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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Stephenson County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CM-955
)	
RICHARD M. ADCOCK,)	Honorable
)	James M. Hauser,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly ordered restitution in the amount of \$9,910, as section 3.06 of the Humane Care for Animals Act authorized restitution for the board and treatment of defendant's horses pending his conviction. Also, defendant forfeited his claim that the restitution was excessive. Therefore, we affirmed.

¶ 2 Following a jury trial, defendant, Richard M. Adcock, was found guilty of violating owner's duties (510 ILCS 70/3 (West 2010)) under the Humane Care for Animals Act (Act) (510 ILCS 70/1 *et seq.* (West 2010)). He was sentenced to two years' conditional discharge and ordered to pay \$9,910 in restitution. The amount of restitution was based on the costs of caring for defendant's horses pending his conviction, as provided for in section 3.06 of the Act (510

ILCS 70/3.06 (West 2010)). Defendant raises two issues on appeal. The first is whether the trial court was authorized to order restitution in light of the holding of *People v. Thornton*, 286 Ill. App. 3d 624 (1997). The second is whether the amount of restitution was excessive. We hold that the trial court was authorized to order restitution and that defendant forfeited his excess restitution argument.

¶ 3

I. BACKGROUND

¶ 4 On November 21, 2011, defendant was charged by complaint with cruel treatment of animals (510 ILCS 70/3.01 (West 2010)) and violating owner's duties (510 ILCS 70/3 (West 2010)). The first count, a class A misdemeanor, alleged that on about September 14, 2011, defendant knowingly cruelly treated two horses that were in his custody and care by not providing adequate or accessible food and water, such that both horses were malnourished, underweight, and in need of deworming. The second count, a class B misdemeanor, alleged that on the same date, defendant knowingly failed to provide the horses with veterinary care and sufficient and accessible food and water, thus preventing the humane care and treatment of the animals.

¶ 5 Defendant's jury trial took place on August 28 and 29, 2012. According to the evidence presented by the State, county personnel visited defendant's property on multiple occasions to observe the conditions of the horses. On July 20, 2011, the horses' water tank was low and there was not accessible hay, but both horses were an appropriate weight according to the Henneke body condition scoring system (HBCS), which is used to evaluate horses. Defendant was notified after that visit that one of the horses had an ill-fitting halter cutting into its ear, which defendant corrected. On August 10, 2011, the horses were noticeably thinner than the previous month's visit, and once again there was not an acceptable amount of hay or water. On

September 13, 2011, defendant's property did not have running water or electricity, the horses had lost more weight since the visit one month earlier, and, in addition to a lack of water in the horses' troughs, any amount of hay on the premises was inaccessible. Finally, on September 14, 2011, because the horses appeared malnourished and none of the conditions had been corrected from the previous day, the horses were removed and taken to a veterinarian before eventually being taken to Cindy Hull's farm to receive board and care. The veterinarian who examined the horses on September 14, 2011, rated each horse at between 3 and 4 according to the HBCS, with an optimal score being 5. He believed that they were malnourished from a lack of food and water; his report stated that they were "both thin but otherwise in good health."

¶ 6 Hull testified that when the horses first came to her farm, their fecal matter was hard and dry, which indicated that they were not getting enough water. A few days later, Hull observed worms in the feces of at least one of the horses, so she fed the horses a "wormer." Hull testified that the horses' condition began to markedly improve after three weeks, and it took about three or four months for them to return to a proper body weight. Photos depicting the horses on various dates were admitted into evidence. Outside of the jury's presence, Hull testified that the County had already paid her for the horses' care through July 15, 2012.

¶ 7 Defendant countered the State's evidence with witness testimony that the horses were not malnourished and instead always had enough food and water. Defendant's father testified he was often at defendant's property between July and September 2011, and the horses appeared healthy and active. He testified that there was always hay on the property. Defendant's father testified that defendant's electricity had been shut off due to defendant's unemployment and inability to pay the electric bill, so defendant would get water from him to fill the horses' water tanks, which always appeared full when defendant's father was on the property. Defendant's

neighbor testified that he often checked on the horses for defendant to ensure they had adequate food and water, and they always did.

¶ 8 Defendant testified that he purchased the horses in 2006 or 2007 and became unemployed in 2008. He expended nearly all his monthly unemployment income of \$50 per week caring for the horses in the summer and fall of 2011. He went to the property on September 12, 2011, the day he went to Rockford looking for a job, and left three 50-pound bales of hay and plenty of water. It was difficult to keep weight on one of the horses because it always spit out half of the wormer. During the months of July, August, and September 2011, he never deprived the horses of good quality food or water.

¶ 9 The jury found defendant not guilty of cruel treatment of animals but guilty of violating owner's duties.

