

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.

FILED BY CLERK
FEB 13 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-JV 2008-0107
)	DEPARTMENT B
)	
IN RE BENNY H.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
<hr style="width: 40%; margin-left: 0;"/>)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 14647304

Honorable Karen S. Adam, Judge Pro Tempore

AFFIRMED

Barbara LaWall, Pima County Attorney
By Dale Cardy

Tucson
Attorneys for State

Nuccio & Shirly, P.C.
By Jeanne Shirly

Tucson
Attorneys for Minor

E C K E R S T R O M, Presiding Judge.

¶1 In this appeal, the State of Arizona challenges the juvenile court’s refusal in this delinquency proceeding to award restitution to the victim’s father for the cost of gasoline for numerous trips he had made from San Diego in order to attend hearings in Tucson. The state is an aggrieved party in this context for purposes of A.R.S. § 8-235. See *In re Frank*

H., 193 Ariz. 433, ¶ 8, 973 P.2d 1194, 1196 (App. 1998). We affirm for the reasons stated below.

¶2 Benny H. was adjudicated delinquent pursuant to a plea agreement after he admitted having committed aggravated robbery and disorderly conduct. The juvenile court placed him on probation for one year and scheduled a restitution hearing. The father of one of the minor victims sought restitution for the cost of fuel or mileage associated with his round trips to Tucson from San Diego, where he lived. The father testified he had made nine such trips; the victim's mother testified the father's attendance at four hearings had been secured by subpoenas. The father submitted a restitution affidavit and testified at the restitution hearing that he was requesting \$2,453.05. This amount included some restitution for personal property; the remainder was apparently based on his claim that the fuel cost for a single trip was \$329.15 and that there had been seven trips. The portion of that amount claimed for fuel was supported by receipts for charges on "a company gas card," which were incurred on a single, unrelated trip but which the father used to establish the cost for a round trip to Tucson from San Diego. In its minute entry of October 3, 2008, the court denied this portion of the total amount sought by the father. The court found that, without receipts for fuel costs actually incurred, there was simply insufficient documentation to justify the award.

¶3 Section 8-344(A), A.R.S., provides that, when "a juvenile is adjudicated delinquent, the court, after considering the nature of the offense . . . shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated." The restitution statutes in the juvenile context, like those applicable to adult criminal prosecutions, are based on the principle that a person who commits a criminal

offense must compensate the victim for economic losses resulting from the offense and must “restor[e] the victim to his economic status quo that existed before the crime occurred.” *In re William L.*, 211 Ariz. 236, ¶ 11, 119 P.3d 1039, 1042 (App. 2005). As the parent of a minor victim of one of the offenses Benny committed, the father was entitled to restitution as a general proposition. *See* A.R.S. § 13-4403(C) (providing that parent of minor victim can exercise all rights of victim “on behalf of the victim”); *see also In re Erika V.*, 194 Ariz. 399, ¶¶ 7-8, 983 P.2d 768, 770 (App. 1999). Additionally, courts have recognized that certain family members of a victim are entitled to restitution for economic losses associated with voluntarily attending hearings. *See, e.g., State v. Madrid*, 207 Ariz. 296, ¶ 10, 85 P.3d 1054, 1058 (App. 2004) (children of murder victim entitled to compensation for travel expenses incurred in attending trial); *In re Ryan A.*, 202 Ariz. 19, ¶¶ 22-25, 39 P.3d 543, 548-49 (App. 2002) (parents of minor victim entitled to compensation for wages lost attending disposition hearing).

¶4 We will not disturb a juvenile court’s order of restitution unless the court has abused its discretion. *In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007). A restitution claim must be supported by a preponderance of the evidence. *In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 117-18 (App. 2003). Generally, a victim’s own statement about the value of his or her losses can satisfy this burden of proof, particularly if the victim has filed an affidavit in support of the claim. But here, the court found the documentation submitted in support of the father’s claim fell short of the required evidentiary mark. We find no abuse of discretion, given the juvenile court’s discretion to weigh evidence presented; the father’s failure to establish that, for each hearing he had attended,

he had been required to travel from San Diego; and the actual cost for fuel for each trip. The father did not establish he had traveled to Tucson from San Diego solely for the purpose of attending hearings in this delinquency proceeding. He testified he had not kept track of his trips and that either he or his wife had completed the restitution affidavit. He conceded some aspects of his trips to Tucson were personal. The prosecutor asked him whether he had traveled to Tucson out of a desire to be with his family in the courtroom. The father responded, “Not really.” The court apparently found that only receipts from actual trips, corresponding with hearing dates, could sufficiently support the restitution claim.

¶5 Although the perpetrator of a criminal offense must make the victim whole for resulting economic harm, courts must assure that the economic consequences are established by sufficient evidence. We cannot say the juvenile court abused its discretion here by finding the proof simply inadequate to justify an award of the amount requested for fuel expenses. Consequently, we affirm the order of restitution.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge