STATE OF MINNESOTA

IN COURT OF APPEALS

In re TEGNA, Inc., Petitioner,

State of Minnesota,

Respondent,

vs.

Joseph Francis Sandoval, II,

Respondent.

SPECIAL TERM ORDER[1]

A24-1177

Considered and decided by Segal, Chief Judge; Bratvold, Judge; and Larson, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:

Petitioner TEGNA Inc., on behalf of its broadcast station KARE-TV (KARE 11), seeks a writ of prohibition to preclude the district court from enforcing July 19, 2024 written and oral orders that preclude KARE 11 from using a sentencing memorandum in its reporting and require KARE 11 to destroy copies of the memorandum in its possession. Defendant-respondent Joseph Francis Sandoval II, who is the subject of the memorandum, opposes the petition. KARE 11 also moves for a partial stay pending the resolution of its petition; Sandoval takes no position on the stay motion.

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[1] Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

KARE 11 obtained a copy of the sentencing memorandum from Minnesota Court Records Online (MCRO). The district court subsequently determined that the sentencing memorandum had been incorrectly designated as a public document and granted the defendant's request for a protective order, which provides that:

> 1. No additional copies of the Sentencing Memorandum or any portion of the Sentencing Memorandum shall be made by parties who had accessed it, or any other representative or agent of the parties who accessed it;
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> 2. Said Sentencing Memorandum shall not be used for any purpose other than consideration by the court and the parties for sentencing;
>
> 3. Said Sentencing Memorandum shall not be publicly exhibited, shown, displayed, used for educational, research or demonstrative purposes, or used in any other fashion, except in judicial proceedings in the above-referenced action; and
>
> 4. Said Sentencing Memorandum may be viewed only by the parties; their counsel and their counsel's employees, investigators, and experts; and as directed by the Court for judicial proceedings in the above-referenced action.

In addition to signing the written order, the district court ordered on the record that "if there were any copies that were reproduced . . . those should be destroyed and are not to be distributed." We refer to the district court's written and oral orders together as "the July 19 order."

"In order for a writ of prohibition to issue, three requirements must be met: (1) an inferior court or tribunal must be about to exercise judicial or quasi-judicial power; (2) the exercise of such power must be unauthorized by law; and (3) the exercise of such power must result in injury for which there is no adequate remedy." *Minneapolis Star & Trib. Co. v. Schumacher*, 392 N.W.2d 197, 208 (Minn. 1986); *see also State v. Conrad (In re*

Hope Coal.), 977 N.W.2d 651, 657 (Minn. 2022). "A writ of prohibition will issue if a trial court issues an unconstitutional prior restraint on free speech." *Minneapolis Star & Tribune Co. v. Schmidt*, 360 N.W.2d 433, 434 (1985) (citing *Minneapolis Star & Tribune Co. v. Lee*, 353 N.W.2d 213, 214 (Minn. App. 1984)). KARE 11 asserts that the July 19 order is an unconstitutional prior restraint and thus that a writ should issue.[2]

"A prior restraint imposes a limit upon the right to publish" and can be contrasted with "a sanction imposed after publication." *Nw. Publ'ns Inc. v. Anderson*, 259 N.W.2d 254, 257 (Minn. 1977). "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). Thus, "[p]rior restraints of speech have long been deemed unconstitutional except in the most drastic of situations." *Lee*, 353 N.W.2d at 214 (citing *Near v. Minn. ex rel. Olson*, 283 U.S. 697 (1931)). Put another way, there is "heavy presumption" against the constitutionality of prior restraints. *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (quotation omitted). And the United States Supreme Court has applied "the most exacting scrutiny" to them. *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 102 (1979).

[2] KARE 11 was not a party to the underlying proceedings, but it does not assert any infirmity in the district court's order stemming from that fact. *Cf. State v. Emerson (In re Leslie)*, 889 N.W.2d 13, 16-17 (Minn. 2017) (granting prohibition to preclude enforcement of order issued in criminal action that essentially granted civil relief against nonparty).

It is equally well established as a matter of constitutional law that the press may not be sanctioned for publishing information that it lawfully obtains, "absent a need to further a state interest of the highest order." *Fla. Star v. B.J.F.*, 491 U.S. 524, 533 (1989); *see also Smith*, 443 U.S. at 103; *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 840 (1978); *Okla. Publ'g Co. v. District Court*, 430 U.S. 308, 311-12 (1977); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975). And any such sanction must be narrowly tailored to meeting that state interest. *Fla. Star*, 491 U.S. at 541.

