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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0270**

In the Matter of the Welfare of: N. A. B., Child

**Filed October 21, 2013
Affirmed
Smith, Judge**

Carver County District Court
File Nos. 10-JV-12-286, 10-JV-12-352

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

Mark Metz, Carver County Attorney, Martha Mattheis, Assistant County Attorney,
Chaska, Minnesota (for respondent state)

David Merchant, Chief State Public Defender, Benjamin Butler, Assistant State Public
Defender, St. Paul, Minnesota (for appellant N.A.B.)

Considered and decided by Smith, Presiding Judge; Worke, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm the district court's restitution order because the district court
sufficiently considered the appellant's ability to pay.

FACTS

Appellant N.A.B. and another juvenile, J.I.G., engaged in a fight that resulted in
injuries requiring each of them to receive medical care. At the time of their injuries,

N.A.B. was insured under his mother's health insurance policy, but J.I.G. had no health insurance coverage. The state filed delinquency petitions against both N.A.B. and J.I.G. N.A.B. pleaded guilty to gross misdemeanor fifth-degree assault. He was adjudicated delinquent, placed on indefinite probation, and ordered to pay \$2,194.61 in restitution, representing the full amount of J.I.G.'s medical bills. In a separate proceeding, J.I.G. was also adjudicated delinquent and ordered to pay \$430.71 in restitution, representing the amount of N.A.B.'s co-payment or out-of-pocket loss.

N.A.B. filed a timely affidavit challenging the restitution order, stating: "We incurred the same amount of medical bills and [J.I.G. is only] ordered to pay [N.A.B.'s] co-pay amount, 400. Unfair we have to pay full amt. because [J.I.G. is] not insured & [N.A.B.] is not employed." The district court held a contested restitution hearing, where the state and N.A.B. offered arguments addressing the fairness of the district court's restitution award. In its order, the district court rejected N.A.B.'s fairness argument, ordering N.A.B. to pay J.I.G. restitution of \$1,763.90, representing the full amount that J.I.G. was billed for his injuries (\$2,194.61) as offset by the amount J.I.G. was ordered to pay to N.A.B. (\$430.71).

D E C I S I O N

In his appeal, N.A.B. abandons the fairness argument he made to the district court, arguing instead that the district court failed to properly consider his ability to pay. We are not persuaded. Restitution in juvenile matters is governed by both the restitution provision of the delinquency statutes and the general restitution statute. *In re Welfare of H.A.D.*, 764 N.W.2d 64, 66 (Minn. 2009) (citing Minn. Stat. §§ 260B.198, subd. 1(5),

611A.04, subd. 1)). A crime victim has the right to receive restitution, including out-of-pocket expenses, as part of the disposition of a juvenile delinquency proceeding. Minn. Stat. § 611A.04, subd. 1(a) (2010). “[I]f the child is found to have violated a state or local law or ordinance which has resulted in damage to the person or property of another, the court may order the child to make reasonable restitution for such damage[.]” Minn. Stat. § 260B.198, subd. 1(5) (2010). 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) (2010). Application of these statutes to undisputed facts is a question of law, which we review de novo. *H.A.D.*, 764 N.W.2d at 66.

N.A.B. argues that, because the district court did not “make any mention of” his ability to pay restitution, it erred by ordering restitution. He also claims that he lacks the ability to pay restitution because he is unemployed and 16 years old. But the record establishes that the district court did consider N.A.B.’s ability to pay. At the restitution hearing, both the prosecutor and N.A.B.’s attorney called the district court’s attention to the statutory requirement that it consider N.A.B.’s ability to pay. N.A.B.’s mother also told the district court, “I don’t make any money” and offered evidence of her income. Based on this record, we conclude that the district court sufficiently considered N.A.B.’s ability to pay. *See State v. Maldi*, 537 N.W.2d 280, 285 (Minn. 1995) (“Minnesota Statute § 611A.045 is not explicit as to *how* the court must consider the income, resources, and obligations of the appellant when imposing a restitution order.” (emphasis added)); *State v. Nelson*, 796 N.W.2d 343, 347 (Minn. App. 2011) (“[T]he statute does

not require the court to make specific findings on an offender's ability to pay restitution.”).

Although N.A.B. did not raise this argument either to the district court or on appeal, we also note that the amount of restitution ordered is not excessive, and that the district court's order does not require N.A.B. to pay the amount in a lump sum or by a certain date. *Cf. Maldi*, 537 N.W.2d at 285-86 (concluding that the restitution statute “give[s] the courts wide flexibility to structure restitution orders that take into account a defendant's ability to pay, including . . . a reduced monthly payment that is within the defendant's means”). Also, while the record reflects that N.A.B. is unemployed, it also indicates that he is a healthy 16-year-old who is involved in sports and who appears to have the ability to work. *Cf. State v. Jola*, 409 N.W.2d 17, 20 (Minn. App. 1987) (noting that the fact that the offenders were “relatively young men in apparently good health and employed” indicated that they likely had the ability to pay restitution). We therefore affirm the district court's amended restitution order.

Affirmed.