

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE TANNER O.

No. 1 CA-JV 20-0058
FILED 9-1-2020

Appeal from the Superior Court in Yavapai County
No. P1300JV201900105
The Honorable Anna C. Young, Judge

AFFIRMED

COUNSEL

Law Office of Florence M. Bruemmer, P.C., Anthem
By Florence M. Bruemmer
Counsel for Appellant

Yavapai County Attorney's Office, Prescott
By Danalyn E. Savage
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge D. Steven Williams and Judge David D. Weinzwieg joined.

T H U M M A, Judge:

IN RE TANNER O.
Decision of the Court

¶1 Tanner O. appeals from a restitution order requiring him to pay \$45,703.25 to Chino Valley High School (School) and the Arizona School Risk Retention Trust (Trust) for damage he caused to a gymnasium floor. Because Tanner has shown no error, the restitution award is affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 Early one morning in February 2019, Chino Valley High School officials found oil “smell[ing] like stale French fries” spread throughout its gym. The oil covered the entire floor, from “basket to basket . . . including the outside baseline areas,” as well as the basketball backboards. An investigation revealed that several students, including Tanner, spread the oil on the floor the night before as a prank. Four individuals were charged, three in juvenile court and one in criminal court. Tanner admitted, and was found delinquent of, solicitation to commit burglary in the third-degree, a Class 6 undesignated felony. He was placed on standard probation and, more recently, on juvenile intensive probation, currently scheduled to expire in January 2021.

¶3 The School quickly tried to clean the floor inexpensively, including using squeegees, rags, an automated floor scrubber and dry mopping with dish soap. These efforts made some progress, but left parts of the floor sticky or slippery. Sanding and refinishing attempts failed because the oil had penetrated the wood. Attempts to replace the ruined portions of floor were stopped given the damage was so pervasive. Ultimately, the School replaced the entire floor, a six-week process that cost nearly \$183,000. The Trust, in a pooled risk arrangement, paid for nearly all the replacement costs, with the School paying the remainder.

¶4 The School and the Trust timely sought restitution from Tanner and the others. The court heard testimony from several witnesses and received exhibits and argument over two days. After concluding the juveniles’ expert witness was not credible, the court awarded \$182,813 in restitution. The court found the School made reasonable efforts to mitigate damages and noted that the School did not seek restitution for loss of use of the gym or additional employee costs. Rather than impose joint and several liability for the entire amount, the court required Tanner to pay one-quarter of the award, or \$45,703.25. The court also found Tanner’s mother,

¹This court views the facts in the light most favorable to upholding the superior court’s restitution decision. *In re Andrew C.*, 215 Ariz. 366, 367 ¶ 6 (App. 2007)

IN RE TANNER O.
Decision of the Court

his custodial parent, jointly and severally liable for \$10,000 of Tanner's obligation. *See* Arizona Revised Statutes (A.R.S.) section 12-661(B) (2020).²

¶5 Tanner timely appealed and this court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 8-235(A).

DISCUSSION

¶6 Tanner argues the court abused its discretion in awarding the victims \$182,813.00 in restitution. Juveniles who have been adjudicated delinquent may be required to pay "full or partial restitution to the victim of the offense" after the court "consider[s] the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile." A.R.S. § 8-344(A).

¶7 When awarding restitution in a juvenile proceeding, the court "has discretion to set the restitution amount according to the facts of the case in order to make the victim whole." *In re Ryan A.*, 202 Ariz. 19, 24 ¶ 20 (App. 2002) (citing A.R.S. § 13-804). To be recoverable as restitution, the loss must "1) be economic; 2) be one that the victim would not have incurred but for the defendant's criminal offense; and 3) directly result from the defendant's criminal conduct." *In re Stephanie B.*, 204 Ariz. 466, 469 ¶ 10 (App. 2003) (citation omitted). This court reviews a restitution order for an abuse of discretion, *In re Andrew C.*, 215 Ariz. 366, 367 ¶ 6 (App. 2007), and "will not reweigh evidence, but look only to determine if there is sufficient evidence to sustain the . . . ruling," *In re Andrew A.*, 203 Ariz. 585, 587 ¶ 9 (App. 2002). On this record, Tanner has shown no error.

¶8 Tanner does not dispute that the damages are an economic loss or that the restitution award meets the "but for" test. Instead Tanner claims that the loss was not a direct result of his actions. Tanner relies on *Maricopa County Juvenile Action No. JV-128676*, where a restitution award was vacated because it was not "directly attributable to the offense." 177 Ariz. 352, 355 (App. 1994). Here, however, the damage was "directly attributable to the offense" of solicitation to commit burglary, which Tanner admitted.

²Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

IN RE TANNER O.
Decision of the Court

¶9 Tanner next argues that the School failed to reasonably mitigate its damages. He contends the oil could have been cleaned up cheaply if the School had followed proper remedial procedures. Tanner argues the School's failure to do so, and its delay in contacting a flooring contractor, "caused the School to replace the entire gym floor." In support of this argument, Tanner points to expert testimony that the spill could have been effectively cleaned up with mineral spirits at a fraction of the cost of replacing the floor and that the School's repair attempts may have made the damage worse.

¶10 The superior court, however, found that the expert was not credible and that the School took reasonable efforts to mitigate its damages. Tanner's arguments seek to reweigh evidence and assess credibility, something this court will not do. *See In re Andrew A.*, 203 Ariz. at 587 ¶ 9. The evidence at the restitution hearing established a direct causal link between Tanner's pouring oil on the gym floor and the resulting damage. On this record, Tanner has not shown that the court abused its discretion in finding the \$182,813 replacement cost was reasonable and appropriate and ordering Tanner to pay \$45,703.25 of that amount to the victims.³

CONCLUSION

¶11 The restitution award is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA

³Although Tanner also cites A.R.S. § 8-344(B) in claiming the School acted unreasonably, that statute describes the evidence the court can consider in addressing a restitution request, an issue Tanner has not raised on appeal.