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DISTRICT IV

September 24, 2026

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You are hereby notified that the Court has entered the following opinion and order:

2024AP1876-CR

State of Wisconsin v. Kendre Carmen Garbers (L.C. # 2020CF665)

Before Graham, P.J., Blanchard, and Kloppenburg, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Kendre Garbers appeals a judgment convicting her of two felonies, as well as an order denying her postconviction motion. Garbers argues that the circuit court erred in concluding that she is not entitled to a setoff against restitution that she is ordered to pay. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Garbers moved into L.J.'s residence to work as a caregiver for L.J., a disabled individual. Garbers moved out of L.J.'s residence after they had a falling out regarding Garbers's alleged misappropriation of funds from L.J.'s bank account at River Bank. Garbers returned to L.J.'s residence to retrieve some of her personal property, including a cat, but was unable to get the property back.

The State charged Garbers with theft in an amount greater than \$5,000 but less than \$10,000, and two counts of identity theft. *See* WIS. STAT. §§ 943.20(1)(a), 943.201(2)(a). Garbers was convicted after a jury trial on all counts except for one of the identity theft counts. At the sentencing hearing, the circuit court withheld sentence and imposed 30 months of probation. The court also stated that it would set a restitution hearing.

At the restitution hearing, the State presented evidence that River Bank had reimbursed L.J. for at least \$5,530 in unauthorized debit, ATM, and Facebook Pay transactions. The circuit court ordered Garbers to pay \$5,530 in restitution to River Bank. The court said, "That is the amount that the bank reimbursed [L.J.] for actions that were determined to be Miss Garbers'[s] actions. I believe that ... the causation is met."

After the circuit court made its ruling, Garbers asserted at the restitution hearing that L.J. had damaged and withheld some of Garbers's property. The court told Garbers that she could raise the matter in small claims court or by filing a report with law enforcement, but ruled that the court could not reduce the restitution amount that Garbers owes to the bank. Garbers then filed a postconviction motion seeking a restitution setoff in an amount equal to the value of her property that L.J. allegedly retained. The court denied the motion after a hearing. Garbers appeals.

The single issue presented by Garbers on appeal is whether the circuit court erred when it denied her postconviction motion seeking a setoff against the restitution that she is ordered to pay the bank for the value of the allegedly retained possessions. The State asserts that Garbers forfeited the issue because she did not raise it until her postconviction motion. We will assume without deciding that Garbers did not forfeit her argument regarding a restitution setoff. Nonetheless, we reject the argument as without merit.

Restitution in a criminal case is governed by WIS. STAT. § 973.20. “A restitution hearing in a criminal proceeding is part of the criminal sentencing process, and serves the goals of the criminal justice system.” *State v. Sweat*, 208 Wis. 2d 409, 422, 561 N.W.2d 695 (1997). A circuit court shall order the defendant to make restitution “to any victim of a crime considered at sentencing or, if the victim is deceased, to his or her estate, unless the court finds substantial reason not to do so and states the reason on the record.” § 973.20(1r). The restitution statute further provides that “[i]f justice so requires,” a court may order the defendant to “reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.” § 973.20(5)(d). Here, to repeat, the court ordered Garbers to pay River Bank \$5,530 because the bank had compensated L.J. in that amount.

The only mention of a setoff in the restitution statute is in WIS. STAT. § 973.20(8), which provides as follows:

Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action. The facts that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action. Any restitution made by payment or community service shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil

action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

It is important to note that WIS. STAT. § 973.20(8) states that any setoff amount asserted by the defendant “shall” be determined “in a civil action arising out of the facts or events which were the basis for the restitution.” In light of § 973.20(8), we are satisfied that the circuit court in this case did not err when it ruled that it is not appropriate in this criminal case to order a setoff against the restitution that Garbers is ordered to pay to the bank in the amount equal to the value of any personal property belonging to Garbers that L.J. allegedly retained. The court correctly indicated to Garbers that her claims against L.J. could be addressed in civil court, but not as part of restitution in the criminal case.

Garbers relies on two cases in her appellant’s brief to support her argument for a setoff against the restitution order. However, neither case supports her position. Garber accurately cites *State v. Hanson*, 2010 WI App 146, 330 Wis. 2d 140, 792 N.W.2d 203, for the principle that a primary purpose of restitution is to compensate the victim for losses that occur as a result of the defendant’s criminal conduct. *Hanson*, 330 Wis. 2d 140, ¶19. Garbers asserts that this principle “does not mean that a trial court should not consider basic economic justice if the ‘victim’ has already engaged in self-help by seizing a defendant’s assets that are in her possession and denying a defendant access to them.” However, Garbers provides no legal citation for this assertion and concedes that “[n]o published cases have decided this issue.”

Garbers also cites *State v. Longmire*, 2004 WI App 90, 272 Wis. 2d 759, 681 N.W.2d 534, a case involving theft by contractor. In *Longmire*, the defendant contractor was ordered to pay restitution to the homeowners who hired him because he kept deposit money that they paid him but did not complete the agreed-upon work. *Longmire*, 272 Wis. 2d 759, ¶¶4-5. Longmire

argued that restitution should be set off in an amount equal to the value of work that he had already paid a subcontractor to perform. *Id.*, ¶6. The circuit court denied Longmire’s setoff request. *Id.*, ¶7. On appeal, this court concluded that the circuit court erred when it denied a setoff for what was an “undisputed expenditure of a portion of the deposit money in compliance with [Longmire’s] contractual obligations.” *Id.*, ¶18.

The facts of *Longmire* are inapposite to the facts of this case. The requested setoff in *Longmire*, unlike in this case, was related to the same transaction that formed the basis for the theft conviction. In contrast, the property losses that Garbers alleges she suffered did not occur until after Garbers moved out of L.J.’s residence, and the move-out occurred separately from and after the fraudulent transactions that led to the criminal charges against Garbers. On these facts, the circuit court in this case correctly ruled that, if Garbers wished to pursue recovery of her personal property from L.J., or the value of that property, her remedy lay in suing L.J. separately for those alleged losses.

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals