

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

B.K. and S.K.,

Appellants,

v.

State of Indiana,

Appellee.

June 30, 2023

Court of Appeals Case No.
22A-JV-2921

Appeal from the Hendricks
Superior Court

The Honorable Heather M. Mollo,
Judge Pro Tempore

Trial Court Cause Nos.
32D03-2206-JD-104
32D03-2207-JD-108

Memorandum Decision by Judge Brown
Judge Crone and Senior Judge Robb concur.

Brown, Judge.

[1] B.K. and S.K. appeal the trial court’s restitution order. We affirm.

Facts and Procedural History

[2] On June 4, 2022, B.K. and S.K. threw fireworks in a trash can near a Costco in Hendricks County which started a fire and caused damage to Costco’s property.¹ The State alleged B.K. and S.K. committed delinquent acts which, if committed by an adult, would constitute theft and criminal mischief. B.K. and S.K. admitted they committed delinquent acts which, if committed by an adult, would constitute criminal mischief.

[3] On October 24, 2022, the court held a hearing. A representative for Costco testified the total loss sustained by Costco was \$28,750.70.² B.K. testified he was seventeen years old, earned about \$160 weekly after taxes, and had about \$250 in his bank accounts.³ S.K. testified he was fifteen years old, worked as needed as a referee, made \$20 a game, worked once or twice a week, and had \$78 in his bank account. The prosecutor stated “they’re living in Illinois,” “there was no indication from the preliminary inquiry that either of these boys are at risk of drug usage,” “I don’t think that anyone disagrees that this was just

¹ S.K. indicated that B.K. was his cousin.

² Costco submitted an expense worksheet itemizing its costs which included replacing a recycle bin, refilling eight fire extinguishers, and “milling, asphalt, awning, concrete” expenses. State’s Exhibit 1.

³ When asked if he had “money in a checking or savings account,” B.K. replied affirmatively, and when asked “[b]allpark, what would you say you have in both,” he answered “[r]ight now like \$250.” Transcript Volume II at 38-39. When asked “[i]s your balance . . . ever get, usually, get over \$1,000 dollars,” he replied “yes,” when asked “[w]hen is that,” he stated “when I work extra hours,” and when asked “how often, would you say on a monthly basis, do you work extra hours,” he answered “[w]henever I have a day off of school or I need extra time.” *Id.* at 39.

a stupid decision,” “so, I did not request that they be placed on probation,” and “[b]asically, the biggest issue was the restitution.” Transcript Volume II at 48-49.

[4] On November 10, 2022, the court issued dispositional decrees providing:

The Court . . . now finds that restitution is due and owing to Costco Wholesale in the amount of \$28,750.70. . . .

The Court did make an inquiry as to the child’s ability to pay. Such an inquiry is required in delinquency dispositions when restitution is ordered as a condition of probation. *M.L. v. State*, 838 N.E.2d 525 (Ind. Ct. App. 2005)[, *reh’g denied, trans. denied,*] In the instant case, there is no term of probation for the juvenile. The only disposition to be entered in the instant cause is restitution. The Court would first submit that no inquiry as to ability to pay is required for the Court to order a restitution disposition against the juvenile as this juvenile is not subject to a revocation of probation.

In the alternative, the Court finds that the child has the ability to pay. . . .

* * * * *

IT IS THEREFORE ORDERED that the juvenile . . . shall pay restitution to Costco Wholesale in the amount of \$28,750.70 jointly and severally

Appellants’ Appendix Volume II at 50-51, 100-101. The court ordered B.K. to pay restitution to Costco of no less than \$250 per month. It ordered S.K. to pay restitution of no less than \$125 per month. On November 18, 2022, the court issued Restitution Orders stating:

The restitution order in this case becomes a judgement lien which: 1) attaches to the property of the Defendant; 2) may be perfected; 3) may be enforced by this victim (or his/her assignee) to satisfy any payment which becomes delinquent under this ORDER; and 4) expires in the same manner as a judgement lien created in a civil proceeding.

Id. at 53, 103.

