

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2606

September Term, 2015

IN RE: A.W.

Graeff,
Kehoe,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: September 27, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The Circuit Court for Charles County, sitting as the juvenile court, adjudicated A.W., appellant, involved in the crime of second-degree assault. The Court ordered that he be committed to the custody of the Department of Juvenile Services for placement and that he pay \$6,491.33 in restitution. In this appeal, appellant presents the following question for our review:

Did the juvenile court abuse its discretion by ordering restitution in the amount of \$6,491.33?

Finding no abuse of discretion, we affirm.

BACKGROUND

On November 12, 2015, appellant entered a plea of involved to one count of second-degree assault. The undisputed facts established that appellant and two other juveniles were involved in an altercation with another individual, Justin M. During the altercation, appellant, who was the clear aggressor, repeatedly punched Mr. M. in the face. Mr. M. suffered significant injuries, including a broken jaw and broken nose.

At the disposition hearing, Mr. M.'s mother testified regarding the expenses that she and her family incurred as a result of the assault on her son. These expenses included approximately \$620 in co-pays for treatment at the hospital, \$56 in parking fees at the hospital and dentist's office, \$223 for medication and other medical supplies, \$270 in lost wages for Mr. M., and \$18,300 in dental treatment. In his victim impact statement, Mr. M. indicated that his medical treatment was ongoing and that because of his injuries he was now precluded from pursuing a career in law enforcement or the military.

At the conclusion of the hearing, the State requested that appellant pay one-third, or approximately \$6,491, of the total losses testified to by Mr. M. and his mother. In response, his counsel argued that such an amount went “beyond the rehabilitative purposes of the Juvenile Restitution Statute and goes towards more of an...adult-like restitution amount.”

Ultimately, the juvenile court agreed with the State:

[T]he restitution...[is] going to be \$6,491.33. And, it's not because...I'm mad at you or I think you're no good or you're a bad person or...that's not it, you know. And...after listening to everyone...it's my fear that if something sort of doesn't grab you now, right, that the grabbing...because you're not that far from eighteen...you're just not. You think you are, but you're not. And...I'd like to see you do something positive. And, that's all in your control. And, if I just tell you go on probation, I think I'm telling you that this is okay, you know. And...I'm fearful of that.

DISCUSSION

Appellant argues that the juvenile court abused its discretion in ordering restitution in the amount of \$6,491.33. Specifically, he contends that “restitution in such a large amount does not serve the rehabilitative purpose of juvenile restitution,” but instead is “so great as to be punitive.” Appellant also argues that the juvenile court failed to conduct a meaningful inquiry into his ability to pay, which the court was required to do prior to ordering restitution.

The State counters that the juvenile court did not abuse its discretion in ordering restitution in the amount of \$6,491.33, as this amount was supported by competent evidence and fell below the statutory maximum of \$10,000. As to appellant's ability to pay, the State avers that this issue was not raised in the juvenile court and thus is not preserved. The State further argues that, even if the issue was preserved, the juvenile court

did not err because its consideration of appellant’s ability to pay may be gleaned from the court’s on-the-record recognition of the proper function of restitution and the general presumption that the court knows and follows the law.

We agree with the State that the issue of appellant’s ability to pay was not preserved for our review. Although appellant argued before the juvenile court that the amount requested by the victim in restitution was excessive, he did so on the grounds that such an amount would go beyond the rehabilitative purpose of the restitution statute. At no time during either the adjudicatory hearing or the disposition hearing did he, his counsel, or his mother present evidence, argue, or even suggest that he did not have the ability to pay restitution. *See State v. Jones*, 138 Md. App. 178, 218 (2001) (“[W]hen particular grounds for an objection are volunteered...’that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated.”) (internal citations omitted). Accordingly, any error as to the juvenile court’s alleged failure to consider appellant’s ability to pay was not preserved. *See Richards v. State*, 65 Md. App. 141, 147 (1985); *See also McDaniel v. State*, 205 Md. App. 551, 566 (2012) (“When a court orders a defendant to make restitution to a crime victim, and the defendant believes that the court either fails to inquire into his ability to pay or errs in determining his ability to pay, the defendant must make a timely objection to the order, else the issue is waived.”).

