[Cite as *Columbus v. Martin*, 2012-Ohio-2654.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-937 (M.C. No. 11 CRB 6762)
Nicholas A. Martin,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	
City of Columbus,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-938 (M.C. No. 11 TRD 123400)
Nicholas A. Martin,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 14, 2012

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, Chief Prosecutor, and *Melanie R. Tobias*, for appellee.

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellant.

APPEALS from the Franklin County Municipal Court.

BROWN, P.J.

{¶ 1} In these consolidated appeals, defendant-appellant, Nicholas A. Martin, appeals from judgments of conviction and sentence entered by the Franklin County Municipal Court ordering him to pay $1,750 in restitution.

{¶ 2} On April 6, 2011, appellant was charged in Franklin County Municipal Court case No. 11-6762 with one count of criminal damaging, in violation of R.C. 2309.06. On April 7, 2011, appellant was charged in Franklin County Municipal Court case No. 11-123400 with one count of reckless operation, in violation of R.C. 2133.02(A).

{¶ 3} On June 10, 2011, appellant entered a no contest plea to both charges. The trial court found appellant guilty of both counts, and set the matter for a further hearing on the issue of restitution. The court conducted a restitution hearing on October 17, 2011, and subsequently issued sentencing entries ordering restitution in the amount of $1,750.

{¶ 4} On appeal, appellant sets forth the following assignment of error for this court's review:

> The city failed to demonstrate the amount of its actual economic loss, based on either money spent repairing the damage caused by appellant, or through an up to date estimate of the cost of repairing such damage as remained after five months of spring and summer weather.

{¶ 5} Under his single assignment of error, appellant contends that the city of Columbus, plaintiff-appellee, failed to carry its burden of proving the amount of economic loss. Appellant maintains that the city's estimate was too speculative to support an award of $1,750.

{¶ 6} R.C. 2929.28 states in part as follows:

> (A) In addition to imposing court costs * * * the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section. If the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:
>
> (1) Unless the misdemeanor offense is a minor misdemeanor or could be disposed of by the traffic violations bureau * * *, restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss.
>
> If the court imposes restitution, the court shall determine the amount of restitution to be paid by the offender. If the court

> imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim, or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.

{¶ 7} Restitution under R.C. 2929.28 is "based upon the victim's economic loss." *State v. Morgan*, 11th Dist. No. 2005-L-135, 2006-Ohio-4166, ¶ 22. Further, "the amount of restitution ordered by a trial court must bear a reasonable relationship to the loss suffered and is limited to the actual loss caused by the offender's criminal conduct for which he was convicted." *State v. Moore-Bennett*, 8th Dist. No. 95450, 2011-Ohio-1937, ¶ 18. This court applies an abuse of discretion standard to a trial court's restitution order. *State v. Guade*, 10th Dist. No. 11AP-718, 2012-Ohio-1423, ¶ 11.

{¶ 8} As noted, appellant entered no contest pleas to charges of reckless operation and criminal damaging. At the plea hearing, the city recited the following factual background information:

> This incident occurred on April 4th of this year in the City of Columbus * * * in the area of East 15th Avenue, west of a road called Big Four. And on that date at around 2:33 a.m., officers were dispatched to a park on East 15th Avenue between North Fourth Street and Big Four on a complaint of a Jeep doing doughnuts in the grass in the park. Officers Polen and Hondros-Walls responded to said location.
>
> Officer Polen observed a male get out of a muddy Jeep.
>
> Officer Polen made contact with said male, learned to be Nicholas Martin * * * and asked him what he was doing. Mr. Martin replied, "Being stupid, I guess."
>
> Upon investigation, Mr. Martin had ran over the curb into the park at the above-listed location and proceeded to do circles,

> doughnuts, throwing grass out in street and putting ruts in the park lawn. Mr. Martin also ran over a park sign that listed park rules during the reckless driving.
>
> As Officer Polen was issuing the citation to Mr. Martin, Mr. Martin made the following spontaneous utterance: "I don't know what I was thinking. To be honest, I just got the Jeep and wanted to have some fun. After sitting back here, that was stupid."

(June 10, 2011 Tr. 4-6.)

{¶ 9} During the restitution hearing, the city called as a witness Chris Matthews, an employee of Builderscape, Incorporated ("Builderscape"). Builderscape is a construction and landscaping contractor; the company has previously submitted estimates and bids to the city.

{¶ 10} Matthews was contacted by the city's property manager, Tina Mohn, about reviewing damage to a park near East 15th Avenue and North Fourth Street. Matthews observed tire ruts and areas that needed to be reseeded. He described the area affected as "kind of all over, not just one little area. It was definitely someone drove through there and did some damage." (Oct. 17, 2011 Tr. 12.) On May 18, 2011, Matthews prepared an estimate which listed the total cost to repair the damage as $1,750, based upon "[l]abor and equipment to grade, add topsoil and hydroseed ruts and damaged lawn areas." (State's exhibit A.) During the hearing, the trial court admitted, as an exhibit, a copy of the estimate. Matthews testified that "a lot of our work we do is based on time and material, which is labor, materials and equipment time." (Oct. 17, 2011 Tr. 13.) Matthews explained that, in arriving at the estimate amount, "it would take a crew of two, one day to go through there and place topsoil, reseed it and make it * * * complete it for the City of Columbus." (Oct. 17, 2011 Tr. 13.)

{¶ 11} Appellant suggests that, because of the passage of approximately six months between the incident and the restitution hearing, the grass may have improved such that the damage was no longer visible. As noted by the city, however, appellant did not submit any evidence of the current condition of the area in question to rebut or contradict the evidence presented by the city's witness.

{¶ 12} In seeking an award of restitution, "the victim may establish the loss through documentary evidence *or testimony*." (Emphasis sic.) *In re Hatfield*, 4th Dist. No. 03CA14, 2003-Ohio-5404, ¶ 9. R.C. 2929.28(A)(1) provides for the admission of "estimates * * * indicating the cost of repairing or replacing property."

{¶ 13} In the instant case, the record reflects that the trial court heard testimony and received documentary evidence with respect to an estimate reflecting the cost of labor and equipment to grade, add topsoil, and apply hydroseed to the damaged lawn. Matthews estimated the total cost of repair to be $1,750. Based upon the testimony and documentary evidence submitted, we conclude that the trial court did not abuse its discretion in ordering restitution in the amount of $1,750. *See State v. Powell*, 12th Dist. No. CA2010-09-257, 2011-Ohio-3906, ¶ 10 ("Given the 'broad standard' in the revised code section for determining the amount of restitution, the repair estimate was sufficient to establish an amount of restitution.").

{¶ 14} Accordingly, appellant's single assignment of error is overruled, and the judgments of the Franklin County Municipal Court are hereby affirmed.

Judgments affirmed.

BRYANT and DORRIAN, JJ., concur.

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