfare of a child by abuse or neglect. The trial court imposed a three-year term of probation subject to 180 days in the county jail.

At the time of J.W.'s conviction, N.J.S.A. 2C:24-4(a) provided as follows:

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of a child, or who causes the child harm that would make the child an abused or neglected child as defined in [N.J.S.A. 9:6-1, N.J.S.A. 9:6-3 and N.J.S.A. 9:6-8.21] is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of [sixteen] is guilty of a crime of the third degree.

[(Emphasis added).]

The expungement statute in effect at the time of J.W.'s conviction provided as follows:

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement:
[N.J.S.A.] 2C:11-1 et seq. (Criminal Homicide), except death by auto as specified in [N.J.S.A.] 2C:11-5; [N.J.S.A.] 2C:13-1 (Kidnapping); section 1 of [N.J.S.A. 2C:13-6] (Luring or Enticing); section 1 of [N.J.S.A.] 2C:13-8 (Human Trafficking); [N.J.S.A.] 2C:14-2 (Sexual Assault or Aggravated Sexual Assault); [N.J.S.A.] 2C:14-3 a. (Aggravated Criminal Sexual Contact); if the victim is a minor, [N.J.S.A.] 2C:14-3b (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, [N.J.S.A.] 2C:13-2 (Criminal Restraint) or [N.J.S.A.] 2C:13-3 (False Imprisonment); [N.J.S.A.] 2C:15-1 (Robbery); [N.J.S.A. 2C:17-1 (Arson and Related Offenses); [N.J.S.A.] 2C:24-4 a. (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child); [N.J.S.A.] 2C:24-4 b(4) (Endangering the welfare of a child); [N.J.S.A.] 2C:24-4 b.(3) (Causing or permitting a child to engage in a prohibited sexual act); [N.J.S.A.] 2C:24-4 b.(5)(a) (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); [N.J.S.A.] 2C:24-4 b.(5)(b) (Possessing items depicting the sexual exploitation or abuse of a child); [N.J.S.A.] 2C:28-1 (Perjury); [N.J.S.A.] 2C:28-2 (False Swearing); [N.J.S.A.] 2C:34-1 b.(4) (Knowingly promoting the prostitution of the actor's child); section 2 of [N.J.S.A. 2C:38-2] (Terrorism); subsection a. of section 3 of [N.J.S.A. 2C:38-3] (Producing or Possessing Chemical Weapons, Biological

Agents or Nuclear or Radiological Devices);
and conspiracies or attempts to commit such
crimes.

[N.J.S.A. 2C:52-29(b) (emphasis added).]

In 2013, the Legislature amended N.J.S.A. 2C:24-4(a) to set
forth the crime of endangering the welfare of a child in two
separate paragraphs:

(1) Any person having a legal duty for the
care of a child or who has assumed
responsibility for the care of a child who
engages in sexual conduct which would impair
or debauch the morals of the child is guilty
of a crime of the second degree. Any other
person who engages in conduct or who causes
harm as described in this paragraph to a child
is guilty of a crime of the third degree.

(2) Any person having a legal duty for the
care of a child or who has assumed
responsibility for the care of a child who
causes the child harm that would make the
child an abused or neglected child as defined
in [N.J.S.A. 9:6-1, N.J.S.A. 9:6-3 and
N.J.S.A. 9:6-8.21] is guilty of a crime of the
second degree. Any other person who engages
in conduct or who causes harm as described in
this paragraph to a child is guilty of a crime
of the third degree.

[(Emphasis added.)]

In 2016, the Legislature amended N.J.S.A. 2C:52-2(b) to
provide as follow:

