

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ALICIA RAMOS ZUNIGA,
Defendant-Appellant.

Malheur County Circuit Court
15CR1253; A161931

Lung S. Hung, Judge.

Argued and submitted August 8, 2017.

Thomas A. Hill argued the cause and filed the brief for appellant.

Taylor Housley, Certified Law Student, argued the cause for respondent. On the brief were Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Greg Rios, Assistant Attorney General.

Before Egan, Presiding Judge, and DeHoog, Judge, and Aoyagi, Judge.

AOYAGI, J.

Affirmed.

AOYAGI, J.

Defendant was convicted of reckless driving and careless driving, in connection with a car accident that seriously injured another driver, Reed. The trial court ordered defendant to pay \$596,472.46 to Reed's health insurer as restitution for Reed's medical bills. Defendant contends that the restitution award is unlawful under ORS 137.106, a statute that provides for the payment of restitution to "victims" as defined in ORS 137.103. We affirm.

The relevant facts are undisputed. On the morning of January 7, 2015, defendant was driving a vehicle in Malheur County. While attempting to pass another vehicle, she collided head-on with a vehicle driven by Reed. Reed was seriously injured in the collision and incurred substantial medical bills.

Defendant pleaded guilty to one count of reckless driving, ORS 811.140, which is a misdemeanor, and one count of careless driving, ORS 811.135, which is a violation. The state asked that defendant be ordered to pay restitution to Reed's health insurer, Moda Insurance (Moda), in the amount of \$596,472.46, for medical expenses incurred by Reed and paid by Moda. Defendant opposed the request, arguing that her crimes were not committed "against" Reed within the meaning of ORS 137.103(4)(a) and that Moda therefore had no right to restitution under ORS 137.103(4)(d). After a hearing, the trial court entered an amended judgment of conviction, ordering defendant to pay \$596,472.46 to Moda as restitution.

Whether ORS 137.106 authorizes the restitution award to Moda is a question of statutory construction. As such, we examine the statutory text, context, and any helpful legislative history to determine the legislative intent. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). The correct construction of a statute is a question of law. *Karjalainen v. Curtis Johnston & Pennywise, Inc.*, 208 Or App 674, 681, 146 P3d 336 (2006), *rev den*, 342 Or 473 (2007) ("[S]tatutes are—by definition—law, and their interpretation always is a question of law.").

ORS 137.106(1)(a) provides for a trial court to order a defendant to pay restitution to a “victim” who has suffered economic damages as a result of the defendant’s crime. The statute states, in relevant part:

“When a person is convicted of a crime, or a violation as described in ORS 153.008, that has resulted in economic damages, the district attorney shall investigate and present to the court, at the time of sentencing or within 90 days after entry of the judgment, evidence of the nature and amount of the damages. *** If the court finds from the evidence presented that a *victim* suffered economic damages, in addition to any other sanction it may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant pay the *victim* restitution in a specific amount that equals the full amount of the *victim*’s economic damages as determined by the court.”

(Emphases added.)

ORS 137.103(4) defines “victim,” as used in ORS 137.101 to 137.109.

“‘Victim’ means:

“(a) The person or decedent *against whom* the defendant committed the criminal offense, if the court determines that the person or decedent has suffered or did suffer economic damages as a result of the offense.

“(b) Any person not described in paragraph (a) of this subsection whom the court determines has suffered economic damages as a result of the defendant’s criminal activities.

“(c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.

“(d) An insurance carrier, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.

“(5) ‘Victim’ does not include any coparticipant in the defendant’s criminal activities.”

(Emphasis added.)

The parties agree that Reed is a “victim” under the restitution statutes and that, if Reed had paid her own medical bills, it would have been proper for the trial court to order defendant to pay restitution to her under ORS 137.106. That position accurately reflects our case law. We have long recognized that restitution is appropriate under ORS 137.106 when there is a causal relationship between the defendant’s crime(s) and reasonably foreseeable economic damages suffered by the person to whom restitution is to be paid. *State v. Ramos*, 358 Or 581, 584, 368 P3d 446 (2016); *State v. Dillon*, 292 Or 172, 181, 637 P2d 602 (1981); *State v. Akerman*, 278 Or App 486, 490, 380 P3d 309 (2016); *State v. Kirkland*, 268 Or App 420, 424, 342 P3d 163 (2015). Thus, if the causal requirement for restitution is proved, the person as to whom it is proved is necessarily a “victim” within the meaning of the restitution statutes.¹

