

## Juvenile Law Case Summaries

By  
**Robert O. Dawson**  
Bryant Smith Chair in Law  
University of Texas School of Law

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### ***Father ordered to make restitution for damage to mobile home; civil standard of restitution not applicable [In re A.C.W.F.] (01-2-12)***

On April 5, 2001, the Dallas Court of Appeals upheld the juvenile court's restitution order against the father of a child who vandalized a mobile home. The Court of Appeals refused to require proof of the condition of the home before it was vandalized as would have been required in a civil lawsuit as a measure of damages.

01-2-12. In the Matter of A.C.W.F., UNPUBLISHED, No. 05-00-00984-CV, 2001 WL 328160, 2001 Tex.App.Lexis \_\_\_\_ (Tex.App.—Dallas 4/5/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: A.C.W.F., a juvenile, was adjudicated a child engaged in delinquent conduct for committing the offense of criminal mischief. The State subsequently filed a petition seeking restitution from appellant, A.C.W.F.'s father. The trial court held a hearing on the State's petition and entered a judgment ordering appellant to pay restitution to the victim of A.C.W.F.'s offense. In three issues, appellant generally complains the trial court used the incorrect measure of damages.

On or about December 27, 1997, A.C.W.F. vandalized a vacant house owned by Robert Evans. At the time of the offense, Evans had moved to California and the house was on the market. Because of the vandalism, Evans returned to Texas to evaluate the damage. According to Evans, the flooring throughout the house had been destroyed, including its hardwood floors, carpeting and vinyl floors. Photographs of the damage were introduced into evidence. The State presented evidence of the cost to replace the floors. Specifically, Evans obtained five estimates to replace the hardwoods ranging from \$5,906.85 to \$10,684.13, and averaging \$7,418. The cost to replace the carpet for the portion of the house that was carpeted was \$2,850. Evans elected not to replace the hardwoods because it was too expensive and he did not know if he would be able to recover from the wrongdoers. Therefore, he carpeted the entire house at a cost of \$4,660. Because of the vandalism, Evans also had to have the house cleaned and painted, fixtures replaced and repaired, and the locks replaced. The State presented evidence that the value of the house was still less after repairs than before the vandalism, not only because it no longer had hardwood floors, but also because of the stigma associated with the vandalism. The trial court ordered appellant to pay restitution for the cost to repair the house, including the cost to replace the hardwood floors and carpet. In this appeal, appellant challenges only the award of damages for replacing the floors.

Held: Affirmed.

Opinion Text: Once a trial court determines a juvenile has engaged in delinquent conduct, the court may order the juvenile or his parent to pay restitution. See Tex. Fam.Code Ann. § 54.041(b) (Vernon Supp.2001). The family code limits the amount of restitution ordered to the victim's actual damages. Tex. Fam.Code Ann. § 54.041(c) (Vernon 2001).

Although juvenile proceedings are considered civil proceedings, they are quasi-criminal in nature. See *In re D.I.B.*, 988 S.W.2d 753, 756 (Tex.1999); *In re K.J.O.*, 27 S.W.3d 340, 342 (Tex.App.-Dallas 2000, pet. denied). Therefore, in determining restitution in a juvenile case, the rules of restitution in criminal cases apply. *In re M.S.*, 985 S.W.2d 278, 280 (Tex.App.-Corpus Christi 1999, no pet.); *In re D.S.*, 921 S.W.2d 860, 861 (Tex.App.-San Antonio 1996, no writ); *In re J.R.*, 907 S.W.2d 107, 109 (Tex.App.-Austin 1995, no writ).

Whether to order restitution is within the sound discretion of the trial court. See *Cartwright v. State*, 605 S.W.2d 287,

289 (Tex.Crim.App.1980). The amount of restitution ordered must, however, be "just" and it must have a factual basis in the record. *Campbell v. State*, 5 S.W.3d 693, 696 (Tex.Crim.App.1999); *Cartwright*, 605 S.W.2d at 289. Although restitution in juvenile cases is limited to "actual damages," we construe that term in accordance with the approach to restitution in criminal cases. See *In re J.R.*, 907 S.W.2d at 109. In criminal cases, the trial court has broad discretion in determining "just" restitution. See *Long v. State*, 7 S.W.3d 316, 323 (Tex.App.-Beaumont 1999, no pet.); see also *Tex.Code Crim. Proc. Ann. art. 42.037* (Vernon Supp.2001).

Appellant asserts the proper measure of damages is limited to the cost to repair the floors to restore them to their condition immediately before the injury. Appellant therefore asserts the trial court could not order restitution for the damage to the floors because there was no evidence of the condition or value of the floors before the vandalism. To show the trial court used the incorrect measure of damages, appellant relies on civil cases applying the civil measure of damages with respect to damage to real property. However, in determining restitution, the trial court is not limited to the civil measure of damages. See *Davis v. State*, 757 S.W.2d 386, 389 (Tex.App.-Dallas 1988, no pet.). Rather, we determine only whether there is evidence that the restitution ordered is "just" and would tend to "make good" the injured party. See *id.*

In this case, there was evidence that after the vandalism the house was not marketable and needed to be repaired before it could be sold. In particular, the floors were completely destroyed and needed to be replaced. We cannot conclude the trial court abused its discretion in determining the victim's actual damages included the cost to replace those floors. We reject appellant's assertion the State was required to present evidence of the condition of those floors before they were destroyed. [FN1] Cf. *Davis*, 757 S.W.2d at 389 (refusing to equate statutory term "just" with civil concept of reasonable and necessary expenses). Nor did the State have to present specific evidence that the cost to repair the house was reasonable and necessary. See *id.*; see also *J.R.* 907 S.W.2d at 109. After reviewing the record, we conclude the trial court's award of damages for the cost to replace the victim's floor was "just" and had a factual basis in the record.

FN1. Appellant indirectly suggests that the damages awarded exceeds actual damages because the victim recovered both what it would cost to replace the hardwood floors and the cost he incurred in carpeting over those floors. Evans sought recovery only for what it would have cost to replace the hardwoods and what it would have cost to replace the carpet in the areas that were already carpeted. Appellant has not shown the trial court awarded both the cost of carpeting over the hardwoods in addition to the cost to recarpet the same area.

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