COURT OF APPEALS
DECISION
DATED AND FILED

April 25, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1519 **Cir. Ct. No. 2015JV256**

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

IN THE INTEREST OF J. J. S., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

J. J. S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Affirmed.*

¶1 SEIDL, J.[1] J.J.S. appeals a circuit court dispositional order entered in this juvenile delinquency proceeding imposing restitution against him for $1,600. He argues the circuit court incorrectly interpreted the statute governing restitution in juvenile cases and lacked authority to order any amount of restitution over $250. We affirm.

¶2 A petition was filed charging thirteen-year-old J.J.S. with two counts of misdemeanor theft from an incident in which he allegedly stole an envelope containing cash from his aunt and uncle. While he was still thirteen, J.J.S. entered a no-contest plea on the charges before the court commissioner. J.J.S. was fourteen years old at the time the circuit court held a dispositional hearing, at which time J.J.S. reaffirmed his no-contest plea and was adjudicated delinquent. The parties jointly recommended $250 in restitution based upon the statutory cap in WIS. STAT. § 938.34(5)(c). On its own initiative, however, the court ordered restitution in the amount of $2,195, an award which it stated was "subject to review." On a motion for reconsideration, the court reduced the amount to $1,600, but concluded the statute permitted an order of over $250 in restitution once J.J.S. was fourteen years old.

¶3 WISCONSIN STAT. § 938.34(5)(c), which is part of the statutory provisions governing delinquency dispositions, provides that "a court may order a juvenile who is under 14 years of age to make not more than $250 in restitution or to perform not more than 40 total hours of services for the victim as total restitution under the order." The dispute here is whether § 938.34(5)(c) allows a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

circuit court to order over $250 in restitution only if a juvenile is fourteen years of age or older at the time of filing the juvenile petition, as J.J.S. argues, or at the time of disposition, as the State argues.

¶4 This matter requires us to interpret WIS. STAT. § 938.34(5)(c). Statutory interpretation is a question of law we review de novo. *See* ***State v. Trent N.***, 212 Wis. 2d 728, 736, 569 N.W.2d 719 (Ct. App. 1997). The first step of statutory interpretation is to begin with the plain language of the statute. ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. "Statutory language is given its common, ordinary, and accepted meaning" save for specifically-defined terms in the statutes. ***Id.*** If interpretation of a statute's language yields an unambiguous and plain meaning, the inquiry ends. ***Id.***, ¶¶46-47.

¶5 J.J.S. argues we must read WIS. STAT. § 938.34(5)(c) *in pari materia* with language used in § 938.34(4h)(a). "The statutory construction doctrine of *in pari materia* requires a court to read, apply and construe statutes relating to the same subject matter together." ***State v. Jeremiah C.***, 2003 WI App 40, ¶17, 260 Wis. 2d 359, 659 N.W.2d 193. Paragraph (4h)(a) allows a circuit court to order placement of a juvenile in the "Serious Juvenile Offender Program" ("the Program") only if:

> The juvenile is 14 years of age or over *and has been adjudicated delinquent* for committing or conspiring to commit a violation of s. 939.32 (1) (a), 940.03, 940.06, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2) or attempting a violation of s. 943.32 (2) or the juvenile is 10 years of age or over *and has been adjudicated delinquent* for attempting or committing a violation of s. 940.01 or for committing a violation of s. 940.02 or 940.05.

(Emphasis added.) J.J.S. argues para. (4h)(a) sets placement in the Program by one's age at the time of the disposition. We agree. However, from that, J.J.S. argues that because the legislature *did not* include the wording "and has been adjudicated delinquent" in the restitution paragraph (5)(c), it must have intended that the juvenile's age at the time the petition was filed governs the ceiling for the amount of restitution.

¶6 We reject that interpretation. First, J.J.S. reads "and has been adjudicated delinquent" in WIS. STAT. § 938.34(4h)(a) out of context. That phrase prefaces a separate eligibility for the Program—namely, that in addition to attaining a certain age, a juvenile must have committed, or conspired or attempted to commit, certain criminal offenses. Section 938.34(5)(c) does not restrict the amount of restitution on that basis. Paragraphs (4h)(a) and (5)(c) do not relate to the same subject matter, and therefore the statutory construction doctrine of *in pari materia* does not apply.

¶7 Moreover, lack of the wording "and has been adjudicated delinquent" in WIS. STAT. § 938.34(5)(c) is not a compelling omission in support of J.J.S.'s argument. J.J.S. hypothesizes that the only logical reason for the legislature to have excluded the phrase "and has been adjudicated delinquent" was to avoid conflict with para. (4h)(a). That argument fails to recognize that § 938.34(5)(a) allows a circuit court to order restitution only after a juvenile is found to have committed a delinquent act, a finding that may be after he or she turns fourteen years old. Adding "and has been adjudicated delinquent" in para. (5)(c) would have only created surplusage. *See* ***Kalal***, 271 Wis. 2d 633, ¶46 (statutes must be interpreted "to avoid surplusage").

¶8 We conclude the plain language of WIS. STAT. § 938.34(5)(c) allows a circuit court to order restitution over $250 if the juvenile *is* fourteen years of age or older at the time the dispositional order is entered. The use of the present-tense verb "is" rather than "was" in para. (5)(c), without any other qualifying language, clearly indicates a juvenile's current age controls what a court "may order" at the dispositional hearing. Simply put, under paragraph (5)(c), it is the time that the court enters the restitution order when the court determines whether the juvenile "is" over or under fourteen years of age and accordingly determines whether the $250 limit applies.

¶9 Finally, J.J.S. broadly contends based upon various policy considerations that under WIS. STAT. § 938.34(5)(c), a circuit court should set the age for the restitution ceiling at the juvenile's age when the petition was filed. However, we have determined the language of the statute is plain, and therefore, J.J.S.'s policy objectives cannot influence our interpretation and are determinations left to the legislature. *See* ***Kalal***, 271 Wis. 2d 633, ¶¶46-47. Had the legislature intended to adopt J.J.S's interpretation, it certainly could have included language to that effect. *See, e.g.*, WIS. STAT. § 938.18(1)(c) (petition requesting a juvenile court waive jurisdiction may be filed if "[t]he juvenile is alleged to have violated any state criminal law on or after the juvenile's 15th birthday"). We therefore do not consider J.J.S.'s arguments on policy grounds. Because J.J.S. does not otherwise challenge the order for restitution, the circuit court did not err in imposing restitution of $1,600.

By the Court.—Order affirmed.

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