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NEBRASKA SUPREME COURT
COURT OF APPEALS**

NO. A-23-831

IN THE COURT OF APPEALS
FOR THE STATE OF NEBRASKA

STATE OF NEBRASKA
IN THE INTEREST OF JEOVANI EBAN HERNANDEZ CHACON

APPEAL FROM THE JUVENILE COURT
OF HALL COUNTY, NEBRASKA

The Honorable Arthur S. Wetzel, County Court Judge

BRIEF OF APPELLEE-STATE

State of Nebraska, Appellee

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STATEMENT OF JURISDICTION

This is an appeal from a disposition in which the Juvenile Court of Hall County, Nebraska, on or about October 3, 2023, found the Juvenile to be one adjudicated under Neb. Rev. Stat. § 43-247. (6:3-6). Jurisdiction for an appeal on disposition exists as it is final order for purposes of appeal. *In re LeAntonae D.*, 28 Neb. App. 144, 942 N.W.2d 784 (2020).

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a disposition for Attempted assault, 3rd degree, a Class 2 Misdemeanor and ability to pay restitution hearing that occurred on or about 10-3-23. (7:10-15).

B. Issues Tried to the Court

The issue before the Juvenile Court was the Juvenile's ability to pay restitution in the amount of \$2,553.05. (24:15-18).

C. How the Issues Were Decided and Judgment Entered

The Juvenile Court held that the Juvenile had the ability to pay restitution. (22:3-11).

D. Standard of Review

An appellate court reviews juvenile cases *de novo* on the record and reaches a conclusion independently of the lower court's findings. *In re Jeremy U.*, 304 Neb. 734, 936 N.W.2d 733 (2020).

However, when evidence is in conflict, the appellate court will consider and give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *In re Interest of L.P. and R.P.*, 240 Neb. 112, 480 N.W.2d 421 (1992).

PROPOSITIONS OF LAW

I.

§ 43-286(1)(a) does not limit the types of restitution a juvenile court may order to only restitution for property stolen or damaged. *In re Seth C.*, 307 Neb. 862, 951 N.W.2d 135 (2020).

II.

(The) Nebraska Juvenile Code shall be construed to offer selected juvenile offenders the opportunity to take direct personal responsibility for their individual actions by reconciling with victims and fulfilling the terms of any resulting agreement which may require restitution and community service. *In re Seth C.*, 307 Neb. 862, 951 N.W.2d 135 (2020).

III.

Statutorily, juvenile court was authorized, in delinquency case, to order juvenile offender to pay restitution for victim's medical expenses; requiring juvenile offender to pay restitution for victim's medical bills was essential for juvenile offender's reformation and rehabilitation and gave him the opportunity to take direct personal responsibility for his actions. *In re Seth C.*, 307 Neb. 862, 951 N.W.2d 135 (2020).

IV.

In delinquency proceeding, juvenile court did not violate the salutary purpose of restitution by ordering juvenile offender to pay restitution to victim in the amount of \$500, given that court ordered restitution in an amount rationally related to the proofs offered at dispositional hearing and the amount was consistent with purposes of education, treatment, rehabilitation, and the juvenile's ability to pay. *In re Seth C.*, 307 Neb. 862, 951 N.W.2d 135 (2020).

V.

In delinquency proceeding, juvenile court has statutory authority to order restitution for victim's medical expenses as long as such order is in the interest of juvenile offender's reformation or rehabilitation. *In re Seth C.*, 307 Neb. 862, 951 N.W.2d 135 (2020).

VI.

It is prudent that juvenile courts consider factors similar to those utilized in the criminal restitution statute when entering restitution orders during the dispositional phase of a juvenile delinquency proceeding. *In re Laurance S.*, 274 Neb. 620, 742 N.W.2d 484 (2007).

VII.

When a juvenile court enters an order of restitution, the court should consider, among other factors, the juvenile's earning ability, employment status, financial resources, and other obligations. *In re Laurance S.*, 274 Neb. 620, 742 N.W.2d 484 (2007).

VIII.

