

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No 2014-000420

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APR 27 2015
SC Court of Appeals

THE STATE,

Respondent,

v

JASON RANDALL MORGAN,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Is a victim entitled to receive restitution in an amount equal to outstanding medical bills when she pursued a civil suit for their recovery and signed a release of claims form as a result of the civil suit?

STATEMENT OF THE CASE

On August 21, 2010, the appellant was involved in an accident with Elizabeth Miralles-Molena [*hereinafter* victim]. The victim suffered damages in this accident and the State sought reimbursement for those damages. Appellant's insurance company negotiated with the victim's attorney, which resulted in an offer of the policy limits of \$25,000.00. (R. p. 16). The victim accepted this amount and signed a covenant not to execute, waiving all her claims to further recovery from Appellant. Subsequently, the victim ignored a lien established by her acceptance of care by the Greenville Health System of \$236,855.00. The victim obtained her settlement proceeds without addressing the lien she personally signed with the hospital.

Following the resolution of the civil claim, Appellant pled guilty to assault and battery second degree. (R. p. 6). At a restitution hearing on October 3, 2013, the State sought restitution from the Appellant in the amount of \$236,855.00, the amount owed to Greenville Health System on the medical bills. (R. p.7, line 3). During the hearing, the State asserted that requiring this amount of the Appellant was about making the victim whole and about fairness. (R. p. 12, lines 12-15). The State contended that the money being collected was to cover the medical bills that the victim had outstanding. (R. p. 7, lines 2-4). On the day of the hearing, Judge Verdin indicated agreement with the Appellant that the civil judgment should encompass those damages as well, but took the matter under advisement. (R. p. 14, lines 11-13). Subsequently, Judge Verdin ruled, not at a hearing on the record, that the covenant not

to execute, signed by the victim, did not bar her from collecting restitution from Appellant for her hospital bills and awarded the victim restitution in the amount of the outstanding hospital bills, \$236,855.00. (R. p.2). Appellant received a signed and filed copy of this order on February 26, 2014. It is from this decision to award an inordinate amount of restitution that Appellant now appeals to the South Carolina Court of Appeals.

ARGUMENT

The court erred in awarding restitution in the case at bar as the victim signed a valid waiver of any further recovery from Appellant, and because the court failed to consider the award in light of S.C. CODE ANN. § 17-25-322. Restitution payments by Defendants have traditionally been allowed in order to prevent unjust enrichment. *See Jasdip Properties SC, LLC v Estate of Stewart Richardson*, 395 S.C. 633, 640, 720 S.E.2d 485, 488 (S.C. Ct. App. 2011) (finding that restitution is a way for victims to recover for the amount that the defendant has been unjustly enriched at the victim's expense). The standard of review of a ruling in General Sessions is usually for an abuse of discretion or an error of law; however, the appeal of a restitution award, due to its equitable nature, is *de novo*. *See id.*, at 640, 488 (finding that restitution and unjust enrichment are both equitable doctrines). In the case at bar, Appellant asserts that the standard of review should be *de novo* review as indicated above; however, notwithstanding this assertion, the court nevertheless abused its discretion in finding that the Appellant owed the victim restitution.

I. THE COURT ERRED IN AWARDING RESTITUTION AS THE STATE WAS ESTOPPED FROM PURSUING RECOVERY FOR DAMAGES THAT WERE PURSUED IN ANOTHER ACTION.

The court erred in awarding restitution in the case at bar because the victim accepted compensation for its pecuniary damages and released Appellant from further payment toward victim in a covenant not to execute. Appellant, through his insurance company, agreed to

pay victim the full liability limits available on his vehicle. (R. p.16) (indicating that “it is the express intent of the parties that Covenantee, his/her/its/their agents, representatives, heirs and assigns, shall never at any time, be liable to covenantor, his/her subrogees, agents, representatives, heirs or assigns, beyond the consideration expressed herein and paid, by reason of any damages or injuries on which such judgment may be based except as herein stated”). The victim had the opportunity to collect for and satisfy the lien by the hospital as a part of the proceeds from her civil settlement. Instead, upon advice of counsel, she chose to take the entire net proceeds and leave those bills unpaid. Hospitals, when the funds available are not sufficient to cover their costs, will routinely reduce their bills to an amount within the settlement proceeds. Neither the victim, nor her attorney, addressed the lien of the hospital in settling the case. Contract law requires that the victim be held to her contract and not collect any more money from Appellant for the damages she had a duty to take care of as a part of any civil settlement she received.

