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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1876**

In the Matter of the Welfare of: A. G., Child

**Filed June 19, 2017
Reversed and remanded
Randall, Judge***

Steele County District Court
File No. 74-JV-15-2146

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Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Randall, Judge.

UNPUBLISHED OPINION

RANDALL, Judge

On appeal from a restitution order requiring appellant, a juvenile, to pay \$1,988.44 in restitution to the complainant after appellant was adjudicated guilty of fifth-degree assault, appellant argues that the district court abused its discretion by ordering her to pay

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

restitution for medical bills stemming from a roll-over car crash that occurred shortly after the assault and, therefore, were not directly caused by appellant's conduct. There is no direct causal connection between appellant's conduct and the concussion sustained by the complainant that resulted from the car accident. We reverse and remand for a recalculation of the proper amount of restitution to be awarded the complainant.

FACTS

On or about September 6, 2015, appellant A.G. was at a party where some party-goers were consuming alcohol. Shortly after arriving at the party, A.G. saw her boyfriend in a compromising sexual encounter with two girls, M.K. and M.R. Appellant then became upset and punched both M.K. and M.R. When M.K. and M.R. decided to leave the party sometime later, appellant followed the girls to M.K.'s vehicle and started "punching the window," prompting M.K. to drive away. At the time of the confrontation, M.K. and M.R. were ready to leave the party; appellant did not follow the girls after that confrontation. The vehicle then crashed and "went through a low-speed rollover."¹ M.R., who was in the front passenger seat and not wearing a seatbelt, was rendered unconscious as a result of the car accident, and was taken to the emergency room for treatment.

A juvenile delinquency petition was filed charging appellant with two counts of fifth-degree assault, one involving M.K. and one involving M.R.² Appellant subsequently pleaded guilty to the fifth-degree assault charge involving M.R., and the assault charge involving M.K.

¹ Details involving the exact time, place, and cause of the accident are not clear from our record.

² The record indicates that M.K. was charged in a separate complaint with criminal vehicular operation.

was dismissed. At the plea hearing, appellant admitted slapping M.R. on the face and then punching her “three times.” Appellant also admitted that “as a result of the punches,” M.R. sustained “some kind of an injury to her lip.” The district court then ordered a stay of adjudication and required appellant to “pay restitution as established either through agreement or through the results of a contested hearing.”

The state submitted an affidavit requesting \$1,988.44 in restitution for medical bills incurred by M.R. stemming from the assault. Appellant challenged the amount of restitution requested, claiming that the amount “in no way stemmed from [her] offense,” and instead included outstanding medical expenses resulting from the September 6, 2015 car accident for which she is not responsible.

Following a contested restitution hearing, the district court found that as a result of the events on September 6, 2015, M.R.’s “parents had to pay out of pocket for most of [M.R.’s] medical costs, including the [emergency room] visit, CT scans of her head, face, and spine, a follow up outpatient visit, and stitches for her mouth from the punches.” The district court then found that the “main point of contention for causation is whether [appellant] should be responsible for costs of the CT scans of [M.R.’s] head, face, and spine.” The court concluded that the “evidence supports medical investigation of a possible concussion from the assault . . . , making the head and face CT scans and emergency room visit likely and wise regardless of intervening events.” The court also stated that “[f]urthermore, [M.R.] was escaping [appellant’s] assault when the car accident happened. It is clear that [appellant] started the chain of events that caused all of [M.R.’s family’s] medical expenses. The subsequent accident resulted in concurrent medical evaluation, including the spine CT, which

does not absolve [appellant's] responsibility.” Accordingly, the district court awarded M.R. \$1,988.44 in restitution for the “emergency room visit, three CT scans, mouth stitches, and follow up visit cost” because these were “all costs directly resultant of [appellant's] actions.” This appeal followed.

D E C I S I O N

In juvenile cases, restitution is governed both by the general restitution statute and the restitution provision of the juvenile delinquency statutes. *In re Welfare of H.A.D.*, 764 N.W.2d 64, 66 (Minn. 2009); *see* Minn. Stat. § 611A.04, subd. 1 (2016) (general restitution statute); Minn. Stat. § 260B.198, subd. 1(5) (2016) (restitution provision of juvenile delinquency statutes). “The record must provide the [district] court with a factual basis to award restitution.” *State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014). “The burden of demonstrating the amount of loss sustained by a victim is on the prosecution.” *Id.* In general, the district court has broad discretion in determining restitution awards and imposing disposition in juvenile matters. *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007); *In re Welfare of J.L.Y.*, 596 N.W.2d 692, 696 (Minn. App. 1999), *review granted* (Minn. Sept. 28, 1999) *and appeal dismissed* (Feb. 15, 2000).