Records of conviction for the following crimes
specified in the New Jersey Code of Criminal
Justice shall not be subject to expungement:
[N.J.S.A.] 2C:11-1 et seq. (Criminal
Homicide), except death by auto as specified

in [N.J.S.A.] 2C:11-5 and strict liability vehicular homicide as specified in section 1 of [N.J.S.A. 2C:11-5.3]; [N.J.S.A.] 2C:13-1 (Kidnapping); section 1 of [N.J.S.A. 2C:13-6] (Luring or Enticing); section 1 of [N.J.S.A. 2C:13-8] (Human Trafficking); [N.J.S.A.] 2C:14-2 (Sexual Assault or Aggravated Sexual Assault); subsection a. of [N.J.S.A.] 2C:14-3 (Aggravated Criminal Sexual Contact); if the victim is a minor, subsection b. of [N.J.S.A.] 2C:14-3 (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, [N.J.S.A.] 2C:13-2 (Criminal Restraint) or [N.J.S.A.] 2C:13-3 (False Imprisonment); [N.J.S.A.] 2C:15-1 (Robbery); [N.J.S.A.] 2C:17-1 (Arson and Related Offenses); subsection a. of [N.J.S.A.] 2C:24-4 (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child, or causing the child other harm); paragraph (4) of subsection b. of [N.J.S.A.] 2C:24-4 (Photographing or filming a child in a prohibited sexual act); paragraph (3) of subsection b. of [N.J.S.A.] 2C:24-4 (Causing or permitting a child to engage in a prohibited sexual act); subparagraph (a) of paragraph (5) of subsection b. of [N.J.S.A.] 2C:24-4 (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); subparagraph (b) of paragraph (5) of subsection b. of [N.J.S.A.] 2C:24-4 (Possessing or viewing items depicting the sexual exploitation or abuse of a child); [N.J.S.A.] 2C:28-1 (Perjury); [N.J.S.A.] 2C:28-2 (False Swearing); paragraph (4) of subsection b. of [N.J.S.A.] 2C:34-1 (Knowingly promoting the prostitution of the actor's child); section 2 of [N.J.S.A. 2C:38-2] (Terrorism); subsection a. of section 3 of [N.J.S.A. 2C:38-3] (Producing or Possessing Chemical Weapons, Biological Agents or Nuclear

or Radiological Devices); and conspiracies or attempts to commit such crimes.

[(Emphasis added).]

In August 2016, J.W. filed a petition for expungement pursuant to N.J.S.A. 2C:52-2(a)(2). The trial court granted the petition, finding the 2016 amendment to N.J.S.A. 2C:52-2(b) did not prohibit expungement for convictions for the nonsexual offense of endangering the welfare of a child by abuse or neglect. Distinguishing In re Expungement of W.S., 367 N.J. Super. 307 (App. Div. 2004), the court noted that the crime of endangering the welfare of a child by abuse or neglect was not a lesser included offense of endangering the welfare of a child by sexual conduct, and the two crimes differed in both the nature of the offense, collateral consequences, and penalties. The court found that the pre-amended expungement statute only prohibited a conviction for endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the moral of a child.

The court noted that the Legislature amended N.J.S.A. 2C:24-4(a) into two subsections and inserted the term "causes harm" in both, meaning the "harm" in subsection (1) refers to harm caused by sexual conduct, whereas the "harm" in subsection (2) refers to harm caused by nonsexual conduct. The court then interpreted the parenthetical language in the 2016 amendment to N.J.S.A. 2C:52-

2(b), "or causing the child other harm," as referring only to other harm resulting from sexual conduct under N.J.S.A. 2C:24-4(a)(1). In reaching this conclusion, the court relied on the Senate Judiciary Committee's statement commenting that the function of the 2016 amendment was to "update, using the accepted current citation format, the statutory citations for the list of criminal convictions that are not subject to expungement; such updating does not add any additional crimes to this list." Statement of the Senate Judiciary Committee to Assembly Bills 206, 471, 1663, 2879, 3060 and 3108 (May 7, 2015). The court concluded that if a conviction for a nonsexual offense under N.J.S.A. 2C:24-4(a) was eligible for expungement prior to the 2016 amendment and the Legislature's intent was not to add any additional crimes to the list of crimes barred from expungement, a conviction for a crime under N.J.S.A. 2C:24-4(a) for nonsexual conduct which makes the child abused or neglected is still eligible for expungement. We disagree.

Our review of a trial court's statutory interpretation is de novo. Beim v. Hulfish, 216 N.J. 484, 497 (2014). "In construing a statute, our 'overriding goal is to determine as best we can the intent of the Legislature, and to give effect to that intent.'" Bermudez v. Kessler Inst. for Rehab., 439 N.J. Super. 45, 50 (App.

Div. 2015) (quoting State v. Hudson, 209 N.J. 513, 529 (2012)).

As our Supreme has held:

When interpreting a statute, our main objective is to further the Legislature's intent. To discern the Legislature's intent, courts first turn to the plain language of the statute in question. In reading the language used by the Legislature, the court will give words their ordinary meaning absent any direction from the Legislature to the contrary. 'If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over.'

Where the plain meaning does not point the court to a 'clear and unambiguous result,' it then considers extrinsic evidence from which it hopes to glean the Legislature's intent. Included within the extrinsic evidence rubric are legislative history and statutory context, which may shed light on the drafters' motives. Likewise, interpretations of the statute and cognate enactments by agencies empowered to enforce them are given substantial deference in the context of statutory interpretation.

[TAC Assocs. v. N.J. Dep't of Env'tl. Prot., 202 N.J. 533, 540-41 (2010) (alteration in original) (citations omitted).]

"The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005). Thus, "[t]he plain language of the statute is our starting point." Patel v. N.J. Motor Vehicle Comm'n, 200 N.J.

413, 418 (2009). In considering a statute's language, we are guided by the legislative directive that

words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language. Technical words and phrases, and words and phrases having a special or accepted meaning in the law, shall be construed in accordance with such technical or special and accepted meaning.

[N.J.S.A. 1:1-1.]

"Courts may not rewrite a plainly written law or presume that the Legislature intended something other than what it expressed in plain words." In re Plan for Abolition of the Council on Affordable Hous., 214 N.J. 444, 468 (2013). "If the language of a statute is clear, a court's task is complete." Ibid.

The Legislature's stated purpose in enacting N.J.S.A. 2C:52-2 was to

provid[e] relief to the reformed offender who has led a life of rectitude and disassociated himself with unlawful activity, but not to create a system whereby persistent violators of the law or those who associate themselves with continuing criminal activity have a regular means of expunging their police and criminal records.

[N.J.S.A. 2C:52-32.]

N.J.S.A. 2C:52-2 "serves to 'eliminate "the collateral consequences imposed upon otherwise law-abiding citizens who have had a minor brush with the criminal justice system.'" The Legislature intended the statute to 'provid[e] relief to the one-time offender who has led a life of rectitude and disassociated himself with unlawful activity[.]'" In re Expungement of J.S., 223 N.J. 54, 66 (2015) (quoting In re Kollman, 210 N.J. 557, 568 (2012)). Nevertheless, the statute provides a list of crimes barred from expungement. N.J.S.A. 2C:52-2(b).

Here, the plain language of N.J.S.A. 2C:52-2(b) unambiguously prohibits the expungement of J.W.'s conviction. The 2016 amendment explicitly prohibits the expungement of convictions pursuant to "subsection a. of N.J.S.A. 2C:24-4[.]" At the time of J.W.'s conviction, N.J.S.A. 2C:24-2(a) specified that a person was guilty of endangering the welfare of a child if he or she "engage[d] in sexual conduct which would impair or debauch the morals of a child, or . . . [caused] the child harm that would make the child an abused or neglected child[.]" The parenthetical in the 2016 amendment to N.J.S.A. 2C:52-2(b) refers to endangering the welfare of a child by either engaging in sexual conduct that would impair or debauch the morals of a child or causing the child "other harm." Given that the only "other harm" referred to in the pre-amended N.J.S.A. 2C:24-4(a) related to conduct that made a child abused

or neglected, the "other harm" specified in the parenthetical of the 2016 amendment to N.J.S.A. 2C:52-2(b) must refer to "harm that would make the child an abused or neglected child" under N.J.S.A. 2C:24-4(a).

The "other harm" in the parenthetical of the 2016 amendment cannot refer back to harm caused by sexual conduct or to the impairment or debauchment of a child's morals because the rules of statutory interpretation require that statutes be construed in a manner that gives effect to every word so no part is rendered superfluous. Otherwise, if we adopted J.W.'s reading of N.J.S.A. 2C:52-2(b) and found that "other harm" refers to only harm from sexual conduct, the statute would become redundant.

