

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-09-081

Appellee

Trial Court No. 2007CR0476

v.

Tonja Broud

DECISION AND JUDGMENT

Appellant

Decided: June 11, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Aram Ohanian, Assistant Prosecuting Attorney, for appellee.

Edward L. Schimmel, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas which imposed restitution against appellant in the amount of \$65,768 following an evidentiary hearing. The hearing was held in connection with appellant's felony theft

conviction. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Tonja Broud, sets forth the following sole assignment of error:

{¶ 3} "I. The Trial Court abused its discretion when it ordered the Appellant to pay restitution in the amount of \$65,768.00."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. This case arises from appellant's four-year employment in the household of a Perrysburg widower. The victim retained the services of appellant after his wife passed away to assist him with various housekeeping and bookkeeping duties. In the course of this arrangement, the victim entrusted appellant with a number of his credit cards.

{¶ 5} In 2007, the victim retained a replacement household assistant after appellant relocated to Florida. The replacement assistant soon discovered that appellant had repeatedly utilized the victim's credit cards for unauthorized personal usage and cash advances. Appellant's misuse of the victim's credit cards resulted in substantial credit card debt accumulating against the victim.

{¶ 6} On November 8, 2007, appellant was indicted on one count of theft, in violation of R.C. 2913.02(A)(2), a fourth degree felony. A two-day jury trial commenced on August 14, 2008. Appellant was found guilty of felony theft stemming from the credit card misuse. On October 14, 2008, appellant was sentenced to a five-year term of community control.

{¶ 7} The matter was subsequently remanded by this court in order to have the trial court conduct the requisite restitution evidentiary hearing pursuant to R.C. 2929.18. On October 27, 2009, the restitution hearing was performed.

{¶ 8} The trial court heard detailed testimony from the replacement assistant who had discovered the theft. The assistant testified with specificity regarding the monetary damages incurred by the victim as a result of appellant's misuse of the victim's credit cards. In addition, testimony was taken from the victim. Counsel for appellant cross-examined the witnesses. On November 7, 2009, the trial court ordered appellant to make restitution to the victim in the amount of \$65,768. Timely notice of appeal was filed.

{¶ 9} In the sole assignment of error, appellant asserts that the trial court abused its discretion in its restitution order. In support, appellant asserts that the trial court engaged in, "a very convoluted and incomprehensible analysis," in its restitution assessment.

{¶ 10} It is well-established that restitution orders are reviewed pursuant to the abuse of discretion standard. *State v. Williams* (1986), 34 Ohio App.3d 33. In conjunction with this, restitution amounts must be determined based upon competent, credible evidence. *State v. Gears* (1999), 135 Ohio App.3d 297. An abuse of discretion connotes more than a mere error of law or judgment. It requires establishing that the disputed trial court action was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 11} In applying these controlling legal principles to the instant case, we note that the record of the hearing reflects that the bookkeeping assistant's testimony clearly and specifically delineated various pecuniary damages sustained by the victim as a result of appellant's credit card misuse.

{¶ 12} The record also significantly shows that in order to mitigate damages, the victim retained legal counsel to negotiate down significantly payoff amounts to the credit card companies. The record shows that the restitution amount ordered was comprised of the mitigated credit card payoff amounts, the amount needed to cover income tax implications triggered by the negotiated payoffs, the interest on loans secured to facilitate the payoffs, legal fees, and closing costs.

{¶ 13} The record reflects that the restitution order was established by competent credible evidence. The record is devoid of any indicia of an abuse of discretion in the restitution order. We find appellant's assignment of error not well-taken.

{¶ 14} Wherefore, based on the foregoing, we find that substantial justice has been done. The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
