

NO. 22698

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

In the Interest of JOHN DOE,
Born June 1, 1982

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-J NO. 96-27287)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Lim, JJ.)

Juvenile-Appellant John Doe (Doe) appeals the family court's July 14, 1999 Amended Judgment ordering Doe to pay restitution "in the amount of Six hundred dollars (\$600.00), payable at the rate of One hundred dollars (\$100.00) per month for six months to [the owner of the property damaged]." We vacate and remand.

DISCUSSION

On July 31, 1998, Doe and his fellow gang members battered a 1981 Toyota Starlet (Toyota) and destroyed its body. On March 12, 1999, the family court decreed that Doe was a law violator for having done criminal property damage. The family court's decree ordered Doe to pay restitution.

Hawai'i Revised Statutes §§ 571-48(11) and (13) authorize the court to order restitution for the "loss or damages as a result of the child's action." What was the loss suffered by the owner of the Toyota?

In a related context, the Hawai'i Supreme Court concluded that "[t]he total amount of the restitution ordered by the trial court should be the actual loss or damage incurred by the victim." State v. Johnson, 68 Haw. 292, 295, 711 P.2d 1295, 1298 (1985). Generally, "the actual loss or damage incurred by the victim" is the depreciation in value caused by the damage. Id. The "cost of repair is evidence of the depreciation[.]" Richards v. Kailua Auto Machine Service, 10 Haw. App. 613, 622, 880 P.2d 1233, 1238 (1994).

Where a plaintiff seeks to recover damages for injury to a motor vehicle measured by the cost of repairs, he or she is limited by the requirement that they must not exceed the market value of the vehicle before the accident since the fundamental rule of damages is the depreciation in market value inflicted by the injury.

8 Am. Jur. 2d, Automobiles and Highway Traffic § 1314 (1997) (footnotes omitted).

The Toyota had been purchased in the summer of 1996 for \$1,500. There is no evidence of the Toyota's fair market value (FMV) at that time. New tires were purchased for \$100. A stereo sound system and speakers were purchased for \$1,000 and installed.

There is no evidence whether the battering of the Toyota damaged the speakers and/or the stereo sound system. After the Toyota was battered, the speakers and the stereo sound system were worth "[p]robably little bit more than [\$500]" and Doe sold them for "about [\$450]."

On July 31, 1998, the Toyota was in good working condition and had passed a safety check. The Toyota had been driven more than 100,000 miles. There is no evidence how much of that mileage occurred prior to or subsequent to the 1996 purchase. The upholstery and exterior paint of the Toyota were not in good condition. There is no evidence of their condition at the time of the 1996 purchase.

There is no dispute that the \$1,800 estimated cost of repair exceeded the FMV of the Toyota on July 31, 1998.

In its Motion for Restitution filed on April 16, 1999, Plaintiff-Appellee State of Hawai'i (the State) represented that "the bluebook resale value of a 1981 Toyota Starlet in perfect condition is \$1525. The wholesale blue book value is \$700.00." At the May 6, 1999 hearing, however, the State did not introduce evidence of these alleged facts, or of the blue book values on July 31, 1998, or of how the Toyota's imperfections did or did not reduce its FMV.

On May 27, 1999, the family court decided that the amount of restitution owed was \$1,100. The court ignored the stereo sound system and the speakers and decided that the loss was the \$1,600 paid for the Toyota and tires minus the \$200 cash and \$300 value in services for which the Toyota was sold.

At a July 2, 1999 hearing, upon Doe's request, the family court reconsidered and, in its July 14, 1999 decree, also deducted the \$500 value of the stereo sound system and the speakers which Doe had sold for \$450. This reduced the amount to \$600. The family court ordered Doe to pay \$600 in installments of \$100 per month for six months. Doe appealed.

The question on appeal is whether the evidence is sufficient to support the family court's decision that the amount of restitution payable by Doe and Doe's parents is \$600.

If the speakers and stereo sound system were damaged by the battering of the Toyota, their depreciation in value caused by the battering (and not by ordinary wear and tear) is relevant and should be considered when calculating the amount of restitution payable. If not, they and their value are not relevant and should not be considered.

The Toyota was purchased in the summer of 1996 for \$1,600 (\$1,500 plus \$100). Is there evidence to support the family court's finding that two years later, on July 31, 1998, the FMV of the Toyota was \$1,100 (\$200 plus \$300 plus \$600)? The answer is no. The State presented no evidence of the FMV of the Toyota on July 31, 1998.

CONCLUSION

Accordingly, we vacate the July 14, 1999 Amended Order and remand for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai'i, October 11, 2000.

On the briefs:

Glenn D. Choy
for Juvenile-Appellant.

Chief Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Appellee.

Associate Judge

Associate Judge