

STATE OF MICHIGAN
COURT OF APPEALS

In re LUCAS BORLAND CHADDAH.

PEOPLE OF STATE OF MICHIGAN,

UNPUBLISHED

October 23, 2012

Petitioner-Appellee,

and

LUCAS BORLAND CHADDAH,

Respondent-Appellee,

v

No. 306978

Saginaw Circuit Court

Family Division

LC No. 11-033111-DL

TERRY L. ELLISON,

Appellant.

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Appellant, Terry Ellison, appeals the restitution order of the trial court. For the reasons set forth below, we affirm.

I. FACTS AND PROCEEDINGS

Following delinquency proceedings, the referee, and later the trial court, held that appellee, Lucas Borland Chaddah, owes Mr. Ellison \$895.00 in restitution as a result of Mr. Chaddah's plea to one count of malicious destruction of property (\$1,000 to \$19,999.00), MCL 750.377a(1)(b)(i). Mr. Ellison notes that he sued the Saginaw County prosecuting attorney in a prior, related case, seeking a mandamus order to compel the prosecutor to file charges against Mr. Chaddah. The trial court granted summary disposition in favor of the prosecutor's office in that case, and this Court later dismissed appellant's appeal as moot because the prosecutor eventually filed charges against Mr. Chaddah. See *Ellison v Saginaw Co Prosecuting Attorney*, unpublished order per curiam of the Court of Appeals, issued November 7, 2011 (Docket No. 303908). Mr. Chaddah was not a party to that case, and the record from those proceedings is not preserved in the record.

Mr. Chaddah admitted that he threw a rock at Mr. Ellison's car and, thereafter, the referee set a restitution hearing in order to determine the amount Mr. Chaddah owed Mr. Ellison for the damaged car. At the restitution hearing, Mr. Ellison asked for restitution totaling \$12,455.50. Specifically, he asked for \$1,007.50 in damages and repair costs to the car, \$5,360 for attorney fees he incurred in this case, and \$6,088 in attorney fees he incurred in the prior mandamus action against the Saginaw County prosecuting attorney. After hearing the arguments and reviewing the documents contained in the victim impact statement, the referee found that appellant never repaired the car and awarded restitution of \$895, based on subtracting the ultimate resale value of the unrepaired vehicle, \$650, from the original Kelly Blue Book value of the car, \$1,545. The referee also denied Mr. Ellison's request for attorney fees on the ground that the Crime Victim's Rights Act (CVRA) does not permit recovery of attorney fees. The circuit court affirmed the referee's decision.

II. DISCUSSION

Mr. Ellison argues that he should have received \$1,007.50 in restitution, rather than \$895. Under the Michigan Constitution, crime victims are entitled to restitution by right. Const 1963, art 1, § 24. Additionally, the CVRA requires "the defendant [to] make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction. . . ." MCL 780.766(2). "In determining the amount of restitution to order . . . the court shall consider the amount of the loss sustained by any victim as a result of the offense." MCL 780.767(1). The prosecutor is the party responsible for proving the total amount of the victim's losses by a preponderance of the evidence. *People v Cross*, 281 Mich App 737, 739-740; 760 NW2d 314 (2008).¹ As this Court further explained in *People v Allen*, 295 Mich App 277, 281; 813 NW2d 806 (2011):

Whether and to what extent a loss must be compensated is a matter of statutory interpretation; and this Court reviews de novo the proper interpretation of statutes. See *People v Bemer*, 286 Mich App 26, 31; 777 NW2d 464 (2009). However, this Court reviews the findings underlying a trial court's restitution order for clear error. MCR 2.613(C). A finding is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made. *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003).

Mr. Ellison did not replace the broken car window and, as noted, the referee awarded him the difference between his ultimate sale price and the blue book value. Mr. Ellison maintains that he presented evidence that it cost him an additional \$112.50 for clean-up and to obtain various repair estimates. Mr. Ellison relies on a document from Area Tent & Canvas that he included in his victim impact statement, but it was merely inserted between several different repair estimates, and Mr. Ellison never specifically advised the referee that it was not an

¹ "The juvenile code employs the same statutory scheme for restitution found in the [CVRA] Accordingly, the Legislature's overall intent in mandating restitution for crime victims may be discerned from the comprehensive scheme governing victims under the CVRA as well as the juvenile code." *In re McEvoy*, 267 Mich App 55, 63; 704 NW2d 78 (2005).

estimate, but an actual invoice of his costs. Further, the Area Tent & Canvas invoice is unclear on its face. It does not establish the value of the window or the actual costs Mr. Ellison incurred in getting various estimates or cleaning up the broken glass. It merely established a labor rate of \$45 per hour, and it is not at all clear whether this rate actually reflected Mr. Ellison's costs. Based on the lack of clarity in this invoice, the referee did not commit clear error in finding that Mr. Ellison's loss was \$895 on the basis that the sale price differential was the only evidence of his loss.²

Mr. Ellison further claims that he is entitled to attorney fees as part of his restitution. We need not decide the extent to which attorney fees are recoverable under the CVRA because, here, there is clearly no causal connection between Mr. Ellison's attorney fees and the crime. For a loss to be recoverable, MCL 780.767(1) requires a sufficient nexus between the crime and the loss. Specifically, the loss must be incurred "as a result" of the criminal act. Mr. Ellison seeks attorney fees for both his unsuccessful, moot attempt to obtain a mandamus order compelling the Saginaw County prosecuting attorney to file charges against Mr. Chaddah, and his voluntary decision to hire an attorney to represent his rights in these proceedings. The prosecutor had the discretion to decide when to charge Mr. Chaddah, see *People v Goold*, 241 Mich App 333, 342-343; 615 NW2d 794 (2000), and the CVRA did not give Mr. Ellison the right to require the prosecutor to immediately file charges. Accordingly, the attorney fees incurred during that moot proceeding clearly were not a result of Mr. Chaddah's actions. Further, while Mr. Ellison was permitted to retain counsel in these proceedings, he fails to establish that his voluntary decision to do so created a loss that was necessarily incurred as a result of the offense. Because there is no causal link between Mr. Chaddah's criminal actions and the attorney fees incurred by Mr. Ellison in the two proceedings, Mr. Ellison's attorney fees are not recoverable losses under the CVRA.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Michael J. Kelly

² Mr. Ellison contends that his restitution should have been over \$1,000 because Mr. Chaddah, in essence, admitted to causing between \$1,000 and \$19,999.99 in damages pursuant to MCL 750.377a(1)(b)(1). While the statute permits the court to fine a defendant up to \$10,000 or three times the value of the total property damage, these are punitive fines, not restitution. MCL 750.377a(1)(b). Mr. Ellison presents no legal support to show that Mr. Chaddah's admission of guilt to the offense should establish the actual value of appellant's losses. Accordingly, the issue is deemed abandoned on appeal. *PIC Maintenance, Inc v Dep't of Treasury*, 293 Mich App 403, 414; 809 NW2d 669 (2011).