

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LILLIAN McLEAN-LANE,

Defendant-Appellant.

UNPUBLISHED

April 13, 1999

No. 203282

Ingham Circuit Court

LC No. 93-065874 FH

Before: Cavanagh, P.J., and MacKenzie and McDonald, JJ.

PER CURIAM.

Defendant appeals as of right from an order directing her to pay \$21,075 as restitution to her employer at the rate of \$225 a month. The trial court further ordered that any portion of the restitution remaining unpaid at the conclusion of defendant's probation would be converted to a judgment. We affirm.

Defendant argues on appeal that the trial court erred by ordering her to pay \$225 a month in restitution for the money defendant embezzled. A trial court's decision to award restitution is reviewed for an abuse of discretion. *People v Law*, 223 Mich App 585, 589; 568 NW2d 90 (1997); *People v Guajardo*, 213 Mich App 198, 201-202; 539 NW2d 570 (1995). Statutory construction, however, is a question of law that this Court reviews de novo. *People v Lyon*, 227 Mich App 599, 604; 577 NW2d 124 (1998). The trial court did not abuse its discretion when it set the monthly payment of restitution because defendant stipulated that she could pay \$225 a month. Furthermore, the court committed no legal error because it addressed the enumerated factors of the Michigan Crime Victim's Rights Act.

Restitution is a form of punishment, *People v Slocum*, 213 Mich App 239, 244; 539 NW2d 572 (1995), and is specifically authorized by the Michigan Constitution, Const 1963, art 1, § 24, and the Michigan Crime Victim's Rights Act. MCL 780.766; MSA 28.1287(766) and MCL 780.767; MSA 28.1287(767). Restitution is not a substitute for civil damages, but encompasses only those losses that are easily ascertained and are the direct result of the defendant's criminal conduct. *Law*, *supra* at 589.

Under the statute in effect at the time of defendant's resentencing, the trial court was permitted to order full, partial, or no restitution. *People v Avignone*, 198 Mich App 419, 422; 499 NW2d 376 (1993). The court is obligated to determine both the amount of the loss sustained by the victim and the defendant's ability to pay. *People v Grant*, 455 Mich 221, 231-233; 565 NW2d 389 (1997); *Guajardo, supra* at 200-201. Because defendant in this case stipulated that she could pay \$225 per month, the trial court did not abuse its discretion in ordering this amount.

Defendant also contends that the court erred in failing to conduct an evidentiary hearing to determine her ability to pay and the precise amount of the loss. We disagree. It is incumbent on the defendant to make a proper objection and request an evidentiary hearing when the amount of restitution is contested. *People v Gahan*, 456 Mich 264, 276; 571 NW2d 503 (1997). Absent an objection, the trial court is not required to order, sua sponte, an evidentiary hearing. *Id.* at 276 n 17. In the instant case, the record demonstrates that defendant expressly waived her right to an evidentiary hearing at the time of resentencing.

Defendant next argues that the trial court erred when it ordered that at the end of defendant's probationary period, the crime victim could treat any unpaid restitution as a judgment. At the time of defendant's resentencing, MCL 780.766(16); MSA 28.1287(766)(16) provided that an order of restitution could be enforced by the victim in the same manner as a judgment in a civil action. Defendant argues, however, that by allowing the victim to attempt to collect restitution following her term of probation, the trial court violated MCL 780.766(12); MSA 28.1287(766)(12), which provides that the period for which restitution is ordered cannot exceed the defendant's probation. However, defendant's argument ignores MCL 780.766(16); MSA 28.1287(766)(16), which provides that a *victim* may seek to enforce a restitution in the same manner as a judgment in a civil action. In the instant case, the trial court did not improperly attempt to maintain jurisdiction over defendant's payments of restitution past the conclusion of her probation. Instead, the court simply noted what is already provided by statute – specifically, that a victim may enforce a restitution order in the same manner as a civil judgment.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Barbara B. MacKenzie
/s/ Gary R. McDonald