

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

August 10, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-2254-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**CAMILLE N. SKOTNICKI,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Green County: JAMES R. BEER, Judge. *Reversed.*

Before Dykman, P.J., Eich and Roggensack, JJ.

¶1 ROGGENSACK, J. Camille N. Skotnicki appeals from a judgment ordering her to pay \$4,000 in restitution and an order denying her postconviction motion for relief. She claims that the circuit court erred in ordering restitution for the pre-closing payments due under her contract to purchase Kendall and Kristi

Flood's house because restitution is limited to special damages that have a causal nexus between the crime and the damages a victim of the crime sustains. We agree with Skotnicki that the pre-closing payments which were due under her purchase contract with the Floods are not special damages described in WIS. STAT. § 973.20(5)(a) (1997-98)<sup>1</sup>, because the damages for nonpayment were caused by Skotnicki's breach of the purchase contract and not by any crime considered at sentencing. Therefore, we reverse the circuit court's award of restitution.

### **BACKGROUND**

¶2 On October 21, 1996, Skotnicki signed an offer to purchase real estate from the Floods. The offer was accepted, and the closing was scheduled for no later than August 15, 1997. The contract provided:

Buyer shall be allowed to occupy property as of Nov. 15, 1996 and shall pay seller \$800.00 per mo. for use of property. Payments shall be deposited into Broker's trust account, and shall be applied to down payment at closing.... If property does not go to closing, Seller shall retain money paid as rent, and earnest money shall be returned to buyer.

¶3 Sometime thereafter, Skotnicki placed in the mailbox of the Floods' parents two receipts that appeared to have been signed by the broker designated as the escrow agent for the sale.<sup>2</sup> The receipts indicated that Skotnicki deposited \$7,500 in earnest money and \$2,400 for three months of pre-closing payments

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

<sup>2</sup> The parties dispute when the receipts were placed in the mailbox. The receipts are dated October 28, 1996. However, Kristi Flood testified that she did not receive them until the end of January or the beginning of February. The actual date the receipts were placed in the mailbox, however, is not relevant to our decision.

with the escrow agent. Skotnicki later admitted that she forged the broker's signature on both documents and never paid any money to the escrow agent.<sup>3</sup>

¶4 Skotnicki was convicted of uttering a forged writing in violation of WIS. STAT. § 943.38(2), obstructing an officer in violation of WIS. STAT. § 946.41(1), and of giving false information contrary to WIS. STAT. § 452.133(1)(c). She was sentenced to a three-year prison term on the uttering count and to two withheld two-year sentences on the other counts. She also was ordered to pay \$4,000 in restitution to the Floods. Defense counsel objected to the proposed restitution order at sentencing and filed a postconviction motion requesting the court to vacate the order. The circuit court denied the motion and this appeal followed.

## DISCUSSION

### Standard of Review.

¶5 Whether a circuit court has authority to order restitution in the first instance, given a particular set of facts, is a question of law which we review *de novo*. See *State v. Walters*, 224 Wis. 2d 897, 901, 591 N.W.2d 874, 875-76 (Ct. App. 1999). If the court has that authority, we then review the terms of the restitution order to determine whether the circuit court erroneously exercised its discretion. See *id.* “However, when the record will permit only one conclusion in regard to how much restitution should be ordered, the decision becomes an issue of law, which we review *de novo*.” *Id.* at 901, 591 N.W.2d at 876.

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<sup>3</sup> In April 1998, a fire destroyed the residence located on the property, and the sale of the property was never consummated.

## Restitution Damages.

¶6 In construing the restitution statute, we begin by noting its mandatory directive. Under WIS. STAT. § 973.20(1r), a circuit court must order full or partial restitution to any victim of a crime considered at sentencing,<sup>4</sup> unless the circuit court finds a substantial reason exists not to do so and states the reason. This furthers one of the primary purposes of restitution: to compensate the victim. See *State v. Sweat*, 208 Wis. 2d 409, 422, 561 N.W.2d 695, 700 (1997). Section 973.20 “reflects a strong equitable public policy that victims should not have to bear the burden of losses if the defendant is capable of making restitution.” *State v. Kennedy*, 190 Wis. 2d 252, 258, 528 N.W.2d 9, 11 (Ct. App. 1994). Additionally, we construe the restitution statute “broadly and liberally in order to allow victims to recover their losses [that occur] as a result of a defendant’s criminal conduct.” *State v. Anderson*, 215 Wis. 2d 673, 682, 573 N.W.2d 872, 875 (Ct. App. 1997).

¶7 However, circuit courts are limited in regard to the type of damages for which they may order restitution. WISCONSIN STAT. § 973.20(5)(a) provides:

[T]he restitution order may require that the defendant do one or more of the following:

(a) Pay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.

