COURT OF APPEALS
DECISION
DATED AND FILED

December 23, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

Nos. 97-2253-FT
97-2254-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE INTEREST OF JARED J.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JARED J.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County: WILLIAM E. CRANE, Judge. *Affirmed.*

SNYDER, P.J. Jared J. appeals from an order requiring him to pay $1000 in restitution as part of a delinquency adjudication. Jared contends that the circuit court misused its discretion when it set restitution because he is incarcerated and "[has] no ability to pay any money within the remaining five months of the dispositional order." Because we conclude that there was a

reasonable basis for the court's finding that Jared could pay $1000 and because of our further determination that there is no statutory requirement that restitution be paid in full before the expiration of a juvenile's initial dispositional order, we affirm.

Jared admitted to three counts of burglary contrary to § 943.10, STATS., and was adjudged delinquent on April 1, 1996. For purposes of restitution, charges of criminal damage to property and theft were read in.[1] Jared was placed on supervision for a year[2] and was ordered to pay restitution in an amount to be determined. At the time the dispositional order was entered, the court stated, "Jared is required to pay any restitution owed, as determined by [the Restitution Coordinator]." Neither Jared nor his counsel objected to this order.

On November 4, 1996, the State requested restitution in the amount of $6136.36. Jared objected to this order on the following grounds: the amount of restitution, the "untimeliness" of the restitution request and his ability to pay restitution. A restitution hearing was held on November 26, 1996. *See* § 48.34(5)(a), STATS., 1993-94.[3] At that time a county restitution coordinator suggested that an amount of $1000 would be "fair and reasonable." As a result of that hearing, the court issued an order on December 13, 1996, setting restitution at $1000. Jared now appeals.

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[1] Four other burglary charges were dismissed as part of a plea agreement. The adjudications and read-ins were consolidated for admission and disposition purposes and Jared acknowledged that restitution would be included in the dispositions.

[2] It is clear from the record before us that Jared was at Lincoln Hills at the time of the instant action, but the record does not disclose any information about the basis for this custodial placement.

[3] All statutory references to ch. 48, STATS., will be to the 1993-94 Children's Code unless otherwise noted.

Jared argues that the circuit court's order which required him to pay $1000 was in violation of § 48.34(5)(a), STATS. He bases this on the following language in that subsection: "Any [restitution] order shall include a finding that the [juvenile] alone is financially able to pay *and may allow up to the date of the expiration of the order for the payment*." Section 48.34(5)(a) (emphasis added). Because the order was not finalized until December 13, 1996, he then had less than four months of supervision remaining on his dispositional order. He also claims that because he was placed in correctional custody at Lincoln Hills from June 23, 1996, until at least January 1997, this significantly impacted his ability to earn any money toward restitution. According to Jared, the restitution order is faulty because it requires him to pay more than "[he] alone is financially able to pay" based on his custodial status and the fact that his supervision order was due to expire on April 1, 1997, only three and one-half months after the restitution order was entered.

The circuit court is required to make a finding as to the ability of a juvenile to pay restitution. We will not set aside findings of a circuit court unless they are clearly erroneous. *See* § 805.17(2), STATS.; *see also* ***Novelly Oil Co. v. Mathy Constr. Co.,*** 147 Wis.2d 613, 617-18, 433 N.W.2d 628, 630 (Ct. App. 1988). We are also required to apply the circuit court's findings of fact to the statutory requirements of § 48.34(5)(a), STATS. The construction of a statute as it relates to a given set of facts is a question of law and we need not accord deference to the circuit court. *See* ***State v. Mason,*** 132 Wis.2d 427, 431, 393 N.W.2d 102, 104 (Ct. App. 1986). We review the circuit court's findings and the restitution order entered based on the appropriate standard of review for each.

The restitution coordinator solicited a statement from each of Jared's victims which included their losses due to his crimes. The coordinator determined

that the total amount of restitution owed was $6136.36. However, Jared contested this amount, claiming that it was an unreasonable amount of money for a juvenile to pay. Ken Bales, the Winnebago county restitution coordinator, testified that a restitution amount of $1000 would be "fair and reasonable" based on Jared's age and his circumstances. Bales suggested this amount because it is roughly half of what a juvenile Jared's age could earn in a year if he or she worked ten hours per week during the school year and twenty hours each week in the summer.

Based on this, we are satisfied that the restitution order considered the statutory requirement that restitution be set at an amount that "the child alone is financially able to pay." Section 48.34(5)(a), STATS. We now must consider whether the circuit court properly construed the statute when it ordered Jared to pay $1000 when only three and one-half months remained on the dispositional order and determined that it could extend the order if Jared had not paid the restitution amount in full before the initial order's expiration.

Jared contends that the circuit court's order is not supportable because the reasonableness of the $1000 figure was based upon a one-year repayment period and Jared's dispositional order was due to expire on April 1, 1997. Therefore, he argues, he was given only three and one-half months to make the required restitution.[4] This argument is premised on Jared's position that the statutory language is clear that the repayment period cannot be extended beyond the initial supervision order. This argument requires us to construe the language of the applicable statute, § 48.34(5)(a), STATS.

[4] He also offers that he "is not able to work because he is not able to leave Lincoln Hills.

