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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2330
A07-2331**

In the Matter of the Welfare of: M. G. W., Child (A07-2330),
and
In the Matter of the Welfare of: J. J. R. W., Child (A07-2331)

**Filed December 23, 2008
Affirmed
Ross, Judge**

Stearns County District Court
File Nos. 73-J6-06-052027; 73-J4-06-052026; 73-J5-07-050022;
73-J7-07-050023; 73-K2-07-000243

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Juveniles M.G.W. and J.J.R.W. were arrested and pleaded guilty to a delinquency petition for stealing property from a home. As part of the delinquency disposition, the district court required them to pay restitution. In these consolidated appeals, M.G.W. and J.J.R.W. challenge the district court's restitution order, the restitution amount, and insurer State Farm's "victim" status. Because the district court did not abuse its discretion by ordering restitution or deciding the amount, and because insurance companies can be considered victims for restitution purposes under Minnesota Statutes section 611A.04, we affirm.

FACTS

On December 12, 2006, M.G.W., J.J.R.W., and three other juveniles entered the DeVaaans' home and stole personal property. They took a television, computer, jewelry, DVDs, and various other items. Police arrested the juveniles. M.G.W. pleaded guilty to felony theft, J.J.R.W. pleaded guilty to aiding and abetting theft, and the district court adjudicated them delinquent. At the disposition hearings, the district court ordered that they pay a then-undetermined restitution amount, obligating M.G.W. and J.J.R.W. jointly and severally with the three other juveniles. The district court informed M.G.W. and J.J.R.W. that they could contest the restitution amount once it was determined.

Both State Farm and the DeVaaans filed restitution affidavits. State Farm requested \$5,154.88 in restitution, which it supported with an inventory list. The DeVaaans requested \$10,495.45, which they supported with a handwritten list of items

and the approximate individual cost for each. The DeVaaans based their amounts on the unpaid depreciation value of the items. Relying mainly on these affidavits, the district court ordered restitution of \$15,560.33 to be paid by M.G.W., J.J.R.W., and the three other juveniles, with no deadline for payment.

M.G.W. and J.J.R.W. requested a restitution hearing and submitted supporting affidavits. The state asked the district court to deny M.G.W. and J.J.R.W.'s request because their affidavits lacked the detail required by Minnesota Statutes section 611A.045, subdivision 3. M.G.W. and J.J.R.W. argued that they did not receive necessary information from the DeVaaans and that their affidavits satisfied the statutory requirements when considered with the attachments. The district court determined that the juveniles' affidavits lacked the detail required by the statute, and it denied M.G.W. and J.J.R.W.'s hearing request.

M.G.W. and J.J.R.W. appealed, but while their appeal was pending, another juvenile from the group, J.R.E., challenged the restitution order and requested a hearing. Although the state asked the district court to dismiss J.R.E.'s challenge because his affidavit lacked specific detail, the district court conducted a hearing. Because J.R.E. had been granted a hearing, the state joined M.G.W. and J.J.R.W. in moving the district court to allow them to join J.R.E.'s restitution challenge. The district court granted this motion. This court then dismissed M.G.W. and J.J.R.W.'s appeal on their request.

The district court heard testimony from Mr. DeVaans, a State Farm claims adjuster, J.R.E.'s defense investigator, and the investigating police officer. The district court then reduced the restitution order from \$15,560.33 to \$12,912.44, with the DeVaaans to receive

\$7,757.56 and State Farm to receive \$5,154.88. It ordered J.R.E. to pay this amount jointly and severally with the other juveniles. It then imposed J.R.E.'s order on M.G.W. and J.J.R.W. based on their motion to join J.R.E.'s challenge. M.G.W. and J.J.R.W. now appeal.

DECISION

I

M.G.W. and J.J.R.W. first argue that the district court abused its discretion by ordering restitution, contending that the DeVaaans have not proven the existence of their claimed jewelry with documentary evidence, such as receipts. Crime victims have a “right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding . . . if the offender is convicted or found delinquent.” Minn. Stat. § 611A.04, subd. 1(a) (2006). And district courts have broad discretion to decide whether to order restitution. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). Before ordering restitution, the district court must receive proof of the amount owed, which the victim can provide by affidavit or by “other competent evidence.” Minn. Stat. § 611A.04, subd. 1(a). This proof must include a description of the items lost, itemized costs, and reasons for the amount if it is “in the form of money or property.” *Id.*

The district court did not abuse its discretion by ordering restitution. The DeVaaans and State Farm submitted affidavits that described the lost items, provided their approximate cost, and gave reasons for the amount. We are not persuaded by M.G.W. and J.J.R.W.'s contention that the DeVaaans needed additional proof; the statute does not require pictures, receipts, or additional affidavits. *See* Minn. Stat. § 611A.04, subd. 1(a)

(listing requirements for crime victim’s affidavit); *State v. Keehn*, 554 N.W.2d 405, 408 (Minn. App. 1996) (noting that statute does not require “receipts or proof of exact purchase price” just list of “reasonable specificity” that describes items lost and dollar amount), *review denied* (Minn. Dec. 17, 1996). The challenged affidavits contained a detailed list of items lost with their approximate costs.

