

Circuit Court for Baltimore City
Case No. 000312074021

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1160

September Term, 2016

IN RE: M.E.

Leahy,
Shaw Geter,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: August 23, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from an order by the Circuit Court for Baltimore City, sitting as a juvenile court, denying appellant, Jonathan Fogg’s motion for disclosure and limited use of appellee, M.E.’s juvenile records. The juvenile court, pursuant to Maryland Rule 11-121(a) and Md. Code (2013 Repl. Vol., 2016 Supp.), § 3-8A-27(b)(1) of the Courts & Judicial Proceedings Article (“CJP”), found that Mr. Fogg had failed to show good cause for the disclosure of those records.¹ In his timely appeal of the juvenile court’s decision, Mr. Fogg raises the following question for our consideration:

Did the circuit court err when it determined that appellant did not have good cause to permit disclosure of appellee’s juvenile records when such records are essential for appellant to pursue a civil action for personal injuries arising out of appellee’s own tortious conduct?

For the following reasons, we shall affirm the juvenile court’s order.

¹ Rule 11-121(a) provides, in pertinent part, that “[f]iles and records of the court in juvenile proceedings, including the docket entries and indices, are confidential and shall not be open to inspection except by order of the court or as otherwise expressly provided by law.”

CJP § 3-8A-27(b)(1) provides:

(b) *Court records.*—(1) A court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown or as provided in §§ 7-303 and 22-309 of the Education Article. [Education Article § 7-303 requires a law enforcement agency making an arrest of a juvenile on a gang-related matter to notify the juvenile’s school principal, the local superintendent, and the school’s security officer, and permits the agency to notify the State’s Attorney. Section 22-309 requires the Department of Education and the Department of Juvenile Services to work cooperatively and to share a juvenile’s education records with each other to “ensure the appropriate delivery of services.”]

FACTS AND LEGAL PROCEEDINGS

On April 24, 2012, the juvenile court adjudicated M.E. a delinquent child in two assault cases and, subject to further order by the court, placed him on probation under the supervision of the Department of Juvenile Services (“DJS”) for an indefinite period. On October 19, 2012, M.E. was committed to DJS for placement after he committed a robbery in another case. He was placed at the Victor Cullen Academy on April 22, 2013, and remanded into the supervision of the Violence Prevention Initiative Program upon his release on September 23, 2013.

On January 24, 2014, M.E. was arrested and charged as an adult with attempted first- and second-degree murder, first- and second-degree assault, reckless endangerment, armed robbery, robbery, and several theft and handgun violations, relating to a January 14, 2014 attack on appellant in Canton. Upon M.E.’s detention at the Baltimore City Detention Center on those charges, DJS recommended that the juvenile court rescind the orders of indefinite probation. The juvenile court rescinded the probation orders and terminated its jurisdiction on December 3, 2014. M.E., then aged 19, was convicted of attempted first-degree murder and car theft on June 4, 2015. He was sentenced to 30 years in prison, with all but 12 years suspended.

On March 24, 2016, Mr. Fogg filed his motion, requesting that he be permitted access to M.E.’s juvenile records and to “utilize those same records for no other purpose than to support or defend any and all claims that may be asserted by the parties in the potential civil matter” to be filed by Mr. Fogg. In his motion, Mr. Fogg claimed a good faith belief that M.E. had been on home detention, with monitoring services provided by

either Corrisoft, LLC (“Corrisoft”) or iSecuretrac Corp. (“iSecuretrac”) at the time of his attack upon Mr. Fogg. He was seeking information from M.E.’s juvenile records to confirm or disprove that fact, in an effort to determine if he had a potential negligence action related to either company’s failure properly to monitor M.E. while he was on home detention.

In his motion, Mr. Fogg explained that he had filed a Maryland Public Information Act request with DJS and served a subpoena and a notice of deposition *duces tecum* to perpetuate evidence before action instituted upon Corrisoft. Both DJS and Corrisoft objected and refused to produce any records unless the juvenile court found good cause to do so pursuant to CJP § 3-8A-27(b). Mr. Fogg claimed that he had good cause for the limited disclosure of the records, as, without access to the records, he would have “no method of obtaining information about his potential case” and would be “completely prohibited from investigating whether there was any negligence in the supervision” of M.E.

