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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CAMERON D., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CAMERON D.,

Defendant and Appellant.

D060356

(Super. Ct. No. J228162)

APPEAL from a judgment of the Superior Court of San Diego County, Carolyn Caietti, Judge. Affirmed.

INTRODUCTION

The juvenile court declared Cameron D. a ward of the court after he admitted committing a misdemeanor assault by means of force likely to produce great bodily injury (Pen. Code, §§ 17, subd. (b)(4), 245, subd. (a)(1)). Consistent with the plea agreement leading to the admission, the juvenile court dismissed two other felony

charges, in which Erick Becker was the victim. At a subsequent restitution hearing, the juvenile court ordered Cameron to pay Becker restitution of \$4,106, consisting of \$2,393.04 for lost wages, \$412.96 for Becker's share of an ambulance bill, and \$1,300 for the portion of the ambulance bill paid by his insurance company.¹

Cameron appeals, contending the juvenile court abused its discretion by failing to apply comparative fault principles in determining the restitution amount and by failing to reduce the amount of the restitution because of compelling and extraordinary circumstances. We conclude there is no merit to these contentions and affirm the judgment.

BACKGROUND

According to evidence presented at the restitution hearing, Cameron and his two companions encountered Becker and Becker's companion in the middle of the night at a convenience store. Becker, who was under the influence of alcohol, confronted Cameron about something. Cameron lightly pushed Becker. Becker went outside and Cameron and his companions followed. Becker took a confrontational stance and started physically fighting with one of Cameron's companions. Cameron intervened and kicked Becker in the head or face twice.

¹ The parties do not dispute the juvenile court had the authority to order restitution to a victim of dismissed charges. (Pen. Code, § 1192.3, subd. (b); *People v. Harvey* (1979) 25 Cal.3d 754, 758; *In re T.C.* (2009) 173 Cal.App.4th 837, 849-850.)

Becker's companion ran out of the convenience store, presumably to assist Becker. Cameron immediately confronted him, punched him, threw him on the ground, and kicked him. Cameron then turned his attention back to the fight with Becker while Becker's companion got up and ran back into the convenience store.²

Becker lost consciousness during the fight and suffered a broken eye socket, a broken back, and bleeding in the front of his brain. He spent several days in the hospital, where he had surgery to reconstruct his eye socket, and he was unable to return to work for two months after the fight.

DISCUSSION

I

At the restitution hearing, Cameron asserted the juvenile court should apply comparative fault principles and reduce Becker's restitution award by 50 percent. Alternatively, he asserted the juvenile court should reduce Becker's restitution award by 50 percent because the circumstances of the fight, particularly Becker's drunken state and his instigation of the fight, provide compelling and extraordinary reasons for doing so. The juvenile court declined to reduce the restitution award, finding comparative fault principles did not apply in this case and there were no compelling and extraordinary reasons for doing so. Cameron challenges both findings on appeal.

² The charge Cameron admitted related to his confrontation with Becker's companion.

II

Crime victims have a state constitutional right to restitution when they suffer losses because of criminal activity. (Cal. Const., art I, § 28, subd. (b)(13); *People v. Giordano* (2007) 42 Cal.4th 644, 652.) A court, therefore, must require a juvenile ward to pay restitution in every case where a victim suffers economic losses, including lost wages and medical expenses, because of the juvenile's criminal conduct. (Welf. & Inst. Code, § 730.6, subd. (a)(2)(B) & (h)(2) & (4).) The restitution amount must be sufficient to fully reimburse the victim unless the court finds compelling and extraordinary reasons for awarding less than full restitution and states those reasons on the record. (*Id.*, subd. (h).) We review restitution orders for abuse of discretion. (*Giordano, supra*, at p. 663.)

A

We addressed the application of comparative fault principles to victim restitution in *People v. Millard* (2009) 175 Cal.App.4th 7 (*Millard*). We concluded comparative fault principles implicitly applied in cases where the defendant's conduct was criminally negligent to ensure the defendant was only required to reimburse the victim for economic losses actually attributable to the defendant's conduct. (*Id.* at pp. 39, 41.)

However, we recognized comparative fault principles did not apply in cases where the defendant's conduct was intentional, such as when the defendant commits a murder, robbery, or battery. (*Millard, supra*, 175 Cal.App.4th at p. 41.) "[T]here is 'an unbroken line of authority barring apportionment [based on comparative fault] where . . . the defendant has committed an intentional tort [e.g., battery] and the injured plaintiff was

merely negligent.' (*Heiner v. Kmart Corp.* (2000) 84 Cal.App.4th 335, 350; cf. *Thomas v. Duggins Construction Co., Inc.* (2006) 139 Cal.App.4th 1105, 1112 [recognizing deterrence and punishment policy reasons *preclude* a reduction of an intentional tortfeasor's liability in proportion to the plaintiff's contributory negligence].)" (*Millard, supra*, at p. 38.) Since Cameron's conduct in this case was intentional, the juvenile court correctly declined to apply comparative fault principles to reduce the restitution award in this case.

The fact Becker's conduct may also have been intentional does not alter our conclusion. Cameron has not cited to nor have we located any cases allowing the application of comparative fault principles where both the victim and the perpetrator engaged in intentional conduct. As Cameron acknowledges, the cases upon which he relies address the doctrine of comparative equitable indemnity. (See, e.g., *Baird v. Jones* (1993) 21 Cal.App.4th 684, 686.) This doctrine involves the allocation of responsibility for a plaintiff's damages among concurrent tortfeasors. (*Id.* at p. 689.) Becker's status as a victim is not analogous to a concurrent tortfeasor. Consequently, these cases offer us no helpful guidance.

Moreover, while Becker's actions were indisputably condemnable, Cameron's criminal conduct was the use of excessive force in response to Becker's actions. As Becker's economic losses were the direct result of the injuries he sustained from Cameron's use of excessive force, our policy concern in *Millard*—that absent application of comparative fault principles a defendant might be required to reimburse a victim for

economic losses not actually attributable to the defendant's criminal conduct—is not present here. (*Millard, supra*, 175 Cal.App.4th at pp. 39, 41.)

III

Cameron alternatively contends the juvenile court abused its discretion by failing to reduce the restitution award because Becker's actions provided compelling and extraordinary reasons for doing so. We disagree.

The abuse of discretion standard " 'asks in substance whether the ruling in question "falls outside the bounds of reason" under the applicable law and the relevant facts [citations].' [Citation.]" (*People v. Giordano, supra*, 42 Cal.4th at p. 663.) Although Becker was drunk and instigated the altercation, Cameron's response was unquestionably excessive, as manifested by Becker's severe injuries. Becker's claimed economic losses were relatively modest and essentially limited to items not covered by his medical and disability insurance providers. Given the severity of the injuries Cameron inflicted on Becker and rehabilitative benefit of impressing upon Cameron that he had other options short of using excessive force, we cannot conclude the juvenile court's decision to require Cameron to reimburse Becker for his uninsured economic losses fell "outside the bounds of reason."

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

McINTYRE, J.