

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 03-1328
03-1329**

**Cir. Ct. Nos. 02JV000085
02JV000130**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF JAMES G.L.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JAMES G.L.,

RESPONDENT-APPELLANT.

APPEALS from an order of the circuit court for Brown County:
RICHARD J. DIETZ, Judge. *Affirmed.*

¶1 CANE, C.J.¹ The sole issue on appeal is whether a juvenile court has the authority to order restitution in excess of \$250 when the juvenile was age thirteen at the time of filing the juvenile delinquency petition but had turned age fourteen before the dispositional hearing. Because we conclude the court has such authority, the dispositional order requiring the juvenile to pay restitution in the amount of \$1,195 is affirmed.

¶2 The underlying facts are undisputed. Initially, the State filed a juvenile delinquency petition charging James L. with crimes of battery and disorderly conduct. Another juvenile delinquency petition charged James with driving or operating a motor vehicle of another without the consent of the owner. James admitted to the charges and by the time of the dispositional hearing, had turned age fourteen. The court found that full restitution would be \$2,390, but ordered that James pay restitution in the amount of \$1,195 after rejecting the argument it was limited to ordering restitution in the amount of \$250 because James was thirteen at the time of filing the petitions.

¶3 The relevant statute, WIS. STAT. § 938.34(5) provides:

Disposition of juvenile adjudged delinquent.

....

(5) RESTITUTION. (a) Subject to par. (c), if the juvenile is found to have committed a delinquent act which has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, order the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court,

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile. Any such order shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services and may include a schedule for the performance and completion of the services. Objection by the juvenile to the amount of damages claimed shall entitle the juvenile to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this paragraph shall be reduced by the amount recovered as restitution under s. 938.45(1r)(a).

(am) Subject to par. (c), order a juvenile who owes restitution under par. (a) and who is receiving income while placed in a secured correctional facility, residential treatment center or other out-of-home placement to contribute a stated percentage of that income towards that restitution.

(b) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under s. 103.70 (1).

(c) Under this subsection, a court may not order a juvenile who is under 14 years of age to make more than \$250 in restitution or to perform more than 40 total hours of services for the victim as restitution. (Emphasis added.)

¶4 The interpretation of a statute and its application to a set of facts are questions of law we review independently. *Reyes v. Greatway Ins. Co.*, 227 Wis.2d 357, 364-65, 597 N.W.2d 687 (1999). The purpose of statutory interpretation is to discern the legislature's intent. *State v. Setagord*, 211 Wis. 2d

397, 405-06, 565 N.W.2d 506 (1997). We first consider the language of the statute. *Id.* If that clearly and unambiguously sets forth the legislature's intent, we do not look outside the statutory language to ascertain that intent; rather, we apply the plain language to the facts at hand. *Id.* A statute is ambiguous when it is capable of being understood in two or more different senses by reasonably well-informed persons. *Id.* However, statutory language is not ambiguous merely because the parties disagree on its meaning. *Id.* Finally, statutes are to be given a reasonable interpretation and not one that will work an absurd result. *State v. Mendoza*, 96 Wis. 2d 106, 115, 291 N.W.2d 478 (1980).

¶5 Here, the trial court reasoned, “I’m satisfied that since it [sec.938.34(5)(c)] talks in terms of the order and not the age at the time of the offense that I can order more restitution and I think that that’s appropriate in this case.” We agree.

¶6 The clear consistent theme throughout the restitution section refers to what the court can and cannot do at the time of ordering restitution for a juvenile who has been found to have committed a delinquent act resulting in damage to property or actual physical injury to another. The statute speaks in terms of the time after there has been an adjudication finding the juvenile delinquent. Thus, the plain reading of this section is that those juveniles who are under fourteen years of age at the time of the dispositional order may not be ordered to make more than \$250 in restitution. This reading also makes sense from a practical standpoint and avoids an absurd result. A juvenile under the age of fourteen at the time of filing the delinquency petition who either absconds or delays the proceedings for a substantial period of time could be before the court for a dispositional hearing long after his or her fourteenth birthday. There is no logical reason why the court should be treating a juvenile who is age fourteen or

older at the time of the dispositional hearing as if he or she is under the age of fourteen. Restitution is designed to hold each juvenile offender accountable for his or her acts, and the court should properly be imposing a disposition for the juvenile under the circumstances existing at the time of its dispositional order.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

