

Case Summary

A.S. appeals the trial court's order requiring him to pay restitution without first determining his ability to pay such. We reverse and remand.

Issue

A.S. raises one issue, which we restate as whether the trial court properly ordered A.S. to pay restitution without determining his ability to pay.

Facts

A.S. was adjudicated a delinquent child. When sentencing A.S., the trial court ordered him to pay restitution, including the victim's medical bills and the costs associated with the victim's mother missing work. The trial court did not consider A.S.'s ability to pay when it issued this order. A.S. now appeals.

Analysis

A.S. argues that the trial court improperly ordered him to pay restitution without first considering his ability to pay and asks that the restitution order be reversed. See M.L. v. State, 838 N.E.2d 525, 529 (Ind. Ct. App. 2005) (“[E]qual protection and fundamental fairness concerns require that a juvenile court must inquire into a juvenile’s ability to pay before the court can order restitution as a condition of probation. On the other hand, when restitution is not a condition of probation, but rather a part of an executed sentence, an inquiry into the defendant’s ability to pay is not required.”), trans. denied. The State agrees that the trial court’s order of restitution without first determining A.S.’s ability to pay constitutes an abuse of discretion. The State urges that the proper remedy is to vacate the restitution order and to remand for a new restitution

order contingent on the trial court's inquiry into A.S.'s ability to pay. Because A.S. is not otherwise challenging the delinquency adjudication, we agree that reversing the restitution order and remanding for redetermination is the proper remedy.

Conclusion

Because the State agrees with A.S. that the trial court improperly ordered him to pay restitution without first considering his ability to pay, we reverse the restitution order and remand for a new restitution determination. We reverse and remand.

Reversed and remanded.

BAILEY, J., and VAIDIK, J., concur.