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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL MEDINA, JR.,

Defendant and Appellant.

D058545

(Super. Ct. No. JCF22610)

APPEAL from a judgment of the Superior Court of Imperial County,
Christopher W. Yeager, Judge. Affirmed.

Manuel Medina, Jr. pleaded guilty to attempted murder of his wife (Pen. Code,¹ §§ 664/187) and admitted he personally inflicted great bodily injury (§ 12022.7, subd. (a)). Medina was sentenced to a determinate term of 12 years in prison. Following three restitution hearings, the court ordered restitution to be paid to the victim in the amount of \$28,221.32.

¹ All further statutory references are to the Penal Code unless otherwise specified.

Medina appeals challenging only a portion of the restitution order imposed by the court. Specifically, he contends the court erred in ordering restitution in the amount of \$25,170.95 billed by the University of California San Diego (UCSD) hospital. He contends there is not sufficient evidence of the amount actually owed by Medina's wife. Medina also contends, for the first time on appeal, that ordering restitution in the amount selected by the court amounts to an excessive fine in violation of the Eighth Amendment.

We find no abuse of discretion and find there is sufficient evidence to demonstrate that there has not been any insurance payment to the hospital and therefore no adjustment of the bill by the hospital so that Medina's wife remains obligated to pay the full amount of the bill. We are also satisfied the restitution order, based on the actual economic losses of the victim, does not constitute a fine or punishment and thus does not violate the state or federal Constitutions.

STATEMENT OF FACTS

Since Medina does not challenge his conviction or that the victim was treated for injuries he inflicted, we find it unnecessary to set out a statement of the facts of the offense. It is sufficient to note Medina severely injured his wife by throwing sulfuric acid on her in an attempt to kill her. The victim was treated at a local hospital and then air-lifted to the UCSD hospital for treatment of severe chemical burns.

DISCUSSION

I

THE AMOUNT OF RESTITUTION

Following Medina's guilty plea the court held several restitution hearings in an attempt to determine the correct amount of restitution necessary to compensate the victim for her economic losses. At the end of the process, the only amount in dispute was the amount, if any, owed to UCSD for necessary medical care. The difficulty in calculating the amount arose because Medina's insurance company, Tricare, initially paid around \$5,900 to the hospital and it appeared the hospital adjusted the balance to accept that amount as basically full payment. Unfortunately, the insurance company then determined that Medina's policy did not provide coverage and withdrew its payment. Thereafter the hospital billed the victim for the full amount. In the trial court Medina indicated he was willing to pay the amount which was initially paid by the carrier. Following the dispute over what was owed, Medina took the position that no amount had been proved. He now contends there is not sufficient evidence in the record to support the amount of restitution ordered for the UCSD treatments and thus the trial court abused its discretion in ordering the full amount of the bill in restitution.

A. Legal Principles

In California, crime victims have both constitutional and statutory rights to restitution for their economic losses "from the persons convicted of crimes for losses they suffer." (Cal. Const., art. I, § 28, subd. (b); § 1202.4, subd. (f); *People v. Baker* (2005) 126 Cal.App.4th 463, 467 (*Baker*).)

The standard of proof of the amount of restitution is by a preponderance of the evidence. (*Baker, supra*, 126 Cal.App.4th at pp. 468-469.) Trial courts have broad discretion to set the amount of restitution, choosing any rational method of calculating the appropriate amount. (*People v. Giordano* (2007) 42 Cal.4th 644, 663-664 (*Giordano*)). We will sustain a trial court's decision on the amount of restitution unless the record shows it to be a clear abuse of discretion. (*People v. Prosser* (2007) 157 Cal.App.4th 682, 686-687.) On appeal we will not reweigh the evidence regarding restitution but will determine whether there is sufficient substantial evidence to meet the lower burden of proof required for such calculation. (*Ibid.*)

B. Analysis

Relying in part on his interpretation of *People v. Bergin* (2008) 167 Cal.App.4th 1166 (*Bergin*), Medina argues that a court may not order restitution in an amount simply based on a hospital bill. He argues the bill might be adjusted, or that his insurance might actually pay some portion of it. The opinion in *Bergin* does not aid Medina.

Bergin held that where the bill had been settled for the amount paid by insurance, the restitution order could not be based on the higher amount billed. All that could be required was for the defendant to be responsible for what was actually paid to settle the medical costs, in that case the amount paid by insurance. (*Bergin, supra*, 167 Cal.App.4th at p. 1172.) The court noted that nothing in the record in that case showed that the victim might be liable for an amount above what was paid by insurance. (*Id.* at p. 1172, fn. 4.)

Similarly, in *People v. Millard* (2009) 175 Cal.App.4th 7, we held that to "fully

reimburse" a victim for medical expenses as required by section 1202.4, subdivision (f)(3), "means to reimburse him or her for all out-of-pocket expenses actually paid by the victim or others on the victim's behalf (e.g., the victim's insurance company." (*Millard, supra*, at p. 27.)

It was not necessary for the trial court to determine whether Medina's insurance carrier could properly withdraw its payment to the hospital. The record showed that the payment was withdrawn because the carrier determined that Medina was not covered at the time he injured his wife. Nor was it unreasonable for UCSD to likewise withdraw the adjustment it had made when the carrier made payment.

The final record before the trial court showed that UCSD had not been paid by anyone and that they had billed the victim for the full amount. Thus it was not an abuse of discretion for the court, based on those facts to hold Medina responsible for the whole, unpaid amount. Although the victim had not yet paid the bill, she was liable for the amount and it was entirely reasonable for Medina to be required to pay for the medical care which was required by his criminal conduct.

II

EXCESSIVE FINES

Medina argues that the restitution order imposed on him by the trial court amounts to an excessive fine in violation of the Eighth Amendment. We find the argument to be without merit.

The Eighth Amendment prohibits the imposition of excessive fines. The word fine, as used in that provision, has been interpreted to be "a payment to a sovereign as

punishment for some offense." (*United States v. Bajakajian* (1998) 524 U.S. 321, 327-328.) A fine is excessive for purposes of the Eighth Amendment "if it is grossly disproportionate to the gravity of the defendant's offense." (*Id.* at p. 334.)

Victim restitution is not punitive. (*People v. Harvest* (2000) 84 Cal.App.4th 641, 649-650 (*Harvest*)). It is paid to the victim and not the state and its purpose is to make the victim whole, not to punish the defendant. Simply stated, an order requiring a convicted defendant to pay the victim for his or her economic losses caused by the defendant's criminal conduct is not a fine. Accordingly the Eighth Amendment prohibition against excessive fines is not implicated

In his reply brief, Medina argues that *Harvest, supra*, 84 Cal.App.4th 641, has been severely criticized by the Supreme Court. Thus he argues the holding that restitution is not a punishment should be suspect. We disagree. In *Giordano, supra*, 42 Cal.4th at page 662, footnote 6, the court commented on *Harvest* and several other cases. The court noted that some courts have held that restitution hearings require less due process than other hearings. The view was premised on the idea that restitution hearings are sentencing hearings. The court went on to note that *Harvest* and the other cases cited were decided before *Cunningham v. California* (2007) 549 U.S. 270, which addressed certain Sixth Amendment issues implicated in sentencing hearings. Having noted that subsequent Sixth Amendment case law might implicate such "sentencing hearings" the court noted no such issue had been presented by *Giordano*, thus "we do not have occasion to address possible constitutional challenges to restitution hearings." (*Giordano, supra*, at p. 662, fn. 6.)

Respectfully, the court's comments in *Giordano, supra*, 42 Cal.4th 644, have absolutely nothing to do with the question of whether restitution orders are "fines." The issue was not addressed in *Giordano* and the Eighth Amendment was not even mentioned. Whatever the implication of the court's ruminations about the impact of Sixth Amendment and due process jurisprudence might have on the viability of portions of the opinions in *Harvest, supra*, 84 Cal.App.4th 641, and the other cited cases, nothing indicates the high court disagrees with the conclusion that restitution is not punishment. Since restitution is not punishment and is not a sum payable to the sovereign as punishment, it does not amount to a fine, let alone an excessive fine.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.