

SUPREME COURT OF SOUTH DAKOTA

In the Matter of M.D.D., A Delinquent Child

2009 S.D. 94, 774 N.W.2d 793 (S.D. 2009) · No. No. 25124 · Decided October 28, 2009

SUMMARY

The Supreme Court of South Dakota held that juvenile restitution statutes authorized ordering a delinquent child to reimburse Medicaid for medical expenses resulting from the child's misconduct. The court concluded that the juvenile restitution statute's broad language was not limited to direct victims or criminal-case restitution provisions. The court also held that the child's hardship argument was not preserved because it was not properly raised at the restitution hearing.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Severson, Justice
JURISDICTION	South Dakota
DECIDED	October 28, 2009
DOCKET	No. 25124
DISPOSITION	affirmed
PROCEDURAL POSTURE	M.D.D. appealed a juvenile restitution order requiring her to reimburse Medicaid for medical expenses paid for injuries resulting from her admitted delinquent conduct.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. The asserted hardship issue was reviewed for preservation, and an issue not raised before the circuit court is ordinarily waived on appeal.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	M.D.D. v. State of South Dakota

TOPICS

restitution

medicare medicaid

statutory interpretation

preservation of error

appellate procedure

PRACTICE AREAS

juvenile law

restitution

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether South Dakota's criminal restitution statutes authorize restitution to Medicaid in a juvenile delinquency proceeding.
2. Whether the juvenile restitution statutes authorize an order requiring a delinquent child to reimburse Medicaid, a third-party payer legally obligated to pay the victim's medical expenses.
3. Whether the circuit court was required to make findings regarding serious hardship or injustice when M.D.D. did not raise actual hardship at the restitution hearing.

HOLDINGS

1. South Dakota's criminal restitution statutes do not govern restitution in juvenile delinquency proceedings because their terms—criminal activities, crimes, pleas of guilty, verdicts of guilty, defendants, and judgments of conviction—do not apply to juvenile proceedings.
2. SDCL 26-8B-6(4), as incorporated into juvenile delinquency dispositions by SDCL 26-8C-7(1), authorizes restitution to a third-party payer such as Medicaid when the payer was legally required to pay medical expenses caused by the juvenile's misconduct.
3. M.D.D. waived her hardship and injustice arguments because she did not raise actual hardship or request consideration of that issue at the restitution hearing, thereby failing to give the circuit court an opportunity to address the claimed error.

KEY QUOTATIONS

“Absent limiting language, we hold that the statute authorizes restitution to a third-party payor like Medicaid, who was legally required to pay medical expenses for damages caused by the juvenile's misconduct.” (¶ 6)

“Failing to raise an issue, thereby allowing the circuit court an opportunity to correct the claimed error, results in waiver of the issue.” (¶ 11)

FACTUAL BACKGROUND

M.D.D. injured another person while driving a car, and the injured person required medical care. Medicaid paid the resulting medical expenses. In a juvenile delinquency proceeding, M.D.D. admitted a petition alleging simple assault, and the circuit court ordered her to reimburse Medicaid as part of her probationary disposition.

PROCEDURAL HISTORY

M.D.D. admitted allegations of simple assault in a juvenile delinquency petition. The circuit court placed her on 120 days' probation and, after a restitution hearing, ordered her to pay Medicaid for the victim's medical expenses. M.D.D. appealed, arguing that the governing statutes did not authorize restitution to a third-party medical expense payer and that the circuit court failed to consider hardship.

DISPOSITION

affirmed

CASES CITED

- State v. Wilson, 2008 SD 13, ¶ 14, 745 N.W.2d 666, 670
- State v. Fryer, 496 N.W.2d 54 (S.D. 1993)
- State v. Galligo, 1996 SD 83, 551 N.W.2d 303
- St. Cloud v. Leapley, 521 N.W.2d 118, 125 (S.D. 1994)
- Bell v. Midland Nat'l Life Ins. Co., 78 S.D. 349, 359, 102 N.W.2d 322, 327 (1960)
- Craigo v. Craigo, 22 S.D. 417, 423, 118 N.W. 712 (1908)
- State v. Fellers, 37 Wash. App. 613, 620, 683 P.2d 209, 214-15 (1984)
- State v. Gard, 2007 SD 117, ¶ 15, 742 N.W.2d 257, 261
- Fed. Land Bank of Omaha v. Jensen, 415 N.W.2d 155, 159 (S.D. 1987)
- Rich v. Olah, 274 S.W.3d 878, 884 (Tex. Ct. App. 2008)

OPINION

PER CURIAM.

774 N.W.2d 793 (2009) 2009 SD 94 In the Matter of M.D.D., A Delinquent Child. No. 25124. Supreme Court of South Dakota. Argued August 25, 2009. Decided October 28, 2009. *794 Marty J. Jackley, Atty. Gen., Frank Geaghan, Asst. Atty. Gen., Pierre, SD, for appellee State of South Dakota. David K. Wheeler of Morgan, Theeler, LLP, Huron, SD, for appellant, M.D.D.

