

Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Restitution amount which exceeded "blue book" value for damaged car, was considered proper.[In the Matter of R.M.](07-3-16)

On July 24, 2007, the Dallas (5th Dist.) Court of Appeals held that a restitution amount, which exceeded the "blue book" value for a damaged car, was (based on the evidence) not arbitrary nor unjustly enriching the recipients.

¶ 07-3-16. **In the Matter of R.M.**, MEMORANDUM, No. 05-06-00519-CV, 2007 Tex.App.Lexis 5785 [Tex.App.—Dallas (5th Dist.), 7/24/07].

Facts: In this case, R.M. appeals the order adjudicating him delinquent and ordering him to pay \$ 6,386.20 in restitution. R.M. contends the State failed to prove the restitution damages arose as a result of the offense for which he was adjudicated delinquent, the restitution amount was awarded arbitrarily and unjustly enriched the recipients, and the court abused its discretion in failing to weigh his family's ability to pay when ordering the rate of restitution payment. We affirm the trial court's order. The background of the case and the evidence adduced at trial are well known to the parties, and therefore we limit recitation of the facts. We issue this memorandum opinion pursuant to *Texas Rule of Appellate Procedure 47.1* because the law to be applied in the case is well settled.

Appellant pleaded true to unauthorized use of a motor vehicle. Testimony at trial showed he and his cohorts jumped out of the car they had taken while it was still moving. When the car was recovered, it had to be towed to a repair facility. The owners of the car offered testimony and evidence showing a car dealership's estimates for repairing the car. According to the owners, the car was in "perfect" condition before the offense.

R.M. offered evidence showing an independent mechanic's estimates for the same repairs using rebuilt parts. R.M. also offered into evidence a document showing the "blue book" value for a vehicle of the same make, model, and year, in fair condition. R.M.'s father testified the family income was approximately \$ 1,200 per month and the family could afford to pay no more than \$ 50 in restitution per month.

In making its ruling, the trial judge stated the following about how she determined the restitution amount:

The Court is also ordering that the family be responsible for the amount of \$ 6,386.20 in restitution to Socorro Lopez. That's payable at \$ 277.66 per month beginning January the 21st, the year 2006.

What I did was I took the Blue Book value of \$ 3,830.00 and, in looking at this assessment, it makes some specific notes about the condition of the car that we could not verify that is the condition of this particular car. For that reason I then took the difference between the two

estimates and divided it and added the difference to - [Coughing in the gallery] - that made the difference being \$ 6,386.

Now, the testimony seemed to be consistent that the damages to the car were the same. The only difference being you're saying that there was no damage to the ignition, but I remember, specifically, the police officer testifying that the car had to be towed away because there was no key and there was damage to the ignition. So for that reason I found all of the damages to be consistent. The only issue was as to how much it would cost to repair this particular vehicle.

I don't think that the victim should be forced to take inferior parts in order that the Respondent have to pay less, but I also don't think that, for a five-year-old car, that the victim should be compensated with a new - with new parts, necessarily, either. So for that reason I divided the two - divided the difference in the estimates.

Held: Affirmed

Memorandum Opinion: In all three of his issues on appeal, R.M. complains about the trial court's restitution order. A juvenile court has broad discretion to determine the proper disposition of a child who has been adjudicated as engaging in delinquent behavior. *In re C.G.*, 162 S.W.3d 448, 452 (Tex. App.-Dallas 2005, no *pet.*). Absent an abuse of discretion, we will not disturb the juvenile court's findings. *Id.*

Here, R.M. first complains the State failed to prove by a preponderance of the evidence that the damages alleged arose as a result of R.M.'s unauthorized use of a motor vehicle offense. The State offered testimony showing the car was in perfect condition before the offense. Police testimony showed the car was damaged after appellant and his companions abandoned it, and the parties essentially agreed about what damage was caused by the offense. We conclude the court did not abuse its discretion and resolve appellant's first issue against him.

R.M. next argues the restitution amount, which exceeded the "blue book" value for the car, was awarded arbitrarily and unjustly enriched the recipients. Here, the trial judge noted the "blue book" estimate in evidence was based on a car in "fair" condition, but there was no evidence to suggest the car had been only in fair condition before the crime. The judge specifically chose a restitution amount, based on the evidence before her, that would provide the owners of the car with repairs that would be reasonable both to them and to R.M.'s family. We resolve appellant's second issue against him.

In his third issue, R.M. contends the court abused its discretion in not weighing his family's ability to pay when ordering the rate of restitution payment. In fact, the record shows the court carefully considered the family's ability to pay and heard evidence on the matter. We resolve appellant's third issue against him as well.

Conclusion: We affirm the trial court's order adjudicating R.M. as a juvenile engaged in delinquent conduct.