

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1878**

State of Minnesota,
Appellant,

vs.

Katelynn Marie Pick,
Respondent.

**Filed July 22, 2024
Affirmed
Segal, Chief Judge**

Crow Wing County District Court
File No. 18-CR-21-4014

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Donald F. Ryan, Crow Wing County Attorney, Janine LePage, Assistant County Attorney,
Brainerd, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public
Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and
Slieter, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal, appellant State of Minnesota argues that the district court erred in concluding that the child-victim's father was not entitled to restitution for attorney fees incurred in collateral child-protection and family-law proceedings that the state claims resulted directly from respondent's crime. We affirm.

FACTS

In October 2021, the state charged respondent Katelynn Marie Pick with three counts each of first-degree and second-degree criminal sexual conduct. The charges stemmed from an allegation that Pick and her boyfriend sexually abused Pick's six-year-old daughter.

As alleged in the complaint, law enforcement was informed in October 2021 of a report of a possible criminal-sexual-conduct case involving the child. The child lived with Pick and Pick's boyfriend. While the child was staying with a third party, the child disclosed that Pick and Pick's boyfriend sexually abused her.

Pick and the state reached a plea agreement. Pursuant to the agreement, Pick pleaded guilty to one count of second-degree criminal sexual conduct and the state dismissed the remaining charges. Pick further agreed to cooperate with the prosecution of her boyfriend, and the state agreed that if she rendered substantial assistance in the prosecution, then the state would not oppose and may even support a motion for a

downward sentencing departure.¹ The district court sentenced Pick to 108 months in prison, stayed execution of sentence, and placed Pick on probation for ten years. After sentencing, Pick requested a restitution hearing.

On the issue of restitution, the child's father submitted an affidavit requesting an award of \$5,017.60 for "Mileage Reimbursement bringing child to/from school."² In a supplemental affidavit, the child's father also requested an award of (1) \$5,000 to reimburse him for attorney fees incurred in the juvenile-protection proceedings that were initiated by the county because of the sexual-abuse charges, and (2) \$4,000 to reimburse him for attorney fees incurred in opposing a motion seeking grandparenting time brought by Pick's mother, the child's maternal grandmother. The county initiated the juvenile-protection proceedings because, at the time of Pick's arrest, she had sole legal and physical custody of the child. As a result of the juvenile-protection proceedings, sole legal and physical custody of the child was awarded to the child's father.

Following the restitution hearing, the district court ordered Pick to pay the child's father \$992.32 for mileage reimbursement and pay for "[a]ny future claims for restitution for costs associated with services for trauma induced mental health, physical health and therapeutic services needed for the [child]," including any costs of transporting the child to and from those services and lost wages that might be incurred by the child's father,

¹ Pick's boyfriend later pleaded guilty, so she did not have to testify at his trial.

² In order to avoid an abrupt change of schools for the child after father was first awarded custody, the child's father had to drive a significant distance from his home to drop off and pick up the child from school.

stepparent or guardian in accompanying the child to those services. The district court stated that it was “cognizant that the termination of [Pick’s] parental rights shifts all the responsibility for raising the [child] on her father,” but concluded that it lacked authority to award attorney fees to the child’s father for the juvenile-protection and family-law matters because the matters were not the “direct result” of Pick’s crime. The state now appeals the denial of the request for an award of restitution for the child’s father’s attorney fees.

DECISION

“A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . if the offender is convicted or found delinquent.” Minn. Stat. § 611A.04, subd. 1(a) (Supp. 2023). For purposes of restitution, “[t]he term ‘victim’ includes the family members . . . of a minor.” Minn. Stat. § 611A.01(b) (2022). The district court “may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime.” *State v. Boettcher*, 931 N.W.2d 376, 381 (Minn. 2019); *see also State v. Palubicki*, 727 N.W.2d 662, 666-67 (Minn. 2007) (declining to adopt the more expansive but-for test for causation). Appellate courts review a district court’s “broad discretion to award restitution” for abuse of discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). “A [district] court abuses its discretion when its decision is based on an erroneous view of the law.” *Boettcher*, 931 N.W.2d at 380 (quotation omitted).

The state argues that the district court abused its discretion in determining that the child’s father was not entitled to an award of restitution to reimburse him for attorney fees

incurred in collateral court proceedings. The state contends that the district court made an improper categorical determination that expenses related to collateral court proceedings are not recoverable through restitution.

In its restitution order, the district court observed that the child's father was "requesting reimbursement for the cost of representation in two separate and distinct . . . collateral court proceedings." The district court further stated:

The rule stated in *Palubicki* is that a district court may order restitution only for losses that are directly caused, and it would seem that collateral court proceedings are not directly caused by nor are consistent with this direct result standard. This Court would conclude that "but for" the Defendant's criminal act the other court proceeding would not have occurred. However, "but for" causation is not the standard, as the Legislature did not provide that victims recover losses that merely have "some factual relationship to" the crime of conviction.

