STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1281

State of Minnesota,
Respondent,

vs.

Jason L. Jaqua,
Appellant.

Filed October 6, 2009
Affirmed
Minge, Judge

Scott County District Court
File Nos. CR-07-987, CR-07-18974, CR-07-4996

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Special Assistant County Attorney, Scott County Justice Center, JC340, 200 Fourth Avenue West, Shakopee, MN 55379 (for respondent)

Marie Wolf, Interim Chief Appellate Public Defender, Ngoc Nguyen, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Minge, Presiding Judge; Klaphake, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

MINGE, Judge

Appellant challenges the order requiring him to pay restitution in the amount of $13,690.02. Appellant argues that the amount of restitution awarded to the crime victim was unreasonable, that the district court erred in ordering appellant to pay restitution to crime victim's adult son, and that the district court erred in failing to expressly consider appellant's financial situation. We affirm.

FACTS

Victim L.J. obtained an order for protection (OFP) against appellant Jason Lloyd Jaqua. Appellant consistently sent harassing messages and death threats to L.J. in violation of the OFP. L.J.'s adult son also received a text message from appellant threatening to kill his mother. The police advised L.J. to keep her home lights on, day and night. When the police were unable to arrest appellant and he again sent L.J. a death threat, the Federal Bureau of Investigation (FBI) then advised L.J. to leave town until appellant was arrested. L.J. testified that she immediately searched for a place to take refuge using her frequent-flyer miles, including Florida, Iowa, and Wisconsin. L.J. then flew to Destin, Florida, with her two sons. She testified that she did not relocate somewhere closer because she had a large vehicle and the driving would be expensive. After L.J. learned that appellant had been arrested, she returned to Minnesota. L.J. and her sons stayed in a hotel in Florida for a total of 31 days.

On June 8, 2007, appellant pleaded guilty to one count of felony violation of an OFP and one count of terroristic threats. The district court sentenced him to 51 months in

prison and ordered him to pay L.J. restitution of $13,450.02 and to pay restitution of $240 to L.J.'s adult son. This appeal follows.

D E C I S I O N

The district court has significant discretion to award restitution for a victim's expenses. *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). But the record must provide a factual basis for the amount awarded by showing the nature and amount of the losses with reasonable specificity. *State v. Keehn*, 554 N.W.2d 405, 408 (Minn. App. 1996), *review denied* (Minn. Dec. 17, 1996). Whether a specific claim for restitution fits within the statutory definition is a question of law which we review de novo. *State v. Esler*, 553 N.W.2d 61, 63 (Minn. App. 1996), *review denied* (Minn. Oct. 15, 1996). This court may reverse a restitution order if the district court abused its discretion. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1991).

I.

The first issue is whether the district court abused its discretion by ordering appellant to pay L.J. restitution in the amount of $13,450.02. A victim of a crime is entitled to receive restitution from the offender if the offender is convicted. Minn. Stat. § 611A.04, subd. 1(a) (2006). A restitution request "may include, but is not limited to, any out-of-pocket losses resulting from the crime." *Id.* "The burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution." Minn. Stat. § 611A.045, subd. 3(a) (2006). Disputes as to the proper amount of restitution must be resolved by a preponderance of the evidence. *Id.*

Appellant first argues that he should not be ordered to pay restitution for L.J.'s entire electricity bill for three months. This argument is misplaced because the district court only ordered appellant to pay $253.09 for the increase in L.J.'s bill, not the entire electricity bill.

Appellant next argues that he should not pay restitution for L.J.'s travel and stay in Florida because she could have driven to Wisconsin or Iowa, which appellant argues would have been less expensive. But L.J. was not obligated to relocate herself and her family in the cheapest manner possible. *See State v. Lindsey*, 632 N.W.2d 652, 664 (Minn. 2001) (holding that the district court did not abuse its discretion by ordering restitution for a murder victim's funeral expenses, including the cost of funeral clothes, postage stamps for thank-you cards, a hotel room for a relative and reception, the cost of hiring a soloist, and a limousine service); *see also Tenerelli*, 598 N.W.2d at 671 (holding that the district court was within its discretion in ordering appellant to pay restitution for the cost of traditional Hmong ceremony to heal the soul of the victim he assaulted, including a cow and pig for sacrifice and the payment to a Shao woman who conducted the ceremony).

