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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3514-21

NEW JERSEY DIVISION OF
CHILD PROTECTION AND
PERMANENCY,

Plaintiff-Respondent,

v.

A.P.,

Defendant-Appellant,

and

L.R., T.C., and J.P.,

Defendants.

———————————————

IN THE MATTER OF D.P.
and T.R., minors.

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APPROVED FOR PUBLICATION
May 4, 2023
APPELLATE DIVISION

Submitted March 7, 2023 – Decided May 4, 2023

Before Judges Geiger, Susswein and Berdote Byrne.

On appeal from an interlocutory order of the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FN-13-0151-19.

Joseph E. Krakora, Public Defender, attorney for appellant (David M. Fraistern, Assistant Deputy Public Defender, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Erin O'Leary, Assistant Attorney General, and John J. Lafferty, IV, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor D.P. (Jacqueline Pham, Assistant Deputy Public Defender, on the brief).

The opinion of the court was delivered by

BERDOTE BYRNE, J.S.C. (temporarily assigned)

Defendant, A.P (Arlo),[1] appeals an order entered in the Family Part permitting the Division of Child Protection and Permanency (Division) to use expunged records obtained from the Monmouth County Prosecutor's Office (MCPO) pursuant to N.J.S.A. 2C:52-19 in a Title 9 litigation concerning the alleged abuse and neglect of his son, D.P. (Daniel). On appeal, Arlo argues the trial court erred by: (1) authorizing the Division to utilize records that were expunged, sealed automatically, and precluded any subsequent use; (2) granting the Division's motion by relying upon N.J.S.A. 2C:52-19; and (3) functioning

[1] We use initials and pseudonyms to protect the privacy of individuals and the records of this proceeding. R. 1:38-3(d)(12).

as an appellate court by ruling on a motion that should have been filed before the Criminal Part judge who entered the expungement order. We conclude the Division was permitted to use the expunged records because N.J.S.A. 2C:52-19 allows the release and use of expunged records in these circumstances and affirm.

On March 31, 2019, the Division received a Child Protective Services referral regarding twenty-three-month-old Daniel, who was brought to the hospital on March 30, 2019, via ambulance. Daniel was accompanied by his father, Arlo, and his father's girlfriend, T.C. (Tiffany). When they arrived, emergency medical technicians were actively performing cardiopulmonary resuscitation on Daniel. He was immediately placed on a ventilator once inside the hospital.

Arlo told the hospital he and his family had just moved to a new house that day and things were scattered about the house. At about 1:00 p.m., Daniel tripped over something in the kitchen and fell face first, injuring his lip, but otherwise appeared to have no other injuries. At approximately 8:00 p.m. Daniel was put to bed. When Tiffany went to check on him shortly thereafter, she found him unresponsive. Tiffany told the hospital when she found Daniel, his eyes rolled back into his head and his body was limp, so she called 911.

Daniel's examination revealed an abrasion to his lip, consistent with what was described by Arlo and Tiffany. However, Daniel also had a parietal area skull fracture and subdural hemorrhage.

Consistent with agency regulations and the Department of Children and Families/Law Enforcement Model Coordinated Response Protocol (Protocol), upon receiving this information, the Division contacted the MCPO. The MCPO said it would begin investigation the following morning but, in the interim, the Division could respond immediately and conduct interviews if it chose to do so.

After speaking with the MCPO, Division workers met with Arlo, Tiffany, and Daniel's biological mother, L.R. (Lisa) at the hospital while Daniel was in the operating room. Arlo told workers he had sole legal custody of Daniel, and Lisa was entitled to only supervised visitation. Arlo's version of what transpired was consistent with Tiffany's explanation of events.

Divisions workers then spoke with the surgeon, who stated something impacted Daniel's head with force and stated a full skeletal examination would be done to determine the extent of the damage. After speaking with the doctor, the Division decided a Safety Protection Plan (SPP) would be implemented. Workers also spoke with another one of Daniel's doctors who explained Daniel's injuries were not consistent with the fall described. The doctor said he saw these

types of injuries in high-speed motor vehicle accidents. Echoing what the previous doctor had said, this doctor advised more tests would be done to determine the extent of the injuries. The following morning, detectives from the MCPO reported to the hospital.

