



2723 South State Street, Suite, 150
Ann Arbor MI 48104
(866) 534 6177
LawCompany.com

INFORMAL RESEARCH MEMORANDUM

TO:
FROM:
DATE:
RE: Criminal restitution bar on civil action for personal injuries

QUESTION PRESENTED

Does a criminal restitution operate as a bar to a victim's claim for personal injury damages in North Carolina arising from the same criminal act?

FACTS

[REDACTED]

SUMMARY

In North Carolina, criminal restitution and civil settlement, even arising from the same act, are regarded as legally distinct both in terms of applicable law and the remedies for each cause of action. At a minimum, the causes of action involve distinct plaintiffs. In a criminal matter, as was the case here, the plaintiff in the dispute is a government which possessed jurisdiction over the matter, (*e.g.*, a state or a municipality). Separate and apart from a criminal matter are civil suits in which the plaintiff is the alleged victim in a matter. It should be noted, however, under North Carolina law, a defendant may nonetheless be credited for his criminal restitution to the plaintiff in a subsequent civil action. In that same vein, a plaintiff's ostensible civil claims arising from the same criminal act *may* be resolved during criminal proceedings and reflected in the criminal judgment of the case a plaintiff to an ostensible civil, explicitly permits a resolution of their civil claims within an otherwise criminal proceeding. *See Hamrick v. Beam*, 19 N.C. App. 729 (1973) (a district court lacks jurisdiction to resolve a plaintiff's civil claims without their consent in an otherwise known criminal action).

Here, ██████████'s criminal charges under G.S. § 14-33(A) were dismissed on "a full and final basis" in exchange for a \$██████ restitution to ██████████. Yet, there is no explicit language within either operative statute or the resolution itself that is intended or could be construed as limiting ██████████'s rights as an ostensible civil plaintiff. Instead, such language should be properly understood as limiting language to the plaintiff in the criminal matter at hand, the government and would act to bar the government from further recourse with respect to

RESEARCH FINDINGS

Statute:

§ 15A-1340.37. Effect of restitution order; beneficiaries

(a) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense committed by the defendant. Any amount paid by the defendant under the terms of a restitution order under this Article shall be credited against any judgment rendered against the defendant in favor of the same victim in a civil action arising out of the criminal offense committed by the defendant.

N.C. Gen. Stat. § 15A-1340.37

Case Law:

Restitution is characterized as a "reparation to an aggrieved party . . . for the damage or loss caused by the defendant arising out of" the criminal offense. *State v. Reynolds*, 161 N.C. App. 144, 149, 587 S.E.2d 456, 460 (2003) (citing N.C. Gen. Stat. § 15A-1343(d) (2001)) (emphasis supplied).

***State v. Williams*, 829 S.E.2d 518, 524 (N.C. Ct. App. 2019)**

The civil settlement and release and the criminal restitution represent separate, distinct remedies.

***State v. Williams*, 829 S.E.2d 518, 524 (N.C. Ct. App. 2019)**

Here, the trial court ordered Defendant to pay \$41,204.85 to compensate Fogleman for his losses due to Defendant's embezzlement, less than the amount Fogleman claimed was taken. The court allowed Defendant a \$13,500.00 credit for what she has already paid under the civil settlement agreement towards making Fogleman whole. To compensate for losses, the trial court properly ordered Defendant to pay the balance of restitution of \$27,704.85. The intention of the restitution order is to restore what Defendant took and make Fogleman whole for his losses. Defendant's arguments are overruled.

***State v. Williams*, 829 S.E.2d 518, 524 (N.C. Ct. App. 2019)**

The "duty to pay reparations does not affect, and is not affected by, the victim's right to institute a civil action for damages against the defendant based on the same conduct, although, if the victim recovers, a setoff might be ordered for the money already received by the victim under the condition of probation." 79 A.L.R. 2d at 992, citing to *People v. Stacy*, 64 Ill. App. 2d 157, 212 N.E. 2d 286 (1965).

***Shew v. S. Fire & Cas. Co.*, 307 N.C. 438, 442, 298 S.E.2d 380, 383 (1983)**

Restitution should not be used as a substitute for determination in the proper form of a defendant's civil liability:

Criminal and civil liability are not synonymous. A criminal conviction does not necessarily establish the existence of civil liability. Civil liability need not be established as a prerequisite to the requirement of restitution as a probation condition

People v. Heil, 79 Mich. App. 739, 748, 262 N.W. 2d 895, 900 (1977). See *People v. Pettit*, 88 Mich. App. 203, 276 N.W. 2d 878 (1979).

***Shew v. S. Fire & Cas. Co.*, 307 N.C. 438, 443, 298 S.E.2d 380, 383 (1983)**

Relevant case:

The order appealed from is in error. The civil liability for a tort which also constitutes a crime may, of course, be compromised and settled just as any other unliquidated claim. A

binding settlement of such a claim may result from negotiations or actions taken during the course of criminal proceedings, and the terms of such a binding settlement may be embodied in the judgment entered in the criminal case. *Jenkins v. Fields*, 240 N.C. 776, 83 S.E. 2d 908, an appeal from rulings on the pleadings, exemplifies such a case. Such is not the present case. Nothing in the record before us suggests that when the defendant paid the \$ 231.54 into court, as he had been ordered by the District Judge, or when the plaintiff received said sum from the clerk, either party thought plaintiff's claim was being settled. Even months later, after the present civil action had been brought, defendant did not plead an accord and satisfaction, but pled only that plaintiff "has been fully paid for damage received by him." This would indicate that defendant considered the prior payment as relieving him of liability, not because it was made pursuant to a binding compromise settlement, but because it represented compensation commensurate with plaintiff's injuries. The District Court in the criminal proceeding had no power, absent plaintiff's consent, to adjudicate finally his civil claim, and nothing in the present record suggests that the District Judge even thought that he was doing so. Defendant did not plead *res judicata*, estoppel, or, as above noted, accord and satisfaction, all of which are affirmative defenses. G.S. 1A-1, Rule 8. Indeed, a reading of the record in this case leaves the strong impression that defendant's counsel, no less than plaintiff's, was caught by surprise by the trial court's ruling dismissing plaintiff's action.

So far as the record in this case discloses, the matters sought to be litigated in the present action were simply not negotiated, adjudicated, or in any other way finally determined by anything which occurred in or as a result of the criminal prosecution. Defendant is, of course, entitled to credit for the payment previously made by him, *Hester v. Motor Lines*, 219 N.C. 743, 14 S.E. 2d 794, but on the present record that payment did not finally dispose of his potential civil liability to the plaintiff.

The order appealed from is reversed and this case is remanded to the Superior Court for trial.
Reversed and remanded.

Hamrick v. Beam, 19 N.C. App. 729, 730-31, 200 S.E.2d 337, 338 (1973)