A district court may impose restitution and a wide range of other dispositions if it deems them “necessary to the rehabilitation” of the juvenile. Minn. Stat. § 260B.198, subd. 1. But “[t]he primary purpose of restitution is to restore crime victims to the same financial position they were in before the crime.” *Johnson*, 851 N.W.2d at 65 (quotation omitted). “[I]f restitution is in the form of money or property, the information must include an itemization and description of the loss and reasons justifying the amounts claimed.”

Hughes v. State, 815 N.W.2d 602, 605 (Minn. 2012) (quotation omitted). “A dispute over the proper amount of restitution must be resolved by the district court by a preponderance of the evidence.” *Johnson*, 851 N.W.2d at 65. A district court abuses its discretion when it awards restitution in an amount that “far exceeds the loss attributable to the offense of which [a defendant] was convicted.” *State v. Ramsay*, 789 N.W.2d 513, 518 (Minn. App. 2010).

In determining whether to order restitution, and the amount of restitution, the district court is required to consider, among other things, “the amount of economic loss sustained by the victim as a result of the offense.” Minn. Stat. § 611A.045, subd. 1(a)(1) (2016); *see State v. Riggs*, 865 N.W.2d 679, 685-86 (Minn. 2015) (defining “result” as a “result of the offense”). “The district court should order restitution only for losses the defendant directly caused by the conduct that led to his conviction.” *State v. Miller*, 842 N.W.2d 474, 477 (Minn. App. 2014) (quotation omitted), *review denied* (Minn. Apr. 15, 2014); *see also State v. Maxwell*, 802 N.W.2d 849, 853 (Minn. App. 2011) (stating that a recoverable economic loss is “a reasonably foreseeable result of, and . . . directly caused by, [a defendant]’s actions”). “It may not order restitution for conduct that is only tangentially related to the criminal act that caused the loss.” *Id.* In fact, the supreme court has declined to adopt a “but for” or cause-in-fact test for causation. *Palubicki*, 727 N.W.2d at 667. Instead, the supreme court recognized that “the potential exists for a restitution claim to become so attenuated in its cause that it cannot be said to result from the defendant’s criminal act.” *Id.*

Appellant argues that the district court awarded restitution for M.R.'s expenses that were not actually and directly caused by appellant. We agree. It is undisputed that appellant slapped M.R. on the face and then punched her "three times," causing an injury to her lip that required three stitches. As a result, appellant concedes that restitution was proper for M.R.'s medical bills for "an office visit and the sutures" because they were the direct result of her conduct.

However, there is no medical evidence whatsoever that establishes a causal connection between appellant's conduct and the concussion sustained by M.R. It is undisputed that M.R. did not leave the party or otherwise seek medical attention immediately after the assault. Instead, she left some time later, after the confrontation with appellant at M.K.'s car. At the time of the confrontation, M.K. and M.R. were ready to leave the party and appellant did not follow the girls after that confrontation. It is undisputed that upon leaving the party, the vehicle, driven by M.K. "went through a low-speed rollover," and that M.R., who was a passenger in the vehicle and not wearing a seatbelt, was found unconscious at the scene of the accident. This undisputed evidence indicates that M.R.'s medical bills stemming from the night of the assault, including the C.T. scans for the head, face, and spine, are not the direct result of the assault to which appellant pleaded guilty. Rather, M.R. incurred the bulk of her medical bills as a result of the car accident that followed the assault. *See Palubicki*, 727 N.W.2d at 667 (declining to adopt a "but for" or cause-in-fact test for causation). M.R.'s mother testified that M.R. suffered a concussion as a result of being punched in the face by appellant. There is nothing in the record to support her testimony, a fact noted by the district court.

M.R. sustained the concussion as a result of the car accident, which required the three C.T. scans and treatment. The bulk of M.R.'s medical bills were not directly caused by appellant's conduct. We reverse the district court's inclusion in the restitution award of the three CT scans, the emergency room visit, and the follow-up visit costs, and remand for an order awarding restitution only for the costs associated with the stitches.

Reversed and remanded.