The restitution decision also rests on oral testimony. The district court heard testimony from the victims, the investigating officer, and the defense investigator, before ordering restitution. Mr. DeVaan testified about acquisition dates, approximate values, sources, and his attempts to obtain receipts. The district court saw and heard Mr. DeVaan and could evaluate his credibility. We will defer to its evaluation. *See Cimarron Vill. v. Washington*, 659 N.W.2d 811, 818 (Minn. App. 2003) (noting that district court’s determinations of witness credibility will be given deference on appeal). Because the affidavits and witness testimony support the restitution order, we hold that the district court did not abuse its discretion. *See State v. O’Brien*, 459 N.W.2d 131, 133 (Minn. App. 1990) (noting that affidavits and testimony are sufficient evidence to support restitution).

II

M.G.W. and J.J.R.W. also argue that the district court abused its discretion by deciding that the restitution amount is \$12,912.44. They contend that the amount is too high because the district court failed to consider their ability to pay as reflected by its statements that, “[J.R.E.] is a young able-bodied man. He is capable of finding and maintaining a job, if he already obtained one.” The contention fails to persuade us.

When deciding the restitution amount, the district court must consider the victim's economic loss and the offender's "income, resources, and obligations." Minn. Stat. § 611A.045, subd. 1(a) (2006). Restitution primarily compensates the victim, but it should also rehabilitate the offender. *State v. Maidi*, 537 N.W.2d 280, 286 (Minn. 1995). Because the statute does not indicate how courts should consider these factors, district courts have substantial flexibility in fashioning restitution orders. *Id.* at 285–86. We therefore review the restitution amount under an abuse-of-discretion standard. *Tenerelli*, 598 N.W.2d at 672. If the record supports the amount by showing the losses' nature and amount "with reasonable specificity," we will uphold the order. *State v. Thole*, 614 N.W.2d 231, 234–35 (Minn. App. 2000).

The district court did not abuse its discretion when arriving at the restitution amount. It carefully assessed the DeVaa's and State Farm's economic losses. For example, it denied the DeVaa's request for the depreciation value because this value would have given the DeVaa's an economic windfall. *See State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007) (noting that restitution should "restore crime victims to same financial position they were in before the crime"). The district court based its valuation of the DeVaa's stolen jewelry on their affidavits and testimony and its valuation of State Farm's losses on the insurer's documents.

The district court also evaluated J.R.E.'s ability to pay, and the ability of M.G.W. and J.J.R.W. because they joined his restitution challenge. The district court considered their "income, resources, and obligations." Minn. Stat. § 611A.045, subd. 1(a)(2). It

observed that M.G.W. and J.J.R.W. have no outstanding financial obligations besides the restitution order, which has no repayment deadline.

We observe that these juveniles also have resources in the form of their co-defendants. The district court held M.G.W. and J.J.R.W. jointly and severally liable with the three other delinquent juveniles for the full amount of restitution. Although some unforeseen circumstance might leave M.G.W. or J.J.R.W. carrying the full load of restitution, they point to no basis for us to conclude that either of them will likely bear the burden of payment alone.

They also have not shown an inability to earn income. *See Steinbuch v. State*, 589 N.W.2d 464, 466 (Minn. 1999) (noting that because defendant failed to prove that he was medically unable to work restitution could continue to be taken from his prison wages). M.G.W. and J.J.R.W. can begin work and pay their obligation. *See State v. Jola*, 409 N.W.2d 17, 20 (Minn. App. 1987) (noting that offenders were “relatively young men in apparently good health and employed”). J.J.R.W. told the district court that he planned to attend technical school and wanted to apply for a job. Divided evenly, before long, each of the five teenage delinquents could pay his share (approximately \$2,500 if they divide and satisfy the obligation equally) by working reasonable hours at entry-level jobs while temporarily sacrificing the convenience of such things as a television, computer, DVDs, and the other items they stole during their delinquent conduct. Based on information about the juveniles’ ability to work, the district court considered their ability to pay when it ordered restitution of \$12,912.44. We therefore hold that the district court did not abuse its discretion.

III

M.G.W. and J.J.R.W. argue that State Farm should not be considered a victim for restitution purposes. M.G.W. and J.J.R.W. failed to raise this issue in the district court. We will not discuss the challenge but we reiterate that insurance companies qualify as victims for restitution purposes. *Id.* at 19. M.G.W. and J.J.R.W. must pay restitution to State Farm as ordered by the district court.

Affirmed.