

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re SCOTT H., a Person Coming Under  
the Juvenile Court Law.

B236743  
(Los Angeles County  
Super. Ct. No. MJ19972)

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THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT H.,

Defendant and Appellant.

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APPEAL from an order of the Superior Court of Los Angeles County.  
Robin R. Kesler, Temporary Judge. Reversed and remanded with directions.

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Law Office of Anthony D. Zinnanti and Anthony D. Zinnanti for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey,  
Mary Sanchez and Taylor Nguyen, Deputy Attorneys General, for Plaintiff and  
Respondent.

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Scott H. appeals from the order of restitution entered for the victim and his family after the juvenile court adjudged him a ward of the court under Welfare and Institutions Code section 602<sup>1</sup> and placed him home on probation with various terms and conditions. Scott contends the court lacked authority to award restitution to the victim's family for mental health services. We agree. We, therefore, reverse the order and remand the matter for the court to enter an order of restitution for the victim only.

### **FACTUAL AND PROCEDURAL BACKGROUND**

A petition under section 602, dated October 5, 2010, alleged that, on or between December 1, 2009 and January 30, 2010, Scott committed a lewd act upon a child in violation of Penal Code section 288, subdivision (a). According to the probation report, the charge stemmed from an incident in which Scott, then 17 and an instructor at the Tao Kwon Do studio owned by the victim's mother and stepfather, followed the 12-year-old victim into a bathroom stall at a restaurant, locked the door, pulled down the victim's pants and underwear, touched the victim's penis and put it in his mouth. The victim told his father about the incident after the father found numerous texts of a sexual nature from Scott to the victim on the victim's cellular telephone. On October 21, 2010, Scott admitted the charge, and the juvenile court declared him a ward of the court and placed him home on probation for six months.

On July 14, 2011, the People moved under Penal Code section 1202.4 for an order of \$9,060 in restitution on behalf of the victim and his mother, stepfather and siblings for fees incurred for mental health services to address the "turmoil and stress" suffered by the family as a result of Scott's conduct. As supporting evidence, the People presented a declaration from the victim's mother, two letters from the treating therapist, one explaining the need for treatment of the victim and his family members and one detailing the treatment provided, and a report from the therapist listing the number of sessions attended and therapy expenses incurred by each family member.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise noted.

At a September 6 hearing on the motion, Scott objected to a restitution award on the ground that the family sought mental health services only once the juvenile court stated on the record that reimbursement would be available for such services and 90 days following the victim's disclosure of Scott's conduct, rather than immediately after the disclosure. Scott's counsel argued, "[I]t's clear that the actual incident in this case occurred on December 9th . . . . The incident didn't come to light, according to the moving papers, until July 28th of '10. It's also clear . . . that when the victim goes to counseling is October the 25th of '10. So we're talking about 90 days from the July 28th date to the October 25th date. . . . [O]n Thursday, October the 10th, that was the court date where the court specifically put on the record with the mother present that the mother would be entitled to counseling monies if such counseling was there. So until the court made that statement to the mother no counseling was had by [the victim] that they were saying was [necessitated] by this one act[.] . . . They wait for approximately three months and coincidentally five days after the court makes it known on the record in their presence that they are entitled to psychological counseling reimbursement and all of a sudden the damn busts forth and everybody's going to counseling when no one went to counseling before that date."

After reviewing the evidence, and hearing argument, the juvenile court awarded \$9,540 in restitution. The court stated, "Having reviewed the evidence and read the cases as provided [the] court is now satisfied that the documentation as provided from the . . . therapist, which is notarized[,] [is] sufficient for this court with regards to restitution. The dates of service with regards to the family is acceptable showing that it occurred at least sometime after. It's not an encounter, it's a lewd act on a minor. Let's not forget that there's devastation that can be family-wide with regard to Scott's actions. . . . So court orders . . . restitution for therapy in the amount of \$9540. That's through the dates as provided. In the event there's further therapy that's provided for these losses court will look at additional restitution. . . . So \$9540 is the court's order for restitution,

and that is as of the dates provided, and if there's any further losses that can be attributed to that[,] court will make the order at that time.”<sup>2</sup>

## DISCUSSION

Scott contends the restitution order is erroneous because it includes an award for mental health services received by the victim's family members but the family members are not victims of his offense for purposes of section 730.6—the statute governing restitution in juvenile delinquency cases. We agree.<sup>3</sup>

“The California Constitution gives trial courts broad power to impose restitution on offenders for losses caused by their criminal conduct. [Citations.] A victim's right to restitution is broadly and liberally construed. [Citations.] [¶] In proceedings involving minors, the juvenile court is vested with discretion to order restitution consistent with the goals of the juvenile justice system. [Citation.] The goal of the juvenile justice system is to provide minors under the jurisdiction of the court with care, treatment, and guidance that is consistent with their best interests and to hold them accountable for their behavior as appropriate under the circumstances, consistent with the interests of public safety and protection. [Citation.] In enforcing, interpreting and administering the juvenile court law, the trial court also is to consider the safety and protection of the public, the

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<sup>2</sup> The People in their motion requested \$9,060 in restitution, and the juvenile court awarded \$9,540. Although the record does not contain all of the exhibits admitted at the restitution hearing, it appears that the discrepancy is due to services rendered after the filing of the motion but before the time of the hearing. Scott does not contest the discrepancy, and we, therefore, do not address it further.

<sup>3</sup> In the juvenile court, Scott contested an award of restitution on the ground that the family did not seek mental health services until 90 days after the disclosure of Scott's conduct with the victim. He now does not challenge the restitution award as it applies to the victim but contends it is erroneous to the extent it compensates the victim's family members for their mental health services. Whether section 730.6 provides for an award of restitution for the victim's family members is a question of law, subject to our independent review (see *In re R.D.* (2008) 163 Cal.App.4th 679, 686), which we can address even though Scott did not raise the issue before the juvenile court (see *In re R.L.* (2009) 170 Cal.App.4th 1339, 1343, fn. 4).

importance of redressing injuries to victims and the best interests of the minor.

[Citation.]” (*In re Alexander A.* (2011) 192 Cal.App.4th 847, 853.)

Section 730.6 governs restitution in juvenile delinquency cases. Under the statute, “a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor’s conduct shall receive restitution directly from that minor.” (§ 730.6, subd. (a)(1).) In addition to the actual victim of the minor’s conduct, ““victim”” includes (1) “[t]he immediate surviving family of the actual victim” and (2) “[a]ny governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material . . . and that has sustained an economic loss as the result of a violation” of specified provisions. (*Id.* at subd. (j).) Economic loss under the statute has been interpreted to include the cost of mental health services provided to the victim as the result of the minor’s conduct. (*In re M.W.* (2008) 169 Cal.App.4th 1, 6-7.)

Under this authority, an award of restitution to the victim compensating him for the mental health services he received was proper. Section 730.6, however, does not provide for a restitution award to compensate the victim’s family for economic loss, except in the circumstance when the immediate surviving family is being compensated for the actual victim’s losses. (See § 730.6, subd. (j)(1).) In the juvenile court, and on appeal, the People relied on Penal Code section 1202.4—the statute governing restitution in adult criminal cases—to argue that a restitution award compensating the victim’s family members for their mental health services is proper. Penal Code section 1202.4 does provide for a restitution award for “[m]ental health counseling services” and includes in its definition of ““victim”” derivative victims, such as “[a]ny person who has sustained economic loss as the result of a crime and who . . . [a]t the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim” or who “[a]t the time of the crime was living in the household of the victim.” (Pen. Code, § 1202.4, subd. (k)(3)(A) & (B).) But section 730.6 does not contain such a provision for derivative victims. Although section 730.6 and Penal Code section 1202.4 parallel each other in many respects, Penal Code section 1202.4 by including derivative victims

has a broader definition of “victim” than does section 730.6. The Legislature amended Penal Code section 1202.4 in 1999 to include derivative victims, and in 2004 further amended the statute to specify those individuals now listed in subdivision (k)(3) as derivative victims. (See *People v. Giordano* (2007) 42 Cal.4th 644, 653, citing Stats. 1999, ch. 584, § 4 & Stats. 2004, ch. 223, § 2, eff. Aug. 16, 2004.) But the Legislature did not make such amendments to section 730.6. Absent direction from the Legislature, we decline to read into section 730.6 a more expansive definition of “victim” to include derivative victims when the Legislature did not mirror section 730.6 and Penal Code section 1202.4 in that respect. (See *People v. Trevino* (2001) 26 Cal.4th 237, 242 [“When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning”].)<sup>4</sup>

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<sup>4</sup> Scott also contends that the restitution order is erroneous because the juvenile court indicated that it would consider additional restitution for future mental health services. According to Scott, the award is “possibl[y] perpetual.” The court stated, “In the event there’s further therapy that’s provided for these losses court will look at additional restitution.” It further explained that “if there’s any further losses that can be attributed to [minor’s conduct] court will make the order at that time.” We do not view the court’s statements as providing for a perpetual award of restitution for future mental health services. A restitution award under section 730.6 must be based on a showing that the minor’s conduct was substantial factor in causing the victim’s economic loss. (*In re A.M.* (2009) 173 Cal.App.4th 668, 674.) To award further restitution, the court would have to find such a showing. (See § 730.6, subd. (h) [“court may modify the amount on its own motion or on the motion of the district attorney, the victim or victims, or the minor”].)

**DISPOSITION**

The order is reversed. The matter is remanded with directions for the juvenile court to enter a new order awarding restitution to the victim for the mental health services he received from October 2010 to the restitution hearing on September 6, 2011.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.