Here, L.J. received death threats from appellant. She went to Florida because the FBI advised her to leave town due to appellant's threats and not to return until appellant was arrested. She did not relocate somewhere closer because she had a large vehicle and the driving would be very expensive. L.J. provided evidence, including receipts and financial statements, to prove the amount and nature of her travel expenses and stay in Florida. On appeal, appellant does not otherwise challenge specific expenses,

documentation of expenses, or the district court's arithmetic in calculating total restitution. We conclude that the district court did not abuse its discretion in determining that L.J.'s travel costs and stay in Florida were a result of appellant's crime and were reasonable and that the record supports a determination that actual losses totaled $13,690.02 for L.J. and her son.

II.

The second issue is whether the district court abused its discretion in ordering appellant to pay restitution to L.J.'s adult son. Appellant argues that L.J.'s son is not a "victim" because he was an adult and not listed on the OFP.

Only victims are entitled to restitution for the losses resulting from a crime. *Esler*, 553 N.W.2d at 65. A "victim" includes a "natural person who incurs loss as a result of a crime." Minn. Stat. § 611A.01(b) (2006); *see In re Welfare of J.A.D.*, 603 N.W.2d 844, 846-47 (Minn. App. 1999) (holding that the district court properly awarded restitution to a child victim's mother for expenses she incurred in assisting the victim in exercising her rights as a crime victim); *see also Palubicki*, 727 N.W.2d at 666-67 (concluding that a murder victim's adult sons were considered "victims" and entitled to restitution for their personal expenses for attending the offender's trial because the victim's sons were in court as a direct result of the offender's crime.).

In our case, L.J.'s adult son received a text message from appellant threatening to kill his mother. There was testimony that he felt that he had an obligation to protect his family and the record reflects that his travel to Florida with his mother and brother was a result of appellant's crime. He also incurred an economic loss from having to take a

week off of work to travel with his family. We conclude that L.J.'s adult son was a "victim" for the purposes of the restitution statute and the district court was within its discretion in ordering appellant to pay restitution to L.J.'s adult son.

III.

The third issue is whether the district court abused its discretion by failing to consider appellant's financial situation when ordering restitution. Appellant correctly states that, under Minn. Stat. § 611A.045, subd. 1(a)(2) (2006), the district court must consider "the income, resources, and obligations of the defendant" when determining whether to order restitution and the amount of restitution. But the requirement that the district court consider the offender's financial situation does not require that the district court explicitly discuss the offender's ability to pay in its findings. *See* Minn. Stat. §§ 611A.04, .045 (2006) (containing no provision requiring the court to issue findings regarding a defendant's financial situation).

In *State v. Anderson*, we held that the district court was within its discretion in ordering the defendant, who would be imprisoned for seven years and who had little or no current financial resources or assets, to pay restitution in the amount of $10,227.12 without issuing any findings regarding his ability to pay. 507 N.W.2d 245, 247 (Minn. App. 1993), *review denied* (Minn. Dec. 22, 1993). We reasoned that "[f]ew defendants have a current ability to pay restitution when they are transported to prison, and detailed findings to that effect would serve little purpose." *Id.* Appellant's "recourse will come at any time he is asked to pay more than he has the ability to pay, and his repayment schedule may be modified at that time, if appropriate." *Id.*

Here, although the district court did not explicitly discuss appellant's ability to pay restitution, it stated during a restitution hearing that it reviewed the entire record and the record included the presentence investigation which included limited information on appellant's apparently modest financial situation. If appellant believed his financial situation at the time of the restitution hearing or his prospects for future income should limit the restitution requested, he could have testified or placed appropriate evidence in the record. However appellant did not do so. As in *Anderson*, the record reflects that the district court had considered appellant's financial situation when it ordered restitution. Although it is preferable for the district court to make findings regarding ability to pay, the district court considered appellant's financial situation. We conclude that on this record, the law does not require more.

Affirmed.

Date: