

STATE OF MICHIGAN
32ND CIRCUIT COURT-FAMILY DIVISION

IN THE MATTER OF: ROBBY LAMPART

case no: 7-87 DL

OPINION AND ORDER

This is a case involving restitution in a juvenile matter. The case came before the Court at a reimbursement hearing directed at the juvenile's mother Diana Alexandroni for restitution. The original restitution order was entered on Dec. 3, 2007 in the amount of \$28,210. This followed a plea in which Robby was found responsible for the burning of a neighbor's home. A reimbursement order directed at the mother was entered Dec. 5, 2011. An order for wage assignment was entered on Dec. 19, 2007, directed to the mother's employer, Miner's Inc, a supermarket chain. Collections occurred for a period of time, but as indicated on the record and by affidavit, it is undisputed that the mother has since become disabled and her only source of income is Social Security Disability in the amount of \$730 per month. Since her disability, Robby also receives an additional \$545 per month.

Under the juvenile code, the Court is required to order "full restitution" from the juvenile. MCL 712A.30(2). The parent of the juvenile "having supervisory authority for the juvenile at the time of the acts upon which the order of restitution is based" may be required to pay "any portion of the restitution ordered that is outstanding." MCL

712A.30(15). In this case, it was determined that Ms. Alexandroni was the “supervisory parent” who Robby was living with at the time of the offense. The father was the non-custodial parent and not exercising supervision. This was the reason no order was directed at him.

Ms. Alexandroni, through counsel argues that under Federal law, by virtue of being a recipient of Social Security Disability benefits, is exempt from any payment obligation. This is based upon section 207 of the Social Security Act, 42 U.S.C. 407(a), which indicates :

The right of any person to any future payment under this Title shall not be transferable or assignable, at law or in equity and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment , garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

This appears to be a case of first impression in Michigan. Counsel have supplied no specific authority on point and the Court has not discovered any through research. Some reference was made to the similarities of child support collection, but the Social Security Acts makes direct allowance for collection of such. 42 U.S.C 659.

It is the determination of this Court that the act of enforcement of restitution under the Juvenile Code does not constitute “execution, levy, attachment, garnishment or other legal process.” Interception or garnishment of child support is specifically allowed by the

Act, as noted above. There is no similar mechanism for the restitution and this Court cannot therefore “garnish” or have direct payments taken out and submitted to the Court by the Federal government. The Court may however, subject to contempt, consider the benefits as income to the mother and Robby and enforce payment against them personally, once the income is in their possession. To hold otherwise would exempt them from any payments. It would mean that anyone on Social Security Disability, no matter how substantial, would be exempt from paying any court fines or costs levied for any crime, as well as restitution.

The Court also notes that some of the benefits received in this case are Robby’s. The Juvenile Code makes the juvenile primarily responsible for restitution, and can consider his income in the determination. When he was discharged in this case, the court reserved the right to enforcement payment of any delinquent account or reimbursement order. The Court will therefore consider the family’s income of \$1275 in making an order. However, it is clear that circumstances have changed and the current order may need to be reassessed . Therefore, a new reimbursement hearing should be scheduled to determine an equitable payment.

IT IS SO ORDERED.

Date:

Joel L. Massie p30622

Family Court Judge