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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re S.J., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
S.J.,
Defendant and Appellant.

A145106
(Marin County
Super. Ct. No. JV25864A)

S.J. appeals from the juvenile court’s order sealing her records pursuant to the then-effective version of Welfare and Institutions Code section 786.¹ We vacate the court’s order and remand for reconsideration under the current version of the statute.

BACKGROUND

In January 2014, appellant admitted committing vandalism (Pen. Code, § 594) as alleged in a section 602 juvenile wardship petition. The juvenile court placed appellant on supervised probation for one year. In January 2015, the court dismissed the petition after finding appellant successfully completed her probation. The court also set a contested hearing on the sealing of appellant’s records. Appellant contended the records

¹ All undesignated section references are to the Welfare and Institutions Code.

sealed should include, in addition to the juvenile court's records, the records of the prosecution, probation, and law enforcement agencies. The People argued only those records within the custody of the juvenile court should be sealed. On April 30, 2015, the juvenile court issued an order sealing only the juvenile court's records.

DISCUSSION

At the time of the juvenile court's order, section 786 provided that when a minor satisfactorily completes probation, the juvenile court shall dismiss the petition and "shall order sealed all records pertaining to that dismissed petition *in the custody of the juvenile court . . .*" (Italics added.)² While this appeal was pending, the Legislature amended section 786, effective January 1, 2016. (Stats. 2015, ch. 368, § 1.) The statute now provides, in relevant part, that the juvenile court "shall order sealed all records pertaining to that dismissed petition *in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice.*" (§ 786, subd. (a), italics added.)

Appellant does not argue the amended version of section 786 applies retroactively. Instead, she argues that under *former* section 786 the juvenile court was obligated to seal all records relating to her dismissed petition, including those held by law enforcement and probation. We disagree.

² In its entirety, former section 786 provided: "If the minor satisfactorily completes (a) an informal program of supervision pursuant to Section 654.2, (b) probation under Section 725, or (c) a term of probation for any offense not listed in subdivision (b) of Section 707, the court shall order the petition dismissed, and the arrest upon which the judgment was deferred shall be deemed not to have occurred. The court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court, except that the prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment pursuant to Section 790. The court may access a file that has been sealed pursuant to this section for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction pursuant to subdivision (e) of Section 388. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity."

“The basic rules of statutory construction are well established. ‘When construing a statute, a court seeks to determine and give effect to the intent of the enacting legislative body.’ [Citation.] ‘“We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.” [Citation.] If the plain, commonsense meaning of a statute’s words is unambiguous, the plain meaning controls.’ [Citation.] But if the statutory language may reasonably be given more than one interpretation, ‘“courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.’ ” ’ ” (*People v. King* (2006) 38 Cal.4th 617, 622.)

The plain language of former section 786—requiring juvenile courts to seal those records “in the custody of the juvenile court”—is clear. Appellant first argues “custody” should be construed to mean “control” and, because the juvenile court can control records in the custody of other agencies by ordering them sealed, former section 786 requires juvenile courts to seal those records also. This argument is foreclosed by section 781. Section 781 provides that five years after the juvenile court’s jurisdiction has terminated over a person, or any time after the person has reached 18 years of age, the person can request “sealing of the records, including records of arrest, relating to the person’s case, *in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, entities, and public officials as the petitioner alleges, in his or her petition, to have custody of the records,*” and the court is obligated, if certain findings are made, to “order all records, papers, and exhibits in the person’s case *in the custody of the juvenile court* sealed, including the juvenile court record, minute book entries, and entries on dockets, and any other records relating to the case *in the custody of the other agencies, entities, and officials* as are named in the order.” (§ 781, subd. (a)(1)(A), italics added.) With the exception of the word “entities,” this language was present when former section 786 was enacted. (See stats. 2013, ch. 269, § 1.) “ “[W]here a statute, with reference to one subject contains a given provision, the

omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed.” ’ ’ ” (*People v. Cottle* (2006) 39 Cal.4th 246, 254.) The express provision in section 781 that the court seal records “in the custody of . . . other agencies” shows a different intention existed in enacting former section 786, which does not include such language.³

Appellant next argues the recent amendments to section 786 clarified that the Legislature intended former section 786 to include records in the custody of other agencies. “ ‘[A] statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment.’ . . . [¶] In determining whether a statute clarified or changed the law, we give ‘due consideration’ to the Legislature’s intent in enacting that statute.” (*In re Marriage of Fellows* (2006) 39 Cal.4th 179, 183–184.) The legislative history of the recent amendments to section 786 makes clear that the Legislature intended to change the statute, not clarify it. A committee analysis states: “Unlike the sealing process under Welfare and Institutions Code § 781, [the bill enacting former section 786] did not require the court to order records sealed in the possession of other public agencies such as law enforcement or probation. Arrest records and probation records can be damaging on an individual’s ability to pursue higher education or find a job. This bill seeks to address these concerns by requiring those records to be sealed as well” (Assem. Com. on Public Safety, Analysis of Assem. Bill No. 666 (2015–2016 Reg. Sess.) as amended Apr. 9, 2015, p. 5.) Another analysis notes the bill will result in new “ongoing state-reimbursable costs . . . to local law enforcement agencies and probation departments to seal and subsequently destroy all specified records in the entity’s custody.” (Sen. Rules Com., Off. of Sen.

³ Because we do not find the language of former section 786 ambiguous and we reject appellant’s attempt to create ambiguity, we need not address appellant’s argument that we should construe ambiguous statutory language consistently with the Legislature’s intent to give rehabilitated juveniles a clean slate.

Floor Analyses, 3d reading analysis of Assem. Bill No. 666 (2015–2016 Reg. Sess.) as amended Aug. 31, 2015, p. 6.)⁴

While we reject appellant’s interpretation of former section 786, that version of the statute is no longer in effect. We solicited the parties’ views as to whether a remand for reconsideration in light of the current statute would be appropriate. In their supplemental briefing, the People informed us they do not object to such a remand, noting appellant could file a new petition for sealing under the current statute and a remand would expedite the process.⁵ Accordingly, we will vacate the juvenile court’s sealing order and remand the matter for reconsideration of the appropriate records to be sealed in light of current section 786.

DISPOSITION

The juvenile court’s April 30, 2015 sealing order is vacated and the matter is remanded for reconsideration in light of current section 786.

⁴ Contrary to appellant’s suggestion, the bare fact that the amendment occurred shortly after the original enactment does not render it a clarification rather than a change.

⁵ Following this supplemental briefing, the parties waived oral argument.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.