IN THE COURT OF APPEALS OF THE STATE OF ALASKA

GEORGE CHRISTOPHER SEELEY, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13394 Trial Court No. 4FA-17-01877 CR MEMORANDUM OPINION No. 7053 — April 5, 2023

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Michael P. McConahy, Judge.

Appearances: Michael Horowitz, Law Office of Michael Horowitz, Kingsley, Michigan, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Clyde "Ed" Sniffen Jr., Acting Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Harbison and Terrell, Judges.

Judge HARBISON.

George Christopher Seeley pleaded guilty, pursuant to a plea agreement, to first-degree criminal trespass, fourth-degree criminal mischief, and fourth-degree assault for refusing to leave Staci Quinlan's home, damaging her property, and assaulting

her.[1] The parties agreed that the court would enter a restitution order, but they did not agree on the amount of restitution.

After conducting an evidentiary hearing, the trial court ordered Seeley to pay $8,561.59 in restitution. Seeley was ordered to pay a portion of this to the State of Alaska Violent Crimes Compensation Board (VCCB), to reimburse it for payments it made to Quinlan, and to pay the remaining amount directly to Quinlan. In this appeal, Seeley raises several challenges to the trial court's restitution order.

First, Seeley argues that the trial court erred by awarding restitution to compensate Quinlan for income she lost in order to obtain civil sexual assault protective orders against Seeley. As Seeley points out, a victim may be compensated only for losses that were proximately caused by the conduct for which the defendant was convicted. Because Seeley was not convicted of sexual assault, we vacate this part of the court's restitution order.

Next, Seeley argues that the trial court erred by awarding excess restitution to reimburse Quinlan for wages and benefits she lost in order to attend court hearings. We conclude that the trial court erroneously determined that all of the losses that Quinlan incurred were compensable, rather than focusing on whether the expenses were the reasonably foreseeable result of Seeley's criminal conduct. We accordingly remand this matter to the trial court to apply the correct legal standard in evaluating these losses.

In a related argument, Seeley claims that the trial court erred when it ordered Seeley to reimburse Quinlan for missed work even when she was compensated for this time by taking paid leave. Seeley did not make this argument in the trial court, so he must demonstrate plain error. Because paid leave is an economic resource capable

[1] AS 11.46.320(a)(2), AS 11.46.484(a)(1), and AS 11.41.230(a)(1), respectively.

of being assigned a value by the trial court, we conclude that the trial court did not plainly err when it ordered Seeley to compensate Quinlan for the value of her paid leave.

Lastly, Seeley argues that the trial court erred by awarding restitution to the VCCB and to Quinlan for expenses Quinlan incurred to upgrade her home security system. But Seeley waived this argument by stipulating to this portion of the restitution judgment, and we accordingly reject this claim.

Background facts and proceedings

Following the above-referenced incident involving Quinlan, Seeley was charged with first-degree burglary, two counts of fourth-degree assault, fourth-degree criminal mischief, and attempted first-degree sexual assault.[2] (The charging documents did not allege that the crimes were crimes of domestic violence; indeed, they indicated that Seeley had not been in a relationship with Quinlan.) Seeley ultimately entered into a plea agreement, pursuant to which he pleaded guilty to reduced charges of fourth-degree assault, fourth-degree criminal mischief, and first-degree criminal trespass.[3]

Although Seeley agreed to pay restitution as part of the plea agreement, the parties did not agree on the amount of restitution. The trial court therefore conducted an evidentiary hearing to determine how much restitution Seeley would be required to pay.

Quinlan testified at the restitution hearing. During her testimony, she explained that she had missed work in order to attend court hearings; prepare for those hearings and compose herself after them; meet with the investigating trooper, doctors, counselors, and therapists; and because of anxiety and PTSD. Quinlan provided the

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[2] AS 11.46.300(a)(1), AS 11.41.230(a)(1), AS 11.46.484(a)(1), and AS 11.41.410(a)(1) & AS 11.31.100, respectively.

[3] AS 11.41.230(a)(1), AS 11.46.484(a)(1), and AS 11.46.320(a)(2), respectively.

court with a spreadsheet showing the hours she missed work, starting the day after the assault and continuing up to the restitution hearing. She also provided timesheets from her work, which showed that most of the leave she took was either annual leave or personal leave (*i.e.*, paid leave), but a small portion was leave without pay.