On April 3, 2019, the Division received a written report from another one of Daniel's doctors, dated April 1, 2019. The doctor found:

> An MRI done on April 1, 2019, showed no evidence of any arterial damage to the brain or neck but massive ischemia to the almost entire right cerebral hemisphere into the occipital lobe, also involving the right basal ganglia and also extending to the left frontal area of the brain.
>
> This large area of ischemia is quite alarming and raises the question of at least a temporary occlusion of the right internal carotid artery causing the ischemia. None of the history provided to this point is causative for any of these issues confronting [Daniel].
>
> Such an occlusion could only occur by a choking, strangulation, or some dramatic torsion of the neck so severe as to cause occlusion of the internal carotid artery so that the brain lacked blood flow for a long enough period of time to cause the brain damage.
>
> . . . .
>
> None of this is due to tripping on the steps.
>
> Timing is difficult at this point. [Tiffany] states that he was not feeling well all day, was tired and slept a lot, did not eat well – The seizure and lack of

> responsiveness that occurred that evening could have been caused by trauma in the period in the time frame close to that or perhaps could have been due to the brain swelling and herniation that could have started earlier that day. With no other history, this has to be high concern for significant non accidental trauma of two types – one to cause the ischemia and one to cause the fracture and subdural bleeding.

On April 4, 2019, Arlo was arrested for child endangerment and incarcerated. The Division took immediate custody of Daniel via Dodd removal,[2] which was upheld by the trial court on April 9, 2019. On June 25, 2019, Daniel was discharged from the hospital and placed in a resource home.

Due to the COVID-19 pandemic, further proceedings in this matter in the Family and Criminal parts were delayed. On June 22, 2020, the court specifically noted: "[T]he fact-finding in this matter has not yet occurred and the father's criminal charges are still pending presentation to the grand jury. Additional discovery will be distributed once it is released from the prosecutor, after the grand jury presentation."

On or before January 24, 2022, Arlo's criminal charges were presented to the grand jury, which declined to indict him. After the presentation, the Division received the voluminous electronic criminal file from the MCPO. The court

[2] N.J.S.A. 9:6-8.21 to -8.82.

ordered "the fact-finding is to be adjourned at the request of the [Deputy Attorney General (DAG)] so that she can go through and distribute the voluminous discovery she received from the Prosecutor's office."

On March 24, 2022, pursuant to N.J.S.A. 2C:52-6, Arlo's criminal matter was expunged by Criminal Part Judge Henry Butehorn. Specifically, the order required "the Attorney General of New Jersey, the superintendent of the New Jersey State Police, Expungement Unit and multiple Monmouth County law enforcement agencies" to "remove from their records all information relating to petitioner, for his arrest on April 4, 2019, for Endangering-Abuse/Neglect of a child by a caretaker." In addition, the order provided that the agencies remove "all records concerning the subsequent criminal and/or juvenile proceedings regarding such arrest(s), charge(s), dismissal(s) or disposition(s), if applicable, and place such information in the control of a person within the office designated to retain control over expunged records."

The Division indicated that it was prepared to proceed with its fact-finding against Arlo, scheduled to start on May 9, 2022, and did not make any abuse findings with respect to Tiffany.

As part of trial preparation, the DAG subpoenaed Detective Thomas Sheehan of the Keansburg Police Department. On April 12, 2022, Sheehan

forwarded the order of expungement signed by the trial court. Thereafter, on April 14, 2022, the Division moved before the Family Part to vacate Arlo's expungement order. Arlo's attorney objected to the Division's motion, stating it was not properly before the Family Part, and if the Division planned to proceed on its motion, it should be filed in the Criminal Division. The court responded:

> I would not have entered any order without Judge Butehorn's knowledge and consent. That being said, it would [sic] probably be best to have [the Division] withdraw this motion before me and work with the prosecutor's office to file a motion before Judge Butehorn. If this is not agreeable, we will try to find some time next week to hear this motion.

The Division agreed to contact the MCPO and work with the prosecutors to file the motion before Judge Butehorn. The MCPO declined to work with the Division, stating the criminal case was closed, and the motion was properly before the Family Part.

On May 9, 2022, the fact-finding was adjourned and a hearing was held regarding the expunged materials. The court held it would not vacate the expungement order, but ordered further motion practice as to whether the records could be used during the fact-finding.