We conclude that the July 19 order is a prior restraint and that, on the facts of this matter, the heavy presumption against prior restraints has not been overcome. Sandoval acknowledges that prior restraints are "heavily disfavored" but argues that he has countervailing interests that justify a prior restraint here. We disagree.

Sandoval first identifies his right to a fair trial under the Sixth Amendment. In *Nebraska Press Association*, the United States Supreme Court addressed a challenge by the media to an order that prohibited reporting on certain information before a jury could be impaneled in a murder case. 427 U.S. at 542-46. The Court recognized that the media's First Amendment rights needed to be balanced against the defendant's Sixth Amendment fair-trial rights, which might be frustrated by pretrial publicity. 427 U.S. at 561-62. The Court framed the issue as whether "the gravity of the evil, discounted by its improbability, justifies such an invasion of free speech as is necessary to avoid the danger." *Id.* at 562 (quotation omitted). The Court then determined that, notwithstanding "the evil pretrial publicity can work," the probability of that evil "was not demonstrated with the degree of

certainty our cases on prior restraint require." *Id.* at 569. The Court also was unable to "conclude that the restraining order actually entered would serve its intended purpose." *Id.*

Here, Sandoval does not explain how KARE 11 reporting on the sentencing memorandum would impact his fair-trial rights. Unlike *Nebraska Press Association*, this case does not involve pretrial publicity or concerns about a tainted jury pool. Indeed, there was no trial, and thus no jury, in this case because Sandoval entered a guilty plea. We thus are not persuaded that the July 19 order implicates Sandoval's Sixth Amendment rights.

Sandoval also argues that the July 19 order is justified by what he characterizes as "statutory privacy rights." He cites to statutory provisions that codify privileges between medical providers and their patients and attorneys and their clients, *see* Minn. Stat. § 595.02, subd. 1(b), (d), (g) (2022), govern the dissemination of civil commitment treatment reports, *see* Minn. Stat. § 253B.12, subd. 1 (2022), and preserve the right of civilly committed patient with capacity to make decisions regarding access to medical records, *see* Minn. Stat. § 253B.0921 (2022). He also cites to provisions of court rules that require or allow certain materials to be filed confidentially or under seal and allow certain proceedings to be closed to the public. *See* Minn. R. Pub. Access 4; Minn R. Gen. Prac. 11.04; Minn. R. Crim. P. 20.01, subd. 4(b), 20.02, subd. 4, 25.01, 25.03, 27.03, subd. 1(B)(5). Each of these provisions no doubt serves important purposes, but the validity of the provisions is not at issue here. Rather, the question is whether, on the specific facts here, the July 19 order is necessary to meet a government interest of the highest order. We conclude that these statutes and rules, without more, do not demonstrate that necessity.

Sandoval asserts that this court should employ a less exacting test in determining the permissibility of the July 19 order. He relies on three decisions from the United States Supreme Court that, he asserts, employ a less demanding balancing test. The first is *Nebraska Press Association*, which we have discussed and distinguished above. This case does not involve competing constitutional rights such that *Nebraska Press Association* would apply to require balancing of those rights.

The second case Sandoval relies on is *Seattle Times Company v. Rhinehart*, 467 U.S. 20 (1984). In *Rhinehart*, the United States Supreme Court addressed "the issue whether parties to civil litigation have a First Amendment right to disseminate, in advance of trial, information gleaned through the pretrial discovery process." 467 U.S at 22. The Seattle Times challenged a protective order that precluded it from reporting on information that it had obtained as a litigant during discovery. *Id.* at 24. The Supreme Court applied the level of scrutiny applicable to content-neutral regulations that incidentally restrict free speech, asking "whether the practice in question furthers an important or substantial governmental interest unrelated to the suppression of expression and whether the limitation of First Amendment freedoms is no greater than necessary or essential to the protection of the particular governmental interest involved." *Id.* at 32 (quotations and alterations omitted).