Quinlan testified she had incurred medical expenses and expenses to repair the damage to her home, and that the VCCB had fully reimbursed her for all of these expenses as well as all but $195.03 of her counseling expenses. She testified that she also had incurred expenses for upgrading her home security system and that the VCCB had paid for all but $358.87 of these expenses.

Seeley's attorney then questioned Quinlan about the spreadsheet showing her missed work hours. The attorney questioned whether Quinlan actually met with a trooper for nine hours on the day after the attack, as the spreadsheet suggested. In response, Quinlan explained that the meeting did not take nine hours but that she nevertheless missed nine hours of work that day because "there was no way [she] would have made it through a day of work" and because she "was not going to work all bruised and battered and sore."

Seeley's attorney also questioned Quinlan about the nine hours of work she missed for the grand jury hearing. Quinlan responded that although the grand jury proceeding was not nine hours long, she nevertheless missed that amount of work because of the proceeding, explaining that whenever she "had something on the schedule" she did not go to work and that "this is when the PTSD was evolving." According to Quinlan, she would "go into panic and anxiety attacks and . . . could not work."

Quinlan also testified generally about the time she took off work to attend court proceedings for this case and for separate cases in which she sought sexual assault protective orders against Seeley. She stated that she was able to work after some of the

hearings but was unable to work after others. She said that she went to every court proceeding to stay informed about the cases, and that she often needed to prepare for hearings.

At the conclusion of the restitution hearing, the prosecutor asked the court to require Seeley to pay restitution to Quinlan and to the VCCB in a total amount of $8,561.59. In response, Seeley's attorney did not claim that Quinlan was not entitled to restitution for economic losses resulting from the work she missed to attend court proceedings and to meet with the investigating trooper. In fact, the attorney agreed that Quinlan could be compensated for work she lost in order to travel to and from the proceedings and to attend certain hearings — *e.g.*, the bail hearing, sentencing hearing, and restitution hearing. Seeley's attorney also expressly agreed that the restitution order should include the full amount necessary to reimburse the VCCB, as well as additional expenditures Quinlan incurred for counseling. However, Seeley's attorney argued that the court should not award any restitution to compensate Quinlan for economic losses related to the time she spent obtaining civil sexual assault protective orders, nor to compensate Quinlan for losses that exceeded the time she spent meeting with the investigating trooper, grand jury proceedings, bail hearings, change of plea and sentencing hearings, and restitution hearings.

The court awarded all of the restitution the State requested, requiring Seeley to pay restitution to both Quinlan and the VCCB. Seeley's attorney then filed a motion for reconsideration, which the court denied.

This appeal followed.

Why we reverse the award of restitution to compensate Quinlan for losses related to her efforts to obtain civil sexual assault protective orders against Seeley

Seeley was originally charged with attempted sexual assault, but this charge was dismissed pursuant to the plea agreement. On appeal, he contends that he should not have to pay restitution to compensate Quinlan for economic losses for the time she spent — thirteen and a half hours — in order to obtain sexual assault protective orders against him. Seeley contends that such losses were not the proximate consequence of the criminal conduct for which he was convicted.

Under Alaska law, although "public policy . . . favors requiring criminals to compensate for damages and injury, including loss of income, to their victims,"[4] restitution may be ordered to compensate a victim only for "actual damages or loss caused by the crime for which conviction was had."[5] In other words, "restitution cannot be required in an amount greater than the loss or damage caused by the offense for which a defendant is convicted."[6]

In *Kimbrell v. State*, we addressed the question of whether restitution may be imposed to compensate a victim for losses related to a dismissed charge. We concluded that such an order is proper only if:

> (1) the amount of loss suffered by an identifiable aggrieved party is certain; (2) the defendant admits, and there is no factual question as to whether, the defendant caused or was responsible for the aggrieved party's loss; and (3) the

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[4] AS 12.55.045(a)(1).

[5] AS 12.55.100(a)(2)(B).

[6] *Kimbrell v. State*, 666 P.2d 454, 455 (Alaska App. 1983).

> defendant consents, freely and voluntarily, to make full restitution . . . .[7]

Our opinion in *Kimbrell* controls the outcome here. Seeley was not convicted of sexual assault, and he did not agree to make restitution for the dismissed attempted sexual assault count. For this reason, we conclude that the trial court erred by requiring Seeley to pay restitution for the thirteen and a half hours of wages and benefits that Quinlan lost in order to pursue the sexual assault protective orders.

