

Juvenile Law Case Summaries

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Factual basis in proceedings before associate judge for \$12,900 restitution order against parent in burglary case [In re B.B.] (02-4-03).

On September 4, 2002, the Dallas Court of Appeals upheld an order of restitution against a parent for \$12,900 for property damage and loss in a burglary case. There was a factual basis for the order based on the respondent's participation in the offense.

02-4-03. In the Matter of B.B., UNPUBLISHED, No. 05-01-01847-CV, 2002 WL 2013312, 2002 Tex.App.Lexis ____ (Tex.App.-Dallas 9/4/02) Texas Juvenile Law (5th Ed. 2000).

Facts: The opinion of June 20, 2002 [JLN 02-3-11] is withdrawn, and this opinion is substituted in its place.

Appellants' motion for rehearing is overruled.

In this juvenile offender case, appellants, B.B.'s parents, contend the juvenile court erred in ordering them to pay \$12,900 in restitution damages to the victim. Because the evidence provides a factual basis for the restitution award, the trial court did not abuse its discretion. Therefore, we affirm.

B.B. pleaded guilty to the offense of burglary of a building before an associate judge. At the disposition hearing, the associate judge ordered appellants to pay a monetary judgment of \$12,900 to John Wood, the victim. Appellants appealed the associate judge's decision to the district court sitting as a juvenile court. After a hearing, the juvenile court affirmed the decision of the associate judge. Appellants filed a motion for new trial, which was overruled by operation of law. This appeal followed.

Held: Affirmed.

Opinion Text: In two issues, appellants claim that the juvenile court erred in ordering appellants to pay \$12,900 restitution to John Wood. Whether to order restitution is within the sound discretion of a trial court and so is reviewed under an abuse of discretion standard. In re C.T., 43 S.W.3d 600, 602 (Tex.App.-Corpus Christi 2001, no pet.); In re M.S., 985 S.W.2d 278, 280 (Tex.App.-Corpus Christi 1999, no pet.); see Cartwright v. State, 605 S.W.2d 287, 289 (Tex.Crim.App.1980). A trial court abuses its discretion when it acts arbitrarily or unreasonably, or without reference to any guiding rules or principles. Downer v. Aquamarine Operators, Inc., 701 S.W.2d 238, 241- 42 (Tex.1985). Appellants challenge the legal and factual sufficiency of the evidence supporting the award. However, under an abuse of discretion standard, legal and factual insufficiency are not independent grounds of error but are factors in determining whether the trial court abused its discretion. Burns v. Miller, Hiersche, Martens & Hayward, P.C., 948 S.W.2d 317, 324 (Tex.App.- Dallas 1997, writ denied). A trial court does not abuse its discretion if there is some evidence of a substantive and probative character that supports the trial court's decision. Id.

The Texas Family Code provides that a juvenile court, after due notice to affected persons and a hearing, may order the parent of a child to make full or partial restitution to the victim of an offense when the child has been found to have engaged in delinquent conduct arising from the commission of an offense in which property damage or loss or personal injury occurred. Tex. Fam.Code Ann. § 54.041(b) (Vernon Supp.2002). The amount of restitution is limited to the victim's actual damages. Id. § 54.041(c) (Vernon Supp.2002). Further, the amount of restitution must be just, and it must have a factual basis within the loss of the victim. Campbell v. State, 5 S.W.3d 693, 696 (Tex.Crim.App.1999). A juvenile court may not order restitution to anyone but the victim of the offense with which the juvenile is charged. See id. at 697.

Appellants contend that the evidence does not demonstrate that John Wood was the victim and that there was \$12,900 in damages. Specifically, appellants contend that, at the hearing on the appeal of the associate judge's decision, the State presented no evidence

that John Wood owned the home that was damaged or that the damages were at least \$12,900.

On appeal from an associate judge's decision, the parties may present witnesses as in a hearing de novo on the issues raised in the appeal. Tex. Fam.Code Ann. § 201.015(c) (Vernon Supp.2002). The court may also consider the record from the hearing before the associate judge if the record was taken by a court reporter. Id. Here, the July 25, 2001 proceeding before the associate judge was recorded, but there is nothing in the record of the August 13, 2001 hearing of the appeal to indicate that the juvenile court reviewed the transcription of the previous proceeding. A hearing on the appeal was held. The judgment indicates that the juvenile court considered testimony and reports. Therefore, we will review the testimony and reports presented at the hearing of the appeal in determining whether there is a factual basis for the restitution award.

First, as to whether Wood was the victim of this burglary, appellants claim that the deed in the court's records does not show that Wood is the owner of the home. However, both appellants admitted during testimony that they knew that Wood lived in the home that was burglarized. They admitted that it was Wood's property that was taken. This evidence is sufficient to provide a factual basis to support an award of restitution to Wood.

Next, appellants claim that the only evidence of damages to Wood's home is that B.B.'s father testified that B.B. caused only \$1,500 of the damages. However, the State referred the court to the victim service report listing schedules of damaged property. There was no objection to the court's consideration of this report. Included in the report was Wood's affidavit in which he stated that his damages were \$28,037. In addition, B.B.'s mother was asked about the involvement of other persons in the incident and admitted that another family was ordered to pay a judgment of \$28,037. She testified further that she was aware that Wood was claiming "some twenty-seven thousand dollars" in damages to the house. B.B.'s mother also testified that, although B.B. admitted he damaged the walls, she did not believe "all the damage to the walls is worth twenty-eight thousand dollars." The report and the testimony provide factual support for Wood's actual damages. The juvenile court has discretion in setting the amount of restitution as long as it does not exceed Wood's actual damages. Accordingly, the juvenile court's award of \$12,900 restitution damages has a factual basis within Wood's actual damages.

Because the juvenile court did not abuse its discretion in awarding \$12,900 in restitution damages to Wood, we resolve appellants' issues against them and affirm the judgment.

[Editor's Comment: Family Code Section 201.015, cited by the Dallas Court concerning review of the recommendation of an associate judge, does not apply to Title 3 proceedings. That provision applies only in Titles 1, 4 or 5. Family Code Section 201.001. Associate judge proceedings under Title 3 are controlled by Section 54.10.]

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