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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-309**

In the Matter of the Welfare of:  
D. E. M. F., Child.

**Filed December 8, 2009  
Affirmed  
Klaphake, Judge**

Anoka County District Court  
File No. 02-JV-08-2282

Marie L. Wolf, Interim Chief Appellate Public Defender, Theodora K. Gaitas, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104; and

Scott M. Flaherty, Brock J. Specht, Special Assistant State Public Defenders, Robins, Kaplan, Miller & Ciresi, L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402-2015 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robert M.A. Johnson, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, Suite 720, Anoka, MN 55303 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and  
Huspeni, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

On appeal from a delinquency adjudication following her guilty plea to a charge of misdemeanor theft, Minn. Stat. § 609.52, subd. 2(1) (2008), appellant D.E.M.F. argues that (1) the district court abused its discretion by ordering her to pay \$495 in restitution to the victim while failing to consider her ability to pay restitution and (2) her sentence should be reversed due to ineffective assistance of trial counsel, because counsel failed to challenge the restitution requested by the victim. Because the district court properly considered appellant's ability to pay restitution and because appellant did not meet her burden to show that the outcome would have been different but for her counsel's alleged ineffective representation, we affirm.

## DECISION

Under Minn. Stat. § 611A.04, subd. 1 (2008), a crime victim may receive restitution, including out-of-pocket expenses, as part of the disposition in a juvenile delinquency proceeding. "The primary purpose of the statute is to restore crime victims to the same financial position they were in before the crime." *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). Generally, the items for which a crime victim may receive restitution must be submitted to the court by affidavit and "must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property." Minn. Stat. § 611A.04, subd. 1(a). In determining whether to order restitution, the district court must consider "the amount of economic loss sustained by the

victim as a result of the offense,” and “the income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a) (2008).

A district court has broad discretion to award restitution, *Palubicki*, 727 N.W.2d at 666, but “the record must provide a factual basis for the amount awarded by showing the nature and amount of the losses with reasonable specificity.” *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000). We apply an abuse of discretion standard of review. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999).

Appellant argues that the district court ordered her to pay restitution without considering her ability to pay it. The disposition hearing transcript shows that appellant attempted to protest the district court’s decision to order her to pay restitution, and in response, the district court said that it would address that issue if necessary at a 90-day review hearing, but that it would not “make somebody not pay restitution just because they say [they] can’t pay it right now.” The district court’s statement, as well as the discussion preceding it, shows that the court considered, but rejected, appellant’s argument that she was unable to pay restitution. As appellant has not demonstrated that she is prohibited from working or otherwise earning money, we find no abuse of discretion in the district court’s decision to order restitution. The victim properly established the basis for the award in accordance with Minn. Stat. § 611A.04, subd. 1, and appellant did not raise a formal challenge to the factual basis for the amount of restitution ordered, as required by Minn. Stat. § 611A.045, subd. 3 (2008).

Appellant further claims that her counsel’s representation was inadequate because her attorney failed to contest the factual basis for the amount of restitution ordered. “To

prevail on a claim that counsel is ineffective, [appellant] must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness, and (2) a reasonable probability exists that, but for [her] counsel's unprofessional error, the outcome would have been different." *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009). In determining reasonable probability, this court "considers the totality of the evidence before the judge or jury." *Sanchez-Diaz v. State*, 758 N.W.2d 843, 848 (Minn. 2008). And, if one prong of the test is determinative, the reviewing court will not analyze both prongs. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). Based on our review of the record, we conclude that appellant failed to meet the second prong of the test to show a reasonable likelihood of a different outcome if appellant's attorney had challenged the amount of restitution claimed for the iPod. We therefore affirm on this issue as well.

**Affirmed.**