In appropriate delinquency cases, it is consistent with the considerations and the purposes of the Juvenile Code for the trial court to require that the juvenile obtain and maintain employment in order to satisfy his or her restitution obligations and his or her responsibility to repay the victim, and moreover, the juvenile court should set a timetable for restitution payments and may order that restitution be made immediately, in specified installments, or within a specified period of time. *In re Laurance S.*, 274 Neb. 620, 742 N.W.2d 484 (2007).

IX.

The juvenile courts may use any rational method of fixing the amount of restitution, so long as the amount is rationally related to the proofs offered at the dispositional hearing, and the amount is consistent with the purposes of education, treatment, rehabilitation, and the juvenile's ability to pay. *In re Laurance S.*, 274 Neb. 620, 742 N.W.2d 484 (2007).

X.

Restitution orders in delinquency proceedings must be supported by the record, and the amount ordered must be consistent with the educational, treatment, and rehabilitative purposes of the Juvenile Code and the juvenile's ability to pay. *In re Laurance S.*, 274 Neb. 620, 742 N.W.2d 484 (2007).

STATEMENT OF THE FACTS

On or about April 20, 2023, Appellee-State filed a Juvenile Petition alleging the Juvenile is one as defined under Neb. Rev. Stat. § 43-247(3)(a). (T1). Appellee-State alleged that the Juvenile had committed assault 1st degree under Neb. Rev. Stat. §28-308. (T1). Appellee-State went on to file an Amended Petition on July 27, 2023, now alleging Attempted Assault, Third Degree, under Neb. Rev. Stat. §28-201 and §28-310. (T7). The Juvenile admitted to said amended petition and was adjudicated on 8-4-2023. (T7). During said hearing, the

Juvenile agreed to the amount of restitution owed, \$2,553.05, but disputed the ability to pay and requested a hearing on that matter. (4:8-11). A dispositional hearing and ability to pay hearing occurred on October 3, 2023. (T9). At the conclusion of these hearings, the Court ordered the Juvenile to undergo 12 months of supervised probation and to pay \$2,553.05 in restitution to the victim (22:1-11). The Juvenile then timely appealed.

ARGUMENT

I. THE JUVENILE COURT FOR HALL COUNTY, NEBRASKA CORRECTLY FOUND THAT THE JUVENILE HAD THE ABILITY TO PAY RESTITUTION.

Appellee-State respectfully requests that the lower court's ruling be affirmed. The Juvenile Court for Hall County, Nebraska properly found that the Juvenile had the ability to pay restitution.

Nebraska case law holds that a Court should consider "...among other factors, the juvenile's earning ability, employment status, financial resources, and other obligations." *In re Laurance S.*, 274 Neb. 620, 626, 742 N.W.2d 484, 490 (2007). A Court can require a juvenile to "...obtain and maintain employment in order to satisfy his or her restitution obligations and his or her responsibility to repay the victim." *Id* at 626. *Laurance* goes on to explain: "The juvenile courts may use any rational method of fixing the amount of restitution, so long as the amount is rationally related to the proofs offered at the dispositional hearing, and the amount is consistent with the purposes of education, treatment, rehabilitation, and the juvenile's ability to pay." *Id* at 628. A restitution order entered in a delinquency proceeding must be supported by the record. *Id* at 620.

In *Laurance*, the Supreme Court found the lower court had erred in ordering \$29,059.96 in restitution as no evidence was presented by the State regarding the juvenile's ability to pay. In the case at bar, the Court was presented with several employment opportunities for the Juvenile. Bethany Skodmin testified to three fast-food options, all of which offered a minimum wage salary of \$12 as of January, 2024. (15:13; 16:3-4).

Ms. Skodmin further testified to specifics that were provided to her by McDonalds of 17.5 hours per week during the school year and 38 hours during the summer. (18:10-13). Using just the employment opportunity from McDonalds, the Juvenile could pay the entire restitution amount within 13 weeks during the school year. For example:

1. \$2,553.05 divided by \$12 an hour divided by 17.5 hours per week = 12.2 weeks. If taxes are calculated at 13%, 13.7 weeks.
2. If the Juvenile only worked at McDonald during the summer, \$2,553.05 divided by \$12 an hour divided by 38 hours per week = 5.6 weeks. If taxes are calculated at 13%, 6.3 weeks.

