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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10-12-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

FARRELL FRIEDLAND,) 1 CA-SA 10-0203
)
Petitioner,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
THE HONORABLE PAMELA D. SVOBODA,) Rule 28, Arizona Rules of
Commissioner of the SUPERIOR) Civil Appellant Procedure)
COURT OF THE STATE OF ARIZONA,)
in and for the County of)
MARICOPA,)
)
Respondent Judge,)
)
THE STATE OF ARIZONA and BLAKE)
EVANS ALLEN,)
)
Real Parties in Interest.)
_____)

Petition for Special Action from the
Maricopa County Superior Court

Cause No. CR2009-007762-001-DT

The Honorable Pamela Hearn Svoboda, Commissioner

JURISDICTION ACCEPTED; RELIEF GRANTED

Arizona Voice for Crime Victims Phoenix
By Douglas L. Irish
And Keli B. Luther
Attorneys for Petitioner

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By Thomas McDermott, Deputy County Attorney
Attorneys for Real Party in Interest State of Arizona

O R O Z C O, Judge

¶1 Farrell Friedland (Victim) filed a special action petition. She challenges the superior court's ruling that the total amount of restitution that can be ordered should be offset by the insurance settlement she received from Blake Allen's (Defendant) insurance company. For the reasons stated below, we accept jurisdiction and grant relief.

¶2 Victim is the adult daughter of Mr. and Mrs. Tillman; the true victims who were killed by Defendant in an automobile accident. Defendant pled guilty to two counts of negligent homicide, class four felonies. Victim filed a motion for restitution of economic loss in the sum of \$35,921.93.¹

¶3 Victim's restitution request acknowledged Defendant's automobile insurance carrier had settled her wrongful death claim against Defendant, by paying her his policy limits of \$30,000, or \$15,000 for each parent.² Attached to her restitution request was an affidavit by her attorney in the wrongful death claim that

¹ Petitioner's request for restitution consisted of 1) Funeral Expenses: \$26,066.91; 2) Medical Expenses: \$5,142.02; and 3) Legal Expenses: \$4,713.

² Defendant's automobile insurance policy provided coverage of \$15,000 per person and \$30,000 per accident. Defendant's insurance company paid Victim the full policy limit of \$30,000.

indicated the \$30,000 insurance payment was for Victim's "loss of the love, affection, companionship, etc. of her parents, and not for any economic losses incurred by [Victim] as a result of their deaths". The superior court denied Victim's motion and stated:

The final issue remaining is whether the total amount of restitution should be offset by the insurance settlement the victim received from the Defendant's insurance company. The Court relies on *State v. Iniguez*, 169 Ariz. 533, 821 P.2d 194 (App. 1991) for its analysis. The Court rules the funeral costs are to be offset by the insurance settlement received by the victim.

¶4 Victim filed this statutory special action challenging the ruling.

JURISDICTION

¶5 We have jurisdiction to hear and determine this special action pursuant to the Victims' Bill of Rights, Article 2, Section 2.1, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) section 13-4437.A (2010). Special action jurisdiction is highly discretionary and is appropriate when there is no adequate remedy on appeal. *State ex rel. Thomas v. Duncan*, 216 Ariz. 260, 262, ¶ 4, 165 P.3d 238, 240 (App. 2007). Special action jurisdiction is appropriate where a petitioner would have no "plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a).

¶6 This Court has specific statutory jurisdiction to enforce Victim's rights as guaranteed to all crime victims by the

Victims' Bill of Rights. See Ariz. Const. art. 2, § 2.1. Furthermore, if no appeal is taken in the criminal matter, Victim may not have a remedy. Therefore, because Victim might not have a remedy on appeal and she is also a crime victim, we accept jurisdiction.

DISCUSSION

¶7 Victim contends the superior court's justification for offsetting the insurance settlement proceeds against her restitution claim for economic loss was error. We review a restitution order by the superior court for an abuse of discretion. *State v. Slover*, 220 Ariz. 239, 242, ¶ 4, 204 P.3d 1088, 1091 (App. 2009). "A trial court abuses its discretion if it misapplies the law or exercises its discretion based on incorrect legal principles." *Id.*

¶8 "Restitution and civil damages are independent under Arizona law, and the state's power to order restitution does not bar a victim from seeking damages in a civil action." *State v. Iniguez*, 169 Ariz. 533, 536, 821 P.2d 194, 197 (App. 1991). The converse was true in *Iniguez*, where this Court held civil damages may be necessary to fully compensate the victim. *Id.* "The Legislature intended to fully compensate the victim for economic loss." *Id.* at 537, 821 P.2d at 198. The Arizona Constitution seeks to have the victim "receive prompt restitution." Ariz. Const. art. 2, § 2.1. Furthermore, A.R.S. § 13-603.C (2010)

states, "the court shall require the convicted person to make restitution to . . . the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court." See also *FDIC v. Colosi*, 194 Ariz. 114, 116, ¶ 8, 977 P.2d 836, 838 (App. 1998) ("Payment of full economic restitution is mandatory under the Arizona sentencing system.").

¶9 In this case, the uncontested evidence was that Victim's insurance settlement was solely for her loss of love, affection, and companionship of her parents. Defendant did not present any evidence to the contrary. In Defendant's response, he argues that the affidavit by Victim's attorney is factually incorrect. However, Defendant does not point to any contrary evidence that was presented to the superior court.

¶10 Because there was no evidence to contradict Victim's allegation that the wrongful death insurance proceeds were not for economic loss, the trial court erred in not awarding Victim restitution for her economic losses. We therefore remand this matter to the superior court to determine Victim's economic loss without offsetting her loss by the wrongful death insurance proceeds.

CONCLUSION

¶11 For the above mentioned reasons, we reverse the superior court order and remand this matter for the superior court to enter orders consistent with this decision.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

MARGARET H. DOWNIE, Judge