

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAF 11-00069

PRESENT: SCUDDER, P.J., FAHEY, LINDLEY, VALENTINO, AND MARTOCHE, JJ.

IN THE MATTER OF JOSHUA R.S.,
RESPONDENT-APPELLANT.

STEBUEN COUNTY LAW DEPARTMENT,
PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

ROBERT A. DINIERI, ATTORNEY FOR THE CHILD, CLYDE, FOR
RESPONDENT-APPELLANT.

ALAN P. REED, COUNTY ATTORNEY, BATH (RUTH A. CHAFFEE OF COUNSEL), FOR
PETITIONER-RESPONDENT.

Appeal from an order of the Family Court, Steuben County (Marianne Furfure, A.J.), entered November 30, 2010 in a proceeding pursuant to Family Court Act article 3. The order directed respondent to pay restitution.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by reducing the amount of restitution to \$730 and as modified the order is affirmed without costs.

Memorandum: On appeal from an order directing him to pay restitution in the amount of \$740 for property damage and loss arising from his multiple burglaries of a single residence, respondent contends that the restitution award is not supported by the record. The restitution award is comprised of \$580 for property damage and \$160 for the theft of a handgun and a bottle of vodka. With one minor exception, we conclude that Family Court's restitution award is supported by a preponderance of the material and relevant evidence introduced at the dispositional hearing (see Family Ct Act § 350.3 [1], [2]; *Matter of Michael V.*, 92 AD3d 1115, 1116, lv denied 19 NY3d 804).

Here, the cost to repair the damaged property was established by the testimony of its landlord and an estimate for repairs written on construction company letterhead. Furthermore, the victim testified to the model and the condition of his stolen handgun and that he had inquired at three local stores to determine the value of comparable models. Based on the detailed testimony of the witnesses and in light of the great weight accorded to the court's award (see *Matter of Andrew D.*, 231 AD2d 953, 953; *Matter of James A.*, 205 AD2d 621, 622), we conclude that the evidence is sufficient to support the court's determination of the "fair and reasonable cost to replace the property [or] repair the damage caused by the respondent" with respect to those

portions of the restitution award (Family Ct Act § 353.6 [1] [a]; see *Matter of Dante P.*, 81 AD3d 1267, 1268; *Matter of Antonio M.*, 214 AD2d 571, 571).

We agree with respondent, however, that the court erred in granting restitution with respect to a \$10 bottle of vodka allegedly stolen during a burglary. The theft of that bottle was not alleged in the petition and, as such, is not properly part of the restitution award (see *Matter of Jared G.*, 39 AD3d 1248, 1249). We therefore modify the order by reducing the amount of restitution accordingly.

Entered: February 8, 2013

Frances E. Cafarell
Clerk of the Court