COURT OF APPEALS
DECISION
DATED AND FILED

October 14, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP233-CR **Cir. Ct. No. 2008CF321**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRANDON G. JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Monroe County: TODD L. ZIEGLER, Judge. *Affirmed*.

Before Vergeront, P.J., Sherman and Blanchard, JJ.

¶1 SHERMAN, J. Brandon Johnson appeals from a judgment of conviction for a violation of WIS. STAT. § 940.225(3) (2007–08),[1] an order of

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

restitution and an order denying his postconviction motion challenging, among other things, the order of restitution. He was convicted upon his no contest plea to third degree sexual assault of W.M.K., a 14-year-old girl. Johnson contends that the circuit court erred when it ordered him to pay restitution pursuant to WIS. STAT. § 973.20(4m)[2] in the amount of $10,000 for W.M.K.'s 10-month residence at the Thayer Learning Center, "a boot camp, behavior modification experience." Johnson claims that his sexual assault of W.M.K. was not a substantial factor in causing the problems for which W.M.K. sought treatment and that the program offered at Thayer Learning Center did not provide "professional services relating to psychiatric and psychological care and treatment," as required by WIS. STAT. § 973.20(4m).

¶2 We conclude that the circuit court was correct in concluding that Johnson's sexual assault of W.M.K. was a substantial factor in W.M.K.'s need for treatment, even if it was not the only factor. We further conclude that Johnson's assertion that Thayer Learning Center's program was not related to psychological care and treatment was undeveloped and based upon conclusory statements unsupported by legal authority. We therefore affirm.

[2] WISCONSIN STAT. § 973.20(4m) provides:

> (4m) If the defendant violated s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, or 948.085, or s. 940.302(2), if the court finds that the crime was sexually motivated, as defined in s. 980.01(5), and sub. (3)(a) does not apply, the restitution order may require that the defendant pay an amount, not to exceed $10,000, equal to the cost of necessary professional services relating to psychiatric and psychological care and treatment. The $10,000 limit under this subsection does not apply to the amount of any restitution ordered under sub. (3) or (5) for the cost of necessary professional services relating to psychiatric and psychological care and treatment.

BACKGROUND

¶3 Brandon Johnson was seventeen years old when he had sexual intercourse with W.M.K., who was fourteen years old at the time. Pursuant to a plea agreement, Johnson pled guilty and was convicted of third-degree sexual assault.

¶4 A request was filed on behalf of W.M.K for restitution in the amount of $50,000 for expenses incurred by W.M.K. during a ten-month stay at Thayer Learning Center. According to her mother, C.D.,[3] W.M.K. was sent to Thayer Learning Center by C.D. "to help her heal from the devastation of what happened to her" because "[o]ther attempts of counseling, hospitalization, and medication were attempted and DID NOT HELP."

¶5 At the hearing on the restitution request, C.D. testified that although W.M.K. had exhibited dangerous behavior, including cutting herself, prior to her sexual assault, treatment involving outpatient counseling and medication had always helped her. C.D. testified that, following the assault, W.M.K.'s problems were much more severe than before the assault and that W.M.K. had to be hospitalized under WIS. STAT. ch. 51, which had never previously been necessary. C.D. further testified that none of the treatments offered at the hospital appeared to be helping W.M.K. and she was informed by hospital staff that there was nothing more that the hospital could do for W.M.K. C.D. then searched the internet for appropriate resources to help W.M.K. and found Thayer Learning Center. C.D. testified that, when she discussed her plan to send W.M.K. to Thayer Learning

[3] To preserve the anonymity of W.M.K.. we refer to her mother as C.D. and not by her full name.

Center with W.M.K.'s treating psychiatrist, he stated: "[t]hat's probably the only thing you have left," and "[t]hat's probably the best thing you can do right now."

¶6 Thayer Learning Center charged an initial fee of $2,500, then $4,500 per month. Restitution was sought in the amount of $47,500 to cover the ten months that W.M.K. was in the Thayer Learning Center program. The court awarded $10,000 in restitution, the limit under WIS. STAT. § 973.20(4m). Additional facts will be discussed as necessary below.

DISCUSSION

¶7 WISCONSIN STAT. § 973.20(4m) authorizes the circuit court to provide restitution for violation of certain sexually motivated crimes, including WIS. STAT. § 940.225, in "an amount, not to exceed $10,000, equal to the cost of necessary professional services relating to psychiatric and psychological care and treatment."

¶8 Before the court may award restitution, "'there must be a showing that the defendant's criminal activity was a substantial factor in causing'" the expenses for which restitution is claimed. ***State v. Johnson***, 2005 WI App 201, ¶13, 287 Wis. 2d 381, 704 N.W.2d 625 (quoted source omitted).

¶9 Johnson contends that the circuit court erred when it granted $10,000 in restitution for W.M.K.'s residence at Thayer Learning Center because: (1) W.M.K. had psychological problems prior to the sexual assault and, therefore, the assault was not the cause of W.M.K.'s psychological problems; and (2) Thayer Learning Center did not satisfy the statutory requirement that it be "professional services relating to psychiatric and psychological care and treatment." *See* WIS. STAT. § 973.20(4m).

¶10 It lies within the circuit court's discretion to decide on the amount of restitution and to determine whether the defendant's criminal activity was a substantial factor in causing the expenses for which restitution is claimed. ***Id***., ¶10; *see also* ***State v. Haase***, 2006 WI App 86, ¶5, 293 Wis. 2d 322, 716 N.W.2d 526. We accept the circuit court's findings of fact unless those findings are clearly erroneous. WIS. STAT. § 805.17(2).