"Punctuation is part of an act and may be considered in its interpretation." In re Estate of Fisher, 443 N.J. Super. 180, 192 (App. Div. 2015). "The word 'or' in a statute is to be considered a disjunctive particle indicating an alternative." Ibid. (citation omitted). Thus, where "items in a list are joined by a comma . . ., with an 'or' preceding the last item, the items are disjunctive," or "distinct and separate from each other." State v. Frank, 445 N.J. Super. 98, 106 (App. Div. 2016). Here, the phrases "who engages in sexual conduct which would impair or debauch the morals of a child" and "who causes the child harm that would make the child an abused or neglected child" are separated

by a comma and the word "or" indicating they are disjunctive and refer to two distinct harms. Paragraph (1) of N.J.S.A. 2C:24-4(a) describes one harm -- the impairment and debauchment of a child's morals, and paragraph (2) describes the other harm -- abuse and neglect of a child. Therefore, because J.W. was convicted under the pre-amended N.J.S.A. 2C:24-4(a) of endangering the welfare of a child by abuse or neglect and N.J.S.A. 2C:52-2(b) specifies that convictions under N.J.S.A. 2C:24-4(a) are barred from expungement, the court erred in granting J.W.'s petition.

Even if we found that N.J.S.A. 2C:52-2(b) is ambiguous, because it does not specify which paragraph of N.J.S.A. 2C:24-4a applies to the bar against expungement, the legislative history and general statutory scheme of N.J.S.A. 2C:52-2(b) favor a finding that the statute bars the expungement of convictions for endangering the welfare of a child by abuse or neglect. N.J.S.A. 2C:52-2(b) provides that any convictions under N.J.S.A. 2C:24-4(a) are barred from expungement because the Legislature used no limiting language when it cited to N.J.S.A. 2C:24-4(a). "[W]hen the Legislature includes limiting language in one part of a statute, but leaves it out of another section in which the limit could have been included, we infer that the omission was intentional." Ryan v. Renny, 203 N.J. 37, 58 (2010). N.J.S.A. 2C:52-2(b) specifies paragraphs of subsections of certain crimes

barred from expungement, but does not do so when citing to N.J.S.A. 2C:24-4(a). For example, in listing crimes barred from expungement under subsection b. of N.J.S.A. 2C:24-4, N.J.S.A. 2C:52-2(b) specifies as follows:

paragraph (4) of subsection b. of [N.J.S.A.] 2C:24-4 (Photographing or filming a child in a prohibited sexual act); paragraph (3) of subsection b. of [N.J.S.A.] 2C:24-4 (Causing or permitting a child to engage in a prohibited sexual act); subparagraph (a) of paragraph (5) of subsection b. of [N.J.S.A.] 2C:24-4 (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); subparagraph (b) of paragraph (5) of subsection b. of [N.J.S.A.] 2C:24-4 (Possessing or viewing items depicting the sexual exploitation or abuse of a child)[.]

The Legislature made very specific and narrow references when it chose to limit the scope of the bar to expungement for those crimes. The Legislature could have specified which paragraphs of subsection a. of N.J.S.A. 2C:24-4 applied to the bar, limiting its application to convictions arising from sexual conduct or from nonsexual conduct resulting in abuse or neglect. However, the Legislature chose not to do so, indicating it did not intend to limit the prohibition against expungement of a conviction under N.J.S.A. 2C:24-4(a) to only one type of harm or conduct that endangers the welfare of a child.

Given the express references in N.J.S.A. 2C:52-2(b) to paragraphs of subsections of other crimes listed in the statute, we cannot insert limiting language that the Legislature could have included with respect to the bar on expunging convictions under N.J.S.A. 2C:24-4(a), but did not do so. See Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 596 (2013) (noting that "[i]n light of its express reference to the right to pursue civil remedies elsewhere in . . . [N.J.S.A. 48:2-80], we cannot insert language that the Legislature could have included in subsection (d) -- but did not.").

