UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 392 & 830

September Term, 2016

IN RE: T.A.

Eyler, Deborah S.,
Nazarian,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: December 19, 2016

T.A., a juvenile, repeatedly hit a sliding glass door to his mother's apartment with a patio chair, damaging the door beyond repair. At an adjudicatory hearing, the Circuit Court for Wicomico County, sitting as the juvenile court, heard evidence about T.A.'s acts, but not the value of the destroyed door. It adjudicated T. A. to be a delinquent for committing an act that, if committed by an adult, would constitute the crime of malicious destruction of property valued at less than $1,000. Later, after a restitution hearing, the court ordered T.A. to pay Parkwood Apartments ("Parkwood"), the owner of the destroyed door, $999.99 in restitution, based on evidence about the replacement cost of the door.

T.A. noted this appeal, asking whether the juvenile court "err[ed] in ordering [him] to pay restitution for the sliding glass door based on the replacement cost of the door rather than its fair market value at the time of the delinquent act?" The answer to that question is no.[1]

FACTS AND PROCEEDINGS

The following evidence was adduced at the adjudicatory hearing, on April 12, 2016. At the relevant time, T.A. was 15 years old and was living with his mother in an apartment at Parkwood, in Salisbury. He had an 8:00 p.m. curfew and did not have a key to the apartment.

T.A. stayed out long past curfew on the night of December 30-31, 2015. At about 4:30 a.m. on December 31, he knocked on his mother's bedroom window, asking to be let

[1] T.A. noted two appeals, one from the adjudication order and one from the restitution order. This Court consolidated the appeals. T.A. makes no argument in his brief about the adjudication order.

inside the apartment. His mother, who already was awake, told him to calm down and wait while she got herself ready for work. He repositioned himself on the nearby back patio and told his mother that if she did not let him inside, he would break the sliding glass door from the apartment to the patio. His mother told him not to do that and to wait. T.A. repeated his threat, and his mother said, "Don't do that, you're going to be in trouble." Ignoring this warning, T.A. picked up a patio chair, announced that he was going to let himself in, and began hitting the sliding glass door with the chair. On the fourth hit the glass shattered. T.A.'s mother reported the incident to Parkwood's management.

As noted above, the adjudicatory hearing did not include evidence about the value of the destroyed door. The judge found beyond a reasonable doubt that T.A. had committed the act of malicious destruction of property. Pursuant to Maryland Code (2002, 2012 Repl. Vol., 2016 Supp.), section 6-301(f)(3) of the Criminal Law Article ("CL"), which states that if it "cannot be determined from the evidence whether the value of the damage to the property is more or less than $1,000, the value is deemed to be less than $1,000[,]" the judge found that T.A. had committed the delinquent act of malicious destruction of property valued under $1,000. The court committed T.A. to the Department of Juvenile Services for a non-community based placement.

On May 3, 2016, the juvenile court held a restitution hearing. Leslie Klekotka, the Assistant Community Manager at Parkwood, appeared, filling in for Amber Sotack, the Community Manager, who was out on maternity leave. Ms. Klekotka testified that right after the incident a company was called to board up the door temporarily, until it could be replaced. The door later was replaced at a cost of $1,970.19. Ms. Klekotka did not know

the value of the door immediately before T.A. destroyed it. She testified that Ms. Sotack had communicated with T.A.'s mother about replacing the door. She further testified that she understood that depreciation did not apply to the value of the door.

When counsel for T.A. argued that Parkwood only was entitled to restitution in the amount of the fair market value of the door as it existed on December 31, 2015, immediately before it was damaged, not to the replacement cost of the new door, the court continued the restitution hearing to June 21, 2016, when Ms. Sotack would be available to testify.

At the continued restitution hearing, Ms. Sotack testified that the shattered door had to be replaced for the apartment to be habitable. Parkwood paid the Go Glass Company $1,970 to replace the door.[2] The replacement door was installed on March 7, 2016. On cross-examination, Ms. Sotack testified that Parkwood was built in the 1980s, and she did not know whether the door T.A. destroyed was original to that particular apartment. She explained that Parkwood depreciates carpeting over a ten year period, but does not depreciate the value of sliding glass doors.

It was not disputed that due to T.A.'s delinquent act the sliding glass door was damaged beyond repair. In closing, T.A.'s lawyer argued, "[W]e have potentially a 30-year old sliding glass door that was broken. . . . [T]hey're not entitled to a brand new sliding glass door." He asserted that at most Parkwood was entitled to restitution in the amount of the fair market value of the door before it was damaged, as depreciated over time; and

[2] Obviously, she rounded that figure from the one Ms. Klekotka testified to.

because Parkwood did not present any evidence to prove that figure, restitution should be denied altogether or, in the alternative, awarded "in the amount of no more than $300[.]" The State took the position that Parkwood was entitled to restitution in the amount of the replacement cost of the door.

