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FAMILY LAW: JURISDICTION TO IMPOSE RESTITUTION IN CHILD ABUSE CASE

Summary

In a child abuse case, where a family court has previously imposed an obligation on the defendant for the costs of supporting a child placed in the care of social services, the Supreme Court of Nevada determined the district court has jurisdiction to grant restitution to the State for the cost of such child care but must be offset the restitution amount by the amount of the support obligation imposed by the family court.

Background

Following Larry Major's arrest for child abuse, the State placed his daughter in the custody of Washoe County Social Services (Social Services). In a family court hearing, Major was ordered to pay child support of \$100.00 per month, directly to Social Services. Upon Major's guilty plea to one felony count of child abuse, Social Services sought restitution in the amount of \$20,362.07. Ida Peeks, a fiscal compliance officer for Social Services, testified to establish the amount of restitution, based on the amount it charges other agencies for the care of children placed in Kids Kottage, where Social Services housed Major's Daughter. Peeks further testified Social Services could receive reimbursement for the cost of care from the federal government for children that meet certain eligibility requirements. However, Peeks did not know whether Major's daughter met these requirements, or if Social Services had received any reimbursement for her care.

The district court concluded that the Family Court's order did not affect the jurisdiction of the district court as to its criminal restitution order, and ordered major to pay the full restitution sought less \$700 to reflect the amount already paid to Social Services.

Discussion

The district court had jurisdiction to order Major to pay restitution

Major argued the district court lacked jurisdiction to order him to pay restitution because the family court previously ordered him to pay \$100.00 per month for the cost of the care. On an issue of first appeal, the supreme court disagreed with Major's characterization of the restitution as "modifying or reviewing the family court's support order." The supreme court has previously held "family court judges are district court judges with authority to preside over matters outside the family court division's jurisdiction."² Pursuant to NRS 176.033(1)(c), a sentencing court may award restitution to the victims of a crime upon a criminal conviction.³ Thus, despite the fact district courts lack jurisdiction to review or modify actions of other district courts⁴, here, the district court's order imposing restitution did not constitute a review or modification of the

¹ By Christian Spaulding.

² Landreth v. Malik, 127 Nev. ___, ___, 251 P.3d 163, 169 (2011).

³ NEV. REV. STAT. § 176.033 (2013).

⁴ Rohlifing v. Second Judicial Dist. Court, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990).

family court's support obligation. That is, although a family court judge has the same authority as a district court judge, NRS 176.033(1)(c) limits the power of a district court judge to award restitution to victims of crimes to the sentencing phase of a criminal proceeding⁵.

Restitution is granted to compensate a victim for costs arising from a defendant's criminal act.⁶ Although the circumstances in which the state may be considered a victim are limited, the supreme court has previously held that the State was a victim for purposes of awarding restitution when incurring costs for medical and foster care of a child after the defendant was convicted of child abuse.⁷

Ultimately, the district court has jurisdiction to grant restitution to the state for the total cost imposed on it as a result of Major's criminal act, so long as the district court offsets the restitution amount by the amount of the support obligation. In this case, the restitution amount of \$19,662.07 was proper, as the court deducted the \$700.00 Major had paid under the family court's order, from the original restitution amount of \$20,362.07.

Sufficient evidence supports the restitution award

Major argues in the alternative that the court should remand for a hearing to establish the actual cost of care for his daughter. The district court found the evidence presented by Social Services sufficient and required social services to notify the district court if they received a reimbursement from the federal government, at which time, the district court would amend the restitution order to reflect that reimbursement. Although the Supreme Court has cautioned sentencing courts to "rely on reliable and accurate evidence in setting restitution," a defendant is not entitled to a full evidentiary hearing at sentencing.⁸ Therefore, "so long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence", the court will not interfere with the sentencing imposed.⁹

Conclusion

NRS 176.033(1)(c) limits the power of a district court to grant restitution to the sentencing phase of a criminal proceeding¹⁰, thus, the district court was within its jurisdiction when it granted restitution, offset by the amount paid under the family court's order, to the State. The court found the State to be a victim in this case, and further emphasized a defendant is not entitled to a full evidentiary hearing at sentencing. As such, without evidence in the record of prejudice resulting from consideration of improper information, the court will not interfere with the sentence imposed by the district court. Therefore, the judgment of conviction is affirmed.

⁵ NEV. REV. STAT. § 176.033 (2013).

⁶ *Martinez v. State*, 120 Nev. 200, 202-03, 88 P.3d 825, 827 (2004).

⁷ *Roe v. State*, 112 Nev. 733, 735, 917 P.2d 959, 960 (1996).

⁸ *Martinez v. State*, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

⁹ *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

¹⁰ § 176.033.