

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINA LYNNE SPEARS-EVERETT,

Defendant-Appellant.

FOR PUBLICATION

July 2, 2019

No. 341860

Kalamazoo Circuit Court

LC No. 2013-001188-FH

Advance Sheets Version

Before: K. F. KELLY, P.J., and FORT HOOD and REDFORD, JJ.

REDFORD, J. (*dissenting*).

Because I conclude that the trial court did not abuse its discretion in its May 10, 2017 opinion and order or in its December 5, 2017 opinion from the bench, I respectfully dissent.

I. FACTUAL AND PROCEDURAL HISTORY

The matter at bar is the result of the embezzlement of more than \$150,000 by a licensed healthcare provider from an elderly patient. At her sentencing on September 2, 2014, defendant was ordered, *inter alia*, to pay restitution of \$169,374.18, at a rate of \$2,830 per month. Upon her release from jail, defendant began to pay \$20 per month toward restitution.¹

The record reflects that while on probationary status and not incarcerated, defendant received between \$500 and \$1,700 per month income from employment or wage-loss income from a personal-injury claim. The record likewise reflects that defendant’s spouse had an income of between \$4,600 and \$4,700 per month. All household monies were completely intermingled.

¹ In discussing restitution with her probation officer, it appears that defendant was told to at least pay something each month. Defendant paid \$20 per month on a consistent basis. From the record on appeal, it appears that by May 23, 2017, defendant had paid a total of \$1,034.99 in financial penalties, of which \$582.60 was the total amount of restitution paid.

On August 4, 2016, a petition and order to show cause related to defendant's restitution payments was filed. In the ensuing nine months, the trial court conducted numerous hearings, took testimony, and gave all parties the opportunity to provide briefs as well as proposed findings of fact and conclusions of law.

On May 10, 2017, the court issued an 11-page opinion and order regarding defendant's probation violation for failure to pay restitution. On December 5, 2017, the court conducted a hearing on defendant's motion to modify restitution payment and issued an oral opinion. The court entered an order denying defendant's motion on December 19, 2017.

II. ANALYSIS

I agree with the majority's expression of the applicable standard of review and the applicable law. I disagree, however, with the majority's analysis and conclusion based upon that law. On appeal, defendant claims that the wording of the trial court's order resulted in the invasion of her husband's financial assets and required him to tender payment to honor her obligation to make restitution. My review of the extensive trial court record in relation to the plain language of MCL 769.1a, MCL 780.766, and MCR 6.425(E)(3) leads me to conclude that defendant is incorrect.

The trial court—in both its May 10, 2017 opinion and order and in its oral opinion from the bench on December 5, 2017—plainly required defendant, and defendant alone, to pay the restitution in this matter. In the December opinion the trial court opined:

This Court finds that the language in its May 10 order unambiguously directs Defendant and Defendant alone to make restitution payments, and that the family's income is merely the best measuring rod to determine what Defendant must pay from her own funds.

* * *

The court record reflects the Defendant's income and expenses were co-mingled. When evaluating the totality of the Defendant's financial circumstances using the family's gross income was to this Court the most reasonable basis to calculate Defendant's monthly payment. That is not to say, as Defendant's seem [sic] to assert in the pleadings, that this Court has not considered the true income Defendant has at her disposal to pay the restitution. Indeed, the Defendant's financial circumstances were completely considered pursuant to MCR 6.425 when this Court entered its May 10 order.

The trial court's conclusion is factually supported with a mathematical analysis of the order. In the December 2017 hearing, the trial court stated that defendant had a monthly income of \$900 and that her husband had a monthly income of \$4,700. Combining the two incomes amounts to \$5,600 per month. Defendant's income is thus 16% of the household income, and she was ordered to pay only 15% of her family's gross income.

Unlike the majority, respectfully, I do not conclude that the trial court committed error or abused its discretion. To the contrary, I believe that the trial court carefully and correctly applied

the law to the facts and issued an appropriate order. In my opinion, the trial court did not require restitution to be paid by anyone other than defendant.

IV. CONCLUSION

I would uphold the trial court's December 19, 2017 order denying defendant's motion to modify her restitution payment schedule and the trial court's May 10, 2017 order addressing defendant's restitution payment schedule.

/s/ James Robert Redford