In the

Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2007-1462
	:	
Appellant,	:	
	:	On Appeal from the
v.	:	Crawford County
	:	Court of Appeals,
CHARLES W. BARTHOLOMEW,	:	Third Appellate District
	:	
Appellee.	:	Court of Appeals Case
	:	No. 3-06-16
	:	

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INTRODUCTION

Restitution payments serve two purposes that are critical to this case. First, they deter, rehabilitate, and punish offenders while bringing justice to victims. Second, they help to fund in part Ohio's Victims of Crime Reparation Fund ("Victims Fund"), which provides vital services to victims. As the State explained in its Merit Brief, the text of R.C. 2929.18(A)(1) and R.C. 2743.72(E) authorizes a trial court to designate the Victims Fund as the agency to receive restitution payments. Bartholomew responds to these textual arguments with the policy position that "civil courts" are better equipped to "handle the collection of monies" than are "criminal courts," and, therefore, a criminal trial court may not order restitution to the Victims Fund. Bartholomew Br. at 4. Instead of obtaining a restitution order as part of the criminal proceeding, according to Bartholomew, the Victims Fund must initiate a separate civil proceeding to recover costs the Victims Fund has already paid to victims.

The statute, however, does not contemplate—let alone require—the cumbersome two-step process that Bartholomew advocates. And preferring civil proceedings over criminal proceedings for collection purposes is a distinction without a difference, because judges presiding over both criminal and civil proceedings may enter judgments for monetary relief. What requiring civil proceedings does do, however, is reduce the State's mechanisms for enforcing restitution orders. Finally, allowing one adjudication, rather than requiring a redundant civil proceeding, conserves the resources of both the judiciary and the Victims Fund.

ARGUMENT

A. Ohio's criminal justice scheme provides for one proceeding where a defendant may be ordered to pay restitution to the Victims Fund.

In ignoring the plain statutory text, Bartholomew commits two errors: First, he fails to recognize that the statute authorizes restitution payments to the Victims Fund, and second, he

proposes a system that the General Assembly never contemplated. Unlike the two-step process Bartholomew favors, R.C. 2929.18(A) states that "the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction," including restitution. The General Assembly envisioned one proceeding where the victim could receive relief by having her offender sentenced and ordered to pay restitution. The Crime Victims Reparation Act is part of the criminal justice scheme, and, indeed, it is the trial court during the criminal sentencing phase that orders restitution. See, e.g., *State v. Tolar* (1st Dist), 2003 Ohio App. Lexis 5193, 2003-Ohio-5836 (affirming trial court's award of restitution); *State v. Foster* (12th Dist. Sept. 18, 2006), 2006 Ohio App. Lexis 4749, 2006-Ohio-4830 (same).

What is more, the statute makes clear that restitution may be paid to an "agency designated by the court," including the Victims Fund. R.C. 2929.18(A)(1); see also R.C. 2743.72(E) ("The [Victims Fund] is an eligible recipient for payment of restitution."). Bartholomew attempts to avoid the plain statutory text by mischaracterizing the mechanics of debt-collecting and claiming that "[i]t is better for the civil courts to handle the collection of monies." Bartholomew Br. at 4. Bartholomew appears to assume the judge herself collects on a judgment. But when any judgment, emanating from either a civil or criminal proceeding, is executed, the clerk of courts issues the execution to the sheriff of a county. R.C. 2327.01. For example, Crawford County has one clerk of courts, not a clerk for civil proceedings and a separate clerk for criminal proceedings. And the clerk of courts—not an individual judge or court—is responsible for bookkeeping. Compare Bartholomew Br. at 6 (claiming that criminal courts should not order restitution because then they will have to "undertake the record-keeping").

The restitution statute recognizes that a judge herself will not be collecting restitution and explains that "[e]ach court imposing a financial sanction upon an offender . . . may designate the

clerk of the court or another person to collect the financial sanction." R.C. 2929.18(E). Moreover, R.C. 2929.18(D) defines an offender who owes restitution as a "judgment debtor"—the same label given to someone who owes money pursuant to a civil judgment. Thus, regardless of whether an order requiring a defendant to pay the Victims Fund emanates from a civil proceeding or a criminal proceeding, the result is the same: the clerk of courts will be responsible for collecting the judgment. By claiming that a "civil court" rather than a "criminal court" is more suited to handle debt collection, Bartholomew misunderstands the process by which courts enforce judgments for restitution and offers a solution that makes no sense.

Bartholomew also argues that the General Assembly did not want the criminal justice system to turn into an "unpaid collection agency." But that argument misses the point, as described above, of who actually collects the money. The misuse of this quote also perverts Justice Pfeifer's point in *State v. Kreicher* (2006), 109 Ohio St. 3d 391, 2006-Ohio-2706. In his opinion concurring in part and dissenting in part, Justice Pfeifer explained that "restitution is not intended to be a windfall for insurance companies," *id.* at ¶ 15, and an insurance company does not have a right to use the "criminal justice system as an unpaid collection agency." *Id.* at ¶ 16 (Pfeiffer, concurring in part and dissenting in part). Unlike an insurance agency, the Victims Fund is not a nongovernmental third party using the criminal justice system for a windfall. Instead, the Victims Fund is an agency statutorily permitted to collect reimbursement for what it has already paid on behalf of a victim. While an insurance company has a contractual duty to compensate its paying customers, the Victims Fund simply advances money to victims so that victims may receive relief at a meaningful time when it is needed most. Also, *Kreicher* interpreted a previous version of R.C. 2929.18(A)(1), making its analysis beside the point in this case. See *Kreicher*, 2006-Ohio-2706 at ¶ 1. Finally, Justice Pfeiffer's "comments in the

dissenting opinion . . . are just that: comments in a dissenting opinion." See *United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 176 n.10 (1980). The majority in *Kreicher*, unlike Justice Pfeifer, concluded that criminal courts could order restitution payments to insurance companies, and that doing so did not transform the criminal justice system into an "unpaid collection agency." See *Kreicher*, 2006-Ohio-2706 at ¶ 13 (interpreting the previous version of R.C. 2929.18(A)(1) to allow restitution payments to third-party insurers).

Bartholomew raises two additional irrelevant issues in comparing civil and criminal proceedings. First, he invokes R.C. 2329.66 to claim that civil judgments are subject to exemptions. But the restitution statute provides no reason to assume that the General Assembly wanted offenders to enjoy an abundance of exemptions. Indeed, many exemption statutes do not allow a wrongdoer to shelter his assets. See, e.g., 11 U.S.C. 523(a)(6) (denying discharge of debts for willful and malicious injury). Moreover, criminal offenders do enjoy some protections regarding the ability to pay. When ordering restitution, a criminal court must consider a defendant's financial situation. See *State v. Hamblin* (4th Dist. June 16, 2006), 2006 Ohio App. Lexis 3092, 2006-Ohio-3202 (reversing and remanding sentence where trial court failed to consider defendant's present and future ability to pay); see also R.C. 2929.18(E) (permitting a trial court to hold a hearing to determine a defendant's ability to pay financial sanctions). Second, Bartholomew raises the irrelevant example of garnishing prisoners' wages to say that placing a restitution order on a defendant is a "long, drawn-out process." Bartholomew Br. at 5. Even accepting for a moment that the issue is relevant, both civil and criminal judgments may be used to garnish prisoner wages, again nullifying any distinction between the collection of civil and criminal judgments.

Finally, Bartholomew's policy arguments for requiring an additional civil proceeding pertain to all restitution orders—not only to restitution orders directing payments to the Victims Fund. Bartholomew's allegations of criminal courts' incapacity apply with the same force when a court orders restitution to be paid directly to the victim. Therefore, Bartholomew argues against restitution ordered by a trial court in all cases.

B. Requiring a redundant civil proceeding that reduces the State's enforcement rights undermines the General Assembly's intent and wastes resources.

Restitution serves several purposes. In part, it attempts to compensate the victim for her loss. But it also plays a rehabilitative role by requiring a defendant to "confront the harm his actions have caused." *Kelly v. Robinson* (1986), 479 U.S. 36, 49 n.10. By enacting R.C. 2929.18(A)(1), the General Assembly made clear that restitution is part of the sentencing process, and for restitution to be most effective, it must be seen as part of the punishment for wrongdoing, not simply a civil proceeding where someone is ordered to pay money.

The General Assembly passed the other statute at issue here—the Crime Victims Reparation Fund—to compensate victims when they need financial assistance the most. The purpose was not to allow offenders to avoid restitution orders. But accepting Bartholomew's reasoning will do just that: the State will have to choose between offering timely financial assistance to victims and obtaining a sentencing order that includes restitution. Second, the General Assembly did not create the Victims Fund to put the onus on the State to file an additional civil proceeding. Yet prohibiting a trial court from ordering restitution to the Victims Fund will require the State to initiate a second proceeding on issues that have already been adjudicated. Thus, the Victims Fund will actually be giving additional rights to the offender rather than promoting the General Assembly's intent.

Additionally, requiring the Victims Fund to initiate judicial proceedings apart from the criminal adjudication could mean a windfall for criminals. Indeed, affirming the decision below would jeopardize the 300 open restitution accounts that total $1,456,168. Moreover, requiring a second proceeding wastes judicial resources in addition to the State's. The courts should not be bogged down with redundant civil proceedings, and the Victims Fund does not have unlimited resources to litigate civil suits. Due to increased demand on its funds, the Victims Fund must recover as much money as possible through the use of restitution. In this case, Bartholomew was ordered to pay $426.00 to the Victims Fund. In the scheme of things, that does not seem a large amount. But that amount was important to the victim, and it was important in sentencing Bartholomew and making him internalize the costs of his crime. More to the point, if the Victims Fund is forced to expend its own resources in initiating separate civil actions to recoup each and every seemingly small amount, the costs will quickly add up, to the Victim's Fund considerable financial detriment. So for the Victims Fund to remain solvent, trial courts must be able to designate the Victims Fund as the agency to receive restitution payments.

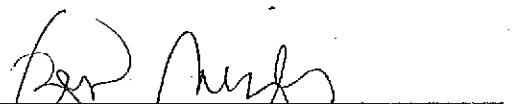
Finally, a judgment from a civil proceeding limits the enforcement mechanisms available to the State. Sanctions may be imposed upon an offender who willfully does not pay court-ordered restitution when the offender is financially able to do so. Unlike the mechanisms available to enforce civil judgments, the State may properly use imprisonment as a form of punishment for failure to pay restitution. An offender's failure to make sufficient bona fide efforts to seek employment or borrow money in order to pay restitution may reflect an insufficient concern for paying the debt he owes to society for his crime. In such a situation, the State is likewise justified in revoking probation and using imprisonment as an appropriate penalty for the offense. See *State v. Kaine* (8th. Dist.), 1999 Ohio App. LEXIS 5467, *5 (citing *State v. Walden* (2nd

Dist.1988), 54 Ohio App. 3d 160, 162). The General Assembly did not intend for the State to lose these enforcement mechanisms simply because the Victims Fund has provided timely relief to a victim. But requiring the Victims Fund to pursue its claims in civil court will do just that.

CONCLUSION

For the above reasons, the Court should reverse the decision below.

Respectfully submitted,



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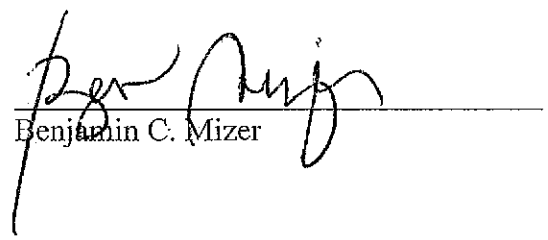

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