

Howell Gets Criminal

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In Re R.O., et al.

2014 WL 801296 (Feb. 28, 2014)

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CASE OVERVIEW

Although uncitable, another California Court of Appeal has favorably expanded the *Howell* ruling to apply to restitution awards in criminal matters. In this criminal appeal, the juvenile court of Alameda County Superior Court found two gang-affiliated minors “willfully and maliciously” fired a gun into an occupied vehicle. The juvenile court ordered restitution in the amount of \$11,386.96. On appeal, one minor contended “insufficient evidence” supported the restitution award.

The Court of Appeal, First District, analyzed medical expenses billed versus paid and concluded substantial evidence supported the juvenile court’s restitution award. The Court affirmed the restitution order.

FACTUAL BACKGROUND

On August 2, 2001, minor M.B. was sitting inside a parked van

outside an apartment complex. Two minors, M.L. and R.O., approached the van and one discharged a firearm, shooting M.B. The juvenile court found R.O. willfully and maliciously discharged a firearm at an occupied vehicle and assaulted M.B. The juvenile court found M.L. also willfully and maliciously discharged a firearm at an occupied vehicle. Both M.L. and R.O. appealed.

M.B.’s mother requested the juvenile court order restitution in the amount \$2,311.96 for M.B.’s medical bills incurred for treating the gunshot wound. The juvenile court ordered M.L. to pay \$11,385.96 in restitution, and M.L. appealed.

JUVENILE COURT AFFIRMED ON APPEAL – HOWELL RELEVANT TO CRIMINAL RESTITUTION

M.B.’s mother requested restitution for the ambulance (\$2,191.96), Alameda County Medical Center (“ACMC”) (\$35.00), three visits to Kaiser (\$45.00), and an arm brace (\$40), totaling \$2,311.96. At the restitution hearing, the People also presented a bill from ACMC, a non-Kaiser facility, with total charges of \$9,224.00. The ACMC bill indicated Kaiser made three payments on the account in the amount of \$9,074.00, \$9.67, and \$80.33, totaling \$9,199.00. The ACMC bill further noted

“[y]our insurance company has paid its portion. The balance [of \$35] is now due from you.”

The Appellate Court explained, in order to recover restitution, the People must present a prima facie case of damages incurred. However, the victim is not required to supply sworn testimony or provide detailed documentation of the incurred expenses. Courts need only employ a “rational method” of calculation “to make the victim whole” when issuing a restitution order. 2014 WL 801296 at *9.

Several pre-*Howell* restitution cases have agreed: “[v]ictim restitution may include amounts billed for medical services provided by a health maintenance organization (HMO), ‘even when the victim is an HMO member not required to pay for those medical services.’” 2014 WL 801296 at *10 (quoting *In re Eric S.* (2010) 183 Cal.App.4th 1560, 1562) (emphasis added). Indeed, victims have been allowed to recover charges their HMO incurred on their behalf for medical treatment necessitated by the defendant’s criminal conduct, even if the victim was not obligated to pay the fully incurred amount pursuant to their HMO agreement. *People v. Duong* (2010) 180 Cal.App.4th 1533, 1539.

However, when the insurer agrees to accept a reduced amount as full payment for the

medical services rendered, restitution is “only required in the amount that the record shows [the insurer] will accept as full payment for the services, not [for] the full amount billed[.]” 2014 WL 801296 at *10 (quoting *Duong*, 180 Cal.App.4th at 1539) (internal quotations omitted). The R.O. Court cited *Howell v. Hamilton Meats* (2011) 52 Cal.4th 541, 567-568 and explained “actual losses due to personal injury are no more than what providers accept for payment for services and do not include amounts providers ‘write off.’”

Accordingly, the R.O. Court concluded evidence before the juvenile court showed the insurer (Kaiser) paid ACMC \$9,199.00 for the \$9,224.00 billed medical treatment. The evidence reflects ACMC held the victim responsible for the remaining \$35 gap. No evidence in the case suggested ACMC accepted a lesser amount in satisfaction of the medical treatment billed. Therefore, substantial evidence supported the juvenile court’s restitution order of \$11,385.96.

SO WHAT DOES IT ALL MEAN?

While the R.O. Court did not reduce the restitution award in this case because the full billed amount was actually paid by Kaiser, the *Howell* analysis appears sound even in criminal cases. Several pre-*Howell* opinions have held victims may recover restitution for full billed amounts; “the tortfeasor should receive no windfall because the victim had the thrift and

prescience to purchase insurance[.]” *People v. Brikett* (1999) 21 Cal.4th 226, 247 fn.19. Nevertheless, the victim is not permitted to recover restitution in excess of paid amounts when the insurer has agreed to accept a lesser paid amount in full satisfaction of the medical treatment rendered.

Though *In re R.O.* is uncitable, we believe its reasoning is sound and further supports the position arbitrary medical billings should be ignored in the face of actual payments. In the wake of *Howell*, we anticipate more criminal courts will continue to follow suit in capping restitution awards at amounts paid in full satisfaction of medical expenses. With criminal courts coming in line with their civil counterparts, it is clear *Howell* is here to stay.

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