Essentially, the Court has allowed the state to nullify a contract between the parties and allow the State to pursue a collection action on behalf of the victim for money that already been pursued and compromised as a part of a civil suit. To do so is a violation of the Contracts Clause of the United States and South Carolina Constitutions as it allows the State to interfere in contracts between private citizens. U.S. CONST. art. 1, § 10; S.C. CONST. art. 1, § 4. In effect, if restitution is allowed in this matter, the state becomes an agent that victims can rely on to avoid restrictions on additional recoveries they bargain for and contractually agree upon.

In this restitution action, the State is barred by the doctrine of collateral estoppel because they are essentially standing in the shoes of a bill collector for the victim. In effect, the State is acting as an agent, not only of the victim, but also of the Greenville Health System, in

acting to collect money that is owed and unpaid by the victim. Appellant recognizes that the State is not a party to releases or covenants signed by parties in civil actions; however, in this case, it appears that the State is well aware of the results of the civil action, and is attempting to further the negotiations on the victim's behalf to make her whole, which is the primary purpose of civil remedies under South Carolina laws.

The purpose of the restitution statute is to prevent unjust enrichment; however, in the case at bar, awarding this restitution results in the victim being unjustly enriched. The victim chose not to satisfy her medical liens as a part of her civil settlement (in order to receive more money from the settlement), and the State is now collecting additional funds that she herself is barred from pursuing. In effect, she has been unjustly enriched; because the State is collecting money for her medical bills; and ordering Appellant to pay her for them with no assurance that those funds shall be paid to the hospital, that she has already paid any medical costs that would be reimbursed pursuant to this restitution, or that the victim even owes any medical costs to the provider.

II. THE COURT ERRED BY FAILING TO FOLLOW STATUTORY REQUIREMENTS WHEN IT ISSUED ITS ORDER FOR RESTITUTION.

The Restitution Order issued in this case is invalid as it fails to address statutory requirements concerning the award of restitution to the victim. The order entered in this case was deficient in that it failed to address those considerations delineated in S.C. CODE ANN. § 17-25-322. The restitution statute requires that the court "enter its order upon the record stating its findings and the underlying facts and circumstances of them." S.C. CODE ANN. § 17-25-322(C). As such, the order, which is akin to a form order, with only the amount and victim's name filled in, does not meet the statutory requirements.

However, no such payment arrangements were delineated out in the order. Additionally, the order fails to account for the \$25,000.00 that the victim had already collected as a result

of a civil settlement regarding this incident. Appellant is informed and believes this is a case of first impression for the issue of whether a civil settlement precludes a subsequent restitution order requiring the same damages sought in the civil action be paid to a victim after the victim has accepted a settlement of the civil matter seeking recovery of those damages.

The restitution statute provides five factors for determining when restitution is awarded and the amount of said restitution. The statute directs that the court consider the financial resources of both the victim and defendant as well as the burden that the restitution will impose on the victim or the defendant, the ability of the defendant to pay restitution; the anticipated rehabilitative effect on the defendant; any burden or hardship on the victim; and the mental, physical, and financial well-being of the victim. S.C. CODE ANN. § 17-25-322.