THE CIRCUIT COURT PROPERLY EXERCISED DISCRETION IN FINDING THAT THE SEXUAL ASSAULT WAS A SUBSTANTIAL FACTOR IN W.M.K.'S NEED FOR TREATMENT

¶11 Johnson challenges the circuit court's determination that his sexual assault of W.M.K. was a substantial factor in W.M.K.'s need for treatment at Thayer Learning Center. His sole argument is that "[i]t simply defies reasonable logic to conclude that when a 17-year-old male has sexual intercourse with a 14-year-old girl, a natural and probable consequence of that intercourse will be that the girl" may require such treatment, "especially when the girl ha[s] had some [prior] mental health issues."

¶12 For the defendant's criminal activity to be a substantial factor in causing the expenses for which restitution is claimed, "[t]he defendant's actions must be the 'precipitating cause of the injury' and the harm must have resulted from 'the natural consequence[s] of the actions.'" ***State v. Canady***, 2000 WI App 87, ¶9, 234 Wis. 2d 261, 610 N.W.2d 147 (quoted source omitted). The victim's burden is to prove only that the defendant's actions "were a substantial factor in producing the injury that required treatment … not to prove that the actions were

the sole factor." ***State v. Behnke,*** 203 Wis. 2d 43, 59, 553 N.W.2d 265 (Ct. App. 1996).[4]

¶13 In addressing whether W.M.K.'s need for care was a natural result of Johnson's sexual assault, the circuit court correctly observed that the assault need only be a substantial factor, and not the only factor, in W.M.K.'s need for the services. *See* ***id.*** The court then reviewed the evidence in the record and found that the assault was a substantial factor. The court stated in its decision:

> [C.D.'s] testimony was sufficient to prove that while she had the problems previously, as a result of this incident, she spent a month in the hospital. Her circumstances as far as her psychiatric condition got worse such that the psychiatrist thought there was not much more that could be done. The medications worked previously, but as I have indicated, not this time. So I don't believe that that is a, well, doesn't defeat the restitution. I believe that it was a substantial factor in producing the injury that W.M.K. had.

¶14 We will not overturn a circuit court's exercise of discretion if the proper legal standard has been applied, the relevant facts have been examined and using a demonstrated rational process, the court has reached a conclusion that a reasonable decision maker could reach. *See* ***Flottmeyer v. Circuit Court for Monroe County***, 2007 WI App 36, ¶17, 300 Wis. 2d 447, 730 N.W.2d 421.

¶15 In this case, we cannot say that the court's exercise of discretion was erroneous. It is clear upon our review of the record that the court applied the correct legal standard, set forth an adequate factual basis and in concluding that

[4] In ***State v. Behnke***, 203 Wis. 2d 43, 59, 553 N.W.2d 265 (Ct. App. 1996), the court stated: "That she had been there before and for other reasons is not fatal to her proof since it is only her burden to prove that Behnke's actions were a substantial factor in producing the injury that required treatment. Her burden is not to prove that the actions were the sole factor."

the sexual assault by Johnson "was a substantial factor in producing the injury that W.M.K had," reached a conclusion that a reasonable decision maker could reach.

WE AFFIRM THE CIRCUIT COURT'S CONCLUSION THAT THAYER LEARNING CENTER PROVIDED "PROFESSIONAL SERVICES RELATING TO PSYCHIATRIC AND PSYCHOLOGICAL CARE AND TREATMENT"

¶16 Whether W.M.K.'s attendance at the "boot camp, behavior modification experience" offered by Thayer Learning Center constituted "professional services relating to psychiatric and psychological treatment," as required by WIS. STAT. § 973.20(4m), is a question of statutory construction that we review *de novo*. ***State v. Cole***, 2000 WI App 52, ¶3, 233 Wis. 2d 577, 608 N.W.2d 432.

¶17 Johnson's entire argument on this issue is composed of a single paragraph which is conclusory, undeveloped, and sets forth no legal authority. In full, it reads:

> Second, the schooling attended by the victim in this case was not "necessary professional services related to psychiatric and psychological care and treatment," as required by §973.20(4m). Counsel for [the] defendant was unable to find any case defining the relevant term. Absent the resource of defining case law, a commonsense definition should apply. No matter how the trial court characterized the victim's attendance at Thayer Learning Center, it cannot reasonably be equated with "necessary professional services related to psychiatric and psychological care and treatment." It is <u>educational</u> programming. Such programming simply is not reimbursable pursuant to the applicable statute.

¶18 The circuit court found: "Thayer Learning Center is a boot camp, behavior modification experience to help redirect poor communication skills, complete nutrition and exercise programs, as well as to learn life skills. It involves

personal growth seminars and typically, as the letter I believe indicated, is a twelve month program in duration, a team life skill center essentially is what it is."

¶19 Johnson does not cite to any legal authority or to any evidence in the record to support his claim that the program offered by Thayer Learning Center is "educational," nor does he explain why the circuit court was clearly erroneous in finding that the program is "a team life skill center" which provides "a boot camp, behavior modification experience to help redirect poor communication skills, complete nutrition and exercise programs, as well as to learn life skills."

¶20 As a general matter, this court does not consider conclusory assertions and undeveloped arguments. *See* ***Associates Fin. Servs. Co. of Wis., Inc. v. Brown***, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56. We also need not consider arguments unsupported by reference to legal authority. ***Kruczek v. DWD***, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286.

¶21 Because we conclude Johnson has failed to sufficiently develop his argument, we do not address it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

CONCLUSION

¶22 For the reasons discussed above, we affirm the circuit court's order of restitution.

By the Court.— Judgment and orders affirmed.

Not recommended for publication in the official reports.