The judge was not convinced by defense counsel's argument. He asked, rhetorically:

> Well, where there is a destruction of property and a finding of delinquency because of that destruction of property, isn't the person whose property was destroyed entitled to have it fixed and if it requires a replacement, have it fixed at the expense of the person who caused the damage? . . . The cost of repair as opposed to the depreciated value of the particular item.

Because T.A. had been adjudicated delinquent for committing an act that, if committed by an adult, would constitute the crime of malicious destruction of property valued at *less than $1,000*, the court could not order him to pay restitution to Parkwood for the full replacement cost of the door. For that reason, the court ordered T.A.to pay $999.99 in restitution.

STANDARD OF REVIEW

This Court has noted that "'[j]uvenile proceedings have a special character; they are civil in nature, rather than being criminal proceedings.'" *In re Earl F.*, 208 Md. App. 269, 275 (2012) (quoting *In re John M.*, 129 Md. App. 165, 174 (1999)). Furthermore, "[i]t is long established that in Maryland, 'juvenile courts have broad discretion to order restitution, either against the juvenile himself, a parent, or both.'" *Id.* at 276 (quoting *In re Delric H.*, 150 Md. App. 234, 249 (2003)). In a juvenile matter,

> "Restitution serves several objectives. It can compensate victims who have been injured or who have suffered property loss as a result of the wrongful acts of a minor, although a court's concern that the victim be fully compensated should not overshadow its primary duty to promote the rehabilitation of the defendant. Restitution can impress upon [the juvenile] the gravity of harm he has inflicted upon another, and provide an opportunity for him to make amends. The restitution statute is also penal in nature since liability arises as a consequence of a presumed neglect of parental responsibilities."

Id. (quoting *John M.*, 129 Md. App. at 174) (internal citations and quotation marks omitted).

"[T]he decision to require restitution, as well as the amount, are reviewed for abuse of discretion." *In re A.B.*, __ Md. App. __, No. 2590, Sept. Term 2015 (filed October 28, 2016), slip op. at 2. A court abuses its discretion when its decision is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *John M.*, 129 Md. App. at 175 (quoting *In re Don Mc.*, 344 Md. 194, 200–201 (1996)). To the extent that a restitution decision turns on a question of law, we review the decision *de novo*. *Earl F.*, 208 Md. App. at 275.

DISCUSSION

Restitution in criminal and juvenile cases is governed by Md. Code (2001, 2008 Repl. Vol.), sections 11-601–11-619 of the Criminal Procedure Article ("CP"). As pertinent, CP section 11-603(a) provides:

> *Conditions for judgment of restitution*. – A court may enter a judgment of restitution that orders a defendant or child respondent to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if:

> (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased[.]

"A victim is presumed to have a right to restitution under subsection (a) . . . if: (1) the victim or the State requests restitution; and (2) the court is presented with competent evidence of any item listed in subsection (a)[.]" CP § 11-603(b)(1)-(2). "'Competent evidence' is simply evidence that is reliable and admissible." *Juliano v. State*, 166 Md. App. 531, 540 (2006). The restitution statutes do not specify a particular method for calculating restitution.

As he did below, T.A. contends that restitution for a delinquent act that results in the destruction of property only can be based on the fair market value of the property immediately before it was destroyed, factoring in depreciation; it cannot be based on the replacement cost of the destroyed property. Thus, the juvenile court erred in granting restitution to Parkwood based on the replacement cost of the door. Because the State failed to present evidence of the fair market value of the door before it was destroyed, T.A. requests the case be remanded for a new restitution hearing at which the State must establish competent evidence of the door's fair market value prior to its destruction. He primarily relies on *In re Christopher R.*, 348 Md. 408 (1998), to support his contention. He maintains that the legislative history of CP section 11-603 shows that the General Assembly intended restitution to be based on the fair market value of property that has been destroyed.

The State counters that the restitution statute does not require that the restitution granted for destruction of property be based on the property's fair market value at the time

it was destroyed; restitution can be ordered in the amount of the replacement cost of the destroyed property, and the juvenile court did not abuse its discretion in doing so here. It argues that the issue is controlled by *Goff v. State*, 387 Md. 327 (2005), not by *In re Christopher R.*

When *In re Christopher R.* was decided, there was a separate restitution statute for juvenile cases that stated, in pertinent part: "A judgment rendered under this section may not exceed: (1) As to property stolen, destroyed, converted, or unlawfully obtained, the lesser of the fair market value of the property or $5,000[.]" Md. Code (1974, 1995 Repl. Vol.), § 3-829(c)(1)(i) of the Courts and Judicial Proceedings Article ("CJP"). Christopher was adjudicated a delinquent for stealing computers and related items from an elementary school. The evidence showed that the original cost of the stolen items was $5,049 and their replacement cost was $5,415. Explaining that it was basing its restitution award on the replacement cost of the items, the court ordered Christopher to pay $5,000 in restitution to the school (the maximum amount permitted by the statute).

The case reached the Court of Appeals, which reversed, holding that the juvenile court applied an incorrect standard for determining the amount of restitution to which the school was entitled. The Court emphasized that the wording of the restitution statute required that restitution be based on the "fair market value" of the stolen property and gave that phrase its well established meaning, *i.e.*, "'the price which a purchaser willing, but not compelled, to buy would pay, and which an owner willing, but not compelled, to sell would accept, for the property.'" *In re Christopher R.*, 348 Md. at 412 (quoting *Marchant v. Mayor & City Council of Balt.*, 146 Md. 513, 527 (1924)). The Court explained that

because it is "common knowledge that in the field of computer technology advances are constantly being made so that used equipment depreciates in value over relatively short periods of time[,]" *id.* at 412-13, depreciation had to be factored into the fair market value of the stolen property.

Goff was decided after the restitution statute was amended to read as it does today. In that case, the defendant, an estranged friend of the victim, broke into the victim's apartment and attacked him. The assault moved from the living room into the bathroom, and into the shower in the bathroom. There the defendant hit the victim repeatedly in the face. In the course of doing so, he punched holes and created cracks in the shower insert, *i.e.*, the hard plastic that lined the interior of the shower, protecting the surrounding walls from water damage. The victim presented evidence that the shower insert was damaged beyond repair, necessitating replacement, and that the replacement cost would be $2,156, including materials and labor. The defendant presented evidence that the insert could be repaired and of the repair cost. The trial court credited the victim's evidence and ordered the defendant to pay $2,156 in restitution to the victim.

The Court of Appeals granted a writ of *certiorari* on three issues: whether the damage to the shower was a direct result of the crime; whether the shower was the property of the victim, even though he was a tenant, not the owner, of the apartment; and whether "ordering replacement [of the shower] instead of repair [was] fair and reasonable." *Goff*, 387 Md. at 339. It answered the first two questions in the affirmative and, on the third, held that, because the evidence credited by the trial court showed that the damage to the shower insert had rendered the shower inoperable and that the damage could not be

repaired, restitution in the amount of the replacement cost of the shower insert was "fair and reasonable under the circumstances." *Id.* at 350.

We agree with the State that *In re Christopher R.* is inapposite and *Goff* is controlling. T.A. recognizes that the restitution statute as it now exists and as it existed at the pertinent time in *Goff* no longer contains the "fair market value" language that was in the restitution statute at the pertinent time in *In re Christopher R.* He argues that even though the "fair market value" language is no longer in the restitution statute, the General Assembly must have intended to retain that concept as a limitation on the amount of restitution that can be ordered. He relies, however, on criminal theft cases, such as *Champagne v. State*, 199 Md. App. 671 (2011), in which the "value" of stolen property, as defined by CL § 7-103(a), is "the market value of the property . . . at the time and place of the crime" or "if the market value cannot satisfactorily be ascertained, the cost of the replacement of the property . . . within a reasonable time after the crime." This definition of "value" only applies to theft cases, and it is not reasonable to infer from the inclusion of this language in the theft statute that the restitution statute was meant to retain a "fair market value" requirement even after that language was removed from that statute.[3] Moreover, the case at bar does not involve theft of property, it involves destruction of property.

[3] We note that even if the definition of "value" in the theft statute had relevance, which it does not, that statute allows for value to be determined by replacement cost when the market value of the stolen property cannot be satisfactorily ascertained. In the case at bar, the evidence showed that the fair market value of the sliding glass door, whose age could not even be determined, could not be satisfactorily ascertained.

If the restitution statute as it now exists implicitly restricts an award of restitution for destroyed property to the fair market value of the property immediately before it was destroyed, the Court in *Goff* certainly would have factored that into its analysis. Instead, in a case factually similar to this one, in that the property at issue was destroyed, not stolen, the Court made clear that when property is destroyed as a result of the criminal or delinquent act of the defendant, an award of restitution in the amount of the replacement cost of the destroyed property may be granted when that is fair and reasonable under the circumstances. In the case at bar, given the evidence that T.A.'s delinquent act destroyed the sliding glass door to the apartment and that the door had to be replaced for the apartment to be habitable, restitution in the amount of the replacement cost of the door was fair and reasonable. The juvenile court did not err or abuse its discretion in awarding restitution based on the replacement cost of the door.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY SITTING AS A JUVENILE COURT AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.