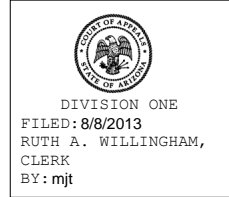


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE ZACHARY R.)
) 1 CA-JV 13-0062
)
) DEPARTMENT E
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JV558391

The Honorable Helene F. Abrams, Retired Judge

AFFIRMED

William G. Montgomery, Maricopa County Attorney Phoenix
By E. Catherine Leisch, Deputy County Attorney
Attorneys for Appellee

Christina Phillis, Maricopa County Public Advocate Mesa
By Suzanne W. Sanchez, Deputy Public Advocate
Attorneys for Appellant

N O R R I S, Judge

¶1 Zachary R. ("Zachary") appeals the juvenile court's order awarding \$985.84 in restitution to the victim high school, arguing the juvenile court abused its discretion because the

award was excessive. Given the facts of this case, we disagree, and therefore, affirm the restitution order.

FACTS AND PROCEDURAL BACKGROUND

¶2 After the juvenile court found Zachary delinquent, Zachary entered a plea agreement in which he admitted to criminally damaging high school textbooks with graffiti. In entering the plea agreement, Zachary acknowledged the textbooks could not be repaired and the damage amount was between \$250 and \$1,000. At the restitution hearing, the State introduced a verified statement into evidence showing it would cost the high school \$985.84 to replace the vandalized textbooks. The high school's principal testified the textbooks needed to be replaced because books with graffiti tend to encourage even more graffiti. Based on the evidence, the juvenile court ordered Zachary to pay the high school \$985.84 in restitution.

DISCUSSION

¶3 Zachary raises one issue on appeal -- whether the restitution amount was excessive. We review a juvenile court's restitution determination for an abuse of discretion. *In re William L.*, 211 Ariz. 236, 239, ¶ 10, 119 P.3d 1039, 1042 (App. 2005).

¶4 A juvenile offender is required to make "full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent." Ariz. Rev. Stat.

("A.R.S.") § 8-344(A) (Supp. 2012). Restitution is commonly referred to as making the victim "whole." See, e.g., *In re Ryan A.*, 202 Ariz. 19, 24, ¶ 20, 39 P.3d 543, 548 (App. 2002); *State v. Reynolds*, 171 Ariz. 678, 681, 832 P.2d 695, 698 (App. 1992) ("a trial court is required to determine the full amount of the victim's loss to make the victim whole"). In each case, the court "must consider the victim's loss in fashioning an order appropriate to a particular case." *Matter of Appeal in Pima County Juv. Action No. 45363-3*, 151 Ariz. 541, 541, 729 P.2d 345, 345 (App. 1986). The court, however, may not order restitution that would make the victim more than "whole" and result in a windfall. *In re Ryan A.*, 202 Ariz. at 25, ¶ 27, 39 P.3d at 549.

¶15 In many cases, the fair market value of the victim's property at the time of the loss realistically reflects the actual loss. *State v. Ellis*, 172 Ariz. 549, 551, 838 P.2d 1310, 1312 (App. 1992). Still, fair market value may not always be the appropriate standard. *Id.* In some cases, fair market value will not make the victim whole, such as when the loss involves unique property or rapidly depreciating property. *Id.* ("if property is unique or has a restricted use so that there is no market for it, the trier of fact may consider the replacement cost of the property").

¶16 Here, we cannot say that the juvenile court abused its discretion in ordering Zachary to pay the replacement cost of the vandalized textbooks. While the replacement cost was likely higher than the textbooks' value when Zachary vandalized them,¹ the State introduced evidence the high school would need to pay \$985.84 to replace the books. As such, "[t]he juvenile court correctly perceived that the primary purpose of restitution -- to make the victim whole -- would have been frustrated if the measure of recovery was limited to fair market value." *In re William L.*, 211 Ariz. at 240, ¶ 17, 119 P.3d at 1043.

¶17 Zachary also argues the \$985.84 award was excessive because the school could have repaired the books, asserting the graffiti was on non-essential pages of the textbooks, so the high school could have removed or covered those pages. We note, however, that at the plea hearing, Zachary acknowledged the textbooks could not be repaired. Further, Zachary did not present any evidence at the restitution hearing that such a "repair" was possible or would have made the high school whole. As the juvenile court explained, "I have to make them whole. Whole is to get their books back. . . . I have to rule based on the evidence presented before me."

¹The high school's principal testified at the restitution hearing the school replaced textbooks every six or seven years and these particular textbooks were "[r]elatively new, but not brand new."

¶18 Based on the evidence before the juvenile court, the replacement cost of \$985.84 bears a reasonable relationship to the high school's loss. *Id.* at 239, ¶ 10, 119 P.3d at 1043 (appellate court "will uphold the amount of restitution if it bears a reasonable relationship to the victim's loss"); *State v. Scroggins*, 168 Ariz. 8, 9, 810 P.2d 631, 632 (App. 1991) ("some evidence must be presented that the amount bears a reasonable relationship to the victim's loss before restitution can be imposed").

CONCLUSION

¶19 For the foregoing reasons, we affirm the juvenile court's order of restitution.

/s/
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/
ANDREW W. GOULD, Presiding Judge

/s/
KENT E. CATTANI, Judge