On May 13, 2022, relying on N.J.S.A. 2C:52-19, the Division filed a motion requesting permission to use the expunged records in the Title 9

litigation. On June 14, 2022, following additional briefing and oral argument, the court issued an oral decision granting the Division's motion, reasoning:

> So, the statutes, the case law cited by the Division and the Protocol, all provide that the relationship between the Division and law enforcement is a collaborative one so as to ensure for protection—protection of children. As the Division argues, to prohibit them from using the Prosecutor's records would hamstring them from proceeding post-Grand Jury in any case where a Grand Jury did not indict. The Division argues that to suggest that an expungement could overcome child protection mandates would reflect an absurd result, and I agree.
>
> Thus, I do not believe that the expungement statutes would prohibit the . . . Division from using the Prosecutor's records in this case. I find that there is good cause and a compelling need to permit the release of records to the Division, the experts and the lawyers for all parties.
>
> And if I need to rely on the statute, I will rely on 2C:52-19. The—this is a children in court case. It's argued by defense counsel but—that 2C:52-19 is limited and pertains solely to sentencing on a subsequent offense after guilt has been established. I do not read the statute that way and, seemingly, neither did the Appellate Division.
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> . . . .
>
> So, I give—I will grant the Division's request for an order that would permit them to use the Prosecutor's records relating to [A.P.'s] arrest on April 4, 2019 that are subject to the expungement order. Again, these are confidential proceedings and it seemed odd to me that there was no case law that directly addressed this issue

> and that might be just because it is not typically something that is disputed. But, again, I find that I don't believe that there was even a need for this expungement issue to be raised; but, it was raised. And if I have to rely on the expungement statute, I do rely on 2C:52-19, as I indicated.

Following the court's decision, Arlo's counsel moved for a stay pending appeal. The court granted the request, staying the matter for ten days until June 24, 2022, to allow Arlo time to make an emergent application before us. On July 1, 2022, we denied Arlo's emergent application, but noted he could file his motion for leave to appeal in regular course. On July 2, 2022, Arlo filed a notice of motion for leave to appeal which we granted, staying the matter.

Arlo first argues his records were correctly automatically expunged following the no-bill determination by the grand jury, and the court erred in concluding those records could be used during the fact-finding because the expungement statute "precludes them from being used for any purpose." We disagree.

The expungement statute serves "to eliminate 'the collateral consequences imposed upon otherwise law-abiding citizens who have had a minor brush with the criminal justice system.'" In re J.S., 223 N.J. 54, 66 (2015) (quoting In re Kollman, 210 N.J. 557, 568 (2012)). The Legislature intended the statute 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.
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> [N.J.S.A. 2C:52-32.]

However, "[t]he relief provided by the expungement statute . . . does not include the wholesale rewriting of history." G.D. v. Kenny, 205 N.J. 275, 294-95 (2011).

Expungement is statutorily defined as:

> a. . . . the extraction, sealing, impounding, or isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.
>
> [N.J.S.A. 2C:52-1.]

Importantly, expunged records—including complaints, warrants, arrests, judicial docket records, and related items—are extracted and isolated but not destroyed. N.J.S.A. 2C:52-1, -15; Kollman, 210 N.J. at 568-69.

As we recently noted in In re the Application of M.U.,___ N.J. Super.___ (App. Div. March 21, 2023) (slip op. at 21-22):

Except for certain defined circumstances, a person granted expungement "does not have to answer questions affirmatively relating to expunged criminal records." However, expunged "criminal records are extracted and isolated but not destroyed." They remain available for various important purposes.