Assuming, *arguendo*, that the issue was preserved, we conclude that the juvenile court did not err in its alleged failure to conduct a “reasoned inquiry” into appellant’s ability to pay restitution. *See In re Delric H.*, 150 Md. App. 234, 251 (2003). Although the juvenile court did not make an express finding regarding either appellant’s or his mother’s

ability to pay, the record shows that appellant’s mother was employed and that she supported the family, including appellant. The record also contained information regarding appellant’s educational history, physiological and intellectual abilities, and employment status, all of which were available to the juvenile court prior to its ordering of restitution.

Furthermore, the juvenile court indicated a clear understanding of the relevant statutory scheme and the underlying purpose of assessing restitution. There is no evidence that the court ignored its duty to consider appellant’s financial status prior to imposing restitution.¹ In fact, Section 11-605 of the Maryland Criminal Procedure Code expressly authorizes a court to ignore a restitution request if the court finds: “(1) that the restitution obligor does not have the ability to pay the judgment of restitution; or (2) that there are extenuating circumstances that make a judgment of restitution inappropriate.” *Id.* Absent evidence to the contrary, we must presume that the trial court understood and applied these laws correctly. *See Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003) (a trial judge is presumed to know the law and to have performed his duties properly).

As to appellant’s remaining claim, we hold that the juvenile court did not abuse its discretion in ordering appellant to pay \$6,491.33 in restitution. Under Section 11-603(a)(2) of the Maryland Criminal Procedure Code, “[a] court may enter a judgment of restitution that orders a defendant or child respondent to make restitution...if as a direct result of the

¹ During the disposition hearing, the juvenile court quoted *Robey v. State*, 397 Md. 449 (2007), recognizing that “because rehabilitation is the main objective of the juvenile justice system and its dispositional consequences, such as restitution, it is consistent with that objective to limit the amount of restitution to which a child may be obligated to pay.” *Id.* at 459.

crime or delinquent act, the victim suffered actual medical, dental, hospital, counseling, funeral, or burial expenses or losses; direct out-of-pocket loss; loss of earnings; or expenses incurred with rehabilitation[.]” *Id.* Moreover, if the victim or State requests restitution, and if competent evidence is presented to the court in support of the restitution amount, the victim is presumed to have a right to restitution. *See* Md. Code, Criminal Procedure § 11-603(b). For juvenile offenders, the amount of restitution is limited to \$10,000 “for each child’s acts arising out of a single incident.” Md. Code, Criminal Procedure § 11-604(b). Any imposition of restitution against a juvenile offender should be consistent with the overall objective of the juvenile justice system, which is rehabilitation not punishment. *See Robey v. State*, 397 Md. 449, 459 (2007) (“Placing an insurmountable debt on a child offender necessarily defeats the rehabilitative purpose of imposing restitution in the first instance because the child may endeavor forever to satisfy the obligation without success.”).

“Maryland law confers upon a juvenile court broad discretion to order restitution.” *In re Don Mc.*, 344 Md. 194, 201 (1996). *See In re John M.*, 129 Md. App. 165, 175 (1999), *superseded by statute on other grounds*, Md. Code, Crim. Proc. § 11-603(a)(2)(ii). As such, a juvenile court’s decision to impose restitution “will not be overturned on appeal except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *In re Don Mc.*, 344 Md. at 201 (internal citations and quotations omitted).

In the present case, there is no evidence that the juvenile court’s imposition of restitution against appellant was manifestly unreasonable or exercised on untenable

grounds. To begin with, the court exhibited a clear understanding of the aims of the juvenile justice system, specifically telling appellant that it was imposing restitution not to punish him but to “grab” him and allow him to “do something positive.” The court also heard competent evidence from Mr. M. and his mother regarding the total losses incurred as a direct result of the assault, and the juvenile court did not appear to go beyond this established amount, which was below the statutory maximum of \$10,000. That the amount imposed was substantial is not by itself dispositive. *See In re Delric H.*, 150 Md. App. at 250-54 (holding that juvenile court did not abuse its discretion in imposing restitution in the amount of \$6,693.89.). Accordingly, the juvenile court’s order of restitution was not an abuse of discretion.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**