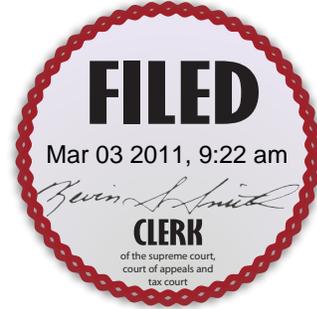


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

J.L.,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-1006-JV-791
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-1001-JD-72

March 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

J.L. appeals the trial court's restitution order following his adjudication as a delinquent child for committing what would constitute class D felony theft if committed by an adult.

We affirm.

ISSUE

Whether the trial court abused its discretion in ordering J.L. to pay restitution in the amount of \$2,020.38.

FACTS

On or about January 7, 2010, J.L. took Gloria Andrews' Buick LeSabre from an Indianapolis gas station without Andrews' permission. Three days later, Indianapolis Metropolitan Police Officer Michael Martin conducted a routine traffic stop of J.L. while he was driving Andrews' vehicle. Officer Martin placed J.L. under arrest when he discovered that the Buick had been reported as stolen. Officer Martin then had the Buick towed to an impound lot.

On January 11, 2010, the State filed a petition, alleging J.L. to be a delinquent child for committing acts that would constitute class D felony theft and class C misdemeanor driving without a license, if committed by an adult. The juvenile court approved the filing of the petition.

Subsequently, J.L. and the State entered into a plea agreement, whereby J.L. agreed to admit to the allegation of committing an act that would constitute theft as a class D felony, if committed by an adult, and the State agreed to dismiss the remaining allegation. The plea agreement left “restitution open as to Gloria Andrews[.]” (App. 38). The juvenile court held a disposition hearing on January 29, 2010, after which it placed J.L. on probation for six months.

On June 9, 2010, the juvenile court held a restitution hearing. Andrews testified that she paid a towing and storage fee of \$95.00 to redeem her vehicle. She further testified that when she retrieved her vehicle, she discovered that its radio had been removed and the console, armrest and ashtray had been damaged. The juvenile court admitted into evidence a receipt for the towing and storage fee in the amount of \$95.00 and an estimate in the amount of \$1,925.38 to repair the vehicle’s damage.

Seventeen-year-old J.L. testified that he was unemployed and studying for his general education degree (“GED”). J.L.’s grandmother testified that J.L. resides with her. After hearing testimony, the juvenile court and J.L. engaged in the following colloquy:

[Court]: [W]hat are you doing with yourself these days? I realize you’re in the Juvenile Center for an unrelated case, if and when you get out what are your plans? What are you doing with yourself?

[J.L.]: I was intending on getting my GED sir and after I get my GED I want to attend Lincoln Tech for graphic and design and diesel mechanic.

[Court]: You said something how you are not employed, is that correct?

[J.L.]: Yes sir.

[Court]: Any reason why you can't work?

[J.L.]: I was looking for a job when I was out sir.

[Court]: Your [sic] seventeen (17) years old, correct?

[J.L.]: Yes sir.

[Court]: Your [sic] able bodied?

[J.L.]: Yes sir.

[Court]: You plan on going to Lincoln Tech, is that correct?

[J.L.]: Yes sir.

(Tr. 32-33). Finding J.L. to be “young”; “able bodied”; and “in fact pursuing higher education so he can work,” the juvenile court ordered J.L. to pay \$2,020.38 in restitution to Andrews and ordered J.L. to complete sixty hours in a restitution work program, which would satisfy \$300.00 of the restitution obligation. (Tr. 33). The juvenile court also waived all unpaid probation fees “in order for [J.L.] to pay restitution.”¹ (App. 8).

DECISION

J.L. asserts that the juvenile court abused its discretion in ordering him to pay restitution in the amount of \$2,020.38. Specifically, J.L. argues that the juvenile court failed to inquire into his ability to pay before imposing the restitution obligation.

An order of restitution is a matter within the trial court's discretion, and this Court should reverse only upon a showing of an abuse of that discretion. An abuse of discretion occurs when the trial court's

¹ Those fees included a \$156.00 fee to the Clerk's Office; a \$35.00 initial probation fee; a \$100.00 probation administrative fee; and a \$15.00 monthly supervisory fee.

determination is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deduction to be drawn therefrom.

M.L. v. State, 838 N.E.2d 525, 528 (Ind. Ct. App. 2005) (internal citations omitted).

The juvenile court is “constrained by principles of equal protection and fundamental fairness to set an amount within [the juvenile’s] ability to pay” *See id.* at 530. Thus, before ordering restitution as a condition of a juvenile’s probation, the juvenile court must inquire into the juvenile’s ability to pay. *Id.* at 529.

The issue of whether the juvenile is able to pay the amount of restitution awarded is a question of fact to be resolved by the trier of fact. *Id.* In determining the ability to pay, the juvenile court should consider facts such as “current financial status, health, and employment history.” *Laker v. State*, 869 N.E.2d 1216, 1221 (Ind. Ct. App. 2007).

Here, the juvenile court inquired into J.L.’s health, employment history, and education. Although J.L. presented no evidence of current income, he also presented no evidence of expenses.

The juvenile court clearly considered several facts in determining J.L.’s ability to pay restitution in due course. We therefore find no abuse of discretion in ordering J.L. to pay restitution in the amount of \$2,020.38.

Affirmed.

NAJAM, J., and BAILEY, J., concur.