Why we remand this matter for further proceedings regarding the award of restitution for missed work

The court's restitution order included compensation for wages and benefits Quinlan lost when she missed work following Seeley's crimes against her. On appeal, Seeley argues that the trial court erred by awarding excessive restitution to compensate Quinlan for the work she missed in order to attend court proceedings for this case. Seeley seems to argue that Quinlan should only have been compensated for the time it took her to travel from her work to the court proceedings, to attend the proceedings, and to travel back to work.

It is undisputed that Quinlan often missed an entire day of work to attend a very short hearing or meeting, and also that Quinlan worked only about a mile away from the courthouse. During the restitution hearing, Quinlan explained that she missed more work than was necessary to travel to and attend the proceedings because she needed to prepare for them and to compose herself afterwards.

When the trial court considered this issue, it focused on the fact that Quinlan chose to attend all of the hearings in Seeley's case, to spend time preparing for

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[7] *Id.* (omission in original) (quoting *United States v. McLaughlin*, 512 F. Supp. 907, 908 (D. Md. 1981)).

them, and to spend significant time afterwards composing herself. It found that Quinlan's "need for the time off . . . was directly a consequence of [Seeley's] conduct." The court acknowledged that another crime victim might have behaved differently, but it noted that Quinlan chose to attend every hearing, and that she kept detailed records of the work she missed. The court held that because Seeley "picked this victim to assault," he "takes his victim with all of these qualities." As a result, in the trial court's view, as long as Quinlan "need[ed]" to take several hours of time off from work before and after each hearing, she was entitled to an award of restitution for any economic losses she incurred as a result of this missed work.

But Alaska law "employs a test of proximate causation in evaluating claims for restitution in a criminal case."[8] Thus, a victim may only be reimbursed for losses that are the natural and proximate consequence of the crime for which the defendant was convicted,[9] and the trial court's finding that Quinlan's need for time off was a *direct* consequence of the crimes for which Seeley was convicted does not answer the question of whether Quinlan may be reimbursed for her loss. Instead, the question of whether Quinlan's losses are compensable as restitution must be answered by determining whether such losses were the *proximate* consequence of the crimes for which Seeley was convicted.

We conclude that the trial court incorrectly focused on Quinlan's subjective decision-making when it considered whether Seeley should be required to compensate Quinlan for missing entire days of work in order to attend hearings that lasted only several minutes. Instead, the court should have considered whether it was reasonably

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[8] *Petersen v. Anchorage*, 500 P.3d 314, 321 (Alaska App. 2021) (citing *Ned v. State*, 119 P.3d 438, 446 (Alaska App. 2005)).

[9] *Id.*

foreseeable that a crime victim would have needed to take this amount of time off from work. We therefore remand this issue to the trial court for reconsideration of Quinlan's request for restitution to compensate her for the time she missed work in order to attend court hearings.

We wish to note, however, that we do not intend to suggest that crime victims are necessarily entitled to restitution for their litigation expenses, such as the financial losses associated with attending court hearings or meetings with the prosecution. Indeed, this is an open question under Alaska law.

Many jurisdictions that have considered this question have precluded an award of restitution to compensate a victim for their litigation expenses, often on the ground that plaintiffs in a civil action cannot recover for time spent in court proceedings absent express statutory authorization.[10] But some courts have permitted restitution

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[10] *See, e.g.*, *State v. Yerkey*, 159 N.E.3d 1232, 1240 (Ohio App. 2020) (holding that losses incurred in the prosecution of a crime are not economic losses suffered "as a direct and proximate result of the commission of the offense" and are therefore not compensable as restitution); *State v. Barrick*, 347 P.3d 241, 243-46 (Mont. 2015) (holding that victims are not entitled to restitution for lost income due to prosecution despite statute providing for "expenses reasonably incurred in attending court proceedings related to the commission of the offense" because lost income was not an expense and the State had not shown that lost income would be recoverable in a civil action); *State v. Brown*, 342 P.3d 239, 243 (Utah 2014) (concluding that lost wages and travel costs are "not properly compensable" because "the longstanding, well-settled rule of the Restatement generally forecloses recovery of costs or expenses incurred in the maintenance of, or related to, litigation" (citing Restatement (Second) of Torts § 914 (1979))); *J.S. v. State*, 717 So.2d 175, 176-77 (Fla. Dist. App. 1998) (explaining that lost wages from court attendance are not recoverable because, "[g]enerally, costs resulting from participation in court proceedings are not recoverable, absent a specific statute authorizing them"); *cf. Ned*, 119 P.3d at 446 (holding that the legislature did not intend for "restitution in criminal cases to exceed the restitution that could be awarded in related civil cases").

