

IN THE COURT OF APPEALS OF IOWA

No. 3-936 / 12-2109
Filed October 23, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TAMARA ANNETTE GAVIN-FREEMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Carol L. Coppola,
Judge.

The defendant challenges a restitution order. **AFFIRMED IN PART,
VACATED IN PART AND REMANDED FOR ENTRY OF A MODIFIED
RESTITUTION ORDER.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, John Sarcone, County Attorney, Kevin Hathaway, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

TABOR, J.

Tamara Gavin-Freeman challenges the district court finding she owes \$3645 in restitution to the estate of Thomas Renda following her guilty plea to falsifying her resume. The court ordered her to repay \$3470 in wages and \$175 for the cost of changing the locks on Renda's house. Gavin-Freeman claims the estate did not suffer an actual loss because she provided the services for which she received wages. She also contends the expense of changing the locks was not causally related to her crime. Because her hiring was based upon misrepresentation, we affirm the restitution for the amount of her wages. Because the family's decision to change the locks was too attenuated from Gavin-Freeman's crime, we vacate that aspect of restitution and remand for entry of a modified order.

I. Background Facts and Proceedings

The children of Thomas Renda hired Gavin-Freeman as a home health care provider in November 2011 to care for their elderly and terminally ill father. During the application process, Gavin-Freeman submitted her resume to Renda and his family. On her resume, Gavin-Freeman claimed she was a registered nurse (RN), when she was not. Renda paid Gavin-Freeman \$650 per week. When Gavin-Freeman took time off, the family hired certified nursing assistants (CNAs) to care for Renda. The family paid the CNAs between twenty and twenty-five dollars per hour. That amount was then deducted from Gavin-Freeman's pay. The family fired Gavin-Freeman on December 19, 2011. In total, Gavin-Freeman received \$3470 in wages. Gavin-Freeman called the police

and accused a substitute CNA of stealing money from her bedroom at the Renda home. An investigation into the dispute revealed Gavin-Freeman was not an RN. The family learned Gavin-Freeman was on the “ineligible” list with the state nursing board and had a criminal record.

On August 2, 2012, Gavin-Freeman pleaded guilty to falsifying an academic degree in violation of Iowa Code section 715A.6A (2011). She was sentenced to 120 days in jail and fined \$315. On October 2, 2012, the State moved to amend the sentencing order to include restitution. The State sought restitution for the family’s cost of changing the locks to the home, as well as wages paid to Gavin-Freeman and to other certified nursing assistants. The court granted the motion and entered a supplemental restitution order of \$4065. Gavin-Freeman filed a motion for a restitution hearing, denying the estate suffered any pecuniary damages. The court held a hearing on October 30, 2012. Renda’s daughters testified at the restitution hearing that their decision to hire Gavin-Freeman to care for their father was strongly influenced by her representation she was trained as an RN. The family also changed the locks on the house after Gavin-Freeman returned what appeared to be a copy of the house key, leaving family members to believe she kept the original key.

Gavin-Freeman testified she “came clean” with Renda after he discovered the name on her driver’s license was spelled differently from the name on her resume, but she claimed he said not to “tell the girls because the girls fight all the time.” Gavin-Freeman also testified she returned the original house key when

she was fired. Following the hearing, the court ordered restitution in the amount of \$3645. Gavin-Freeman now appeals.

II. Standard of Review

Appellate review of restitution matters is for correction of errors at law. *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004). We determine if substantial evidence exists to support the court's factual findings and if the court has properly applied the law. *Id.*

III. Analysis

Gavin-Freeman argues the State failed to show the estate suffered an actual loss and failed to prove changing the locks was related to her falsifying her academic record. We will address each of her claims in turn.

A. Did The State Prove The Renda Estate Suffered Any Pecuniary Damages From The Falsifying Of Gavin-Freeman's Academic Record?

Gavin-Freeman asserts the estate did not suffer any loss or pecuniary damage because she provided the services she was hired to do. The State counters the Renda family paid for RN services yet received CNA services. The State argues the estate deserves restitution for the wages paid Gavin-Freeman.

