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IN THE
COURT OF APPEALS OF INDIANA

D.H.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-1010-JV-1257
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Geoffrey A. Gaither, Magistrate
Cause No. 49D09-1005-JD-1470

June 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant D.H. appeals the Dispositional Order on Delinquency, ordering him to pay $1,896 in restitution. Specifically, D.H. argues that the juvenile court erred in ordering him to pay restitution as a special condition of probation because he does not have the ability to pay it. Concluding that the issue is moot because D.H. has been discharged from probation, we dismiss the appeal.

FACTS

On April 19, 2010, ten-year-old D.H. struck S.S. in the jaw multiple times during an altercation in the school cafeteria. S.S.'s mother took S.S. to a doctor at Wishard Hospital who ordered a CT scan of S.S.'s swollen face. Mother received a $1,896 medical bill from Wishard and does not have medical insurance.

On July 15, 2010, the State filed a petition alleging that D.H. was a delinquent child for committing what would be class A misdemeanor battery if committed by an adult. Following an October 13, 2010, hearing on the petition, the juvenile court adjudicated D.H. to be a delinquent child. The juvenile court placed D.H. on informal probation, and, as a special probation condition, ordered him to pay $1,896 in restitution to S.S.'s mother.

On February 9, 2011, the juvenile court held a review hearing. D.H. had not paid the restitution to D.H.'s mother. The juvenile court found D.H.'s family to be indigent, reduced the restitution to a civil judgment, discharged D.H. from probation, and closed the case. D.H. appeals the restitution order.

DISCUSSION AND DECISION

D.H. argues that the trial court erred in ordering him to pay restitution because he does not have the ability to pay it. However, D.H.'s restitution order has been reduced to a civil judgment, he has been discharged from probation, and his case has been closed. Under these circumstances, the State contends the issue is moot.

The general rule in Indiana is that a case is deemed moot and may be dismissed when no effective relief can be rendered to the parties before the court. W.R.S. v. State, 759 N.E.2d 1121, 1123 (Ind. Ct. App. 2001). For example, this court has held that a sentencing issue was moot because the appellant had already served the sentence. Richardson v. State, 402 N.E.2d 1012, 1013 (Ind. Ct. App. 1980). Here, D.H.'s restitution issue is moot because he has already completed probation. See Tharp v. State, 942 N.E.2d 814, 816, n.1 (Ind. 2011) (stating that issue concerning probation was moot where Tharp completed probation). Because the issue is moot, we dismiss the appeal.

This appeal is dismissed.

BRADFORD, J., concurs.

MAY, J., dissents with opinion.

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MAY, Judge, dissenting

I cannot characterize as "moot" a result that leaves then-eleven-year-old D.H. saddled with a substantial civil judgment, when I do not believe the trial court had authority to enter such a judgment. I therefore respectfully dissent.

In this case, on October 13, 2010, the trial court ordered D.H. to pay restitution of $1896.00, which was for a dental bill. The trial court stated: "[I] [f]ind you indigent as to fees and cost[s] because of mother's job and other responsibilities, including the number of children that she's having to support." (Tr. at 45-49.) Then, on March 10, 2011, the trial court entered a Review Order, stating "The Court finds the family to be indigent and orders all remaining restitution to be reduced to a civil judgment. The Court

grants authorization for the State of Indiana to release only those documents that are necessary to commence a civil suit." (App. of Appellee at 1.)

It is clear the court believed the restitution order gave rise to a "judgment lien" under Ind. Code § 35-50-5-3, which provides a court may, in addition to any sentence imposed, order a convicted person to make restitution to the victim of his crime. A restitution order under that section is a judgment lien that may be perfected or enforced by the person in whose favor the order was issued and that expires in the same manner as a judgment lien created in a civil proceeding. *Id*. Such restitution orders are not discharged by the completion of a probationary period. *Id*.

That section, however, is explicitly limited to restitution orders connected with sentences for "a *felony or misdemeanor*." *Id.* (emphasis added). As an act of juvenile delinquency is not a crime, *M.R. v. State*, 605 N.E.2d 204, 207 (Ind. Ct. App. 1992), that section does not apply to the case before us.

The statute applicable to delinquent children, Ind. Code § 31-37-19-5, provides a juvenile court may "[o]rder the child to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing." However, that section does not provide the restitution order in a juvenile proceeding is a judgment lien, nor does it address whether the restitution order might be discharged by completion of the probationary period. I would decline to read into the juvenile code those provisions the legislature chose to explicitly include only in the criminal code. *See, e.g. Peele v. Gillespie*, 658 N.E.2d 954, 958 (Ind. Ct. App. 1995) (it is just as important to

recognize what a statute does not say as it is to recognize what it does say, and we may not read into a statute that which is not the expressed intent of the legislature), *reh'g denied, trans. denied*.[1] Thus, I would hold the juvenile court in the case before us did not have authority to reduce J.H.'s unpaid restitution to a "civil judgment."

Nor is it apparent the victim's mother, who was to receive the restitution provided for in the original dispositional order, could have obtained an independent "civil judgment" had she sought one during the juvenile proceeding, as she was not a party to the juvenile action, nor was she prosecuting a private wrong. In *State ex rel. Johnson v. White Circuit Court*, 225 Ind. 602, 77 N.E.2d 298 (1948), the victim of a juvenile offense challenged an order by the juvenile court judge that released the juvenile from the Boy's School and placed him in the custody of his father. Our Indiana Supreme Court determined she did not "have a sufficient interest to maintain the action." *Id.* at 611, 77 N.E.2d at 302. The Court said:

> In a criminal case, if after a judgment of conviction and imprisonment of a defendant the trial judge should make a void order changing the judgment and ordering the release of the defendant, would the victim of the crime have the right to demand that the trial judge expunge and vacate the void order? Since the administration of the criminal laws is exclusively the function of the state, in which the victim is not interested personally, it is manifest he would not have that right, but the proper enforcement of the criminal laws and the execution of the valid judgment should be the

[1] I acknowledge Ind. Code § 31-32-1-1, which provides "If a child is alleged to be a delinquent child, the procedures governing criminal trials apply in all matters not covered by the juvenile law." However, I have found no authority to the effect imposition of a judgment lien is within the category of "procedures" governing criminal trials.