In numerous statutorily delineated circumstances, records that have been expunged may be considered. See N.J.S.A. 2C:52-19 ("Inspection of the files and records, or release of the information contained therein, which are the subject of an order of expungement, or sealing under prior law, may be permitted by the Superior Court upon motion for good cause shown and compelling need based on specific facts."); N.J.S.A. 2C:52-20 (permitting use of expunged records in determining whether to grant "acceptance into a supervisory treatment or diversion program"); N.J.S.A. 2C:52-21 (permitting use of expunged or sealed records in setting bail "or for purpose of sentencing"); N.J.S.A. 2C:52-22 (permitting use of expunged records by Parole Board); N.J.S.A. 2C:52-23 (permitting use of expunged records by "the Department of Corrections . . . solely in the classification, evaluation and assignment to correctional and penal institutions of persons placed in its custody"); N.J.S.A. 2C:52-23.1 (permitting use of expunged or sealed records "to facilitate the State treasurer's collection of any court-ordered financial assessments that remain due at the time of an expungement or sealing"); N.J.S.A. 2C:52-27(b) (requiring disclosure of prior charges dismissed after successful completion of supervisory treatment or diversion program when applying for acceptance into supervisory treatment or other diversion program for subsequent charges); N.J.S.A. 2C:52-27(c) (requiring information on expunged records to be revealed by applicant "seeking employment within the judicial

> branch or with a law enforcement or corrections agency").
>
> [M.U., ___ N.J. Super. ___ (slip op. at 21-22) (citations omitted).]

Criminal proceedings may run concurrently with civil abuse and neglect proceedings. See, e.g., State v. P.Z., 152 N.J. 86, 95 (1997) (criminal charges filed while civil proceeding was pending); N.J. Div. of Youth & Fam. Servs. v. T.H., 386 N.J. Super. 271, 281 (Ch. Div. 2006) (parallel criminal and civil abuse and neglect proceedings, in which defendants were charged with aggravated manslaughter and endangering the welfare of a child after their infant son died of severe malnutrition). However, we have recognized "the timing sequence . . . is rarely parallel." See N.J. Div. of Youth & Fam. Servs. v. C.H., 428 N.J. Super. 40, 45 n.3 (App. Div. 2012) (noting the prosecutor was awaiting the results of the civil abuse and neglect proceeding before determining whether to proceed). Moreover, "the two investigations of the same incident have divergent objectives: [the Division] seeks to secure the health, safety, and best interests of the child; the State's interest is in the furtherance of a criminal prosecution." N.J. Div. of Youth & Fam. Servs. v. N.S., 412 N.J. Super. 593, 638 (App. Div. 2010). Lastly, each employs a different standard of proof: a criminal

proceeding requires proof beyond a reasonable doubt[3] and a fact-finding requires a finding by the lesser preponderance of the evidence standard.[4]

Although N.J.S.A. 9:6-8.10a(b)(2) requires the Division release its records to law enforcement agencies investigating a report of child abuse or neglect, there is no reciprocal statute or rule that "requires the county prosecutor to disclose information of an on-going criminal investigation [involving a child] to the Division." N.J. Div. of Youth & Fam. Servs. v. R.M., 347 N.J. Super. 44, 64 (App. Div. 2002). Although "prosecutors should view their relationship with [the Division] as a collaborative enterprise," through which "information [is] to be liberally shared," N.J. Div. of Youth & Fam. Servs. v. H.B., 375 N.J. Super. 148, 179-80 (App. Div. 2005), the Division indicated it did not receive information from the MCPO until after the grand jury declined to indict Arlo.

If the criminal proceeding is resolved first, our case law provides a conviction may be used as evidence of abuse in the civil proceeding. In re

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[3] U.S. Const. amend. VI; State v. Medina, 147 N.J. 43, 49-50 (1996) ("In a criminal prosecution the State bears the burden of proving beyond a reasonable doubt every element of an offense . . . . The due process clause of the Federal Constitution . . . and the New Jersey Constitution . . . compel this standard.") (citations omitted).

[4] N.J.S.A. 9:6-8.46; N.J. Dep't of Child. & Fam. Servs. v. A.L., 213 N.J. 1, 22 (2013).

Guardianship of J.O., 327 N.J. Super. 304, 309 (App. Div. 2000). However, there is an absence of case law as to what evidence may be used in the civil proceeding when the result of the criminal proceeding is a no bill by the grand jury and subsequent expungement of arrest. Here, the trial court granted the Division's request to use the expunged records based on its interpretation of N.J.S.A. 2C:52-19.

