

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS A. NATHAN,	§	
	§	No. 333, 2008
Defendant Below-	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE	§	Case No.: 0610005624
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: September 24, 2008
Decided: November 5, 2008

Before **STEELE**, Chief Justice, **BERGER**, and **RIDGELY**, Justices.

ORDER

This 5th day of November 2008, it appears to the Court that:

(1) Defendant Below-Appellant Thomas A. Nathan appeals from the decision of the Family Court ordering him to pay \$5,000 restitution to the Violent Crimes Compensation Board (“VCCB” or the “Board”). Nathan raises two arguments on appeal. First, he contends that the VCCB is not a “victim” within the meaning of relevant Delaware law. Second, he contends that the Family Court’s order is contrary to the law establishing the means through which the VCCB may recover from offenders. We find no merit to Nathan’s appeal and affirm.

(2) On February 28, 2008, Nathan was adjudicated delinquent of Assault (second degree), Conspiracy (second degree), and Disorderly Conduct. The victim, Michael White, submitted his out-of-pocket losses to the VCCB and received assistance through the Victims Compensation Fund (“VCF”). Nathan was subsequently ordered to pay restitution, which was payable directly to the VCCB as reimbursement for the amounts it issued to White.

(3) Nathan challenged the State’s seeking reimbursement to the VCCB, as opposed to restitution for the victim. The parties submitted briefs on the issue to the Family Court and on January 15, 2008, the court determined it could order full restitution without a hearing. On March 10, 2008, Nathan filed a Motion to Vacate Order and to Correct Sentence, challenging the order and requesting a restitution hearing. The Family Court held a restitution hearing on June 3, 2008 and subsequently ordered Nathan to pay \$5,000 in restitution to the VCCB to reimburse the VCF for payments made to White.

(4) Nathan claims that it is unlawful to order an adjudicated juvenile to pay restitution to the VCCB to reimburse the Board for amounts it paid to the victim of the offense. The question of the legality of the restitution ordered by the

Family Court is one of statutory interpretation and the application of the law to the facts. We review such questions *de novo*.¹

(5) First, Nathan contends that the VCCB is not a victim within the meaning of relevant statutes and case law. He bases this argument on 11 *Del. C.* § 4106(a), which states that a “convicted offender shall ... be liable for direct out-of-pocket losses, loss of earnings and other expenses and inconveniences incurred by victim as a direct result of the crime.” As Nathan correctly points out, we have construed the term “victim” as used in § 4106(a) as “one who suffers injury, loss, or death as a result of the voluntary act or undertaking of another,”² and have included insurers who pay compensation to policy-holding victims in that definition as well.³ Nathan argues that because the VCCB is neither victim nor an insurer, it is therefore not entitled to restitution.

(6) We need not address Nathan’s Section 4106 argument because 10 *Del. C.* § 1009(c)(5) controls. Section 4106 applies to the Superior Court and other courts of criminal jurisdiction,⁴ while Section 1009(c) expressly addresses the authority of the Family Court after declaring a child to be delinquent. Section

¹ *Del. Ins. Guar. Ass’n v. Christiana Care Health Servs. Inc.*, 892 A.2d 1073 (Del. 2006); *Poteat v. State*, 840 A.2d 599, 603 (Del. 2003).

² *Redick v. State*, 858 A.2d 947, 951 (Del. 2004); *Pratt v. State*, 486 A.2d 1154, 1160-61 (Del. 1983)

³ *Pratt*, 486 A.2d at 1161 n.4.

⁴ *Pratt*, 486 A.2d at 1161

1009(c)(5) enables the Family Court to “order a child to make monetary restitution in whole or in part, as the Court determines for out-of-pocket costs, losses or damages caused by the delinquent act of the child where the amount thereof can be ascertained....” This statutory authorization permits the Family Court to order restitution be paid to any person or entity which incurs a loss caused by the delinquent act of a child. The VCCB suffered a loss as a result of Nathan’s delinquent act.

(7) Second, Nathan contends that the Family Court’s order contravenes the existing law that identifies the means through which the VCCB may recover from offenders and replenish the VCF. Nathan argues that the Board’s exclusive remedy against an offender is 11 *Del. C.* § 9010. He argues, first, that the statute does not apply to adjudicated juveniles; and, second, aside from certain fines and penalties, that the statute provides the sole method of recovery against the offender and does not authorize the VCCB to recover through a restitution hearing.

(8) Nathan’s argument lacks merit because 10 *Del. C.* 1009(c) provides that “[t]he authority given the [Family] Court by paragraph[] (5) ... of this subsection shall be *in addition to* any other existing statutory or common law

remedy.”⁵ Independent of whether Section 9010 applies to juvenile offenders, the legislature expressly granted the Family Court the power it exercised to order restitution in this case. The Family Court acted within its authority in ordering Nathan to pay restitution to the VCCB.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ 10 *Del. C.* § 1009(c) (emphasis added).