> concern of the state speaking through its proper prosecuting attorney or the Attorney General.
>
> Likewise, the same considerations of public policy compel the same conclusions if the case be one involving a juvenile offense. The victim is not prosecuting a private wrong, nor is the victim a party to the proceedings. There is particular danger in permitting any victim of either a criminal or juvenile offense to control any step of the proceeding, else we revert to the ancient philosophy of a barbarian society when justice was regarded as a matter of personal vengeance and retribution.

Id. at 610-11, 77 N.E.2d at 302.

Even if the victim's mother in the case before us could have pursued, and did pursue, a "civil judgment" for restitution, no such judgment could properly have been granted on this record. At the disposition hearing, the State offered, and the court accepted, the victim's dental bill. It elicited testimony that the bill "encompass[ed] the cost" the victim's mother had "outstanding from the procedures [she] just described," (Tr. at 31), and accurately reflected what she "owe[d] with regards to the hospital visits." (*Id*.)

We recently addressed, in *Kays v. State*, No. 42A05-1007-CR-504 (Ind. Ct. App. Apr. 21, 2011), the implications of our Supreme Court's decision in *Stanley v. Walker*, 906 N.E.2d 852, 858 (Ind. 2009), *reh'g denied*, in the restitution context. In *Kays*, the victim submitted a hospital bill for $1496.15 and the trial court ordered Kays to pay that amount.

We directed the trial court on remand to "determine whether the evidence submitted at trial included other documentation or testimony regarding [the victim's] "actual cost" and, if so, to recalculate [the victim's] damages." *Kays*, slip op. at 11. We

noted the statutory requirement that a trial court "base its restitution order upon a consideration of . . . medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime," Ind. Code § 35–50–5–3(a), and the rule that "only actual costs incurred by the victim" may be recovered as restitution. *Kellett v. State*, 716 N.E.2d 975, 980 (Ind. Ct. App. 1999).

Therefore, we determined, "a trial court ought not simply base an order of restitution on a hospital bill without determining whether that bill reflects the 'actual cost' to the victim." *Kays*, slip op. at 2. As the *Kays* record did not reflect whether the parties submitted evidence enabling the court to make such a determination, we directed the trial court on remand "to, if such evidence exists, revisit the documentation submitted as to the victim's damages and determine whether the amount of restitution ordered reflects the amount actually paid by the victim." *Id*.

In addressing how much a tortfeasor should pay to reimburse a party injured in an automobile accident, our Indiana Supreme Court discussed in *Stanley* why "[t]he collateral source statute [Ind. Code § 34–44–1–2] does not bar evidence of discounted amounts in order to determine the reasonable value of medical services," 906 N.E.2d at 858, provided to the victim:

> The complexities of health care pricing structures make it difficult to determine whether the amount paid, the amount billed, or an amount in between represents the reasonable value of medical services. One authority reports that hospitals historically billed insured and uninsured patients similarly. Mark A. Hall & Carl E. Schneider, *Patients As Consumers: Courts, Contracts, and the New Medical Marketplace*, 106 Mich. L. Rev. 643, 663 (2008). With the advent of managed care, some insurers began

> demanding deep discounts, and hospitals shifted costs to less influential patients. *Id.* This authority reports that insurers generally pay about forty cents per dollar of billed charges and that hospitals accept such amounts in full satisfaction of the billed charges. *Id.*
>
> As more medical providers are paid under fixed payment arrangements, another authority reports, hospital charge structures have become less correlated to hospital operations and actual payments. The Lewin Group, A Study of Hospital Charge Setting Practices i (2005). Currently, the relationship between charges and costs is "tenuous at best." *Id.* at 7. In fact, hospital executives reportedly admit that most charges have "no relation to anything, and certainly not to cost." Hall, *Patients As Consumers* at 665. Thus, based on the realities of health care finance, we are unconvinced that the reasonable value of medical services is necessarily represented by either the amount actually paid or the amount stated in the original medical bill.

906 N.E.2d at 857 (footnote omitted).

In *Kays*, we stated:

> [T]he *Stanley* reasoning should be applied to criminal restitution orders to ensure victims are compensated only for their actual losses. As explained in *Stanley*, a restitution amount based on a hospital bill, without any indication of the amount paid by the victim or her insurance company, or the amount written off by the hospital, might overcompensate the victim, in violation of Ind. Code § 35–50–5–3(a)(2). *Stanley*, 906 N.E.2d at 856.

Kays, slip op. at 11.

In *Kays*, the record included only the original hospital bill: "We do not know if there was other evidence presented to the trial court regarding the amount [the victim] actually paid . . . and not just the amount billed by the hospital." *Id.* As in *Kays*, the record in the case before us does not include other documentation or testimony regarding what the victim's mother might ultimately pay.[2] Therefore the "civil judgment" the

[2] The victim's mother testified she had not been able to pay the bill and it was "in collection." (Tr. at 33.)

juvenile court purported to enter would have been improper even if such a judgment could be entered without a civil proceeding to obtain such a judgment.

Neither the record before us nor the nature of this juvenile proceeding permitted the juvenile court to reduce the restitution order to a civil judgment. I must therefore respectfully dissent.