under certain circumstances even in the absence of such express statutory language.[11] And Oregon has permitted a restitution award for expenses associated with attending court proceedings when the victim's presence at the hearing was "reasonably necessary."[12]

In the trial court proceedings, Seeley asserted that Quinlan should not receive restitution for losses associated with the litigation other than trooper meetings, grand jury proceedings, bail hearings, change of plea and sentencing hearings, and restitution hearings. But on appeal, Seeley abandons this claim, and he instead challenges the restitution award on the basis that it compensated Quinlan for more time than was necessary to attend the hearings and to travel to and from them. We accordingly have addressed the claim Seeley raises on appeal, and leave for another day the larger question that he raised in the trial court.

Why we reject Seeley's related claims of plain error

Having concluded that a remand is necessary, we must address two related issues. First, we must address Seeley's claim that the trial court was not authorized to order him to pay restitution to compensate Quinlan for the time she missed work but did

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[11] *See, e.g.*, *State v. Lindsley*, 953 P.2d 1248, 1250-52 (Ariz. App. 1997) (concluding that voluntary court appearances were no more a "matter of choice" than losses like counseling expenses and therefore allowing restitution for even voluntary court appearances); *People v. Moore*, 177 Cal. App. 4th 1229, 1233, 99 Cal. Rptr. 3d 555, 558 (Cal. App. 2009) (affirming award of restitution for lost wages for attending all hearings).

[12] *See State v. Ramos*, 368 P.3d 446, 457 (Or. 2016) (allowing restitution for attorney's fees and litigation costs if it was "reasonably necessary" for the victim to appear in court (quoting Restatement (First) of Torts § 914, 591 (1939))); *see also State v. Nichols*, 473 P.3d 1145, 1151-52 (Or. App. 2020) (affirming restitution award for loss of income for time spent at sentencing hearing to give victim impact statement but reversing restitution award for time spent at two pretrial hearings where attendance was not necessary).

not actually lose any income — *i.e.*, when she was able to take paid leave for the time she was absent. Seeley did not make this argument in the trial court, so he must demonstrate plain error.[13]

It is undisputed that when Quinlan missed work to attend court proceedings, she usually took paid leave for this missed work. On appeal, Seeley argues that the trial court erred when it ordered him to reimburse Quinlan for the value of her paid leave. According to Seeley, such an award of restitution will result in Quinlan receiving "double compensation" for this time because she will receive both wages from her employer and also restitution from Seeley.

But numerous state courts have held that paid leave is recoverable as restitution.[14] And the Alaska Supreme Court has repeatedly held, in the context of domestic relations cases, that paid leave is an economic resource capable of being

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[13] *See Adams v. State*, 261 P.3d 758, 764 (Alaska 2011).

[14] *See, e.g.*, *People v. Perez*, 413 P.3d 266, 270 (Colo. App. 2017) (holding that the loss of vacation and sick leave is a loss of employee benefits comparable to lost wages); *In re Ryan A.*, 39 P.3d 543, 550 (Ariz. App. 2002) (concluding that the loss of indirect employment benefits such as annual leave or vacation time are real economic losses recoverable as restitution); *In re K.F.*, 173 Cal. App. 4th 655, 665-66, 92 Cal. Rptr. 3d 784, 793 (Cal. App. 2009) (holding that the depletion of sick leave rendered it unavailable to cover future illnesses and represented an economic loss to the victim); *In re Welfare of M.R.H.*, 716 N.W.2d 349, 352-53 (Minn. App. 2006) (holding that unused leave is a compensable asset, and its loss therefore is recoverable as restitution).

assigned a value by the trial court.[15] We accordingly reject Seeley's claim that paid leave is not compensable in a restitution proceeding.

Next, Seeley claims that, even if Quinlan's use of her paid leave is compensable, the trial court was required to make specific findings about its value in order to award restitution for Quinlan's lost leave. Seeley further asserts that if Quinlan's paid leave was not fungible, payable upon termination, transferrable, or able to be carried over to future years, it was incapable of being assigned a value, and thus he could not be ordered to compensate Quinlan for her paid leave.

When the trial court considered this issue, Seeley did not make this claim and instead suggested that the value of one hour of Quinlan's leave was approximately the same as her hourly wage. The court adopted this valuation method.

