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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1805**

State of Minnesota,
Appellant,

vs.

Jacqueline Marie Wagner,
Respondent.

**Filed April 19, 2011
Reversed and remanded
Wright, Judge**

Ramsey County District Court
File No. 62-CR-09-14700

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for appellant)

Thomas L. Donohue, Robert C. Hoene, St. Paul, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Stoneburner, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this appeal challenging the district court's decision to deny restitution to the family of the deceased victim of criminal vehicular homicide, the state argues that the district court erred by considering a prospective civil action arising from the offense in

violation of Minn. Stat. § 611A.04 (2008). For the reasons set forth below, we reverse and remand to the district court.

FACTS

Respondent Jacqueline Marie Wagner was convicted of criminal vehicular homicide arising from her participation in a drag race in St. Paul near Vandalia Avenue and University Avenue on August 23, 2009. While fleeing the police, Wagner struck and killed M.O.M. with her motor vehicle. Wagner pleaded guilty to criminal vehicular homicide, a violation of Minn. Stat. § 609.21, subd. 1(1) (2008), and was sentenced to 57 months' imprisonment.

M.O.M.'s family incurred funeral expenses of approximately \$7,452, which included the cost of shipping M.O.M.'s body to his home country, Mauritania. M.O.M.'s no-fault automobile insurance paid \$2,000 of the funeral expenses. The state sought restitution on behalf of the victim's family for the unpaid funeral expenses of \$5,452. M.O.M.'s family concurrently filed a civil wrongful-death action against Wagner.

At a contested restitution hearing, Wagner argued that the victim's family can obtain civil damages from Wagner's automobile-insurance policy through the wrongful-death action and that she is unable to pay restitution because of her meager prison wages. The state countered that, because Minn. Stat. § 611A.04 prohibits the district court from considering any civil action when determining restitution, the district court may not consider funds available from Wagner's automobile insurance. The district court found that the requested restitution amount is reasonable and that Wagner's financial circumstances do not dissuade the district court from awarding restitution to M.O.M.'s

family. But the district court denied restitution because of the “substantial amount of insurance” available from Wagner’s automobile-insurance policy to compensate M.O.M.’s family for the funeral expenses. This appeal followed.¹

D E C I S I O N

Under Minnesota law, a crime victim “has the right to receive restitution as part of the disposition of a criminal charge . . . if the offender is convicted.” Minn. Stat. § 611A.04, subd. 1(a). A district court has broad discretion in awarding restitution. *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000). But whether the decision to deny restitution rests on a sound legal basis presents a question of law, which we review de novo. *Id.*

When determining whether to order restitution, the district court must consider “(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a) (2008). But “[a]n actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim’s right to obtain court-ordered restitution.” Minn. Stat. § 611A.04, subd. 1(a). A district court’s rejection of a restitution motion because of “a civil lawsuit pending to address the issue of damages” is contrary to Minn. Stat. § 611A.04, subd. 1(a), and the public policy governing restitution. *State v. Pflepsen*, 590 N.W.2d 759, 768 (Minn. 1999) (quotation omitted).

¹ The state moved the district court to reconsider its restitution decision. But in order to meet the deadline for filing a sentencing appeal, the state appealed before the district court released its order on the reconsideration motion. In its November 19, 2010 order, the district court affirmed its earlier denial of restitution.

The district court expressly declined to reject the restitution motion based on Wagner's limited financial resources, including her meager prison-wage earnings. Rather, the district court denied restitution after concluding that the family will be compensated more quickly by Wagner's insurance than by restitution because M.O.M.'s family is represented by a "very good and experienced private attorney," the "liability seems to be absolutely clear," insurance is available, and "funeral expenses are really not an item of damages that can reasonably be negotiated." These remarks evince the district court's denial of restitution because the victim's family will be compensated sooner through the wrongful-death action.

This rationale for denying restitution, however, is contrary to the plain language of the restitution statute, which precludes a district court from basing a decision to deny restitution on a "prospective civil action." Minn. Stat. § 611A.04, subd. 1(a); *see also State v. Benniefield*, 668 N.W.2d 430, 436 (Minn. App. 2003), *aff'd*, 678 N.W.2d 42 (Minn. 2004) (stating that when statutory language is unambiguous, "the courts must give effect to the plain meaning of that language"). The district court erred by denying restitution based on insurance proceeds that may be available to pay damages awarded against Wagner in a civil action. *See Pflepsen*, 590 N.W.2d at 768 (holding that district court's failure to order restitution because of pending civil lawsuit to address damages is inconsistent with Minn. Stat. § 611A.04, subd. 1(a), and policy governing restitution).

Indeed, the availability of automobile insurance may be an appropriate consideration for the district court in determining to order restitution because it is a financial resource that may establish the offender's ability to pay restitution. *See Minn.*

Stat. § 611A.045, subd. 1(a)(2) (requiring district court to consider defendant's ability to pay restitution). But the availability of insurance proceeds that can be obtained through a civil action may not be the basis for the district court's decision to *deny* restitution. Minn. Stat. § 611A.04, subd. 1(a).

Because the district court erroneously considered a prospective civil action as a basis for denying restitution to M.O.M.'s family, we reverse and remand with instructions to the district court to order restitution in an amount appropriate to compensate M.O.M.'s family for the economic loss they sustained.

Reversed and remanded.