¶ 10 Defendant's sentencing hearing took place on October 26 and 30, 2012. Hull testified that she was charging daily fees of \$20 to board the horses along with \$3 to \$5 for their hay. The charges for the horses' care, up to the date of the hearing, totaled \$9,730. Stephenson County has thus far reimbursed her \$9,080. Hull estimated that the horses were worth \$100 to \$200 each.

¶ 11 Defendant and his father testified about defendant's lack of employment and income. Defendant's father had been paying defendant's property taxes, and he stated defendant's house, which had been entirely paid off, was worth approximately \$77,000. Defendant testified that his house was insured for "70 or something like that," though he thought he could not even sell it for \$15,000. Defendant also testified that his unemployment checks "ran out last February."

¶ 12 At the hearing, defendant argued that under *Thornton*, restitution was inappropriate, and he also noted that *Thornton* had not been overruled. The State countered that section 3.06 of the Act was directly applicable, rather than *Thornton*.

¶ 13 The trial court sentenced defendant to two years' conditional discharge and prohibited him from owning horses for two years. The trial court further stated that section 3.06 authorized restitution under such circumstances and concluded it had been enacted in response to *Thornton*. The trial court ordered defendant to pay \$9,910 in restitution, which was based on Hull's testimony, additional days of care since her testimony, and a \$55 veterinarian bill. The court found defendant had the ability to pay the restitution based on his unencumbered property valued at \$70,000 to \$77,000. The court also determined defendant's horses would be forfeited and any proceeds from the sale of the horses would go to offset the costs of their transportation and sale.

¶ 14 Defendant filed a motion to reconsider, which the court denied. Defendant timely appealed.

¶ 15 The trial court appointed the Office of the State Appellate Defender (OSAD) to represent defendant. However, this court granted OSAD's motion to withdraw because defendant's case does not fall into any of the categories allowing appointment of counsel for indigent appellants, as defendant was not convicted of a felony or class A misdemeanor nor sentenced to imprisonment. See Ill. S. Ct. R. 607 (eff. Feb. 6, 2013). Accordingly, defendant is proceeding *pro se* on appeal.

¶ 16

II. ANALYSIS

¶ 17 On appeal, defendant does not dispute his conviction of violating owner's duties. His only contest is with the \$9,910 ordered as restitution. His argument is twofold: the \$9,910 ordered for restitution should be vacated in accordance with this court's reasoning in *Thornton*;

alternatively, the amount of restitution ordered should be deemed excessive.

¶ 18 We first turn to whether defendant is correct that *Thornton* is controlling law for this issue. Defendant relies exclusively on *Thornton* to argue the trial court did not have the authority to order restitution. Defendant points out how *Thornton* held that restitution required a statutorily-defined victim, and that a “victim” must be a human, which, by inference, means his horses, as animals, could not be a victim under the statute. *Thornton*, 286 Ill. App. 3d at 635. The State argues to the contrary that section 3.06 of the Act, rather than *Thornton*, controls. The State posits that section 3.06(a) (510 ILCS 70/3.06(a) (West 2010)) authorizes a trial court to order restitution for the costs incurred for the board and treatment of a seized animal, including equines. Defendant does not address section 3.06 in his brief or reply brief.

¶ 19 This issue requires us to engage in statutory interpretation. In interpreting a statute, we must ascertain and effectuate the legislature’s intent. *People v. Kucharski*, 2013 IL App (2d) 120270, ¶ 28. The plain and ordinary meaning of the statutory language is the best indicator of the legislature’s intent. *Id.* When the issue is whether a restitution order is authorized by statute, such an issue is a question of law, which we review *de novo*. *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 35.

¶ 20 In *Thornton*, the defendant was convicted of animal cruelty under section 3.01 and ordered to pay restitution to the county agency for boarding the defendant’s dog and for veterinary costs. *Thornton*, 286 Ill. App. 3d at 627, 631. There were two statutes at issue in *Thornton*: section 12 of the Act (510 ILCS 70/12 (West 1994)) and section 5-5-6 of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-6 (West 1994)). *Thornton*, 286 Ill. App. 3d at 633-35. The appellate court rejected the State’s assertion that section 12 of the Act authorized the trial court’s order for restitution. *Id.* at 633. The court noted that section 12 specifically set out

how the cost related to impounding an animal could be recovered only from the animal's sale, not through restitution. *Id.* Likewise, the court held section that 5-5-6 of the Code did not authorize restitution for costs related to impounding the defendant's dog, because in order for there to be restitution under section 5-5-6, there must be a victim, and the Code defined "victim" as a "person," which would not encompass an animal. *Id.* at 633-35. The State also argued that under section 5-5-6, the facility which took care of the dog could be a victim, but the court reiterated that it found no authority which allowed restitution to an agency when there was no underlying "victim." *Id.* at 635.

¶ 21 Section 3.06 of the Act, enacted five years after *Thornton*, states:

"Upon the conviction of the person charged, all animals seized, if not previously ordered forfeited or previously forfeited by operation of law, are forfeited to the facility impounding the animals and must be humanely euthanized or adopted. *Any outstanding costs incurred by the impounding facility for boarding and treating the animals pending the disposition of the case and any costs incurred in disposing of the animals must be borne by the person convicted.*" (Emphasis added.) 510 ILCS 70/3.06(a) (West 2010).

Section 3.06 applies only to "companion animals and animals used for fighting purposes." 510 ILCS 70/3.06 (West 2010). Section 2.01a of the Act includes equines in the definition of "companion animals." 510 ILCS 70/2.01a (West 2010). Additionally, the definition of an "animal control facility" under section 2.01f includes facilities operated by or under contract for a county "for the purpose of *** harboring seized *** animals." 510 ILCS 70/2.01f (West 2010).

¶ 22 While *Thornton* may have been applicable for such circumstances in 1997, it no longer controls in this instance because of the enactment of section 3.06 of the Act. We need only apply

section 3.06's plain language to the facts of this case to conclude that the trial court was authorized to order restitution. Pending defendant's eventual conviction and sentence, Hull incurred outstanding costs in the amount of \$9,910 for the board and treatment of defendant's horses. Hull was acting on behalf of, and at the direction of, Stephenson County to harbor the horses, which means she falls under the treating facility definition within section 2.01f of the Act. 510 ILCS 70/2.01f (West 2010). Additionally, defendant's horses satisfy the companion animal requirement of section 3.06, because equines are specifically mentioned within the definition of "companion animals." 510 ILCS 70/2.01a (West 2010). Section 3.06 is directly on point and thus provided the trial court the authority to order restitution.

¶ 23 In defendant's brief, he also refers to a motion he filed in the trial court under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)) to vacate the trial court's order of restitution, arguing Stephenson County was not a victim under *Thornton*. Said motion was filed on May 5, 2014, after the defendant's appeal came within our jurisdiction. Therefore, the substance of the motion is not properly before us. See Ill. S. Ct. R. 606 (eff. Feb. 6, 2013). Even otherwise, we note that we have already rejected defendant's argument that *Thornton* bars restitution here.

¶ 24 Having determined an order for restitution is appropriate, we next look at the defendant's claim that restitution of \$9,910 was excessive. A trial court's restitution order is a sentencing issue, which "will not be reversed on appeal absent an abuse of discretion." See *Cameron*, 2012 IL App (3d) 110020, ¶ 35.

¶ 25 The amount of restitution ordered by the trial court was based on the costs of the care and veterinary treatment defendant's two horses received. Defendant argues the trial court did not adequately consider his lack of income and that he was apparently filing for disability when it

ordered restitution. In defendant's reply brief, he lists additional factors why he feels the order was excessive. The State responds by arguing that defendant forfeited his argument by not providing citation to the record or any authority in support of his claim that restitution was excessive. Defendant does not address the issue of forfeiture.

¶ 26 Defendant has not directed us to any case law to support his assertion that the amount of restitution ordered was excessive. Illinois Supreme Court Rule 341(h)(7) requires arguments to be supported by authority, and such an absence of authority forfeits the argument. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 31 (argument raised on appeal not supported by citation to relevant authority is forfeited); *In re Estate of Walsh*, 2012 IL App (2d) 110938, ¶ 37 ("Rule 341(h)(7) requires parties to cite relevant authority in support of their arguments, and when a party does not offer meaningful authority in support of his argument, that argument is forfeited."). By not citing any authority in support of his claim that restitution was excessive, defendant has forfeited this issue.

¶ 27 Defendant also attached to his reply brief what appears to be a property tax assessment, apparently to counter the assertion that his property was worth over \$70,000. However, this evidence of the property tax assessment was not filed in the trial court and is not properly a part of the record on appeal. Even if defendant had not forfeited his argument of excessive restitution, we could not consider the tax assessment. See Ill. S. Ct. R. 341(j) (eff. Feb. 6, 2013) ("The reply brief, if any, shall be confined strictly to replying to arguments presented in the brief of the appellee and need contain only Argument."); *Cala v. Gerami*, 137 Ill. App. 3d 936, 938 (1985) (attachments to briefs not filed in the trial court are not properly a part of the record on appeal and cannot be considered by the reviewing court).

¶ 28 Because defendant did not cite to the record or supportive authority, we find that he forfeited his excess restitution argument. Even if defendant had not forfeited this argument, the trial court found the defendant had the ability to pay the order for restitution based on his assets. Therefore, the trial court did not abuse its discretion in ordering restitution in the amount of \$9,910.

¶ 29

III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the Stephenson County circuit court.

¶ 31 Affirmed.