In the case at bar, the Court erred in awarding restitution by failing to consider and inquire into these five factors in deciding to order that the Appellant pay restitution. There is no evidence in the record regarding the financial resources of the Appellant or victim, and the victim was not even present for the restitution hearing. Additionally, there is no indication that the hospital bills that the State seeks to have Appellant pay are outstanding or that they are a burden on the victim. Further, the Court did not inquire into the Appellant's ability to pay restitution. In order for the Appellant to pay the restitution award currently ordered by the Court by the time he finishes probation (which is a maximum of five years under South Carolina Law), he would have to make a monthly restitution payment of at least \$3,977.67 a month. Otherwise, the money owed to restitution at the end of his service of probation would be converted into a civil judgment. Basically, a restitution award of this amount would require Appellant to make payments the rest of his life in order to satisfy it, and that is not what the legislature intended. Restitution is a tool that the court uses to impose upon a

defendant a duty make a victim whole and also acts as a deterrent to future crime. This rehabilitative tool is not meant to last for a lifetime; instead, it is a temporary burden imposed upon the defendant as a result of a criminal action. Unlike a fine, which is used to punish a defendant's actions, the goal of restitution is based on repaying the victim for actual damages sustained, so that it can be rehabilitative in nature.

The third factor indicated in the restitution statute is the rehabilitative effect of the restitution on the defendant. In this case, the Appellant pled guilty to Assault and Battery Second Degree, a crime that carries, at maximum, a fine of \$2,500.00 and/or three years incarceration. S.C. CODE ANN. § 16-3-600(D)(2). As currently ordered, the Appellant is ordered to pay restitution that so exorbitant, it is more than one hundred times the maximum fine allowed for the offense. The legislature set out maximum fines in order to provide the Court with guidance regarding when a fine becomes so excessive that it is no longer rehabilitative and instead becomes punishment. In this case, the exorbitant amount of restitution ordered in essence is one hundred times worse than the maximum punishment allowed under South Carolina law. For example, in order for this restitution to indeed be paid by the end of Appellant's probation (which at maximum can last five years), he would be paying approximately \$59,665.00 each year. By comparison, the average yearly salary for an individual in the year 2012, according to the United States Census Bureau is only \$51,371.00. In essence the current award requires Appellant to pay more in restitution costs per year than most people earn in an entire year.¹ *See supra*, Footnote 1 (detailing the dangers of unpaid restitution and their effect on probation).

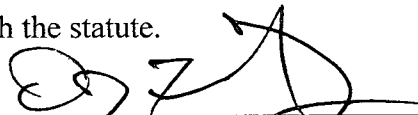
¹ Part of the terms of Appellant's probation would require that he make the restitution payments as required by the Department of Probation, Parole, and Pardon Services. Without the terms being included therein, the Department of Probation, Parole, and Pardon Services' standard plan requires payment of the entire restitution balance prior to completion of eighty percent of one's probation. S.C. CODE ANN. § 17-25-322 (2006). Under that plan, the Appellant would be required to pay approximately \$4,972.09 in restitution *every month*.

This excessive restitution amount, in addition to being a de facto punishment, also does not take into account the burden on the victim or her mental, physical, and financial well-being. No findings as to the victim, her health, or her financial situation, were presented during the restitution hearing. Instead, the State merely presented that there were hospital bills outstanding and requested that amount be repaid. (R. p.7, lines 2-4). Therefore, due to the valid Covenant wherein victim agrees to waive further compensation for her injuries, as well as the failure of the order to comply with S.C. CODE ANN. § 17-25-322, the restitution award should be overturned.

CONCLUSION

Appellant's restitution order should be overturned as the proceeds awarded in settlement of the victim's civil claim bar her from recovering in the current action. In the alternative, and at the very least, Appellant requests that a new hearing be ordered, as the Order does not comply with S.C. CODE ANN. § 17-25-322, and that any amount owed by Appellant for restitution be reduced by the amount the victim has already recovered, \$25,000.00.

Appellant respectfully requests that this Honorable Court overturn the decision of the Pickens County Court of General Sessions and find that Appellant does not owe this restitution to the victim, as the victim had the opportunity to procure said funds through her civil action, and the order failed to comply with the statute.



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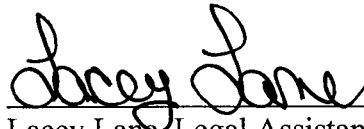
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I certify that I served the Final Brief of Appellant by hand delivery on April 27, 2015
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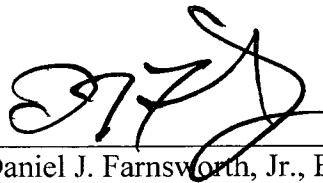
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filing."



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