Issues raised regarding the interpretation of statutes are questions of law which the appellate courts review de novo. Kocanowski v. Township of Bridgewater, 237 N.J. 3, 9 (2019) (citing State v. Fuqua, 234 N.J. 583, 591 (2018)). Therefore, the trial court's "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"The overriding goal" of statutory interpretation "is to determine . . . the intent of the Legislature, and to give effect to that intent." State v. Hudson, 209 N.J. 513, 529 (2012). "The inquiry thus begins with the language of the statute, and the words chosen by the Legislature should be accorded their ordinary and accustomed meaning." Ibid. Courts should "apply to the statutory terms the generally accepted meaning of the words used by the Legislature," Patel v. N.J.

Motor Vehicle Comm'n, 200 N.J. 413, 418 (2009), "read . . . in context with related provisions so as to give sense to the legislation as a whole," DiProspero v. Penn, 183 N.J. 477, 492 (2005).

N.J.S.A. 2C:52-19 provides the "inspection" or "release" of information contained in an expungement order may be permitted where the subject matter of the records "is the object of litigation or judicial proceedings," and "good cause . . . and compelling need based on specific facts" is shown. However, "[s]uch records may not be inspected or utilized in any subsequent civil or criminal proceeding for the purposes of impeachment or otherwise . . . ."

The criminal and civil proceedings in this case were based on the same incident, and the subject matter of the expunged criminal records "is the object" of the civil proceeding. Additionally, the Division presented "good cause" and "compelling need based on specific facts." Specifically, twenty-three-month-old Daniel suffered severe head injuries while in the care of Arlo—injuries consistent with blunt-force trauma. In order to best protect the health, safety, and best interests of Daniel, the Division needed all relevant information from the MCPO, which conducted an investigation immediately after the incident occurred. As correctly recognized by the Family Part, without that information,

the Division's ability to protect Daniel—its sole objective—would be hamstrung.

That is not to say expunged records may be obtained and used in every Title 9 litigation. As N.J.S.A. 2C:52-19 clearly states, whether such records may be used should be considered on a case-by-case basis for compelling need based on specific facts and good cause shown. In this instance, several compelling factors weighed in favor of the release of the contested records, including: (1) the criminal and civil proceedings concerned the same incident and the expunged records were created immediately following the event; (2) the severity of Daniel's injuries; and (3) Daniel's age at the time of the incident. If Daniel had been thirteen years old, for example, and had suffered a leg injury instead of a head injury, then perhaps there would not be a compelling need for the records because Daniel would be able to provide his account of what had transpired. Likewise, expunged records of a prior injury to Daniel or another one of Arlo's children may also not meet the exacting standard. However, because of Daniel's age and the nature of his injury, the Division had limited avenues for information as to what transpired and established good cause for the expunged records.

Arlo argues N.J.S.A. 2C:52-14, which does not apply to an expungement pursuant to N.J.S.A. 2C:52-6, provides:

> A petition for expungement filed pursuant to this chapter shall be denied when . . .
>
> d. The arrest or conviction sought to be expunged is, at the time of hearing, the subject matter of civil litigation between the petitioner or his legal representative and the State, any governmental entity thereof or any State agency and the representatives or employees of any such body.

Arlo maintains that "if the Legislature intended a similar exception to apply to N.J.S.A. 2C:52-6, the Legislature would have included this exception. However, the Legislature created an automatic expungement with no exceptions."

Contrary to Arlo's argument, there is an exception to N.J.S.A. 2C:52-6, and that exception is found in N.J.S.A. 2C:52-19, the catch-all provision, which empowers a court to allow certain parties access to expunged records under fact-specific circumstances. See G.D., 205 N.J. at 282 (finding that criminal-conviction information, truthfully reported, was civilly actionable when the conviction was the subject of an expungement order); State v. J.R.S., 398 N.J. Super. 1, 6 (App. Div. 2008) ("Even after the entry of a judgment of expungement, [expunged] records remain available for certain limited purposes,

including to satisfy discovery obligations in a civil suit."). As our Supreme Court recognized in G.D.,

> the expungement statute does not transmute a once-true fact into a falsehood. It does not require the excision of records from the historical archives of newspapers or bound volumes of reported decisions or a personal diary. It cannot banish memories. . . . Although our expungement statute generally permits a person whose record has been expunged to misrepresent his past, it does not alter the metaphysical truth of his past, nor does it impose a regime of silence on those who know the truth.
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> [G.D., 205 N.J. at 302.]

The trial court did not err in granting the Division access to the expunged records; N.J.S.A. 2C:52-19 authorized the court to do so.