The Court then noted that "[a] litigant has no First Amendment right of access to information made available only for purposes of trying his suit." *Id.* Thus, the Court reasoned, "continued control over the discovered information does not raise the same

specter of governmental censorship that such control might suggest in other situations." *Id.* The Court thus reasoned that "restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information." *Id.* at 33. And the Court found significant "that an order prohibiting dissemination of discovered information before trial is not the kind of classic prior restraint that requires exacting First Amendment scrutiny." *Id.* at 34. The Court concluded that "judicial limitations on a party's ability to disseminate information discovered in advance of trial implicates the First Amendment rights of the restricted party to a lesser extent than would restraints on dissemination in a different context." *Id*. The Court's evaluation of the restraint thus "[took] into account the unique position that such orders occupy in relation to the First Amendment." *Id*.

After emphasizing the "unique position" of protective orders in civil litigation, the Supreme Court next concluded that the rule authorizing such orders "furthers a substantial governmental interest unrelated to the suppression of expression," namely, limiting the potential for abuse of the liberal discovery allowed in civil litigation. *Id.* at 35. And the Court held that when "a protective order is entered on a showing of good cause as required by Rule 26(c), is limited to the context of pretrial discovery, and does not restrict the dissemination of the information if gained from other sources, it does not offend the First Amendment." *Id.* at 37.

We conclude that *Rhinehart* is inapposite for several reasons. First and foremost, KARE 11 did not obtain the sentencing memorandum as a party in civil litigation subject

to a protective order. This case thus does not fall into the unique context addressed by the Supreme Court in *Rhinehart*. Second, the July 19 order is not content neutral; it prohibits dissemination of specific information—the sentencing memorandum. Third, the July 19 order precludes KARE 11 from reporting on information that it lawfully obtained from a public source. Thus, this case appears to involve "the kind of classic prior restraint that requires exacting First Amendment scrutiny." *Id.* at 34. In sum, we are not persuaded that *Rhinehart* applies to lessen the scrutiny that this court must apply to the July 19 order.

The third case that Sandoval relies on is *Butterworth v. Smith*, 494 U.S. 624 (1990). In that case, the United States Supreme Court held that "insofar as [a] Florida law prohibit[ed] a grand jury witness from disclosing his own testimony after the term of the grand jury [had] ended, it violate[d] the First Amendment." 494 U.S. at 626. The Supreme Court in *Butterworth* did discuss the need to "balance respondent's asserted First Amendment rights against Florida's interests in preserving the confidentiality of its grand jury proceedings." 494 U.S. at 630. But the Court rejected Florida's argument to apply the less exacting standard from *Rhinehart*. *Id.* at 631-32. Instead, the Court applied the principle that "where a person lawfully obtains truthful information about a matter of public significance, . . . state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." *Id.* at 632 (quotation omitted). The Court acknowledged the state's interest in maintaining grand jury secrecy but concluded that "[s]ome of these interests are not served at all by the Florida ban on disclosure, and those that are served are not sufficient to sustain the statute." *Id.*

Thus, *Butterworth* does not provide support for the less exacting balancing test that Sandoval asks this court to apply here.

Applying the exacting scrutiny required by the most apposite Supreme Court decisions, we conclude that the July 19 order is an unconstitutional prior restraint. To be sure, Sandoval has an interest in maintaining the privacy of his medical and other personal information, and he reasonably asserts that reporting on his medical history may negatively impact him. But we are not persuaded that Sandoval's privacy interest is "of the highest order," as it must be to justify a content-based prior restraint. *Fla. Star*, 491 U.S. at 533. Moreover, it is not clear that the July 19 order will further Sandoval's asserted interest, given the reporting that has transpired even without reliance on the sentencing memorandum. Sandoval has not explained what information in the sentencing memorandum, not previously disclosed, is likely to cause him additional harm. Under these circumstances, we conclude that the "heavy presumption" against prior restraints has not been overcome. *N.Y. Times Co.*, 403 U.S. at 714. We therefore grant KARE 11's petition for a writ of prohibition to preclude the district court from enforcing the July 19 order. And because we grant the petition, we deny KARE 11's partial stay motion as moot.

IT IS HEREBY ORDERED:

1. The petition for a writ of prohibition is granted, and the district court is prohibited from enforcing the July 19 order.

2. The motion for a partial stay is denied as moot.

Dated: August 13, 2024

BY THE COURT

Susan L. Segal
Chief Judge