

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE S.M.

No. 2 CA-JV 2016-0099
Filed September 29, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JV20150161
The Honorable Jane Butler, Judge Pro Tempore

VACATED IN PART

COUNSEL

Barbara LaWall, Pima County Attorney
By Kara Crosby, Deputy County Attorney, Tucson
Counsel for State

Steven Sonenberg, Pima County Public Defender
By Susan C. L. Kelly, Assistant Public Defender, Tucson
Counsel for Minor

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 The State of Arizona appeals from the disposition in this delinquency proceeding in which the juvenile court altered the restitution amount awarded in a previous proceeding. We vacate that portion of the disposition.

¶2 S.M. was adjudicated delinquent in July 2015 after she admitted having committed criminal damage and disorderly conduct. In October, the court placed S.M. on a twelve-month term of probation and ordered that she pay \$1,343.43 in restitution. In March 2016, the court adjudicated S.M. delinquent based on new allegations; the court found S.M. had committed two counts of assault, and she admitted having committed another count of assault as well as possession of drug paraphernalia. At the May disposition hearing, the court placed S.M. on a twelve-month probation term. During the disposition, S.M. and counsel expressed concern over her ability to pay the previous restitution order.¹ Over the state's objection and citing S.M.'s "ability . . . to pay," the court reduced the restitution amount to \$1,000. This appeal followed.²

¶3 The state asserts and S.M. concedes that the juvenile court lacked authority to alter the previous restitution order. We agree. Upon adjudicating a juvenile delinquent, a juvenile court

¹A program in which S.M. was enrolled would pay up to \$1,000 toward the restitution amount based on S.M.'s participation in community service activities. S.M. informed the court she "can't pay" the balance.

²S.M. did not appeal from the adjudication or disposition.

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“shall order the juvenile to make full or partial restitution to the victim of the offense.” A.R.S. § 8-344(A). If restitution is an issue in the case, the juvenile may not appeal until the restitution order has been entered. *In re Alton D.*, 196 Ariz. 195, ¶ 9, 994 P.2d 402, 404 (2000). Because the order is final, the juvenile court is not permitted to reopen the judgment to modify the amount of restitution. *Id.* ¶¶ 3-16; *see* § 8-344(D) (juvenile court retains jurisdiction to “modify[] the manner in which court ordered payments are to be made”).

¶4 Accordingly, we vacate the portion of the trial court’s disposition in which it altered the restitution award.³

³In her answering brief, S.M. asks that we “remand the matter to the trial court” to consider “alternative or additional sources of payment” of the restitution amount, such as ordering the Arizona Department of Child Safety to pay the amount because S.M. is a dependent child. This issue was not raised below; we therefore deny S.M.’s request. *See Kimu P. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 39, n.3, 178 P.3d 511, 516 n.3 (App. 2008).