

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-001917-DG

TAMMY DILLARD

APPELLANT

ON DISCRETIONARY REVIEW FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE FREDRIC COWAN, JUDGE  
ACTION NO. 11-XX-000017

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING AND REMANDING

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BEFORE: MAZE, STUMBO AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Tammy Dillard was granted discretionary review of her challenge to the imposition of restitution on her conviction for failing to maintain insurance on her vehicle. Because no final order of restitution was entered, we affirm the circuit court's dismissal of the appeal.

On February 12, 2010, Dillard was involved in a three-car accident. The cause of the accident was disputed. The Commonwealth maintained that

Dillard caused the accident when the vehicle she was driving hit the vehicle in front of her (owned by Sarah Halk), causing it to hit the vehicle in front of it (owned by Myra Napper). Dillard contends that a fourth vehicle caused the accident by stopping abruptly in front of Napper's vehicle.

Under the Motor Vehicle Reparations Act (MVRA), Dillard was required to obtain and maintain appropriate insurance or approved security on her vehicle. Kentucky Revised Statutes (KRS) 304.39-080(6), (7); KRS 304.39-090. This obligation included obtaining minimum tort liability insurance. KRS 304.39-110. Dillard was charged with violating the MVRA under KRS 304.99-060(1)(a) for failing to maintain required insurance/security, first offense, a class A misdemeanor pursuant to KRS 532.020(2).

The Commonwealth sought restitution on behalf of Halk for \$3,600 in damages because Halk lacked comprehensive insurance. It did not seek restitution for Napper because she was covered by comprehensive insurance, although she was required to pay a deductible.

Restitution is defined as “any form of compensation paid by a convicted person to a victim for . . . property damage and other expenses suffered by a victim because of a criminal act[.]” KRS 532.350(1)(a). Restitution shall be ordered as part of a sentence of conditional discharge “in a case where a victim of a crime has suffered monetary damage as a result of the crime due to having . . . [the] value [of his property] substantially decreased as a result of the crime, or where the victim suffered . . . direct out-of-pocket losses[.]” KRS 533.030(3).

Dillard requested and obtained a hearing before the district court on whether it had the authority to order restitution. She claimed there was no victim of her crime of failing to maintain insurance and that her conviction did not establish that she was liable for damages from the accident. On January 7, 2011, at the conclusion of the hearing, the district court orally ruled that Dillard would be ordered to pay restitution if found guilty because her failure to maintain insurance prevented Halk from being compensated for her property damage.

On February 8, 2011, Dillard entered a conditional plea of guilty, reserving the right to appeal the court's ruling on the issue of restitution. That same day, the district court accepted her conditional plea pursuant to Kentucky Rules of Criminal Procedure (RCr) 8.09 and ordered her conditionally discharged for two years.

Before the district court could conduct a restitution hearing and enter a final judgment, Dillard appealed, thus staying the lower court's proceedings. The circuit court dismissed the appeal, determining there was no final action of the district court as required by KRS 23A.080(1). Dillard's motion for reconsideration was denied. Dillard requested discretionary review from our Court, claiming the district court entered a final judgment/order and ordered her to pay restitution to Halk. We granted discretionary review.

Upon thorough review of the record, we determine there is no final judgment imposing restitution. The district court's oral advisory ruling did not impose restitution or constitute a final order. *Commonwealth v. Taylor*, 945

S.W.2d 420, 422 (Ky. 1997); *Commonwealth v. West*, 147 S.W.3d 72, 73-74 (Ky.App. 2004). We cannot review this issue on the merits in the absence of a final judgment and order of restitution. However, we can provide some guidance as to what circumstances would allow restitution to be ordered for a violation of KRS 304.99-060.

We disagree with Dillard's contention that her crime lacks a victim. Kentucky adopted the MVRA to address the toll of motor vehicle accidents on victims, the public, policyholders and others. KRS 304.39-010. The MVRA's enumerated purposes include requiring vehicle owners to obtain insurance that would cover legal liability for vehicles and reducing the need for victims to pursue recovery through tort litigation. KRS 304.39-010(1), (5).