Construction of a statute presents a question of law which we are to review de novo. *See* ***R.W.S. v. State,*** 156 Wis.2d 526, 529, 457 N.W.2d 498, 499 (Ct. App. 1990), *aff'd,* 162 Wis.2d 862, 471 N.W.2d 16 (1991). The first step is to determine if the statutory language is clear or ambiguous; the test of ambiguity is whether the statute is capable of being construed in more than one way by reasonable people. *See* ***id.*** We conclude that § 48.34(5)(a), STATS., is ambiguous because reasonable minds could differ over whether it requires that a court can only impose a restitution amount that a juvenile will definitely be able to pay within the initial year of a dispositional order. *See* ***R.W.S.***, 156 Wis.2d at 529, 457 N.W.2d at 499.

In construing a statute, we are to give effect to the intent of the legislature. *See* ***State v. Wilke,*** 152 Wis.2d 243, 247, 448 N.W.2d 13, 14 (Ct. App. 1989). We must also avoid an interpretation that yields an unreasonable result or which renders any statutory language superfluous. *See* ***State v. Clausen,*** 105 Wis.2d 231, 244, 313 N.W.2d 819, 825 (1982). We will not construe a statute to work an absurd result. *See* ***id.*** at 245, 313 N.W.2d at 826. In construing § 48.34(5)(a), STATS., we will also consider related sections. *See generally* ***Pulsfus Poultry Farms, Inc. v. Town of Leeds,*** 149 Wis.2d 797, 804, 440 N.W.2d 329, 332 (1989). "When multiple statutes are contained in the same chapter and assist in implementing the chapter's goals and policy, the statutes should be read *in pari materia* and harmonized if possible." ***R.W.S. v. State,*** 162 Wis.2d 862, 871, 471 N.W.2d 16, 19 (1991).

The purposes of a juvenile restitution statute are to rehabilitate the juvenile and to redress the victim. *See* ***I.V. v. State,*** 109 Wis.2d 407, 412-13, 326 N.W.2d 127, 130 (Ct. App. 1982). Section 48.34(5)(a), STATS., provides:

> Subject to par. (c), if the child is found to have committed a delinquent act which has resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, the judge may order the child to repair damage to property or to make reasonable restitution for the damage or injury if the judge, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the child. *Any such order shall include a finding that the child alone is financially able to pay and may allow up to the date of the expiration of the order for the payment.* Objection by the child to the amount of damages claimed shall entitle the child to a hearing on the question of damages before the amount of restitution is ordered. [Emphasis added.]

Jared reads this section as requiring that any court-ordered restitution must be feasible to pay by the time the initial dispositional order is due to expire. This reading would require that Jared pay the $1000 by April 1, 1997, and because this is not financially feasible, he claims that the court's order is in violation of the mandate of the statute.

We are not persuaded by Jared's construction of this section. We read the statute to allow the circuit court to merely require an amount of restitution that a juvenile can be expected to pay during the period covered by the dispositional order and not, as Jared argues, to be paid in full by that date. In other words, while it is mandatory that the court "*shall* include a finding that the child alone is financially able to pay" the required restitution, the court is allowed to exercise its discretion with respect to when the restitution payments must be completed. *See* § 48.34(5)(a), STATS. (emphasis added). To construe this statutory section as Jared does would permit a juvenile offender to avoid making restitution by claiming an inability to find a job within the required time period of the initial dispositional order. Such a construction would plainly undermine the rehabilitative purpose of restitution. *See* ***I.V.,*** 109 Wis.2d at 412-13, 326 N.W.2d at 130.

In addition, our interpretation squares with another general provision of ch. 48, STATS., which permits a court to extend dispositional orders. *See* § 48.365. Whenever a court considers an extension of a dispositional order it is required to hold a hearing, *see* § 48.365(2), and at such hearing "the person or agency primarily responsible for providing services to the child shall file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the child's rehabilitation …." Section 48.365(2g)(a). Because restitution is one form of rehabilitation and the Children's Code clearly allows a court to extend any dispositions after hearing "to what extent the dispositional order has been meeting the objectives of the plan for the child's rehabilitation or care or treatment," *see* ***id.,*** it follows that a circuit court may choose to examine whether a juvenile offender has paid restitution and whether an extension of a dispositional order requiring restitution is warranted. Based on consideration of the applicable sections, we construe § 48.34(5)(a), STATS., as requiring a court to make a finding that the juvenile offender can realistically earn the amount of restitution imposed within a year, but leaving to the court's discretion whether an extension of the time within which to pay the required amount is warranted.

Jared further contends that his Lincoln Hills custodial placement, which is a result of other delinquent acts, prohibits the circuit court from ordering restitution in the instant case. He argues that because of his other criminal involvement, the application of the statutory language excuses any restitution obligation he may otherwise have. Considering the purpose of juvenile restitution and our analysis above, we are not persuaded by Jared's argument. To suggest that a juvenile may escape the consequences (restitution) of one criminal act by committing another criminal act that results in custodial placement is absurd.

Allowing Jared to successfully argue that he is therefore excused from the restitution order is patently unreasonable and, as contended by the State, leads to an untenable result—Jared's escape from the consequences of his criminal behavior.

Because we conclude that the circuit court's findings are supported by undisputed evidence that it exercised its discretion in setting restitution at an amount that Jared, based on his age and ability, could be expected to pay, those findings are not clearly erroneous. The restitution order serves the intended legislative purpose of juvenile rehabilitation, complies with the statutory requirements of § 48.34(5)(a), STATS., and is therefore affirmed.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.