

[Cite as *State v. Rhinebolt*, 2009-Ohio-5847.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

FLOYD RHINEBOLT

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P. J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 09 CA 01 006

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 07 CR I 10 0596

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 4, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Defendant-appellant Floyd Rhinebolt appeals the January 23, 2009, Judgment Entry of Restitution entered in the Delaware County Court of Common Pleas.

{¶2} Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} The relevant facts are as follows:

{¶4} Floyd Rhinebolt, Jr., (hereinafter Floyd Jr.) received \$425,122.44 from a medical malpractice settlement in January 2003. Floyd Jr. had sued a Marion, Ohio urologist because of an incorrect and unnecessary operation performed on August 14, 1997. The operation involved a re-implantation of the urethra into the bladder. The operation caused severe urinary reflux into the kidneys that led to kidney damage. This will require, at some point in Floyd Jr.'s life, a kidney transplant. Floyd Jr. was 16 years old at the time of the settlement. The Probate Court of Delaware County named Linda Rhinebolt, Floyd's mother, the legal guardian of the minor child's account. Floyd, Jr. turned eighteen years old in September 2005. Mrs. Rhinebolt, a co-defendant in this case, was ordered to deposit the settlement amount of \$425,122.44 in a trust account at Fifth Third Bank "for the benefit of the Minor." Access to the account was restricted to only those expenditures approved by an order of the Probate Court. The funds were earmarked to pay for future medical expenses of Floyd, Jr., including a kidney transplant. Linda Rhinebolt was familiar with this Order, having filed a motion to withdraw funds from the account to pay for medical bills.

{¶15} Appellant is the father of Floyd, Jr. and the husband of Linda Rhinebolt. Over the next year, Linda Rhinebolt, with her husband's knowledge, proceeded to withdraw all but \$4.52 of the \$425,122.44.

{¶16} Mr. and Mrs. Rhinebolt purchased a home so they could move out of their mobile home. After purchasing the residence, the Rhinebolts then secured a mortgage of \$116,000. \$111,569.20 of that mortgage was used by the Rhinebolts to pay down debts, including debts from a bankruptcy filed by both Mr. and Mrs. Rhinebolt. Appellant's signature appeared on the loan application for the mortgage. \$46,000 of the mortgage funds were deposited in appellant's bank account.

{¶17} The Rhinebolts also purchased an in-ground swimming pool. Further money from Floyd, Jr.'s account was used to purchase three "quads" or four-wheel drive vehicles. The bank records, entered as evidence, show dozens of bank counter-checks and wire transfers from the "trust" account into the account of Linda Rhinebolt. On one day alone, deposits of more than \$10,000 were made into appellant's bank account.

{¶18} Mrs. Rhinebolt initiated a wire transfer to purchase a boat. Although she could not remember what kind of boat they had purchased, she testified, "They could ski behind it." The couple purchased a Jacuzzi for the master bedroom and constructed a backyard patio. The Rhinebolts further used the funds to pay for a Florida vacation and to pay off the loan on appellant's truck.

{¶19} Mrs. Rhinebolt entered a plea of guilty to theft and forgery in connection with the settlement money.

{¶10} Later, after the theft was discovered, Floyd Jr. sued his parents and Fifth Third Bank to recover the funds. Fifth Third settled with Floyd Jr. for \$325,000.

{¶11} In 2003, Mrs. Rhinebolt's income was \$3,640. Appellant's income as a truck driver was \$17,000 and an additional \$4,207.81 from his previous employer, Kroger Co. He earned \$16,249 in 2004. Appellant blamed his son for the financial depletion of funds in the trust account because Floyd Jr. wanted to purchase the house.

{¶12} Appellant was indicted on two counts of theft and one count of receiving stolen property. The jury returned a verdict of not guilty on the two charges of theft. Appellant was found guilty of receiving stolen property. The trial court sentenced appellant to community control. The Court further ordered an award of restitution to be paid to Fifth Third Bank in the amount of \$335, 000.00. The trial court also ordered appellant to pay restitution to his son in the amount of \$92,212.79.

{¶13} Appellant filed an appeal to this Court captioned *State v. Floyd Rhinebolt, Sr.*, Delaware App. No. 2008CAA040015, 2008-Ohio-6218, wherein he raised three assignments which included:

{¶14} “III. The trial court erred and is without authority to award restitution to Fifth Third Bank as they are not a victim and indeed are a joint tortfeasor with appellant.”

{¶15} As to such assignment or error, this Court held:

{¶16} “The trial court ordered restitution in the amount of \$335,000.00 to Fifth Third Bank. However, the parties agree that the bank settled the lawsuit brought against it by Floyd, Jr. for \$325,000.00. There is no explanation in the record concerning the \$10,000.00 windfall to the bank.

{¶17} “The order of restitution to Fifth Third Bank in the amount of \$335,000.00 is vacated and the matter is remanded for an evidentiary hearing on restitution to Fifth Third Bank. That sum is the amount of the actual economic loss the bank incurred as a direct and proximate result of the commission of the offense for which appellant was convicted.”

{¶18} Upon remand, the trial court held an evidentiary hearing

{¶19} By Judgment Entry filed January 23, 2009, the trial court issued an Order of restitution in the amount of \$422,122.44 with \$390,000.00 to be paid to Fifth Third Bank and the remainder of \$32,122.44 to be paid to Floyd Rhinebolt, Jr.

{¶20} Appellant now raises the following assignment of error on appeal:

ASSIGNMENT OF ERROR

{¶21} “I. THE TRIAL COURT ERRED AND DID NOT FOLLOW THE ORDERS OF THE APPELLATE COURT IN THE AWARD OF RESTITUTION TO FIFTH THIRD BANK.”

I.

{¶22} In his sole assignment of error, Appellant argues that the trial court’s restitution order is not based on competent, credible evidence. We disagree.

{¶23} As this Court stated in the prior appeal in this matter, the law in effect at the time of the offense, January, 2003, to and including May 20, 2004, authorized the trial court to award restitution to third parties.

{¶24} R.C. §2929.18(A) in effect at the time provided:

{¶25} “[T]he court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions

authorized under this section * * *. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

{¶26} “(1) Restitution by the offender to the victim of the offender's crime * * * in an amount based on the victim's economic loss. * * * *[T]he restitution * * * may include a requirement that reimbursement be made to third parties for amounts paid to or on behalf of the victim * * * for economic loss resulting from the offense.*” (Emphasis added.)

{¶27} Further, R.C. §2929.01(M) defined economic loss as “any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense.”

{¶28} In *State v. Castaneda*, 168 Ohio App.3d 686, 2006-Ohio-5078, this Court found that an order of restitution must be supported by competent and credible evidence from which the trial court can discern the amount of restitution to a reasonable degree of certainty. *Castaneda*, ¶ 18, citing *State v. Gears* (1999), 135 Ohio App.3d 297, 300. A trial court abuses its discretion if it orders restitution in an amount that does not bear a reasonable relationship to the actual loss suffered. *Id.*, citing *State v. Williams* (1986), 34 Ohio App.3d 33. The State bears the burden of establishing the restitution amount. *Id.*

{¶29} Upon review, we find that the trial court based its decision on competent, credible evidence. At the evidentiary hearing in this matter, the trial court was presented with evidence as to the initial balance in the trust account, the amount used

to pay medical bills and the amount remaining in the account on March 24, 2006. A packet of information was provided to the trial court which included part of the record from the probate court proceedings wherein Linda Rhinebolt testified.

{¶30} In arriving at the restitution amount in the instant case, based on the evidence before it at the evidentiary hearing and the prior trial, the trial court determined that the actual economic loss to Fifth Third Bank was the initial deposit of \$390,000.00 and that economic loss to Floyd, Jr. was \$32,122.44.

{¶31} We find that such award bears a reasonable relationship to the actual loss suffered by both the bank and Floyd, Jr.

{¶32} Accordingly, Appellant's sole assignment of error is overruled.

{¶33} For the foregoing reasons, the judgment of the Court of Common Pleas, Delaware County, Ohio, is affirmed.

By: Wise, J.

Farmer, P. J., and

Hoffman, J., concur.

/S/ JOHN W. WISE

/S/ SHEILA G. FARMER

/S/ WILLIAM B. HOFFMAN

JUDGES

