



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. RICHARD ALLEN REED
CR-20-0385-PR**

PARTIES:

Petitioner: Richard Allen Reed

Respondent: State of Arizona

Intervenor: Lanna Mesenbrink, widow of Richard Allen Reed

Victim: C.C.

Amicus Curiae: Arizona Attorneys for Criminal Justice;
Arizona Voice for Crime Victims, Inc.

FACTS:

Petitioner Richard Allen Reed was convicted of voyeurism. The victim hired a private attorney, who primarily practiced civil law, to represent her during the criminal proceedings.

Pursuant to A.R.S. § 13-805, the victim requested a restitution award. She sought \$23,784.80 in total restitution. This amount included \$17,909.50 for the victim's attorney fees. The trial court awarded restitution totaling \$21,033.11, which included the full amount of attorney fees sought.

The \$17,909.50 in attorney fees was based upon 36.3 hours of attorney work at rates varying from \$395 to \$405 per hour, as well as 19 hours of paralegal work. According to the attorney's invoice and affidavit, he performed tasks that included analyzing the victim's restitution claim; researching Petitioner's assets and possible indigency status; communicating with the prosecutor and the victim regarding the witness list, trial preparation, and the restitution claim; facilitating communications between the victim, prosecutor, and victim's advocate; attending trial; and drafting and revising the State's motion for the victim's restitution.

Petitioner appealed the attorney fees award. While his appeal was pending, Petitioner died. The Court of Appeals then dismissed the appeal pursuant to A.R.S. § 13-106. This Court vacated the Court of Appeals' decision and remanded for a decision on the merits, holding that the court may permit a deceased defendant's estate or other interested party to intervene in the appeal. *State v. Reed*, 248 Ariz. 72, 81 ¶ 31 (2020).

On remand, the Court of Appeals permitted Petitioner's widow, Lanna Mesenbrink, to intervene, and it affirmed the restitution award. *State v. Reed*, 250 Ariz. 599 (App. 2020). In doing so, the court first stated that "no contention is made that attorneys' fees cannot be the subject of a restitution

award.” *Id.* at 602–03 ¶ 8 (citing *State v. Leteve*, 237 Ariz. 516, 530 ¶ 58 (2015), in which the Court “assume[d], without deciding, that attorney fees incurred to enforce victims’ rights may be compensable in restitution”). The court next found that the attorney fees were economic losses recoverable as restitution, not as consequential damages exempt from restitution. *Id.* at 603 ¶ 12.

The court rejected Petitioner’s remaining arguments, holding that: (1) Petitioner had not indicated anything in the record suggesting that the trial court failed to assess the restitution’s reasonableness, and Petitioner did not show the hourly rate was unreasonable, *id.* at 604–05 ¶¶ 16–18; (2) the record supported that the victim was obligated to pay the fees to her attorney, *id.* at 605 ¶ 19; and (3) the record did not support an argument that the victim’s attorney acted as a private prosecutor in violation of Petitioner’s due process rights. *Id.* at 605–06 ¶ 21.

Last, the court addressed Intervenor’s request that the court order that: (1) community property not be subject to the restitution order; (2) the lien on the community property she owned with Petitioner be released; and (3) the superior court clerk record the court’s decision with the County Recorder and Arizona Department of Transportation. The court held that her requests exceeded the court’s authority on the remand from this Court. *Id.* at 606 ¶ 23. The court therefore denied her requests “without prejudice to her seeking relief in an appropriate forum by filing an appropriate action naming and joining the necessary parties.” *Id.* ¶ 25.

A Joint Petition for Review was filed on behalf of Petitioner Reed and Intervenor Mesenbrink, and the Court granted review.

ISSUE:

Are a victim’s private attorney fees recoverable as criminal restitution, particularly considering A.R.S. § 13-4437(A), and if so, to what extent?

STATUTES:

In relevant part, Arizona Revised Statute § 13-603(C) provides:

If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime . . . in the full amount of the economic loss as determined by the court. . . .

In relevant part, Arizona Revised Statute § 13-4437(A) provides:

The rights enumerated in the victims' bill of rights, article II, section 2.1, Constitution of Arizona, any implementing legislation or court rules belong to the victim. . . . In asserting any right, the victim has the right to be represented by personal counsel at the victim's expense and the proceedings may be initiated by the victim's counsel or the prosecutor.

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