

No. 36739-4-II

---

DIVISION II OF THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Appellant

vs.

COLIN AARON EISENHUT,

Respondent

FILED  
COURT OF APPEALS  
DIVISION II  
08 APR -9 PM 1:46  
STATE OF WASHINGTON  
BY DENISE [Signature]

---

APPEAL FROM THE SUPERIOR COURT  
OF WASHINGTON FOR KITSAP COUNTY

Cause No. 06-8-00802-6

---

BRIEF OF RESPONDENT

---

Brett A. Purtzer  
WSB #17283

LAW OFFICES OF MONTE E.  
HESTER, INC., P.S.  
Attorneys for Appellant  
1008 South Yakima Avenue  
Suite 302  
Tacoma, Washington 98405  
(253) 272-2157

TABLE OF CONTENTS

<u>TABLE OF AUTHORITIES</u> . . . . .	ii
I. <u>ASSIGNMENTS OF ERROR</u> . . . . .	1
II. <u>ISSUES PERTAINING TO ASSIGNMENTS OF ERROR</u> . . . . .	2
III. <u>STATEMENT OF THE CASE</u> . . . . .	3
A. <u>Facts</u> . . . . .	3
IV. <u>ARGUMENT</u> . . . . .	3
V. <u>CONCLUSION</u> . . . . .	6

TABLE OF AUTHORITIES

	<u>Page</u>
<u>STATE CASES:</u>	
<u>National Electric Contractors Association v. Riveland</u> , 138 Wn.2d 9, 978 P.2d 481 (1999) . . .	4
<u>State v. Cunningham</u> , 96 Wn.2d 31, 633 P.2d 886 (1981) . . . . .	5
<u>State v. Goodrich</u> , 47 Wn.App. 114, 733 P.2d 1000 (1987) . . . . .	3
<u>State v. J.P.</u> , 149 Wn.2d 444, 69 P.3d 318 (2003) . . . . .	5
<u>State v. Landrom</u> , 66 Wn.App. 791, 832 P.2d 1359 (1992) . . . . .	4
 <u>STATUTES:</u>	
RCW 13.40.020 . . . . .	1, 3

I. ASSIGNMENTS OF ERROR

1. The trial court correctly determined the amount of restitution, pursuant to RCW 13.40.020(22).

II. ISSUES PERTAINING TO ASSIGNMENTS OF  
ERROR

1. Whether the trial court ordered the appropriate amount of restitution, pursuant to RCW 13.40.020(22), when the court ordered restitution for the amount of actual expenses incurred for medical treatment for physical injury suffered by the victim?

III. STATEMENT OF THE CASE

A. Facts

Respondent agrees with the statement of the case set forth by the Appellant.

IV. ARGUMENT

Restitution, in the juvenile setting pursuant to RCW 13.40.020(22), is set forth as follows:

"Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender.

In this case, Judge Laurie entered a restitution order based upon the amount of medical expenses that had been incurred by the victim. CP 27. The court, in support, cited State v. Goodrich, 47 Wn.App. 114, 117, 733 P.2d 1000 (1987), which holding limits restitution to the amount the victim has a present obligation to pay for medical treatment necessitated by injury. Id.

Here, the victim, Ian Fleming, incurred dental expenses in the amount of \$9,560.00. CP 27. Additionally, Mr. Fleming's father testified that additional medical procedures will be required in the future, but the medical treatment has not been performed, and there is no present obligation to pay any additional medical expenses. CP 31, RP 8-12. As such, the court ordered that only the amounts that had been incurred were properly before the court as restitution. CP 27.

As this court is aware, review of a juvenile court's restitution order is limited to whether statutory authority exists for the imposed restitution. State v. Landrom, 66 Wn.App. 791, 795, 832 P.2d 1359 (1992). When interpreting a statute, the first step is to discern and implement the intent of the legislature. National Electric Contractors Association v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). The starting point is "the statute's plain language and ordinary meaning." Id. "When the plain language is unambiguous - - that is when the statutory language admits of only one meaning - - the legislative intent is apparent, and we will not

construe the statute otherwise." State v. J.P.,  
149 Wn.2d 444, 450, 69 P.3d 318 (2003).

Here, the statute is unambiguous, and it requires restitution to be paid for actual expenses incurred for medical treatment for physical injury to persons. The testimony at the hearing was that there had been medical expenses incurred, and that there was a potential for future medical expenses. As this court is aware, a trial court abuses its discretion whenever its order is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. State v. Cunningham, 96 Wn.2d 31, 34, 633 P.2d 886 (1981).

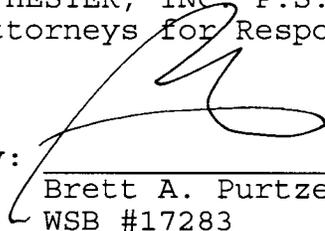
Here, the trial court's restitution order was not manifestly unreasonable; thus, the court did not abuse its discretion. The court ordered restitution per the statute for the actual medical expenses incurred. As such, this court should affirm the trial court's ruling.

V. CONCLUSION

Based upon the aforementioned, the respondent urges this court to affirm the trial court's restitution order.

RESPECTFULLY SUBMITTED this 8th day of April, 2008.

LAW OFFICES OF MONTE E.  
HESTER, INC. P.S.  
Attorneys for Respondent

By: 

\_\_\_\_\_  
Brett A. Purtzer  
WSB #17283

CERTIFICATE OF SERVICE

Lee Ann Mathews, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of brief of respondent to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

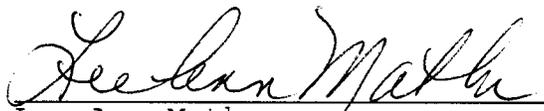
Todd Layton Dowell  
Kitsap County Prosecuting Attorneys Office  
MSC 35  
614 Division Street  
Port Orchard, WA 98366-4681

David Gene "Arthur" Wecker  
Attorney at Law  
569 Division Street, Suite E  
Port Orchard, WA 98366-4600

Colin Eisenhut  
PO Box 391  
Manchester, WA 98353

Signed at Tacoma, Washington this 8th day  
of April, 2008.

FILED  
COURT OF APPEALS  
DIVISION II  
08 APR -9 PM 1:46  
STATE OF WASHINGTON  
BY 

  
Lee Ann Mathews