

IN THE COURT OF APPEALS OF IOWA

No. 8-299 / 97-1722

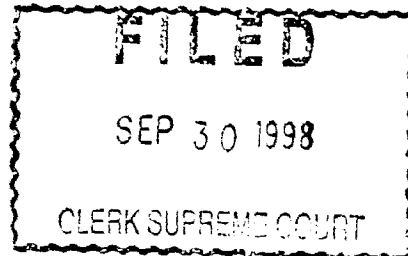
STATE OF IOWA,

Plaintiff-Appellee,

vs.

STEVEN DEAN BALLARD,

Defendant-Appellant.



Appeal from the Iowa District Court for Johnson County, David M. Remley,
Judge.

Steven Ballard appeals from the district court's denial of his objections to the
State's claims for victim restitution. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney
General, J. Patrick White, County Attorney, and Anne Lahey, Assistant County
Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Mahan, JJ.

PER CURIAM.

Defendant-appellant Steven Ballard appeals from the district court's denial of his objections to the State's claim he pay for restitution to the crime victim compensation program. Defendant claims the State failed to establish the parents of the victim of his crime were entitled to restitution for counseling fees. We affirm.

In January 1997, defendant pled guilty to two counts of sexual abuse in the second degree. He was sentenced to prison and ordered to pay restitution of \$896.50, which was the amount of the victim's counseling fees to that date.

In July 1997, the State filed a motion to amend the restitution order to increase it by \$3046.50. This amount was paid by the crime victim compensation program for a counselor for the victim, his siblings, and his parents. Defendant objected to the increase. A hearing was held and Alison Whall, the restitution coordinator for the Iowa Department of Justice Crime Victim Assistance Division, testified the department investigated to determine whether the counseling was related to a crime before the amounts were paid. The district court denied defendant's objection and ordered him to pay the additional amount of restitution.

On appeal, defendant challenges only the restitution he was ordered to pay for counseling the victim's parents. He does not challenge the amount of the restitution. He asserts the State failed to show his criminal act was the proximate cause of the counseling fees or that the counseling was necessary. Defendant contends Whall's

testimony ~~was~~ not sufficient to establish the claim for restitution because she did not have any direct knowledge about the parents' counseling.

Our review of a restitution order is on error. *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989).

A restitution order must rest on a causal connection between the established criminal act and the injury to the victim. *State v. Wagner*, 484 N.W.2d 212, 216 (Iowa App. 1992). It is the burden of the State, not the defendant, to prove the amount of damages causally connected to the criminal act. *State v. Tutor*, 538 N.W.2d 894, 897 (Iowa App. 1995). We examine the record to determine if there is substantial evidence supporting the district court's decision. *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa App. 1995).

The definition of "restitution" includes the payment of crime victim compensation program reimbursements. Iowa Code § 910.1(3) (1995).¹ The crime victim compensation program may award compensation for reasonable charges for

¹ Iowa Code section 910.1(3) provides:

910.1 Definitions. As used in this chapter, unless the context otherwise requires:

....
 3. "*Restitution*" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution also includes fines, penalties, and surcharges, the payment of crime victim compensation program reimbursements, court costs, court-appointed attorney's fees, or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs, court-appointed attorney's fees, or the expense of a public defender.

Iowa Code § 910.1(3) (1995).

mental health care. Iowa Code § 912.6(1).² Since 1995, the program may award compensation to secondary victims, which includes the victim's parents and siblings. Iowa Code § 912.1(5).³ Thus, the crime victim assistance program is authorized to award compensation for counseling to the victim's parents if there is substantial evidence to support a finding the counseling was necessary because of defendant's criminal act. *See Ihde*, 532 N.W.2d at 829.

The first question is whether Whall's testimony was sufficient to establish defendant's responsibility to reimburse the crime victim assistance program. According to Whall, if a request for compensation for counseling is made by a crime victim, an investigator in the department checks whether the counseling is related to

² Iowa Code section 912.6(1) provides:

912.6 Computation of compensation. The department shall award compensation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed ten thousand five hundred dollars. Reasonable charges incurred for mental health care not to exceed three thousand dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 236A.1.

Iowa Code § 912.6 (1995).

³ Iowa Code section 912.1(5) provides:

912.1 Definitions. As used in this chapter, unless the context otherwise requires:

5. "Secondary victim" means the victim's spouse, children, parents, and siblings, and any person who resides in the victim's household at the time of the crime or at the time of the discovery of the crime. Secondary victim does not include persons who are the survivors of a victim who dies as a result of a crime.

Iowa Code § 912.1(5) (1995), as amended by 1995 Iowa Acts ch. 85, § 1.

a crime. If the investigator is satisfied the counseling is necessary because of the crime, a request for compensation is sent to Whall. Whall pays the bill and seeks reimbursement by asking for compensation from the perpetrator of the crime. Whall's testimony proved the crime victim compensation program spent the claimed amount on counseling for the victim's parents.

We agree Whall's testimony, standing alone, was not sufficient to prove the counseling was a necessary result of defendant's wrongful act. However, other evidence does show a causal connection between defendant's crime and the parents' counseling. Defendant pled guilty to performing oral sex on a six-year-old child. As a result of the crime, the child became depressed, suicidal, and began to have behavioral problems. The child was hospitalized for two weeks and placed on anti-depressant medication. Due to the severe consequences to the child, we find there was a connection between defendant's act and the parents' need for counseling. The parents received counseling during the same period of time the child was receiving counseling. We conclude there is substantial evidence to support the district court's findings.

We affirm the restitution order entered by the district court.

AFFIRMED.