Ms. Skodmin further testified to detasseling opportunities. She first discussed S&J Detasseling which offered up to 100 hours at \$12 an hour. (16:18-17:1). She then discussed Radar Detasseling which offered up to 230 hours at \$12 an hour. (18:1-3) (17:8-11).

Further, the Juvenile did not indicate anything was physically wrong with him. (13:7-11). This is also evidenced by his sports involvement as noted below. The Juvenile indicated he does not have to pay for bills, food, rent, groceries, or any other typical expenses. (11:23-12:9).

In its closing argument, the State referenced *In re Seth C.*, 307 Neb. 862 951 N.W.2d 135 (2020). In *Seth*, ample evidence was presented regarding the Juvenile's ability to pay. However, The Supreme Court found the Juvenile could not pay the full amount of restitution requested because he was 18 and had a limited time left for payments during a juvenile probation period. That is not the situation in the case at bar. The Juvenile was 14 as of the date of the restitution hearing and has ample time to pay a restitution order during his juvenile probation term. (11:18).

Relying on this record, the Court was able to correctly determine that the Juvenile had the ability to pay restitution. The Court calculated that if the Juvenile was to only work 12 hours a week, he could make close to \$1,800 or \$2,000 in 10 weeks. (19:11-13). This is well below the time-period for the Juvenile's probation order of 12 months. If that somehow does not prove long enough, in contrast to Seth, the Juvenile is not close to the age of majority and has several years left to be availed to a juvenile restitution order. The Court further noted it was important for the victim to know the system worked and for the Juvenile to make amends for the harm done, stating: "And I understand (the restitution is) going to be troublesome, but I don't think it's anything that's insurmountable." (22:6-11).

Despite the available opportunities and extended period to pay, the Appellant argues that the Juvenile should not be ordered to pay restitution and notes that "according to the YLS 2.0 (youth level of service), a job does not automatically give them a point for free time or make their recidivism rate lower." *Appellant's Brief*, pg. 6. First, this ignores the clear case law that notes the importance of restitution to the rehabilitation of the Juvenile.

...(The) Nebraska Juvenile Code shall be construed to offer selected juveniles the opportunity to take direct personal responsibility for their

individual actions by reconciling with the victims and fulfilling the terms of any resulting agreement which may require restitution...

In re Seth C., 307 Neb. 862, 868, 951 N.W.2d 135, 142 (2020)

When liberally construing the Nebraska Juvenile Code, we conclude that requiring Seth to pay restitution for the victim's medical bills is essential for Seth's reformation and rehabilitation, because it gives Seth the opportunity to take direct personal responsibility for his actions.

Id at 869.

Nebraska case law clearly designates high importance on the payment of restitution. It gives the Juvenile offender the chance to take responsibility for his or her actions and is “essential” to a juvenile’s “reformation and rehabilitation.” In the case at bar, the Court alluded to this in its decision when it asked The Juvenile to consider the viewpoint of the victim and the hardship the Juvenile had created by breaking the victim’s arm. (21:8-12).

Second, this argument, if extended to its logical conclusion, would render all restitution orders inappropriate if the juvenile happened to be engaged in extracurricular activities. It would never be appropriate for a Court to award restitution as that would require a job which would steal time away from such activities and, seemingly, rob the chance to decrease recidivism.

The Appellant also argues that the Juvenile should not be ordered to pay restitution due to an inability to find transportation and/or his other involvements. *Appellant’s Brief*, pg. 5-6.

Even with one of the detasseling companies offering transportation, the Appellant argues it would still be too difficult for the Juvenile to attend work. *Appellant’s Brief*, pg. 6. The Appellant further argues that restitution would interfere with participating in football and football camps. *Appellant’s Brief*, pg. 6. The Appellant also argues that a restitution order would force the Juvenile to “limit or even quit his involvement in after school activities.” *Appellant’s Brief*, pg. 7. During the Restitution hearing, Defense counsel indicated that wrestling involvement would include weekend responsibilities. (20:20-24). The Juvenile also indicated he may have meets and practice on the weekends (23:20-21).