We conclude that the court could reasonably use Quinlan's hourly wage to approximate the value of an hour of leave.[16] Even if Quinlan's leave cannot be cashed

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[15] *See, e.g.*, *Pasley v. Pasley*, 442 P.3d 738, 749 (Alaska 2019) ("Leave is like money: it may be accumulated or spent. Each hour of leave is worth a certain amount of money. Thus leave can be treated like money in a bank account."); *Schober v. Schober*, 692 P.2d 267, 268 (Alaska 1984) ("The right to a paid vacation, when offered in an employer's policy or contract of employment, constitutes deferred wages for services rendered, and the right . . . vests as the labor is rendered. The right is akin to pension or retirement benefits, another form of deferred compensation. As such, Mr. Schober's interest in his unused leave was not an expectancy but a chose in action, a form of property. Moreover, it was an economic resource capable of being assigned a value by the trial court." (internal quotation marks and citations omitted)).

[16] *See Hooper v. Hooper*, 188 P.3d 681, 691 (Alaska 2008) ("Taggart argues that he should not have to cash out sixty-seven percent of his leave and pay Sabra its value because the superior court did not ascertain whether all of his leave could be cashed out. He contends that the court erred by not determining 'if some or all of Taggart's personal leave that was accrued is sick leave that is only available to him for the limited purposes of actual illness or for determining the length of service upon retirement its value is inherently speculative.'

(continued...)

out, this leave still allows her to be paid her hourly wage for time she is not working. As a result, the value of an hour of her leave is approximately the same as her hourly wage, which is the figure that Seeley suggested. The trial court did not plainly err by adopting this method of valuing Quinlan's leave.

Why we conclude that the trial court did not err by awarding restitution for upgrades to Quinlan's home security system after Seeley stipulated to entry of a restitution judgment for these expenses.

Seeley's final argument is that the trial court erred by awarding restitution to the VCCB and to Quinlan for expenses Quinlan incurred to upgrade her home security system.[17] But Seeley told the trial court that he stipulated to the portion of the restitution

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[16] (...continued)
Because Taggart presented no evidence at trial that any of his leave could not be cashed out, he did not preserve this argument."); *In re K.F.*, 92 Cal. Rptr. 3d at 793 ("While its precise economic value might be uncertain, the court in making a restitution order is not required to determine the 'exact amount of loss,' so long as it employs 'a rational method that could reasonably be said to make the victim whole,' and is not 'arbitrary and capricious.' The sick leave used by the victim was a valuable right which he lost as a direct result of appellant's conduct. Given that the exact value of that loss was dependent to some extent on unknown variables, including unknowable future contingencies, the trial court did not act irrationally in simply allowing the value of the time it represented." (quoting *People v. Thygesen*, 69 Cal. App. 4th 988, 992, 81 Cal. Rptr. 2d 886, 888 (Cal. App. 1999))).

[17] *See Henderson v. State*, 2018 WL 3768778, at *1 (Alaska App. Aug. 8, 2018) (unpublished) (reversing restitution award for installation of new security system because defendant's actions were not a proximate cause of this expense); *see also People v. Reyes*, 166 P.3d 301, 303-04 (Colo. App. 2007) (reversing restitution award for installation of a security system because costs were not proximately caused by offender's conduct); *Howell v. Commonwealth*, 652 S.E.2d 107, 109 (Va. 2007) (holding that victims' installation of security system, while related to defendant's burglary of victims' business, was not caused by the offense, and defendant could therefore not be required to pay the cost of the security system as restitution).

judgment that would compensate Quinlan and the VCCB for the cost of upgrading Quinlan's home security system.

The Alaska Supreme Court has repeatedly held that parties cannot appeal stipulated judgments.[18] We accordingly conclude that Seeley has waived the right to appeal this issue.

Conclusion

The portion of the superior court's order requiring Seeley to pay restitution for losses Quinlan incurred to obtain civil sexual assault protective orders against Seeley is VACATED. This case is REMANDED to the superior court with instructions to reconsider its award of restitution to compensate Quinlan for the economic losses she incurred when she missed work in order to attend court proceedings associated with this case. In all other respects, the judgment of the superior court is AFFIRMED. We do not retain jurisdiction.

[18] *Uncle Joe's Inc. v. L.M. Berry & Co.*, 156 P.3d 1113, 1120-21 (Alaska 2007); *Singh v. State Farm Mut. Auto. Ins. Co.*, 860 P.2d 1193, 1197 (Alaska 1993).