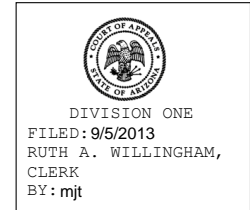


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

IN RE ANTONIO B.) 1 CA-JV 13-0061
)
) DEPARTMENT B
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G) Ariz. R.P. Juv.
) Ct.; Rule 28 ARCAP)

Appeal from the Superior Court in Maricopa County

Cause No. JV557460

The Honorable Peter A. Thompson, Judge

VACATED

William G. Montgomery, Maricopa County Attorney Phoenix
by Andrea L. Kever, Deputy County Attorney
Attorneys for Appellee

The Law Offices of Kevin Breger, PLLC Scottsdale
by Kevin Breger
Attorney for Appellant

T H U M M A, Judge

¶1 This is the second appeal addressing restitution for a criminal trespass the Juvenile admitted committing when he was 17 years old. On December 6, 2012, while the prior appeal was pending, the Juvenile turned 18 years old. Notwithstanding that

critical birthday, no special action relief or expedited consideration was requested and no notice was provided to the court. In a January 3, 2013 memorandum decision, the court in the prior appeal remanded, directing that, "[o]n remand, the juvenile court shall determine an appropriate restitution award for the insurance company [victims]. We otherwise affirm the judgment of the juvenile court." *In re Antonio B.*, 1 CA-JV 12-0162, 2013 WL 49736, *5, ¶ 23 (Ariz. App. Jan. 3, 2013) (mem. dec.). Following that decision, no motion for reconsideration or petition for review was filed and the mandate issued in that prior appeal.

¶2 On remand, the juvenile court dutifully followed the mandate's directive (as it was obligated to do) and on March 4, 2013 issued an order awarding, for the first time, two insurance company victims a total of \$16,000 in restitution. From that order, the Juvenile timely appeals. This court has jurisdiction over that appeal pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) section 8-235.¹

DISCUSSION

¶3 It is clear that the insurance company victims timely filed restitution claims before the Juvenile turned 18 years of age. It is equally clear that the insurance company victims can

¹ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

press independent civil claims against the Juvenile for the amounts sought here. The sole question in this appeal is whether the juvenile court lost jurisdiction to issue the March 4, 2013 restitution awards when the Juvenile turned 18 on December 6, 2012.

¶4 Juvenile court jurisdiction "shall be as provided by the legislature or the people by initiative or referendum." Ariz. Const. art. 6, § 15. Although there is no relevant initiative or referendum, the Legislature has directed that "[e]xcept as otherwise provided by law, jurisdiction of a child that is obtained by the juvenile court" for a delinquency shall, as applicable here, "be retained by it . . . until the child becomes eighteen years of age." A.R.S. § 8-202(G). This "until the child becomes eighteen years of age" language means "only until" a juvenile's 18th birthday. See *State v. Espinoza*, 229 Ariz. 421, 427, ¶ 24, 276 P.3d 55, 61 (App. 2012); see also *McBeth v. Rose*, 111 Ariz. 399, 402, 531 P.2d 156, 159 (1975) (when person "is no longer a child under the age of eighteen the juvenile court has no jurisdiction to try him"). Accordingly, "except as otherwise provided by law," juvenile court jurisdiction ended when the Juvenile turned 18 on December 6, 2012.

¶5 A few statutes grant the juvenile court jurisdiction to enter specific orders after a juvenile turns 18 years of age.

Those statutes allow an adult to apply for specific relief from a juvenile court order entered when the applicant was a juvenile. See A.R.S. § 8-348 (authorizing, with certain exceptions, person "who is at least eighteen years of age" to ask to set aside a delinquency or incorrigibility adjudication and authorizing juvenile court to do so under certain circumstances); A.R.S. § 8-349 (authorizing person who "is at least eighteen years of age" to request destruction of juvenile records and authorizing juvenile court to do so under certain circumstances); A.R.S. § 13-912.01(C) (authorizing person who "attains thirty years of age" to have civil rights restored following delinquency adjudication for certain offenses). No such statute applies here.

¶6 In arguing the juvenile court had jurisdiction to make the March 4, 2013 restitution awards three months after the Juvenile's 18th birthday, the State relies on:

(1) A.R.S. § 8-383(A), enacted to implement in juvenile proceedings the Victims' Bill of Rights in Article 2 § 2.1(A)(8) of the Arizona Constitution, which provides that rights for individual victims of juvenile offenses are enforceable through "appellate proceedings and the discharge of all proceedings related to restitution. If a delinquent is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a judgment is entered in favor of the victim pursuant to [A.R.S.] section 8-344;" and

(2) A.R.S. § 8-344(D), which states "[t]he juvenile court shall retain jurisdiction of the case after the juvenile attains eighteen years of age for the purpose of modifying the manner in which court ordered payments are to be made."²

Neither of these provisions -- or any other provision this court has located -- gives the juvenile court jurisdiction to order restitution, for the first time, after a juvenile turns 18 years old.

¶17 The insurance company victims in this case have more limited rights than do victims who are individuals and there is no suggestion that those victims' rights were denied here. See A.R.S. § 8-385 (legal entity victim has victims' rights to notice and an opportunity "to be heard at any proceeding relating to restitution or disposition of the delinquent."); see also A.R.S. § 8-382(20) ("'Victim' means a person . . ."); A.R.S. § 8-383(A) (specifying rights for victim who is a person, "[e]xcept as provided in" A.R.S. § 8-385). Moreover, to the extent A.R.S. § 8-383(A) applies to these insurance company victims, the State has not shown how that statute extends the jurisdiction of a juvenile court to first impose a restitution order after a juvenile's 18th birthday.

² Although the State also cites Ariz. R. Juv. Ct. P. 106, a procedural rule cannot enlarge jurisdiction granted by statute. See *Book Cellar, Inc. v. City of Phoenix*, 139 Ariz. 332, 334-35, 678 P.2d 517, 519-20 (App. 1983) (rules of court "cannot confer or enlarge the jurisdiction of any court").

¶18 Although A.R.S. § 8-344(D) extends juvenile court jurisdiction after a juvenile turns 18 years of age for the limited "purpose of modifying the manner in which court ordered payments are to be made," for that statute to apply, the relevant restitution order must have been issued before the juvenile turned 18. Here, it is undisputed that there is no such order. Moreover, A.R.S. § 8-344(D) does not suggest that a juvenile court has jurisdiction to issue, for the first time, a restitution order after a juvenile's 18th birthday.

¶19 Individually or collectively, the provisions relied upon by the State do not "otherwise provide[] by law" an exception to the clear A.R.S. § 8-202(G) jurisdictional limitation. Accordingly, because the Juvenile turned 18 on December 6, 2012, the juvenile court lacked jurisdiction to award for the first time restitution to the insurance company victims after that date.

CONCLUSION

¶10 The March 4, 2013 restitution order is vacated.

/S/ _____
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/ _____
DONN KESSLER, Presiding Judge

/S/ _____
ANDREW W. GOULD, Judge