The juvenile court denied the motion on April 25, 2016, for Mr. Fogg’s failure to serve it upon M.E.’s counsel and the assistant State’s Attorney. Mr. Fogg refiled the motion on May 3, 2016. M.E.’s counsel opposed the motion on the ground that the use of M.E.’s juvenile records to investigate the possibility of a potential civil claim did not meet the good cause requirement of CJP § 3-8A-27(b).

The court heard argument on the motion on June 14, 2016. Mr. Fogg advised the court that he was attempting to investigate the possibility of an actionable lawsuit against Corrisoft or iSecuretrac, third party private contractors engaged by DJS to provide home monitoring services, based on negligent supervision or negligent monitoring of M.E., who

was allegedly supposed to be on home detention at the time of his attack upon Mr. Fogg. Mr. Fogg explained that he had exhausted known methods of obtaining the records, including a Public Information Act request to DJS, notices of deposition before an action was filed upon Corrisoft and iSecuretrac, and contact with the Baltimore City Police Department and State’s Attorney’s office. In his view, these failed attempts to obtain the home monitoring records by other means provided good cause for the court to permit him access to M.E.’s juvenile records. Moreover, he concluded, the purpose of CJP § 3-8A-27(b) is to protect the privacy and confidential records of the child offender, not to shield a third-party contractor.

M.E. responded that the purpose of keeping juvenile records confidential is to protect the child and that the release of the records would place M.E.’s name “everywhere within those civil proceedings” with “no limitation on the use of those records once they are released.” M.E., characterizing Mr. Fogg’s motion as “a fishing expedition,” argued that Mr. Fogg had presented “no information” that anything within the records sought would support a civil claim. Mr. Fogg, M.E. concluded, had not, “at this point,” provided good cause for the release of the records, and to permit the release of the records, when the law precludes their use in other proceedings, would set a “very dangerous precedent” for the sanctity of the juvenile court system.

Mr. Fogg replied that although he had a good faith basis to believe M.E. had been on home monitoring at the time of the attack upon him, he simply had no documents to back up his belief. Conceding that the applicable statutes were designed to protect the identity of the minor, he argued that the minor’s right to privacy is not absolute and that

the statutes contemplate exceptions by permitting the release of the records for good cause, which he had shown. As for M.E.’s argument that the release of the records would reveal his identity, Mr. Fogg argued that the statute only prohibits the use of juvenile records in a civil proceeding “against the child” and that M.E. could be sued in a civil suit for assault “without these records” and M.E.’s identity would be “all over the place.” Moreover, M.E.’s identity was already known, by virtue of extensive news coverage of the brutal attack and the fact that he had been tried and convicted of the crimes as an adult.

The court ruled:

Okay. The Court, reviewing both of the Petitions in this matter, hearing both of the oral arguments from Counsel, taking into consideration Maryland Rule 11-121(a), Courts and Judicial Proceedings 3-8A-27, 3-8A-23(b) and (c), *In Re Robert G.*, 296 Md. 175 (1983), which does describe good cause. And good cause is described as:

“A substantial reason, one that affords a legal excuse, legally sufficient ground, or reason. Good cause is a relative and highly extract [sic] term, and its meanings must be determined not only by verbal context of statute, in which the term is employed, but also of action and procedures involved in the type of cases that in fact, are presented.”

After a thorough reading of Courts and Judicial Proceedings and the Petition, I will note that there is no legal authority that has been provided outside of the statute that gives the Court any direction as to how the Court of Appeals would interpret such a thing. And reviewing the good cause explanation that was provided in *In Re Robert G.*, this Court finds that a disruption of the sanctity and the confidentiality of the Respondent’s juvenile record is not warranted.

It is not warrant[ed] in order to pursue the potential claims against others. It is contrary to the safeguards that I believe that’s instituted by the Legislature.

And there is no statutory authority or legal authority to suggest that an investigation of a potential claim amounts to good cause, which would allow

attorneys to go through the extremely sensitive files of the Respondent. And for that reason, your motion is denied.