"Restitution" means the payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Iowa Code § 910.1(4). Pecuniary damages include "all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium." Iowa Code § 910.1(3).

The rationale for restitution under criminal law is similar to a civil recovery for torts. See *State v. Mayberry*, 415 N.W.2d 644, 645-46 (Iowa 1987). “A wrong has been done. A person has been injured or property damaged. The victim deserves to be fully compensated for the injury by the actor who caused it.” *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa Ct. App. 1995). The restitution order must rest on “a causal connection between the established criminal act and the injuries to the victim.” *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989). This causal connection is essentially the tort element of proximate cause. *Id.*; *State v. Starkey*, 437 N.W.2d 573, 574 (Iowa 1989). This connection must be shown under “some civil theory such as fault or intentional tort.” *Id.* The damage must have been caused by the offender’s criminal act to justify the restitution order. See *Holmberg*, 449 N.W.2d at 377–78. The relationship between damage caused by the criminal act and the restitution order must be shown by a preponderance of the evidence. *Ihde*, 532 N.W.2d at 829.

In this case, the State does not offer a specific civil theory for recovery, but it does assert that, but for the falsifying of the resume, Gavin-Freeman would not have been entitled to the pay she received. Section 910.1(3) does not require the crime to match a recognized civil action. *State v. Hollinrake*, 608 N.W.2d 806, 808 (Iowa Ct. App. 2000). But we find Gavin-Freeman’s act of falsifying her academic degree may support a civil claim for fraudulent misrepresentation. See *Dier v. Peters*, 815 N.W.2d 1, 8 (Iowa 2012) (“[F]raudulent misrepresentation is material if it is likely to induce a reasonable person to act”). Renda’s children

believed their ailing father was receiving the services of an RN and based their hiring decision on Gavin-Freeman's faked credentials.

The Renda estate lost the value of qualified nursing services due to Gavin-Freeman's misrepresentations. The work Gavin-Freeman performed while falsely acting as an RN has no legal value for the purpose of calculating the victim's loss here. See *United States v. Hunter*, 618 F.3d 1062, 1065 (9th Cir. 2010) (rejecting defendant's assertion restitution order should have deducted value of services provided to employer that did not require her to hold nursing license). We affirm the court's order requiring Gavin-Freeman to repay \$3470 in wages to Renda's estate.

B. Did The State Prove Replacing The Locks To The House Was Related To The Crime Of Falsifying An Academic Record?

The State must prove the victim's damages were caused by the defendant's criminal act to justify court-ordered restitution. *State v. Bonstetter*, 637 N.W.2d 161, 168 (Iowa 2001) (rejecting cost of an independent audit as restitution in a conversion case because the State did not prove audit was reasonable and necessary). While it may have been prudent to change the locks given the information the estate learned about Gavin-Freeman's criminal history, the State did not prove a nexus between the family's safety measure and her crime of falsifying her academic credentials. The misrepresentation on her resume was not what prompted Renda's family to replace the locks. Their suspicion about Gavin-Freeman only occurred after they learned of her criminal history, after she was fired. When the link between the criminal offense

committed and subsequent expenses incurred by the victim is so attenuated, courts have declined to order restitution. See, e.g., *J.M. v. State*, 661 So.2d 1285, 1286 (Fla. Dist. Ct. App. 1995) (finding lack of causal relation between victim's loss in having to pay for new house locks and juvenile's theft of automobile when house keys were on same ring as automobile key); *State v. Forant*, 719 A.2d 399, 402 (Vt. 1998) (holding victim's act of changing locks related to concern for future crimes and not crime for which defendant was convicted). Accordingly, we vacate the district court's order that Gavin-Freeman owes \$175 in restitution for changing the locks and remand for entry of an amended restitution order in accordance with this opinion.

AFFIRMED IN PART, VACATED IN PART AND REMANDED FOR ENTRY OF AN AMENDED RESTITUTION ORDER.