

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio

Court of Appeals No. OT-09-016

Appellee

Trial Court No. 07CR165

v.

Erin R. Baker

DECISION AND JUDGMENT

Appellant

Decided: March 12, 2010

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, for appellee.

Thomas J. DeBacco and Erin N. Cain, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Erin R. Baker, appeals a judgment of the Ottawa County Court of Common Pleas, which denied her motion to seal her official criminal record pursuant to R.C. 2953.52(A).

{¶ 2} In September 2007, the Ottawa County Grand Jury indicted appellant on 38 counts of sexual battery of a minor, in violation of R.C. 2907.03(A)(9), and 16 counts of

unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A)(4). After a jury trial, appellant was found not guilty on all counts.

{¶ 3} On February 9, 2009, appellant filed her motion to seal the record of this cause. She asserted that: (1) she had no criminal proceedings pending against her; (2) due to this matter she "faced great hardship in multiple facets of her life," particularly in the areas of education and employment; and (3) appellant's interest in having her record sealed outweighed any legitimate interest of the state to maintain said record. Appellee, the state of Ohio, filed objections to appellant's motion arguing that the legitimate interests of the state in protecting the public outweighed any interest of appellant in having her records sealed.

{¶ 4} The trial court held a hearing in which it heard the arguments of both appellant and appellee. The judge then reviewed the record of appellant's criminal trial, the transcripts of the testimony of appellant and C.P., the alleged victim, as provided in that trial, and the exhibits filed therein. On June 15, 2009, the court entered a 22 page judgment denying appellant's motion to seal her record. Appellant timely appeals that decision and sets forth the following assignment of error:

{¶ 5} "The trial court abused its discretion and committed reversible error by denying Appellant's application to seal her official record pursuant to O.R.C. [Section] 2953.52"

{¶ 6} R.C. 2953.52(A)(1) permits any person found not guilty by a jury or a court or who was the defendant in a dismissed case to file an application asking the court to

issue an order sealing the official record in that case. Only in those instances where the application is timely, there are no criminal actions pending against the applicant, and the applicant's interests outweigh the legitimate needs, if any, of the government to maintain those records, can the court order them sealed. R.C. 2953.52(B)(2)(b),(c), and (d). See, also, *In re Page*, 10th Dist. No. 08AP-966, 2009-Ohio-1565, ¶ 6.

{¶ 7} Our review of a trial court's decision to seal or not seal official criminal records under R.C. 2953.52(A) is whether the court abused its discretion. *State v. Haney* (1991), 70 Ohio App.3d 135, 138. A reviewing court may only reverse such a determination upon a showing of an abuse of that discretion. *Id.* An abuse of discretion connotes that the trial court committed more than an error of law or judgment, it signifies that in reaching its decision, the trial court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Widder*, 146 Ohio App.3d 445, 2001-Ohio-1521, ¶ 6, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Abuse of discretion is an extremely high standard; it demands that the trial court exhibited a "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, citing *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222. Thus, an appellate court, in applying the abuse of discretion standard, may not substitute its judgment for that of the trial court. *Id.* at 621.

{¶ 8} In the present case, appellant's application was timely and no evidence was offered to show that she had any criminal action pending against her. Consequently, the sole issue on appeal is whether the trial court abused its discretion in determining that the

interests of appellant were outweighed by the legitimate needs of the state to maintain her criminal record. The interests set forth by appellant are her desire to obtain a college education, become a "junior high" mathematics teacher, and coach. Appellee contends, as it did below, that despite the fact that the jury determined that, as defined in the Ohio Revised Code, neither "sexual conduct" nor "sexual battery" occurred, appellant's behavior with C.P. was inappropriate. The state, therefore, maintains that the Ohio Department of Education's legitimate needs to oversee educator licensing and conduct outweighs appellant's interests. We agree.

{¶ 9} The following pertinent facts were revealed in the trial transcripts of the testimony of appellant and C.P. It is undisputed that appellant began her relationship with C.P. when the girl was 13 years old, and Baker was her eighth grade assistant basketball coach. Later in that same school year, appellant was the girl's softball coach. It is also undisputed that at this time, C.P.'s father was diagnosed with cancer and subsequently died. During the course of their relationship, appellant gave C.P. many gifts. These gifts included expensive athletic shoes, jewelry, tickets to Cleveland Cavalier basketball games and the NCAA Final Four women's basketball games, the fee to attend a basketball camp in Tennessee, and team jerseys. Appellant also sent C.P. notes in which she told her that she loved her, wrote poems for the girl, paid for movie tickets, and picked C.P. up from school.

{¶ 10} When C.P. entered high school, she began spending nights at appellant's home and the two would sleep together on appellant's couch. While C.P. testified that

sexual activity/conduct occurred at this point in time, appellant, while admitting that she and the girl would sleep on the couch together, denied that any such activity occurred. In her junior year of high school, C.P. had an argument with appellant. As a result, C.P. claimed that she realized that appellant's behavior was inappropriate and attempted to end their relationship. According to C.P., appellant continued to send her notes on the internet saying that she loved her and knew that her own behavior was "wrong." Finally, C.P. told her softball coach about the relationship and showed her a printout of a note sent to C.P. by appellant. The coach reported the matter to the authorities.

{¶ 11} Based upon the foregoing facts and the law applicable to this cause we cannot say that the trial court abused its discretion in finding that appellant's interest in becoming a mathematics teacher and coach for children that are the same age as C.P. were outweighed by the legitimate needs of the state and the Ohio Department of Education in licensing teachers, as well as setting forth the standards for the hiring of teachers and the termination of that employment. See, e.g., R.C. 3319.11; Ohio Admin. Code 3301-20-01; Ohio Adm. Code: 3301-24-08. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶ 12} The judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of
Ohio's Reporter of Decisions. Parties interested in viewing the final reported
version are advised to visit the Ohio Supreme Court's web site at:
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