The court filed its written order denying Mr. Fogg’s motion the same day. Mr. Fogg filed his notice of appeal of the court’s order on July 11, 2016, and subsequently filed a civil lawsuit against Corrisoft, *et. al.*, on January 10, 2017.² Following a July 7, 2017 hearing on Corrisoft’s motion to dismiss in that matter, the circuit court held the matter *sub curia*. The case remains open and active.

DISCUSSION

Pursuant to Maryland Rule 11-121(a), the records of juvenile delinquency proceedings—unlike adult criminal records—are “confidential and shall not be open to inspection except by order of the court or as otherwise expressly provided by law.” The purpose of keeping juvenile records confidential “is to further the rehabilitation of young offenders by relieving them of the enduring stigma of their misconduct.” *In re Nick H.*, 224 Md. App. 668, 694 (2015) (quoting *District of Columbia v. Cooper*, 483 A.2d 317, 323 (D.C.1984)).

Section 3-8A-27 of the Courts & Judicial Proceeding Article further provides, with some exceptions not pertinent to this matter:

(b) *Court records.*—(1) A court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, *except by order of the court upon good cause shown* or as provided in §§ 7-303 and 22-309 of the Education Article.

² M.E. is a named defendant in the pending lawsuit. Therefore, use of the juvenile records against his interest in the civil suit may violate the terms of CJP § 3-8A-23(b)(3), which prohibits the admission of an adjudication and disposition of a child as evidence against the child in “any civil proceeding not conducted under this subtitle.”

(Emphasis added.) As we explained in *Samie v. State*, 181 Md. App. 59, 65 (2008),

The plain language of the statute anticipates that there will be circumstances in which there is good cause to disclose portions of the record. Rule 11–121 does not specifically mention “good cause,” but clearly contemplates that the court may order disclosure under some circumstances, presumably when there is a good cause that outweighs the juvenile’s interest in confidentiality.

In *In re Robert G.*, 296 Md. 175, 179–80 (1983), the Court of Appeals, noting “[t]here are no prior Maryland cases arising under this statute,” accepted the definition of “good cause” as provided by *Black’s Law Dictionary* 623 (5th ed. 1979), which defined good cause as:

Substantial reason, one that affords a legal excuse. Legally sufficient ground or reason. Phrase ‘good cause’ depends upon circumstances of individual case, and finding of its existence lies largely in discretion of officer or court to which decision is committed. . . . “Good cause” is a relative and highly abstract term, and its meaning must be determined not only by verbal context of statute in which term is employed but also by context of action and procedures involved in type of case presented.

Whether good cause for access to confidential juvenile records exists depends upon the facts and circumstances of each individual case. *In re Robert G.*, 296 Md. at 180 (discussing *Taliaferro v. State*, 295 Md. 376 (1983), which examined good cause in other contexts and held that “good cause” depends upon facts and circumstances). We review the juvenile court’s decision as to whether good cause has been shown for permitting access to a juvenile’s confidential records for an abuse of its discretion. *Id.* at 179–80.

As we read the juvenile court’s decision, the court concluded that access to M.E.’s juvenile records was not warranted “in order to pursue the *potential* claims against others.” (Emphasis added.) We are not persuaded, even if we might have reached a different

conclusion, that the juvenile court, in considering the broad allegations of purpose in the motion and the facts and the then-circumstances, abused its discretion in determining that Mr. Fogg had not shown good cause for the release of M.E.’s juvenile records at the time he filed his motion. *See King v. State*, 407 Md. 682, 697 (2009) (“[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” (quoting *North v. North*, 102 Md. App. 1, 13–14 (1994))).

We do not understand the court’s decision to mean that access to a juvenile record could never be warranted in order to pursue a third-party civil claim related to an incident involving the juvenile. Mr. Fogg’s motion was filed prior to the filing of the civil lawsuit that is now active in the circuit court. That suit provides Mr. Fogg with discovery and the subpoena powers of the court. Should Mr. Fogg be unable to further an active lawsuit as a result of Corrisoft’s or DJS’s continued refusal to provide information requested by Mr. Fogg’s motion, nothing in this opinion should be read as precluding the filing of another motion for disclosure and limited use of M.E.’s juvenile records in the circuit court.

