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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.F., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B279547
(Super. Ct. No. 14JV00414A)
(San Luis Obispo County)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.F.,

Defendant and Appellant.

The San Luis Obispo County District Attorney's Office filed a petition pursuant to Welfare and Institutions Code section 602,¹ alleging that appellant A.F. committed the crime of elder or dependent abuse (Pen. Code, § 368, subd. (b)(1)). The petition further alleged that the victim suffered great bodily

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

injury (*id.*, § 368, subd. (b)(2)). Appellant admitted committing battery (*id.*, § 242), and the elder or dependent abuse allegation was dismissed. The juvenile court found the petition to be true and placed appellant on probation.

Following a contested hearing, the juvenile court ordered appellant to pay \$10,356.87 in restitution to the victim, Ralph Waldo, primarily for emergency medical services rendered by French Hospital Medical Center (French Hospital). Appellant contends the court abused its discretion by requiring him to pay \$9,652 of French Hospital's bill. We affirm.

FACTS AND PROCEDURAL BACKGROUND

On March 7, 2015, appellant, who was 17 years old, approached the 73-year-old Waldo while Waldo was seated in his vehicle in the YMCA parking lot. Waldo and appellant had exchanged words the previous evening. Appellant said he "was going to finish what he had started last night," and began hitting Waldo, who got out of his vehicle and tried to defend himself. Appellant continued to strike Waldo. Waldo fell backwards, scraping his head on the ground. He suffered a fractured nose, an abrasion on his head and a concussion. He also required stitches in his lower lip. Waldo was treated for his injuries at both French Hospital and Sierra Vista Regional Medical Center (Sierra Vista).

The juvenile court held a contested restitution hearing on October 17, 2016. The prosecution introduced as Exhibit 2 a restitution request form signed by Waldo under penalty of perjury. The request included a copy of a statement from Sierra Vista showing total charges of \$6,438.60 and a discount of \$5,898.73, with a total amount due of \$539.87. It also included a bill from French Hospital showing charges of \$9,717 minus a payment by Waldo of \$65, for a total amount due of \$9,652. In addition, the prosecution introduced as Exhibit 7 an

explanation of benefits from AARP Medicare Complete (Medicare), which did not show any payments to French Hospital. Appellant presented no documentary or testimonial evidence.

Waldo testified that he sought emergency care at French Hospital on March 7, 2015, as a result of the battery committed by appellant. He sought follow-up emergency medical care at Sierra Vista on April 29, 2015. He said he does not know whether Medicare or his other insurer, United Healthcare Insurance, paid any portion of the French Hospital bill.

The juvenile court's restitution order included the sum of \$9,717, representing the total amount billed by French Hospital, and \$539.87, representing the difference between Sierra Vista's bill of \$6,438.60 and the \$5,898.73 discount. It also included \$100 in gas money, for a total restitution award of \$10,356.87. In allowing the amount billed by French Hospital, the court stated: "There is clear case law that the court doesn't consider reimbursement for medical expenses that come from a victim's own insurance company in establishing restitution, but in this case, there wasn't any reimbursement by the [insurer]. So that is not an issue with respect to the French [Hospital] bill." Appellant challenges the amount of the award.

DISCUSSION

Standard of Review

Section 730.6 authorizes the juvenile court to award restitution to victims of crimes committed by minors. Absent compelling and extraordinary reasons, the court must order restitution in a "dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct." (*Id.*, subd. (h)(1).) "The standard of proof at a restitution hearing is preponderance of the evidence, not reasonable doubt." (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1319 (*Holmberg*).)

We review the juvenile court's restitution award for abuse of discretion. (*In re K.F.* (2009) 173 Cal.App.4th 655, 661.) If there is a factual and rational basis for the award, there is no abuse of discretion. (*Holmberg, supra*, 195 Cal.App.4th at p. 1320.) To the extent the minor contends the court abused its discretion because the award is unsupported by the evidence, we review for substantial evidence. (*In re K.F.*, at p. 661.)

*The Juvenile Court did Not Abuse Its Discretion
by Awarding Waldo \$10,356.87 in Victim Restitution*

Appellant contends that there was insufficient reliable evidence that the final bill from French Hospital was \$9,652.² He asserts that because the Sierra Vista bill was discounted, “it is probable that French Hospital eventually granted a similar discount.” The People respond that “[t]his claim is wholly speculative and unsupported by any evidence.” We agree with the People.