Arlo places much emphasis on the last sentence of N.J.S.A. 2C:52-19, which provides: "Such records may not be inspected or utilized in any subsequent civil or criminal proceeding for the purpose of impeachment or otherwise . . . ." Arlo argues "the plain language of the statute" prohibits the use of his expunged records in this case. The only exception, he contends, "pertains solely to sentencing on a subsequent offense after guilt has been established."

The word "any" as it is used in N.J.S.A. 2C:52-19 expresses a lack of restriction. But the statute clarifies—in the preceding sentence—there is a restriction, which is "[l]eave to inspect shall be granted by the court only in

those instances where the subject matter of the records of arrest or conviction is the object of litigation or judicial proceedings." Arlo's argument ignores that language. To read N.J.S.A. 2C:52-19 in the manner Arlo suggests would render the entire provision meaningless.

"In reviewing the Legislature's words, we follow the 'bedrock assumption that the Legislature did not use 'any unnecessary or meaningless language.'" Premier Physician Network, LLC v. Maro, 468 N.J. Super. 182, 193 (App. Div. 2021) (citing Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 587 (2013)). "We 'must presume that every word in a statute has meaning and is not mere surplusage,' and we 'give effect to every word' so we do not 'construe the statute to render part of it superfluous.'" Ibid. (citing In re Att'y Gen.'s "Directive on Exit Polling: Media & Non-Partisan Pub. Int. Grps.", 200 N.J. 283, 297-98 (2009), and Med. Soc'y of N.J. v. N.J. Dep't of Law & Pub. Safety, 120 N.J. 18, 26-27 (1990)). "We cannot 'rewrite a plainly written statute.'" Ibid. (citing Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012)). Here, the plain language of N.J.S.A. 2C:52-19 is clear: while unlimited use in subsequent matters is not permitted, in certain situations, expunged records may be utilized upon a showing of good cause.

Two cases are instructive. In J.R.S., the petitioner had been arrested and charged with driving while intoxicated, refusing to take a breathalyzer examination, and resisting arrest. 398 N.J. Super. at 3. The charges were later dismissed. Ibid. Following their dismissal, petitioner sent a notice of tort claims. Ibid. Thereafter, petitioner filed a petition for expungement. Id. at 4. The petition did not mention the tort claims notice. Ibid. The Somerset County prosecutor did not object to the petitioner's application for expungement and the trial court entered the order for expungement. Ibid.

Thereafter, petitioner filed a civil complaint against the officers who arrested him. The Somerset County prosecutor filed a motion to vacate petitioner's expungement order and the trial court granted the State's motion. Id. at 5.

On appeal, we reversed the trial court's decision to vacate the expungement order, finding no statutory support for that decision. Id. at 5-6. However, we concluded that petitioner's arrest records fell "squarely within the purview" of N.J.S.A. 2C:52-19, and were nonetheless available for review. Id. at 6. We noted "even before the adoption of N.J.S.A. 2C:52-19, . . . '[t]he remedy of expungement was never intended as a device by which a plaintiff in a malicious prosecution suit could control the availability of evidence relevant

thereto.'" Ibid. (quoting Ulinsky v. Avignone, 148 N.J. Super. 250, 255 (App. Div. 1977)).

Likewise, in G.D., during a primary contest for state senate, opponents of a particular candidate issued campaign flyers criticizing that candidate for previously hiring G.D., a person with a criminal conviction. 205 N.J. at 275. G.D. filed a lawsuit, alleging, among other things, defamation. Defendants asserted truth as a defense, as G.D. had been convicted of a crime and sentenced to a five-year prison term. Although this criminal record was expunged thirteen years later, defendants argued that "G.D.'s conviction was a public fact maintained as a public record long before the expungement and that the publication of that fact during a political campaign was a legitimate exercise of their free-speech rights . . . ." Ibid. G.D. countered "the record of his conviction was expunged, and therefore, his conviction—as a matter of law—[did] not [] occur[]. . . . [A]fter the expungement of his record, the pronouncement that he was convicted of a crime was simply false . . . ." Id. at 283.