This presents a fundamental inconsistency present in the Appellant's argument, that the Juvenile has ample transportation and time available for sports and other extra-curricular activities but not work. The Juvenile previously worked for a detasseling company the year prior. (12:13). Summer camps for football and weekends dedicated to wrestling will, ostensibly, require transportation. There was no credible evidence presented that would indicate the Juvenile lacks the ability to pay, only the desire not to as it would interfere with other activities. The argument that transportation is unavailable is not compelling considering the Juvenile's ability to be transported for other activities.

Simply put, the test is the ability to pay, not the ability to avoid being inconvenienced by responsibility. The Court correctly found the Juvenile had the ability to pay restitution.

II. THE JUVENILE COURT FOR HALL COUNTY, NEBRASKA DID NOT DENY THE APPELLANT'S DUE PROCESS RIGHTS.

Appellee-State respectfully requests that the lower court's ruling be affirmed. The Juvenile Court for Hall County, Nebraska did not violate the Appellant's due process rights.

"Strict rules of evidence shall not be applied at any dispositional hearing." Neb. Rev. Stat. Ann. § 43-283 (West). Nebraska Evidence rules do not apply in dispositional setting but may provide guidance. *In Re Interest of D.L.S.*, 230 Neb. 435, 432 N.W.2d 31 (1988).

Appellant argues that that the same rules of evidence extended to a juvenile at a revocation hearing should apply to a restitution hearing. There is a significant misquote in which argument is included in a quotation from Neb. Rev. Stat. 43-286. The quoted portion of said statute ends with: "...His or her probation or supervision." However, the following section of argument is included as if part of the quotation. "A Juvenile at a restitution hearing... not allowing cross-examination of the State's witnesses." *Appellant's Brief*, pg. 7.

The State contends that restitution, and by extension a restitution hearing, is part of the dispositional order of the Court. It is a natural extension that the same rules of evidence, or lack-there-of, that apply to a juvenile disposition hearing also apply to a restitution hearing.

Appellant first asserts that the "Defense was allowed to call only one witness," as evidenced by the Court not inquiring of the Defense if they had more

witnesses (page 8). Appellant's second assertion argues that the Court "erred in not allowing the defense a chance to question him." Both arguments are without merit for the same reason.

First, it is an inaccurate characterization that the Defense was *not allowed* to call another witness or cross examine the Juvenile. Upon calling their witness, the Defense ended their questioning, The Court asked the State if they had questions, and the Court then questioned the witness before asking the State if they wished to be heard. (10:3-23) At no point did the Defense indicate they had another witness to call. After the conclusion of the State's questioning of the Juvenile, the Court asked the State if they wished to be heard. (14:8-9). At no point did the Defense object or otherwise indicate they wished to cross-examine the Juvenile.

A similar situation arose with the State. After the conclusion of the Defense's witness, the Court asked the State if they wished to be heard. The State then informed the Court they had evidence to present. The Court then permitted the State to present evidence. (10:22-25).

As no objection or notice was made to the Court, the evidence was not excluded. However, even if the evidence was deemed to be excluded, the guidance from Nebraska Evidence rules would not allow for the Appellant's argument to succeed:

(1) Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

(a) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if a specific ground was not apparent from the context; or

(b) In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

...

Neb. Rev. Stat. § 27-103.

The Defense gave no notice, request, objection, nor offer of proof. The Court did not violate the Juvenile's due process rights. This argument is without merit.

CONCLUSION

The Court correctly relied on the evidence presented to find that the Juvenile had the ability to pay. The Court did not violate the Juvenile's due process rights. Therefore, Appellee-State respectfully requests that the Appellate Court affirm the Juvenile's Court ruling.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that this brief complies with the typeface requirements of Nebraska Court Rules of Appellate Practice § 2-103, that Microsoft 365 was used to prepare this brief, and that the total number of words contained in this brief is 3,110.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this brief was electronically filed with the Court of Appeals, and a true and correct copy of the foregoing Brief was sent to Appellant-Juvenile's attorney of record, by e-mail on January 26, 2024.

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Certificate of Service

I hereby certify that on Friday, January 26, 2024 I provided a true and correct copy of this *Brief of Appellee State* to the following:

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