“Section 730.6 expressly states that ‘economic losses,’ not monies expended, is the governing test.” (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) “The term ‘economic losses’ is thus entitled to an expansive interpretation.” (*Id.* at p. 1133.) To constitute evidence of a “loss incurred,” there need only be “some basis to conclude that the victim is ‘liable or subject to’ a charge.” (*In re K.F., supra*, 173 Cal.App.4th at p. 663.) Of particular significance here, the court need not—in fact, must not—consider whether the victim has been or will be reimbursed for these losses from any third party, including an insurer. The underlying rationale is well-established: “The purpose behind

² Appellant does not contest the restitution award to the extent it requires him to pay \$539.87 of Sierra Vista’s bill, the \$100 gas charge and the \$65 paid by Waldo to French Hospital. He challenges the remaining \$9,652 of the \$10,356.87 award.

requiring a minor to pay victim restitution is for its deterrent as well as rehabilitative effect. ‘Requiring the [minor] to make complete reparation to [his or] her victims for the harm done to them is more likely to make an impression on the [minor] than simply imposing a statutory fine. [Citation.]’ These purposes would be thwarted if a minor was relieved from responsibility for making [his or] her victims whole simply because the victims had been farsighted enough to purchase insurance for this type of damage” (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1387, footnotes omitted; see *People v. Birkett* (1999) 21 Cal.4th 226, 246 [trial courts are not to consider whether the victim has been, or will be, reimbursed from third parties in ordering victim restitution]; *People v. Hove* (1999) 76 Cal.App.4th 1266, 1272-1273 [the victim need not suffer direct economic losses to recover restitution and, in fact, may recover “even though the victim could conceivably profit . . . if defendant complies with the restitution order and if Medicare and/or Medi-Cal does not pursue reimbursement”].)

Appellant is correct, however, that if a medical provider discounts a bill after payment by an insurer, the victim is only entitled to recover the amount paid by the insurer. In *In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1018, the court reduced a restitution order from the full amount billed by the health care providers to the amount that had been paid by Medi-Cal for those services. This is because “by statute, a health care provider who accept[s] Medi-Cal funds as payment [is] precluded from billing the patient for any unpaid balance due; thus the actual loss to the victim [is] limited to the lesser amount paid by Medi-Cal rather than the original amount billed by the providers.” (*In re Eric S.* (2010) 183 Cal.App.4th 1560, 1566 [““The concept of ‘reimbursement’ of medical expenses generally does not support inclusion of amounts of medical bills in excess of

those amounts accepted by medical providers as payment in full””]; see *In re Anthony M.* at pp. 1014, 1018.)

The prosecution is only required to make a prima facie case for restitution, which can be established by the victim's testimony or a statement of the amount of economic loss. (*People v. Sy* (2014) 223 Cal.App.4th 44, 63.) To make this showing in this case, the prosecution presented the request for restitution submitted by Waldo, which included a “DEMAND BILL” addressed to Waldo from French Hospital reflecting a balance due of \$9,652. The bill stated “THIS IS NOT A FINAL BILL,” noting that “[d]ue to charging delays this bill may not reflect all charges due.” There is nothing to suggest, however, that Waldo was not fully responsible for the \$9,652 balance. The Medicare statements introduced by the prosecution showed charges for services rendered on March 7, 2015, but did not include any from French Hospital. The only charges listed were for services provided by Dr. Richard Pollak and California Emergency Physicians Medical Group. There is no indication that Medicare or any other insurer made payments to French Hospital or that French Hospital wrote off any portion of the \$9,652 balance due.

Once the prosecution presented prima facie evidence of the French Hospital billing, the burden shifted to appellant to prove that the amount of restitution sought was excessive. (*People v. Sy, supra*, 223 Cal.App.4th at p. 63; *People v. Hartley* (1984) 163 Cal.App.3d 126, 130.) Appellant did not attempt to meet this burden. As the People point out, defense counsel unsuccessfully tried to continue the restitution hearing because he did not have billing records from the two hospitals. When the juvenile court asked whether counsel had subpoenaed the records, he admitted that he had not, even though he had known of the contested hearing for more than a year.

Waldo's request for restitution, submitted under penalty of perjury, and the accompanying French Hospital bill reflect billed charges in specified amounts. They constitute substantial evidence the French Hospital charges were incurred by the victim absent evidence to the contrary. (*In re K.F.*, *supra*, 173 Cal.App.4th at p. 663.) Appellant had notice of the amount of restitution sought and also had a reasonable opportunity to contest that amount. (See *People v. Foster* (1993) 14 Cal.App.4th 939, 947, superseded by statute on other grounds as stated in *People v. Birkett*, *supra*, 21 Cal.4th at p. 238-245.) Appellant did not present contrary evidence and failed to rebut the victim's statement of losses. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543; see *People v. Collins* (2003) 111 Cal.App.4th 726, 734.) Specifically, there is no evidence that French Hospital discounted its bill or agreed to accept less than \$9,652 in full satisfaction of the obligation. On this record, we have no basis to find the restitution amount unreasonable.

DISPOSITION

The restitution order is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

Jolene Larimore, under appointment by the Court of
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