In addition, the Legislature's focus was not only on offenses arising from sexual conduct, as N.J.S.A. 2C:52-2(b) bars the expungement of convictions arising from nonsexual conduct, such as kidnapping, N.J.S.A. 2C:13-1, false swearing, N.J.S.A. 2C:28-2, and perjury, N.J.S.A. 2C:28-1, and nonsexual conduct against minors, such as criminal restraint, N.J.S.A. 2C:13-2, and false imprisonment, N.J.S.A. 2C:13-3. Thus, in light of the absence of limiting language and the inclusion of nonsexual offenses barred from expungement, the statutory scheme of N.J.S.A. 2C:52-2(b) indicates the prohibition against expungement is not limited to a specific type of conduct or harm underlying a conviction pursuant to N.J.S.A. 2C:24-4(a).

Furthermore, the parenthetical language in the pre-amended or amended N.J.S.A. 2C:52-2(b) does not limit the scope of the prohibition against expungement. In In re Expungement of W.S., 367 N.J. Super. at 309, we found that N.J.S.A. 2C:52-2b barred the expungement of any convictions under N.J.S.A. 2C:14-2 despite the fact that the parenthetical following the citation to N.J.S.A. 2C:14-2 only referred to "aggravated sexual assault," but not to "sexual assault" generally, because the parenthetical was descriptive only and incomplete. Ibid. We noted that "when the Legislature intended to exclude a lesser degree of one of these enumerated offenses from the prohibition against expungement, it directly expressed that intent by specifically 'except[ing] death by auto as specified in section 2C:11-5' from the prohibition against expungement." Id. at 312. Likewise, here, when the Legislature intended to include a subparagraph or subsection of one of the enumerated offenses barred from expungement, it did so by referencing specific subsections or paragraphs.

Moreover, "the Legislature that enacted N.J.S.A. 2C:52-2 is presumed to have been aware of the judicial construction of the expungement statute's earlier version[.]" In re Expungement Petition of J.S., 223 N.J. 54, 75 (2015). Given that in In re Expungement of W.S. we interpreted the parentheticals in N.J.S.A. 2C:52-2(b) as descriptive only and deferred to the citations when

they were more expansive, we conclude the Legislature acted deliberately when it later amended the reference to N.J.S.A. 2C:24-4(a) in N.J.S.A. 2C:52-2(b) by adding the language "or causing the child other harm," but not including a particular paragraph when citing to N.J.S.A. 2C:24-4(a) to limit the scope of the prohibition against expungement. The 2016 amendment to N.J.S.A. 2C:52-2(b) made the parenthetical complete and accurate to reflect the conduct barred from expungement described in N.J.S.A. 2C:24-4(a), but did not alter the citation, which previously included convictions arising from endangering the welfare of a child by sexual and nonsexual conduct.

Lastly, the Senate Judiciary Committee's statement commented that the amendments to N.J.S.A. 2C:52-2(b) "update, using the accepted current citation format, the statutory citations for the list of criminal convictions that are not subject to expungement[,]" but that "such updating does not add any additional crimes to this list." Prior the 2016 amendment, N.J.S.A. 2C:52-2(b) specified that convictions under "N.J.S.2C:42-4 a." could not be expunged. The 2016 amendment altered the citation to the statute to read "subsection a. of N.J.S.A. 2C:24-4," making it conform to the current citation format. The amendment did not expand or limit which part of subsection a. of N.J.S.A. 2C:24-4 applied to the bar against expungement, keeping in line with the

Legislature's expressed intent not to add any additional crimes to the list of crimes barred.

Both prior to and after 2016, N.J.S.A. 2C:24-4(a) described the offense of endangering the welfare of a child as engaging in sexual conduct which would impair or debauch the morals of the child or nonsexual conduct that causes the child harm that would make the child an abused or neglected child. Therefore, reading the addition of the parenthetical language in 2016 amendment, "or causing the child other harm[,]" as referring to conduct causing the abuse or neglect of a child complies with the Legislature's intent not to add additional crimes to the list of crimes barred from expungement, as it still describes conduct included within the scope of N.J.S.A. 2C:24-4(a) -- endangering the welfare of a child. Thus, the 2016 amendment did not limit or expand the scope of the bar against expungement of convictions under N.J.S.A. 2C:24-4(a), but only updated the citation format and made the accompanying parenthetical more complete. Accordingly, we reverse the grant of J.W.'s petition for expungement.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION