

No. 1-10-3845

NOTICE: This order was filed under Supreme Court Rules 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from
) the Circuit Court
 Plaintiff,) of Cook County
v.)
)
KEMOY DUNN,) No. 09 CR 12307
)
 Defendant,)
)
(Ronald Hutchison,) Honorable
) Larry G. Axelrod,
 Intervenor-Appellant.) Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Justices Garcia and Lampkin concurred in the judgment.

ORDER

¶ 1 **Held:** The trial court's finding that it lacked the authority to award restitution to intervenor-appellant because defendant's privately-retained attorney had a "primary lien" on defendant's posted bail bond was error.

¶ 2 Defendant Kemoy Dunn pled guilty to attempted first degree murder after severely injuring intervenor Ronald Hutchinson in a bar fight. Hutchinson incurred more than \$130,000

in medical bills.

¶ 3 Before his plea bargain hearing defendant had posted two \$25,000 cash bail bonds, and Hutchison filed a petition to intervene for restitution under section 5-5-6 of the Unified Code of Corrections (730 ILCS 5/5-5-6 (West 2010)), requesting that the court award him the \$50,000 in bail bonds as reimbursement for his medical expenses. Defendant also filed two cash bond refund (CBR) petitions, requesting the \$50,000 in bonds be refunded to his privately-retained defense attorney.

¶ 4 At defendant's hearing, defendant's privately-retained counsel said the initial \$25,000 bond would be insufficient to cover his fee. The court denied Hutchison's request to intervene because "[u]nder statute, the [defense] attorney has the primary lien" and the court did not "have the authority" to award Hutchison restitution before refunding the bond money to defense counsel. The court ordered the initial \$25,000 bond to be refunded to defendant's attorney but stayed the order with respect to the other \$25,000 bond pending this appeal.

¶ 5 On appeal, Hutchison contends that it is within the discretion of the trial court to refund a defendant's posted cash bond as restitution to a crime victim before enforcing a CBR bond assignment to cover a privately-retained defense counsel's attorney fees. Defendant argues that under section 110-7 of the Code of Criminal Procedure (725 ILCS 5/110-7 (West 2010)) and section 5-5-6 of the Unified Code of Corrections (730 ILCS 5/5-5-6 (West 2010)), privately-retained attorneys do not have a "priority" lien on a defendant's posted bail bond.

¶ 6 We review the trial court's finding on this question of law *de novo*. *People v. King*, 241 Ill. 2d 374, 378, 948 N.E.2d 1035 (2011).

¶ 7 The court's primary function is to give effect to the legislature's intent, and the best indicator of such intent is the plain and ordinary meaning of the statute's language. *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 332, 898 N.E.2d 631 (2008). The words and phrases of a statute should be construed in light of other relevant portions of the statute. *Krautsack v. Anderson*, 223 Ill. 2d 541, 553, 861 N.E.2d 633 (2006).

¶ 8 We believe that the trial court here erred in finding that defendant's privately-retained attorney had a "primary lien" on defendant's bond money and in finding that the court lacked the authority to award the bond money to Hutchison as restitution.

¶ 9 Section 110-7(a) of the Code of Criminal Procedure requires that notice be given to third parties providing bail money, "indicating that the bail *may* be used to pay costs, attorney's fees, fines, or other purposes authorized by the court." (Emphasis added.) 725 ILCS 5/110-7(a) (West 2010).

¶ 10 Section 110-7(f) of the Code of Criminal Procedure provides:

"Bail bond deposited by or on behalf of a defendant in one case may be used, *in the court's discretion*, to satisfy financial obligations of that same defendant incurred in a different case due to a fine, court costs, *restitution* or fees of the defendant's attorney of record. ***

At the request of the defendant the court *may* order such 90% of defendant's bail deposit, or whatever amount is repayable to defendant from such deposit, to be paid to defendant's attorney of record." (Emphasis added.) 725 ILCS 5/110-7(f) (West 2010).

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¶ 11 Section 5-5-6(e) of the Unified Code of Corrections states "[t]he court *may* require the defendant to apply the balance of the cash bond, after payment of court costs, and any fine that may be imposed to the payment of restitution." (Emphasis added.) 730 ILCS 5/5-5-6(e) (West 2010)

¶ 12 Read together, we believe that sections 110-7(a), 110-7(f) and 5-5-6(e) establish that it is within the court's discretion to order a defendant's bail bond to be paid as restitution. See *People v. Resnick*, 373 Ill. App. 3d 163, 165, 867 N.E.2d 1257 (2007) ("[u]se of the permissive 'may' in [section 5-5-6(e)] indicates that the payment of restitution from a defendant's bail bond lies within the discretion of the trial court"); see also *People v. Rayburn*, 258 Ill. App. 3d 331, 335, 630 N.E.2d 533 (1994) ("although another individual may provide the defendant's bond money, it is within the discretion of the trial judge to determine whether that money should be used for restitution"); *People v. Villanueva*, 231 Ill. App. 3d 754, 761, 596 N.E.2d 1182 (1992) ("trial courts should concern themselves more with using cash bonds posted by defendants or their surrogates to pay restitution than with *any* interests of defendant or those surrogates regarding the cash posted" (emphasis in original)).

¶ 13 The trial court's finding that it lacked the authority to award the bond money to Hutchison as restitution because defendant's attorney had a "primary lien" on defendant's bond money was error. We remand this matter to the trial court for further proceedings consistent with this order.

¶ 14 Reversed and remanded.