Discussion

- [5] B.K. and S.K. argue the juvenile court did not have the authority to enter the restitution orders as civil judgments because they were juveniles. They also assert the court abused its discretion in finding they have an ability to pay and point to the testimony regarding their incomes and resources.
- [6] We generally review a juvenile court’s restitution order for an abuse of discretion. *M.M. v. State*, 31 N.E.3d 516, 519 (Ind. Ct. App. 2015). “The purpose behind an order of restitution is to impress upon’ a juvenile delinquent ‘the magnitude of the loss he has caused and to defray costs to the victim’ caused by the delinquent act.” *Id.* (citing *Carswell v. State*, 721 N.E.2d 1255, 1259 (Ind. Ct. App. 1999)).
- [7] Ind. Code § 31-37-19-5(b)(4) provides a juvenile court may order a child “to pay restitution if the victim provides reasonable evidence of the victim’s loss, which the child may challenge at the dispositional hearing.” No other provision of the juvenile code on delinquency discusses restitution imposed during a delinquency proceeding. *M.M.*, 31 N.E.3d at 519-520. Although Ind. Code §

31-37-19-5(b)(4) allows the juvenile court to order a juvenile to pay restitution, the statute does not expressly state that the restitution order is a judgment lien or the juvenile court may enter the restitution order as a civil judgment.

However, this Court has held that the adult restitution statute “is instructive when the juvenile statute is silent.” *M.M.*, 31 N.E.3d at 520 (citing *S.G. v. State*, 956 N.E.2d 668, 683 (Ind. Ct. App. 2011), *trans. denied*). Ind. Code § 35-50-5-3, the adult restitution statute, provides:

(b) A restitution order . . . is a judgment lien that:

- (1) attaches to the property of the person subject to the order;
- (2) may be perfected;
- (3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person’s assignee; and
- (4) expires;

in the same manner as a judgment lien created in a civil proceeding.

[8] Indeed, we have held “[a] juvenile restitution order results from an act that would be a crime if committed by an adult, and, thus, it is equivalent to an adult restitution order.” *M.M.*, 31 N.E.3d at 521. Each of the juvenile court’s restitution orders here is a judgment lien which may be enforced in the same manner as a judgment lien created in a civil proceeding. *See id.* at 518 n.1 (holding that, “[a]s we have explained in the context of Indiana Code Section 35-50-5-3, the adult restitution statute, a ‘restitution order *is* a judgment lien’ and ‘may be enforced *in the*

same manner as a judgment lien created in a civil proceeding”) (citing *Winger v. Purdue Univ.*, 666 N.E.2d 455, 459 (Ind. Ct. App. 1996), *trans. denied*).⁴ Further, even if the court were required to make an inquiry into their ability to pay, B.K. testified he earned about \$160 per week after taxes and had about \$250 in the bank, S.K. testified he worked as needed as a referee, made \$20 dollars a game, worked once or twice a week, and had \$78 in the bank, and we cannot say the court abused its discretion in finding B.K. is able to pay \$250 per month and S.K. is able to pay \$125 per month.

[9] For the foregoing reasons, we affirm the juvenile court.

[10] Affirmed.

Crone, J., and Robb, Sr.J., concur.

⁴ In *J.B. v. State*, this Court found the trial court did not have authority to order J.B. to pay ordered restitution as a civil judgment. 55 N.E.3d 831, 834 (Ind. Ct. App. 2016). However, in that case, the trial court determined J.B. violated his probation in four other causes and, after a disposition hearing, ordered J.B. to pay restitution in two of those causes. *Id.* at 832. In *M.M.*, M.M argued that Ind. Code § 35-50-5-3, the adult restitution statute, did not apply to him because an act of juvenile delinquency is not a crime. 31 N.E.3d at 520. We noted, “while an act of juvenile delinquency is not a felony or a misdemeanor, this is not because the act did not harm the victim in the same manner as a felony or misdemeanor committed by an adult,” held “the General Assembly did not intend that Section 35-50-5-3 not apply to a delinquent act that would be a felony or misdemeanor if committed by an adult,” and reiterated Ind. Code § 35-50-5-3 is instructive when the juvenile restitution statute is silent. *Id.* B.K. and S.K. admitted they committed delinquent acts which, if committed by an adult, would constitute criminal mischief, and the ordered restitution was based on the harm resulting from their delinquent acts. We cannot say *J.B.* requires reversal.