In analyzing the issue, our Supreme Court observed:

> For purposes of the present case, perhaps the most pertinent exception to the expungement statute's cloak of confidentiality is N.J.S.A. 2C:52-19. That section permits the inspection of expunged records if the Superior Court finds "good cause shown and compelling need based on specific facts," and "only in

> those instances where the subject matter of the records of arrest or conviction is the object of litigation or judicial proceedings." Thus, in this case, if truth is a defense to a defamation action based on the publication of information contained in expunged records, this section ostensibly empowers a court to give defendants access to those records to establish the truth of their assertions.
>
> [Id. at 296 (citations omitted).]

Ultimately, the Supreme Court held "[a]lthough our expungement statute relieves a prior offender of some civil disabilities, it does not extinguish the truth." Id. at 283.

Pursuant to N.J.S.A. 2C:52-19, expunged records may be accessed in certain situations and may be used at trial to establish facts. The trial court was correct in finding N.J.S.A. 2C:52-19 authorized the release of Arlo's expunged criminal record in this instance—where Arlo's criminal case ran concurrently with his civil case, was based on the same incident, and was for the limited purpose of protecting Daniel from further injury in a sealed civil matter.

Further, Arlo points out that "N.J.S.A. 2C:52-27 governs the effect of expungement," which is that "any proceedings related thereto shall be deemed not to have occurred, and the petitioner may answer any questions relating to their occurrence accordingly." Arlo argues although N.J.S.A. 2C:52-27, and N.J.S.A. 2C:52-20, N.J.S.A. 2C:52-21, N.J.S.A. 2C:52-22, N.J.S.A. 2C:52-23,

and N.J.S.A. 2C:52-23.1, lists several exceptions, none of those apply to his case, and thus, there is no statutory justification permitting the records associated with his arrest to be used during fact-finding.

These statutory exemptions highlighted by Arlo are beyond the pale of the exception justifiably relied upon by the trial court and discussed herein, N.J.S.A. 2C:52-19. Reading statutory exceptions in the manner proposed by Arlo would render the discretion afforded to trial judges at N.J.S.A. 2C:52-19 ineffective. Incongruous interpretations are at odds with our first principle of construction, to read statutes in a commonsense manner, as directed by the Legislature. N.J.S.A. 1:1-1; see also State v. Thompson, 250 N.J. 556, 573 (2022) ("In keeping with standard canons of statutory construction, it is not the general rule, but rather the exceptions that are to be construed narrowly.") (quoting In re Expungement Application of P.A.F., 176 N.J. 218, 223 (2003)). Most narrowly construed, N.J.S.A. 2C:52-19 affords trial courts discretion to release expunged records for good cause shown and compelling need demonstrated by specific facts.

Next, Arlo argues the MCPO "violated the procedure dictated by [N.J.S.A. 2C:52-15]" and our Supreme Court's decision in State v. Doliner, 96 N.J. 236 (1984), when it provided "the entire record to the Division," and particularly,

the "confidential grand jury records." In Doliner, our Supreme Court held the standard governing disclosure of grand jury materials to government departments for use in civil prosecution is "a strong showing of particularized need that outweighs public interest in secrecy of the grant jury proceedings." 96 N.J. at 241.

At the time the MCPO turned over information to the Division, the expungement of Arlo's criminal record had not yet been granted. Further, the record suggests the Division was seeking to utilize only the reports and other evidence the MCPO generated during its investigation. The Division was not seeking to utilize grand jury testimony, grand jury exhibits, or any other information related to the grand jury proceeding.

Arlo's contention the Family Part inappropriately exercised jurisdiction by supplanting the Criminal Part is similarly unavailing given the plain text of the statute, and the Family Part's jurisdiction. N.J.S.A. 2C:52-19 provides the "Superior Court" may order inspection, but does not limit the exercise of this discretion to the Criminal Part. The Family Part was not reconsidering the merits of expungement and did not vacate expungement, but rather granted the Division access to reports and records generated by MCPO, which remain expunged for other purposes.

Additionally, the Family Part is in a much better position to hear the Division's N.J.S.A. 2C:52-19 motion than the Criminal Part. The Family Part has "special jurisdiction and expertise in family matters," Cesare v. Cesare, 154 N.J. 394, 413 (1998), and was familiar with the allegations and issues in the Title 9 action, making it better suited to evaluate the Division's reasons for accessing the expunged records.

Affirmed.