As the state argues, the supreme court has cautioned against prohibiting recovery of certain types of expenses. In *State v. Maidi*, the supreme court considered whether a district court could award counter-abduction expenses under Minn. Stat. § 609.26, subd. 4 (1994). 537 N.W.2d 280, 284 (Minn. 1995). In analyzing the issue, the supreme court noted that, in addition to the recovery of expenses permitted under Minn. Stat. § 609.26, a victim of a crime may generally request restitution for "*any out-of-pocket losses resulting from the crime.*" *Id.* (quoting Minn. Stat. § 611A.04 (1994)). The supreme court held that "the court may not construe [Minn. Stat. § 609.26, subd. 4,] to exempt certain types of expenses, even though we may consider these expenses inappropriate" because "[t]o do so . . . would run contrary to the clear language of both sections 611A.04 and 609.26." *Id.* The supreme

court later cited this principle from *Maidi* when addressing an appeal from an award of restitution solely under Minn. Stat. § 611A.04. *State v. Tenerelli*, 598 N.W.2d 668, 671-72 (Minn. 1999) (“Our recent decision in *State v. Maidi* demonstrates the broad scope of section 611A.04.”).

Accordingly, to the extent that the district court’s order can be read as holding that attorney fees for collateral court proceedings, as a category, cannot be recovered as an item of restitution, such a holding would be in error. But based on the record developed below, we are not persuaded that the district court abused its discretion in denying the restitution request.

Prior to the restitution hearing, Pick submitted an affidavit that asserted the child’s father was not entitled to an award of restitution for attorney fees because the “attorney fees are not an out of pocket loss resulting from the crime.” Pick thus properly raised a challenge to the restitution request based on the causal connection between the offense and the claimed loss. *See State v. Seeman*, 5 N.W.3d 171, 176 (Minn. App. 2024) (concluding an offender’s affidavit challenging restitution must be sufficiently detailed to provide notice to the state), *rev. granted* (Minn. June 26, 2024); *State v. Cloutier*, 987 N.W.2d 214, 221 (Minn. 2023) (noting a challenge to an item of restitution based on causation is not necessarily a challenge to the amount of the loss). Consequently, “[t]he burden of

demonstrating . . . the appropriateness of a particular type of restitution [was thus] on the prosecution.” Minn. Stat. § 611A.045, subd. 3(a) (2022).

At the restitution hearing, the state cited to *State v. DeGrote*, a nonprecedential opinion, to support its argument.³ No. A03-908, 2004 WL 556946 (Minn. App. Mar. 23, 2004), *rev. denied* (Minn. June 15, 2004). In *DeGrote*, the offender pleaded guilty to killing his wife, and the district court awarded restitution that included attorney fees incurred by the woman’s parents in the subsequent custody and visitation proceedings involving the offender and victim’s children. *Id.* at *1. This court affirmed the restitution award, applying a “but-for” standard of causation. *Id.* at *3-4. But three years later, in *Palubicki*, the supreme court explicitly declined to adopt the “expansive” but-for causation test. 727 N.W.2d at 667. The supreme court thereby functionally overruled the standard we applied in *DeGrote*. The supreme court explained that restitution is appropriate only for losses that are the direct result of an offender’s unlawful conduct. *Id.*

Despite the supreme court’s holding in *Palubicki*, the state’s argument at the restitution hearing referenced the “but-for” standard, repeatedly asserting that the child’s father would not have incurred the attorney fees “but for” Pick’s unlawful conduct. The child’s father testified at the restitution hearing, but his testimony focused primarily on his request for mileage reimbursement for transporting the child to and from school. Indeed, the state did not ask the child’s father any questions about the collateral court proceedings during direct examination. The only testimony in the record about the juvenile-protection

³ Nonprecedential opinions of this court, while not binding precedent, may be cited for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

proceedings related to timing, the child-support ramifications, and the fact that father was entitled to court-appointed counsel. And virtually no testimony was presented concerning the grandmother's motion for grandparenting time. In closing, the state reiterated that the child's father "would not be in this situation *but for* Ms. Pick's illegal activity. *But for* her abuse of their daughter." (Emphasis added.)

Even though the state based its argument on the "but-for" standard, the district court nevertheless applied the correct legal standard—whether the costs were incurred as a "direct result" of Pick's crime. The district court acknowledged that the child's father would not have incurred the attorney fees but for Pick's conduct, but determined that the narrower, direct-result standard was not satisfied. We agree because we conclude that the state failed to carry its burden of proof; the state did not elicit evidence sufficient to satisfy the direct-result standard set out in *Palubicki*. We thus discern no abuse of discretion by the district court in its denial of the restitution request for the child's father's attorney fees.

Affirmed.