ZINTER, Justice. [¶ 1.] M.D.D. admitted the allegations of a juvenile delinquency petition alleging simple assault and resulting injury of another person. The circuit court placed M.D.D. on probation and ordered her to pay restitution for the medical expenses Medicaid was required to pay for the treatment of the injured person. M.D.D. appeals the order of restitution.

We affirm. Facts and Procedural History [¶ 2.] M.D.D. injured another person while driving a car. As a result of this incident, the injured person required medical care. The medical expenses were paid by Medicaid. In a juvenile proceeding arising from the incident, M.D.D. admitted to a juvenile delinquency petition alleging that her conduct constituted simple assault.

She was placed on probation for 120 days. At a restitution hearing, the State requested that Medicaid be reimbursed for the medical expenses it was required to pay for the victim's injuries. M.D.D. argued that, in juvenile proceedings, the applicable statutes did not authorize restitution for third-party medical expense payers like Medicaid.

The circuit court disagreed and ordered M.D.D. to pay restitution to Medicaid. Decision [¶ 3.] On appeal, M.D.D. argues that Medicaid, a third-party payor legally obligated to pay the medical expenses, is not entitled to restitution under either SDCL ch. 23A-28 (restitution in criminal cases) or SDCL 26-8C-7(1) and 26-8B-6(4) (restitution in juvenile delinquency cases).

Statutory interpretation is a question of law we review de novo. *State v. Wilson*, 2008 SD 13, ¶ 14, 745 N.W.2d 666, 670. [¶ 4.] SDCL ch. 23A-28 authorizes an award of restitution to specified "victims" in criminal cases.

The definition of victim in SDCL 23A-28-2(5) includes third-party payors.[1] The State suggests that we interpret this statute to apply in juvenile proceedings. We note, however, that under this criminal statute, the person seeking restitution must be a victim of "criminal activities" of a "defendant." Further, "criminal activities" only include "crime[s]" for which there is a "plea of guilty or verdict of guilty upon which a judgment of conviction may be rendered."

SDCL 23A-28-2(2). Although these terms apply in criminal cases involving adults, none of them have application in juvenile proceedings. *795 [¶ 5.] In juvenile proceedings there are no criminal activities, crimes, pleas of guilty, verdicts of guilty, or defendants. Instead, an alleged "delinquent child" may be subject to an "adjudication and disposition" and can only admit or deny a juvenile petition.

See SDCL 26-7A-43. Plainly, the different language used in the criminal restitution statutes does not reflect legislative intent that the criminal statutes (SDCL ch 23A-28) apply to restitution in juvenile proceedings under SDCL chs 26-8B and 26-8C.[2] [¶ 6.]

Therefore, the question is whether a delinquent child, as a part of a juvenile disposition, may be ordered to pay the restitution under the juvenile statutes. Unlike the criminal restitution statute that limits restitution to a defined group of "victims," SDCL 26-8B-6(4)[3] broadly authorizes the court to order restitution in juvenile cases without language limiting or restricting the type of person or entity that may be reimbursed.

The statute simply authorizes restitution for "any damage done to property or for medical expenses." *Id.* (emphasis added). In light of this broad, unqualified language, we conclude that the Legislature did not intend to limit restitution to any particular class of persons or entities that paid medical expenses as a result of the juvenile's delinquent behavior.

Absent limiting language, we hold that the statute authorizes restitution to a third-party payor like Medicaid, who was legally required to pay medical expenses for damages caused by the juvenile's misconduct. [¶ 7.] *M.D.D.'s* reliance on *State v. Fryer*, 496 N.W.2d 54 (S.D.1993) (superseded by statute as stated in *State v. Galligo*, 1996 SD 83, 551 N.W.2d 303), is misplaced.

In that case, the Legislature chose to limit restitution to "victim[s]" in criminal cases, but the Legislature did not define that term. In interpreting the word "victim," this Court recognized the distinction between direct victims of criminal offenses and indirect victims, such as insurance companies. *Id.* at 55. That distinction is, however, inapplicable here because the word "victim" is not used in the juvenile restitution statute.

As previously explained, unlike the criminal statute, the juvenile statute does not limit restitution to "victims." Therefore, Fryer's interpretive analysis of the word "victim" is inapposite in a juvenile proceeding. [¶ 8.] M.D.D. also argues that the circuit court did not consider the "serious hardship or injustice" that restitution payments would cause her.

See SDCL 26-8B-6(4), *supra* note 3 (authorizing restitution in juvenile cases if payment can be enforced without serious hardship or injustice to the child). In this case, the circuit court determined the amount of restitution to be paid, but made no findings regarding possible hardship or injustice to the child. M.D.D. claims that a circuit court must make a finding on hardship in every case, *796 and that the court's failure to make such a finding which M.D.D. claims was a disputed material issue requires reversal.

