

IN THE COURT OF APPEALS OF IOWA

No. 6-690 / 05-1913
Filed October 25, 2006

STATE OF IOWA,
Plaintiff-Appellant,

vs.

GREGORY HARDEN COLEMAN, JR.,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, Judge.

Plaintiff appeals the district court order denying it restitution. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, J. Patrick White, Johnson County Attorney, and Michael D. Brennan, Assistant County Attorney, for appellant.

Linda Del Gallo, State Appellate Defender, and Theresa Wilson, Assistant Appellate Defender, for appellee.

Heard by Sackett, C.J., and Zimmer, J., and Hendrickson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

SACKETT, C.J.

The plaintiff-appellant, the City of Iowa City (City), appeals from the district court's order denying it restitution from the defendant-appellee, Gregory Coleman, for medical and disability reimbursements the City made to an officer who was injured by Coleman when resisting arrest. We reverse and remand.

On June 5, 2003, Coleman resisted the City officers' attempt to arrest him and assaulted them, hitting Officer Darin Zacharias with enough force to dislocate his shoulder. He pled guilty to interference with official acts causing injury and assault on a police officer causing bodily injury. On October 23, 2003, the Johnson County Attorney filed an amended statement of pecuniary damages on behalf of the City, including a claim for the medical expenses of and disability payments made by the City to Officer Zacharias. On October 30, 2005, the district court issued a ruling denying the City's request for restitution finding it was not a person and was rather an insurer pursuant to Iowa Code section 910 (2003). The City contends the district court erred in holding it is not "person" under section 910.1(5) and that it is an "insurer" rather than a "victim" entitled to restitution.

Coleman concedes the City can be considered a "person" under the restitution statute. However, he asserts the district court was correct in its holding that the City is an "insurer" and not entitled to restitution. In making this argument, Coleman asserts the City has assumed the position of an insurer and is not the "direct victim" of Coleman's actions.

We review the district court's order denying restitution for correction of errors at law. *State v. Paxton*, 674 N.W.2d 106, 108 (Iowa 2004). We determine

whether the findings of the district court lack substantial evidentiary support or whether the law was properly applied. *State v. Bonsetter*, 637 N.W.2d 161, 165 (Iowa 2001).

We agree with Coleman and the City that the City is a “person,” and thus may be a “victim” entitled to restitution. A victim is defined as “a person who has suffered pecuniary damages as a result of the offender’s criminal activities.” Iowa Code § 910.1(5). While “person” is not defined in section 910.1, it is defined elsewhere in the Code and we apply that definition. Section 4.1(20) states: “unless otherwise provided by law ‘person’ means an individual, corporation, limited liability company, *government or governmental subdivision or agency*, business trust, estate, trust, partnership or association or other legal entity.”

Given the fact that the City is a “person,” we must determine whether the City is a “victim” or “insurer.” Generally, a defendant must pay restitution to the victims of his crimes; however, an insurer is not entitled to subrogation. See *id.* §§ 910.2 (setting forth when restitution is required) and 910.1(5) (defining “victim”). The trial court found the City was, in effect, Officer Zacharias’ insurer because it reimbursed his medical bills.

The City is required by statute to pay its officers’ medical bills. *Id.* § 411.15. It is also required to pay disability benefits. *Id.* § 411.1A(2). The defendant contends these sections impose a duty on the City to assume the risk of loss suffered by its officers, and though it could contract with an insurance carrier, it chose to put itself in the position of insurer. Nevertheless, these provisions do not make the City an insurer. The definition of insurer should be

interpreted using the ordinary meaning of the word. *State v. Hennenfent*, 490 N.W.2d 299, 300 (Iowa 1992). An insurer is “[t]he underwriter or insurance company with whom a contract of insurance is made; [t]he one who assumes the risk or underwrites a policy, or the underwriter or company with who [a] contract is made.” *Id.* (citing *Black’s Law Dictionary* 808 (6th ed. 1990)). The City does not write contracts for insurance on an ordinary basis. Sections 411.15 and 411.1A(2) are not traditional contracts for insurance where “for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.” *Id.* (citing *Black’s Law Dictionary* 802). Just as a statute requiring “a bank to make good the amount charged to a depositor’s account because of forged checks,” these provisions merely place responsibility on the City, “who is in the best position to avoid it,” to cover medical expenses incurred by an officer in the line of duty. *Id.* at 300.

Furthermore, the City is a self-insurer, and “self-insurance, or internal risk distribution,” is no insurance at all. *State v. Schares*, 548 N.W.2d 894, 896 (Iowa 1996) (citing *Iowa Contractors Workers’ Comp. Group v. Iowa Ins. Guar. Ass’n*, 437 N.W.2d 909, 917 (Iowa 1989)). The City’s medical costs and disability benefits are paid through the operating budget of the police department. The City estimates the cost of the benefits for city employees and determines the tax levy to be applied to the property in the City to pay for the expenses. It is not compensated for assuming the risk involved in providing medical attention for its officers, nor does it earn or distribute a profit from the relationship. See *id.*, at 896 (finding the Archdiocese of Dubuque was not compensated for risks even where the participating parishes and schools paid premiums to the “fund”). In the

City's situation, "the policy reason for disallowing reimbursement to insurers, that is because insurers derive a profit by assuming assigned risks, is not present."

Id.

Contrary to the defendant's claims that the City is an "indirect" rather than "direct" victim of Coleman's actions, the City is simply a "victim." The definition of "victim" in section 910.1(5) makes no distinction between an "indirect" or "direct" victim for restitution purposes. Because the City had to expend money from its budget to pay the medical bills and disability benefits of a City officer as a result of an admitted assault by the defendant, the City is entitled to restitution. We reverse the district court's order denying the City restitution and remand for proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.