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ATTORNEY FOR APPELLANT:

MARSHELLE DAWKINS BROADWELL
Wooden & McLaughlin LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

TIFFANY N. ROMINE
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

L.B.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0902-JV-153
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0810-JD-3459

August 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

L.B., a juvenile, pled guilty to auto theft and, as part of his plea agreement, agreed to pay restitution to the victim of his crime. L.B. now appeals the juvenile court's order that he pay $1670 in restitution to the victim, arguing that the court failed to inquire into his ability to pay that amount. The State concedes this issue. We reverse and remand this case for the juvenile court to inquire into L.B.'s ability to pay restitution.

Facts and Procedural History

On October 30, 2008, sixteen-year-old L.B. noticed that Jenna Jones' car was running, so he entered it without her permission. L.B. then drove the car until he was pulled over by police. Thereafter, the State filed a delinquency petition alleging that L.B. was a delinquent child for committing Class D felony auto theft, Class D felony resisting law enforcement, Class A misdemeanor resisting law enforcement, and Class C misdemeanor driving without a license. L.B. and the State entered into a plea agreement whereby L.B. pled guilty to Class D felony auto theft and the State dismissed the remaining charges. L.B. and the State agreed that the juvenile court would enter the following dispositional decree: "open argument to the court at dispositional hearing with a cap of a suspended commitment to the Department of Correction[]." Appellant's App. p. 40 (capitalization omitted). As for restitution to Jenna Jones, the plea agreement provides that L.B. "agrees to make restitution to the victim(s) for the following amount: open to Jenna Jones." *Id.* at 41.[1]

[1] To the extent that L.B. argues on appeal that he is not responsible for restitution, we note that he agreed to it in his plea agreement.

At the disposition hearing, the juvenile court awarded wardship of L.B. to the Department of Correction but suspended it and placed him on probation with special conditions, including no contact with Jenna Jones and completing sixty hours via the restitution work program. L.B. was also ordered to pay "$1670 in restitution payable to the Clerk's Office of Marion County to be withdrawn by: Jenna Jones." *Id.* at 10. L.B. now appeals the trial court's order that he pay restitution.

Discussion and Decision

L.B. contends that the juvenile court erred in ordering him to pay restitution because it failed to inquire into his ability to pay. An order of restitution is a matter within the trial court's discretion, and we reverse only upon a showing of abuse of that discretion. *T.C. v. State*, 839 N.E.2d 1222, 1224 (Ind. Ct. App. 2005), *reh'g denied*. An abuse of discretion occurs when the trial court's determination is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* Although Indiana Code § 31-37-19-5(4)—which provides that a juvenile court may order a child "to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing"—does not expressly require the court to inquire into a juvenile's ability to pay, this Court has held that equal protection and fundamental fairness concerns require a juvenile court to inquire into a juvenile's ability to pay before the court can order restitution as a condition of probation. *Id.* (citing *M.L. v. State*, 838 N.E.2d 525, 527 (Ind. Ct. App. 2005), *reh'g denied*, *trans. denied*).

Here, because the juvenile court ordered restitution as a condition of L.B.'s probation, *see* Tr. p. 8, the court was required to determine his ability to pay. At the disposition hearing, the State submitted evidence of the value of the items taken from Jenna Jones' car, including cosmetology school supplies and CDs, which amounted to a loss of $1670. However, the juvenile court never inquired into L.B.'s ability to pay that amount. In fact, the Probation Officer's Report of Preliminary Inquiry shows that L.B., a sixteen year old, was unemployed. Appellant's App. p. 20. This was an abuse of discretion, as the State concedes. Appellee's Br. p. 5. Although it is apparent that L.B. will earn some money that he can apply toward restitution through the sixty hours that he will be working in the restitution work program, the trial court did not indicate how much money L.B. will earn in this program. As such, we remand this case for a hearing on the issue of L.B.'s ability to pay the difference and to modify the existing restitution order if the juvenile court determines that he is financially unable to meet its terms. *See T.C.*, 839 N.E.2d at 1224-25. In light of this ruling, we need not address L.B.'s argument that the trial court erred by refusing to allow his attorney more time to gather and present evidence relevant to the restitution order.

Reversed and remanded.

BAILEY, J., and BRADFORD, J., concur.