The Kentucky Supreme Court has indicated that the MVRA is remedial legislation to be liberally interpreted to accomplish its broad public policy goals. *Mitchell v. Allstate Ins. Co.*, 244 S.W.3d 59, 63 (Ky. 2008); *Coots v. Allstate Ins. Co.*, 853 S.W.2d 895, 900 (Ky. 1993). The Court has further explained that the MVRA is intended to create a comprehensive compulsory insurance system requiring owners to obtain security and imposing legal liability for damages arising out of ownership or use of the vehicle. *McGrew v. Stone*, 998 S.W.2d 5, 6 (Ky. 1999). It is intended to "insure that one who suffers a loss as the result of an automobile accident would have a source and means of recovery." *Mitchell*, 244 S.W.3d at 63 (quoting *Nat'l Ins. Ass'n v. Peach*, 926 S.W.2d 859, 861 (Ky.App. 1996)). The MVRA also requires that tort victims receive prompt

payment. *Progressive Max Ins. Co. v. Nat'l Car Rental Sys., Inc.*, 329 S.W.3d 320, 323 (Ky. 2011).

Dillard's failure to maintain insurance prevented Halk from receiving the benefit of the MVRA's provisions that were designed to protect motorists who had properly complied with their legal obligations. Under these circumstances, the remedial purposes of the MVRA are best served by allowing Halk to seek compensation through the restitution system, rather than having to pursue recovery in tort litigation.

Whether Halk qualifies as a victim depends on whether the Commonwealth can establish that Halk's damages are the result of Dillard's crime. Dillard's conviction for failure to maintain insurance does not by itself establish liability for the accident. Therefore, restitution may only be ordered if both liability for the accident and the amount of damages is proven by a preponderance of the evidence.<sup>1</sup>

Dillard's liability can be established through a proper restitution hearing. The evidence introduced at the restitution hearing must show an adequate factual predicate for the restitution order, and the defendant must be given a meaningful

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<sup>1</sup> We do not believe that the rule announced in *Commonwealth v. Morseman*, 379 S.W.3d 144, 152 (Ky. 2012), that a trial court may not order a criminal defendant to pay restitution to a victim of a crime for which he is not convicted unless the defendant voluntarily agreed to make restitution as part of a plea agreement, prohibits restitution from being ordered in this case. The Commonwealth is not trying to make Dillard pay restitution for an unconvicted crime related to causing the accident, but for the convicted crime of failing to drive without insurance causing the damages. If the Commonwealth can establish causation, the restitution would be required based on the crime for which she is convicted.

opportunity to controvert the factual allegations that form the basis for the restitution. *Fields v. Commonwealth*, 123 S.W.3d 914, 917-918 (Ky.App. 2003). Alternatively, liability may be established through judicial notice of a civil judgment finding liability and specific damages due to the accident. If liability for the accident is established, comparative fault could reduce the amount of any damages a victim is eligible to receive. Therefore, any hearing must allow evidence pertaining to liability, damages and comparative fault, and the trial court must making findings on those issues.

We clarify that a victim for purposes of the restitution statute could only include Halk and Napper in this case. Although the Commonwealth is not seeking restitution on Napper's behalf, she could potentially qualify as a victim and be eligible for reimbursement of her deductible and any other damages not covered by her insurance company. However, her insurance company could not receive restitution. An insurance company is "not a reimbursable entity under the statute." *Clayborn v. Commonwealth*, 701 S.W.2d 413, 416 (Ky.App. 1985). *See also Rollins v. Commonwealth*, 294 S.W.3d 463, 465 n. 3 (Ky.App. 2009). We do not believe that an application of the broad remedial purposes of the MVRA changes this analysis as the MVRA is not intended to benefit insurance companies. *See, e.g., Bishop v. Allstate Ins. Co.*, 623 S.W.2d 865, 866-867 (Ky. 1981); *Mosley v. W. Am. Ins. Co.*, 743 S.W.2d 854, 855 (Ky.App. 1987) (both determining insurance exclusions from minimal coverage were unenforceable as contravening the purpose and policies behind the MVRA).

Dillard has not begun to serve her period of conditional discharge because she appealed from an interlocutory order. Her period of conditional discharge will begin after a final order is entered in this matter. We note that if restitution is imposed and if Dillard is unable to complete payment within the period of conditional discharge, the district court could potentially lengthen the period of conditional discharge before it lapses to ensure payment of restitution. *Rollins*, 294 S.W.2d at 466 n. 5; KRS 533.020(3); KRS 532.033(8).

We affirm the Jefferson Circuit Court's dismissal of the appeal and remand for the district court to conduct a restitution hearing and impose a final judgment.

MAZE, JUDGE, CONCURS.

STUMBO, JUDGE, CONCURS IN RESULT ONLY.

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