Therefore, not every item of damages brought to the court’s attention will support a restitution order. For example, restitution may be ordered only for special

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<sup>4</sup> A “crime considered at sentencing” is the crime of conviction, as well as any crime read-in at sentencing. See WIS. STAT. § 973.20(1g)(a).

damages, not for general damages. Special damages are “those attributable to the wrong by reason of circumstances not generally present in such situations.” *State v. Boffer*, 158 Wis. 2d 655, 660, 462 N.W.2d 906, 908 (Ct. App. 1990) (citation omitted). Special damages denote “harm of a more material or pecuniary nature and represent the victim’s actual pecuniary losses,” such as wage loss, past and future medical, hospital or other similar expenses. *See State v. Holmgren*, 229 Wis. 2d 358, 365, 599 N.W.2d 876, 880 (Ct. App. 1999) (citation omitted). General damages, on the other hand, are “those that necessarily result from the injury regardless of its special character, the conditions under which the injury occurred, or the [victim’s] circumstances.” *Id.* (citation omitted). Generally, this type of damage results from such injuries to the victim as pain and suffering, anguish, humiliation or injury to feelings or reputation. *See State v. Stowers*, 177 Wis. 2d 798, 805, 503 N.W.2d 8, 10 (Ct. App. 1993). In defining these terms, we have consistently looked to tort law concepts to help explain them. *See id.* at 804, 503 N.W.2d at 7.

¶8 Furthermore, there also must be a causal nexus between the special damage sustained by the victim of the crime and a crime considered at sentencing. *See State v. Madlock*, 230 Wis.2d 324, 333, 602 N.W.2d 104, 109 (1999) (citing *State v. Behnke*, 203 Wis. 2d 43, 553 N.W.2d 265 (Ct. App. 1996)). In proving causation, the victim need show only that the defendant’s criminal activity was a ‘substantial factor’ in causing special damage. *See Behnke*, 203 Wis.2d at 59, 553 N.W.2d at 273. A substantial factor is one in which a crime considered at sentencing was a “precipitating cause of the injury” such that the resultant special damage was a natural consequence of it. *See id.*; § 973.20(5)(a).

¶9 In arguing whether the circuit court had the authority, in the first instance, to order restitution for the pre-closing payments due under the purchase

contract, Skotnicki contends that the falsified payment receipts were not a substantial factor in causing the Floods to sustain the \$4,000 loss for which restitution was ordered. We note that the circuit court said that the damages occurred because of Skotnicki's failure to fulfill her promise under the purchase contract. It stated:

As a condition of your parole, you will pay restitution in the amount of \$4,000. It is this Court's strong belief that the Floods lost the benefit of their bargain of \$800 a month rent and which you were to pay if you did not follow-through on this agreement.

¶10 The court's comments demonstrate that the restitution order was designed to compensate the Floods for Skotnicki's failure to perform the contract. The amount ordered by the circuit court was the amount of the pre-closing payments due from the date Skotnicki had the contractual right to move into the house (November 15, 1996) to April 15, 1997, shortly before the house was destroyed by fire (April 22, 1997).

¶11 The State argues that the court did not err because there was a nexus between the forgery and the loss of pre-closing payments, as the Floods could have found other tenants or purchasers for their house if Skotnicki had not deceived them with forged receipts. In the alternative, if we conclude there was no nexus between the forgery and the restitution ordered, the State argues that the restitution was properly ordered because a restitution order is valid for all crimes considered at sentencing, and Skotnicki was also convicted of providing false information as a realtor, pursuant to WIS. STAT. § 452.133(1)(c)<sup>5</sup>. Skotnicki meets both arguments the same way: Neither crime was causally related to the loss of

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<sup>5</sup> The giving of false information arose at the same time as the forgery and from the same facts: the forged statements Skotnicki provided to the Floods.

pre-closing payments the Floods sustained. The Floods suffered only breach of contract damages.

¶12 We agree with Skotnicki. We conclude there is no causal connection between the forgery or the giving of false information and the loss of pre-closing payments the Floods sustained<sup>6</sup> because the \$4,000 the court awarded as restitution would have been due to the Floods under their contract with Skotnicki, even without Skotnicki's forgery or her giving of false information. Looked at another way, if the Floods did not have the contractual right to \$800 per month payments during the pre-closing possession of their house by Skotnicki, Skotnicki's providing forged documents stating she had made \$800 per month advance payments on the purchase price would have caused no damage to the Floods because they would have had no right to receive pre-closing payments in the first instance. Therefore, we conclude the cause of the Floods' loss was Skotnicki's failure to keep a contractual obligation, not her violations of the criminal code. Accordingly, we conclude that the circuit court erred when it ordered restitution that was not causally connected to a crime considered at sentencing, and we reverse its restitution order.

## CONCLUSION

¶13 We conclude that the pre-closing payments due under Skotnicki's purchase contract with the Floods are not special damages as described in WIS.

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<sup>6</sup> We also question whether these damages are special damages, as WIS. STAT. § 973.20(5)(a) requires because, under contract parlance, the loss of these pre-closing payments would be an item of general damages, not of special damages. *See Univest Corp. v. General Split Corp.*, 148 Wis. 2d 29, 42, 435 N.W.2d 234, 239 (1989); 22 AM. JUR. 2D *Damages* § 40 (1988). However, the differences between damages arising as a result of a tort and damages arising under a contract have not been addressed by the parties, so we shall not consider them here.

STAT. § 973.20(5)(a), because the damages for nonpayment were caused by Skotnicki's breach of the purchase contract and not by any crime considered at sentencing. Therefore, we reverse the circuit court's award of restitution.

*By the Court.*—Judgment and order reversed.

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