Although, in general, juvenile records should remain confidential, CJP § 3-8A-27 permits disclosure of the records upon a showing of good cause, which is specific to the facts and circumstances of each case. In determining whether circumstances outweigh M.E.’s interest in continued confidentiality in his identity, the circuit court should consider whether, by virtue of extensive news coverage of his crimes and the fact that he was tried

as an adult, his identity as the perpetrator of the attack upon Mr. Fogg is known. We perceive no harm to M.E. or the sanctity of the juvenile records by an *in camera* review of M.E.’s juvenile records by the circuit court for the limited purpose of ascertaining whether M.E. was on home detention at the time he attacked Mr. Fogg and whether a third party was under contract to provide the monitoring services, and, if both are true, to limit the use of the information for that purpose in any future proceeding. *See, e.g., State v. WBAL-TV*, 187 Md. App. 135, 157–58 (2009) (Maryland Rules favor access to court records, but they do not deny discretion to the trial court to limit access, based on the particular circumstances of the case).

With the exception for release under §§ 7-303 and 22-309 of the Education Article, the Maryland statute does not specify under what circumstances the court may find good cause to permit access to confidential juvenile records, and the juvenile court admitted uncertainty as to how the Court of Appeals might interpret the good cause requirement. As Mr. Fogg points out in his brief, however, at least two states’ statutes expressly specify that good cause may be found when a later civil suit is filed based upon the delinquent behavior of the juvenile. *See Thibodeaux v. Judge, Juvenile Division of the Fourteenth Judicial District Court*, 377 So.2d 508, 510 (La. Ct. App. 1979) (explaining that applicable statute permits the disclosure of confidential juvenile records for good cause ““upon a particular showing that the information is relevant to a specific investigation or proceeding””) (quoting Louisiana Code of Juvenile Procedure, Title VIII, Chapter 25, Article 123B (1979)); *Matter of Falstaff Brewing Corp. Re: Narragansett Brewery Fire*, 637 A.2d 1047, 1050 (R.I. 1994) (explaining that statute expressly permits disclosure of a juvenile’s

identity to a victim suing the juvenile for civil damages resulting from the charged crime). *And see also In re James B.*, 714 A.2d 735, 739 (Conn. 1998) (noting that the victim of delinquent act allowed access to juvenile records in civil proceeding and may use information contained in released records to uncover evidence that is admissible in the civil case); *Hickey v. Eighth Judicial Dist. Court*, 782 P.2d 1336, 1339 (Nev. 1989) (discussing the appropriateness of discovery of son’s juvenile records in action alleging father’s negligent supervision); *Seattle Times Co. v. Benton County*, 661 P.2d 964, 966 (Wash. 1983) (discussing whether research by newspaper reporter on issue of whether abused children suffer more from intervention or nonintervention by state was legitimate research sufficient to allow release of juvenile records); *Matter of the Interest of Hollingshead*, 619 P.2d 1160–63 (Kan. 1980) (noting that trial court did not abuse discretion in releasing name of 15-year-old juvenile adjudicated a miscreant child for his involvement in school vandalism to news media).

The statutes in the cases cited above provide more specific language and/or direction about circumstances permitting the disclosure of a juvenile record than does the Maryland statute. Nonetheless, we do not believe that the absence of more specific language in CJP 3-8A-27(b) about when juvenile records may be disclosed under the Education Article renders disclosure for use in a third party civil suit that involves the juvenile’s delinquent behavior outside the scope of a good cause determination. In our view, “except by order of the court upon good cause shown” in CJP § 3-8A-27(b)(1) and “except by order of the court” in Rule 11-121(a) indicates the General Assembly’s intent to leave the “good cause” determination to the sound discretion of the court and that the records cannot be used “as

evidence against the child” in a civil proceeding does not necessarily preclude their limited use in an action against a third party with responsibility related to that child. CJP § 3-8A-27(b)(3). It simply means that if and when they can be used rests in the sound discretion of a court.

**ORDER OF THE CIRCUIT COURT
FOR BALTIMORE CITY, SITTING
AS A JUVENILE COURT,
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**