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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1901**

In the Matter of the Welfare of: A. I. Q., Child.

**Filed July 9, 2018
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-JV-16-6597

Mary F. Moriarty, Fourth District Public Defender, David W. Merchant, Assistant Public Defender, Minneapolis, Minnesota (for appellant A.I.Q.)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent State of Minnesota)

Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant seeks reversal and remand of the restitution ordered in a disposition order, arguing that she did not directly cause the victim's loss and that the district court failed to make sufficient disposition findings. We affirm.

FACTS

Victim B.W. accidentally dropped the car keys to her red PT Cruiser and subsequently discovered that her car was missing. B.W. immediately reported to law enforcement that her car had been stolen. The next day, a Minnesota Highway Patrol Trooper observed a red PT Cruiser with an expired registration and learned that its owner had reported it stolen. The trooper stopped the car and asked the driver to identify herself. The driver, appellant A.I.Q., gave the trooper a false name. A.I.Q. subsequently provided her true name at the Hennepin County Juvenile Supervision Center.

Respondent State of Minnesota charged A.I.Q., a juvenile, for falsely identifying herself to a peace officer and tampering with a motor vehicle. B.W. claimed that her recovered car was missing \$2,000 worth of clothing.

At a pretrial hearing, the parties reached a plea agreement. A.I.Q. admitted to both charges, and the state reduced the false-name charge from a gross misdemeanor to a misdemeanor and dismissed six other cases pending against her. A victim advocate for B.W. read B.W.'s victim-impact statement on the record. The juvenile court issued a written order, adjudicating A.I.Q. delinquent as to both charges, dismissed the other cases pending against her, placed her on probation, and ordered a restitution study.

B.W. subsequently submitted a restitution claim for \$2,129.68 that was comprised of \$200 for B.W.'s insurance deductible, \$1,800 for missing clothes not covered by insurance, and \$129.68 in lost wages. The district court modified A.I.Q.'s disposition to include restitution to B.W. in the amount of \$2,129.68. A.I.Q. requested a restitution hearing, denying that she caused B.W. any loss, disputing the value of missing clothing,

and claiming that she lacked the ability to pay the restitution award. At the restitution hearing, through counsel, A.I.Q. stipulated to the admission of the following documents: (1) a memorandum of a meeting between the Hennepin County Attorney's Office and B.W.'s victim advocate; (2) a memorandum of a meeting between the Hennepin County Attorney's Office and B.W.; (3) a victim impact/restitution report prepared by the Hennepin County Attorney's Office; and (4) B.W.'s restitution claim form.

The district court determined that the record was insufficient as to A.I.Q.'s inability to pay restitution, that restitution served "a rehabilitative purpose" for A.I.Q., and that, based on the law favoring restitution and the factual basis for the charges, the court had properly ordered A.I.Q. to pay restitution of \$2,129.68 to B.W. for her loss.

This appeal follows.

DECISION

I.

"In juvenile-delinquency matters, restitution is governed by both the restitution provision of the juvenile-delinquency statute . . . and the general restitution statute." *In re Welfare of I.N.A.*, 902 N.W.2d 635, 640 (Minn. App. 2017), *review denied* (Minn. Nov. 28, 2017); *see* Minn. Stat. §§ 611A.04, .045 (2016) (allowing restitution if an offender is "found delinquent"); Minn. Stat. § 260B.198, subds. 1(5), 8 (2016) (allowing for restitution in juvenile-delinquency cases). "The primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime." *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). Part of a district court's "duty to vindicate a victim's statutory right to restitution . . . is to award some amount of restitution when

there is economic loss to a victim.” *State v. Davis*, 907 N.W.2d 220, 226 (Minn. App. 2018) (quotation omitted), *review denied* (Minn. Apr. 17, 2018). In determining whether to order restitution, the district court must consider “the amount of economic loss sustained by the victim as a result of the offense” and the “income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a). “The record must provide the [district] court with a factual basis to award restitution.” *State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014). “The burden of demonstrating the amount of loss sustained by a victim is on the prosecution.” *Id.*; Minn. Stat. § 611A.045, subd. 3(a).

“A district court has broad discretion to award restitution,” and its order “will not be reversed absent an abuse of that discretion.” *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). “The district court’s factual findings will not be disturbed unless they are clearly erroneous.” *Id.*

A.I.Q. argues that we must reverse the district court’s restitution order because the record lacks sufficient evidence to prove that her conduct directly caused B.W.’s clothing loss. Indeed, “[r]estitution has limits”; a district court should only order restitution for “losses the defendant directly caused by the conduct that led to h[er] conviction.” *State v. Miller*, 842 N.W.2d 474, 477 (Minn. App. 2014) (quotation omitted), *review denied* (Minn. Apr. 15, 2014); *State v. Nelson*, 796 N.W.2d 343, 347 (Minn. App. 2011) (“[A] loss claimed as an item of restitution by a crime victim must have some factual relationship to the crime committed—a compensable loss must be directly caused by the conduct for which the defendant was convicted.” (quotation omitted)). A district court “may not order

restitution for conduct that is only tangentially related to the criminal act that caused the loss.” *Miller*, 842 N.W.2d at 477.

A.I.Q. argues that she never admitted to taking the clothes and that the district court’s findings do not support restitution for the lost clothes. She states that “[n]othing other than sheer speculation connects [her] to the missing clothes.” But the district court ordered restitution based on facts stipulated to and therefore admitted by A.I.Q., including that B.W.’s car contained clothes prior to it going missing, A.I.Q. had been in B.W.’s car without B.W.’s permission, and when B.W. recovered her car, her clothes were missing. The district court concluded that a preponderance of the evidence supported a finding that A.I.Q.’s conduct caused the loss of B.W.’s clothes, and that “enough of a nexus” existed to award restitution for B.W.’s lost clothes.

A district court decides the proper amount or type of restitution based on a preponderance of the evidence. *State v. Willis*, 898 N.W.2d 642, 648 (Minn. 2017). The preponderance of the evidence standard “requires that to establish a fact, it must be more probable that the fact exists than that the contrary exists. If evidence of a fact or issue is equally balanced, then that fact or issue has not been established by a preponderance of the evidence.” *In re Source Code Evidentiary Hearings in Implied Consent Matters*, 816 N.W.2d 525, 538–39 (Minn. 2012) (quotation and citation omitted). Allowing the district court to factually resolve restitution disputes frees the crime victim “from the burden of instituting a civil action based upon the same conduct.” *State v. Terpstra*, 546 N.W.2d 280, 283 (Minn. 1996).

Here, at the plea hearing, a victim’s advocate read B.W.’s victim-impact statement on the record, which included B.W.’s statement that “[w]orst of all was the loss of irreplaceable items I had in my car that I was in the process of moving to storage. Several were boxes of clothing.”¹ The following colloquy occurred:

THE COURT: [A.I.Q.], when you heard that statement from the victim, how did that make you feel?
A.I.Q.: Not very good. Sad.

The district court then informed A.I.Q. that she would “have to pay any restitution back for any of the victim’s costs,” and asked A.I.Q. if she understood that, and she replied yes. At no point did A.I.Q. or her counsel deny that she had taken the clothes or object to restitution for the missing clothes. Moreover, prior to the restitution hearing, the state filed exhibits that included an itemized list of losses, including the missing clothes. And, at the hearing, A.I.Q. stipulated to the admission of the exhibits without qualification.

In *State v. Gaiovnik*, the supreme court concluded that the record contained sufficient evidence to award restitution, stating that the offender “was on notice prior to and during trial” of the requested restitution and that both he and the district court “were aware of [the victim’s] loss, and [the offender] has never contested the amount of the loss.” 794 N.W.2d 643, 652 (Minn. 2011). Here, A.I.Q. offered no evidence to the contrary or disputed the district court’s implications that she had caused B.W.’s loss. Based on the record, we conclude that the district court properly found that a preponderance of the evidence supported a finding that A.I.Q.’s conduct caused the loss of B.W.’s clothes. *See*

¹ Part of the clothing included items that had belonged to B.W.’s deceased child.

id. (concluding that record supported award of restitution when offender was on notice of loss and did not provide contrary evidence that he caused the loss).

The record supports the district court's findings that B.W. had \$2,000 worth of clothes in her car prior to it being stolen, that the clothes were missing when B.W. retrieved her car, and that A.I.Q. admitted to being in B.W.'s car without permission in the intervening time. And A.I.G. did not deny at the restitution hearing that she caused the loss of B.W.'s clothes, i.e., that the clothes were not in B.W.'s car when she came into possession of it without B.W.'s permission. Further, prior to the restitution hearing, A.I.Q. knew about B.W.'s missing clothes and was on notice that B.W. was seeking restitution for them.

We conclude that the district court did not abuse its discretion by ordering A.I.Q. to pay restitution for B.W.'s missing clothes because evidence supports the court's conclusion that she directly caused B.W.'s loss. *See Palubicki*, 727 N.W.2d at 667 (affirming restitution for expenses incurred by victim's children attending court proceedings because "the claimed loss [was not] too attenuated from the criminal act."); *Terpstra*, 546 N.W.2d at 283–84 (affirming award of restitution where preponderance of the evidence supported award even though state failed to prove beyond a reasonable doubt the offense of theft); *In re Welfare of J.A.D.*, 603 N.W.2d 844, 847 (Minn. App. 1999) (affirming restitution compensating mother of minor victim for driving expenses incurred taking victim to an interview); *but see State v. Latimer*, 604 N.W.2d 103, 105 (Minn. App. 1999) (concluding that the district court abused its discretion in awarding restitution for murder where offender convicted of accessory after the fact denied participating in the murder).

II.

A.I.Q. argues that we must reverse the restitution order and remand to the district court because it failed to make the requisite statutory findings. A.I.Q. argues that the district court failed to make findings about her best interests, benefit to public safety, and alternative dispositions.

Minnesota Rule of Juvenile Delinquency Procedure 15.05, subdivision 2(A), provides that a dispositional order made by the district court

shall contain written findings of fact to support the disposition ordered and shall set forth in writing the following information:

(1) why public safety and the best interests of the child are served by the disposition ordered; [and]

(2) what alternative dispositions were recommended to the court and why such recommendations were not ordered.

“Written findings are required in juvenile-delinquency cases to show that the district court considered vital standards and to enable the parties to understand the court’s decision.” *I.N.A.*, 902 N.W.2d at 642 (quotation omitted). A court’s failure to issue adequate findings in a juvenile-disposition order constitutes reversible error. *Id.*

Here, the district court considered A.I.Q.’s proposal of paying only \$250 in restitution and found that “ordering restitution in the full amount in this case does serve a rehabilitative purpose — [A.I.Q.]’s payments to the victim will provide a monthly reminder of the losses endured by this victim and may deter [A.I.Q.] from committing similar crimes in the future.”

A.I.Q. argues that the district court’s disposition order should be reversed because of its similarity to the order reviewed in *I.N.A.* At age 14, I.N.A. vandalized public park

property, and the state charged him with criminal damage to property. *I.N.A.*, 902 N.W.2d at 638. The district court continued the case without adjudication, conditioned in part on I.N.A. paying restitution in the amount of \$12,529.90. *Id.* At a contested restitution hearing, I.N.A.’s mother testified that I.N.A. had attention deficit hyperactivity disorder, dyslexia, had missed developmental milestones, and received special education in school. *Id.* at 638–39. She also testified that I.N.A.’s disabilities would prevent him from finding a job to pay the restitution and that her family only could afford to pay “maybe” \$50 per week. *Id.* at 639. When ordering the \$12,529.90 in restitution, the district court stated that the restitution “serves to rehabilitate I.N.A. by demonstrating the amount of time and money that goes into maintaining our cities’ public park systems.” *Id.* at 642. This court reversed and remanded the restitution order, concluding that the district court’s finding was “not an explicit written finding addressing the statutory factors” in Minn. R. Juv. Delinq. P. 15.05 and that the court did not “explicitly discuss” alternative dispositions and why the court had not ordered them. *Id.*

The case before us is distinguishable from *I.N.A.* In this case, A.I.Q. was 16 at the time that she engaged in the delinquent conduct and age 17 when the district court issued its disposition order that included restitution. A.I.Q. offered no testimony or other evidence to support an argument that she was unable to pay restitution. And the district court “explicitly discuss[ed]” the alternative disposition of lowering the amount of restitution owed by A.I.Q. *See id.* (concluding that district court failed to discuss any alternative disposition). We conclude that under the circumstances in this case, the court made sufficient findings under Minn. R. Juv. Delinq. P. 15.05.

Because the district court made adequate findings, and because the record supports the restitution awarded, we conclude that the court did not abuse its discretion, and we affirm.

Affirmed.