See *St. Cloud v. Leapley*, 521 N.W.2d 118, 125 (S.D.1994) (stating: "A failure to make a finding on a disputed material issue requires a reversal of a judgment." (quoting *Bell v. Midland Nat'l Life Ins. Co.*, 78 S.D. 349, 359, 102 N.W.2d 322, 327 (1960) (citing *Craig v. Craig*, 22 S.D. 417, 423, 118 N.W. 712 (1908)))). [¶ 9.] Our review of the record, however, reflects that hardship was never an issue, let alone a disputed issue that required findings of fact in the restitution proceedings.

As other courts have commented, if it is the juvenile's contention that he or she cannot afford to pay restitution, the juvenile bears the initial burden of at least raising the issue. See *State v. Fellers*, 37 Wash.App. 613, 620, 683 P.2d 209, 214-15 (1984) (observing that "[w]hen requested, the juvenile has a right to be heard on the issue of whether he has the ability to pay") (emphasis added). [¶ 10.]

At the restitution hearing, M.D.D. did not argue that potential hardship was required to be considered in every case or that restitution would constitute a hardship in this case. On the contrary, in its opening statement, the State indicated that the "sole issue" was whether the circuit court could legally order M.D.D. to repay Medicaid under the previously discussed restitution statutes, and M.D.D. agreed.

Further, M.D.D.'s only argument involved the applicability of the criminal statutes in juvenile proceedings. Counsel's argument was that: [SDCL 23A-28-2] applies to adult convictions.... It does not refer to adjudications for juvenile delinquencies, and therefore, I believe that statute does not apply in this case. And I believe that it doesn't apply for a good reason in that a juvenile matter, such a far reaching restitution order... doesn't meet the same ends of justice in that the juvenile isn't going to have the same earning ability as an adult, and it is going to become more of a burden upon the family than it is upon punishment or making someone whole as it would in the case of an adult.

The entire Title... 26 and the subchapters referring to juveniles, subchapter 7(a) and then 8(a), 8(b) and 8(c) [sic] don't even mention the word restitution. Thus, M.D.D. only mentioned that generally, juveniles do not have the same earning ability as adults. [¶ 11.] This general reference to earning ability, made in the context of an argument on a different legal issue, did not bring the legal or factual arguments M.D.D. now asserts on appeal to the circuit court's attention.

Considering the stipulated, limited nature of the restitution hearing and the failure to raise a suggestion of actual hardship or injustice in this case, M.M.D. has not preserved her hardship arguments for appeal.[4] Ordinarily an issue not raised before the trial court will not be reviewed at the appellate level.

The trial court must be given an opportunity to correct any claimed error before we will review it on *797 appeal. To preserve issues for appellate review litigants must make known to trial courts the actions they seek to achieve or object to the actions of the court, giving their reasons. Failing to raise an issue, thereby allowing the circuit court an opportunity to correct the claimed error, results in waiver of the issue.

State v. Gard, 2007 SD 117, ¶ 15, 742 N.W.2d 257, 261 (citations omitted). See also Fed. Land Bank of Omaha v. Jensen, 415 N.W.2d 155, 159 (S.D.1987) ("Not having been presented to the trial court for ruling, it simply is not preserved for appeal[.]"). [¶ 12.] Affirmed. [¶ 13.] GILBERTSON, Chief Justice, and KONENKAMP, MEIERHENRY, and SEVERSON, Justices, concur.

NOTES [1] SDCL 23A-28-2(5) defines a "victim" as: Any person, as defined in subdivision 22-1-2(31), who has suffered pecuniary damages as a result of the defendant's criminal activities, including any person who has by contract or by statute undertaken to indemnify another or to pay or provide a specified or determinable amount or benefit upon determinable contingencies.

Any victim who has suffered pecuniary damages has priority of claim as opposed to any person who has a claim to indemnity or subrogation as a result of the same defendant's criminal activity.

[2] We acknowledge the point that SDCL 23A-28-14, a criminal statute, refers to "victim[s] of any act of juvenile delinquency." This statute, however, only allows certain "victims" of juvenile misconduct to receive the name and address of the juvenile.

There is nothing in the statute authorizing restitution for the "victims" referenced in that statute. We conclude that this statute has no application in juvenile proceedings under Title 26, other than to authorize the release of certain juvenile information.

[3] SDCL 26-8C-7 prescribes the available dispositions in juvenile delinquency cases, and subsection (1) of that statute authorizes the dispositions allowed in 26-8B-6(4), which provides: The court may require the child to pay for any damage done to property or for medical expenses

under conditions set by the court if payment can be enforced without serious hardship or injustice to the child[.]

[4] We acknowledge that M.D.D. raised the factual issue of hardship in her proposed findings of fact and conclusions of law. At that point in the proceedings, however, the time for presenting evidence of hardship had passed and the circuit court had no factual basis upon which it could have entered a finding of fact regarding hardship. See e.g., *Rich v. Olah*, 274 S.W.3d 878, 884 (Tx.Ct.App.

2008) ("When a party attacks the factual sufficiency of an adverse finding, it must demonstrate the adverse finding is against the great weight and preponderance of the evidence."). We also note that at oral argument, counsel for M.D.D. conceded that he never used the word "hardship" at the restitution hearing.