Having established that Reed is a “victim,” the issue in this case is what *type* of victim she is. The trial court agreed with the state that Reed is a victim under ORS 137.103(4)(a), *i.e.*, a person “against whom” defendant committed the offenses of reckless driving and careless driving, and that Moda therefore is a victim under ORS 137.103(4)(d), *i.e.*, an insurance carrier that “has expended moneys on behalf of a victim described in paragraph (a).” Defendant disagrees. In defendant’s view, the words “against whom the defendant committed the criminal offense” limits paragraph (a) to victims of crimes or violations that require injury to another person as an element of the offense. Paragraph (b), defendant asserts, captures all other victims, including victims of crimes like reckless driving and careless driving that make certain conduct unlawful regardless of whether anyone gets hurt. If Reed is a victim under paragraph (b), not paragraph (a), then defendant cannot be ordered to pay restitution to Moda. *See* ORS 137.103(4)(d) (defining an

¹ The word “victim” appears throughout our statutes, and we have previously recognized that it has different meanings in different statutes. *State v. Teixeira*, 259 Or App 184, 192, 313 P3d 351 (2013) (concluding “that the meaning of ‘victim’ under the sentencing guidelines is broader than the meaning of ‘victim’ for purposes of ORS 161.067, but narrower than the meaning of ‘victim’ under ORS 131.007”). Here, we address only the definition of “victim” in ORS 137.103, which defines that term as used in ORS 137.101 to 137.109, the compensatory fine and restitution statutes.

insurance carrier as a “victim” only “if it has expended monies on behalf of a victim described in paragraph (a)”).

The critical question then is whom the legislature intended to include in the paragraph (a) definition of “victim.” The answer to that question is not immediately apparent from the text of the statute, which reasonably could be interpreted as the trial court interpreted it, but also reasonably could be interpreted as defendant proposes. The context of the statute provides little assistance. We therefore turn to the legislative history.

The legislative history of ORS 137.103 and ORS 137.106 begins, coincidentally, with another head-on collision. In the early 1970s, Robert Stalheim was convicted of criminally negligent homicide after the car he was driving struck an oncoming vehicle, resulting in the death of a woman and her two children. *See State v. Stalheim*, 275 Or 683, 684-85, 552 P2d 829 (1976). Stalheim was placed on probation. *Id.* As a condition of his probation, the court required Stalheim to pay restitution to the deceased woman’s husband, who was also the deceased children’s father. *Id.* At that time, a sentencing court was authorized by statute to require, as a condition of probation, that the defendant pay restitution “to the aggrieved party” for damage or loss caused by the offense. *Id.* at 685. Stalheim appealed and challenged the probation condition. *Id.* The Supreme Court reversed the imposition of that condition holding, as a matter of first impression, that the phrase “aggrieved party” referred “to the direct victim of a crime, and not to other persons who suffer loss because of the victim’s death or injury.” *Id.*

In 1977, in direct response to the *Stalheim* decision, the legislature enacted ORS 137.103 to 137.109. *See State v. Barkley*, 315 Or 420, 846 P2d 390, *cert den*, 510 US 837 (1993) (discussing legislative history). The newly enacted restitution statutes used the term “victim” instead of “aggrieved party.” ORS 137.106 (1977). “Victim” was defined broadly as “any person whom the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities,” except for a criminal coparticipant. ORS 137.103 (1977).

Prior to the bill’s enactment, legislative discussions of the bill consistently used language similar to that in *Stalheim* to describe the purpose of the bill, *i.e.*, that it would expand the availability of restitution beyond the “direct” victims of crimes to indirect victims such as family members. For example, in a meeting of the Senate Committee on the Judiciary, Edward Sullivan, Legal Counsel to the Governor and Chair of the Governor’s Task Force on Corrections, explained that “only the direct victims of an offense could receive restitution” under *Stalheim* and that the new statute “was an attempt to reverse” *Stalheim* and would “allow the victim, the victim’s family and injured third parties to collect restitution.” *Barkley*, 315 Or at 436 (quoting Tape Recording, Senate Committee on Judiciary, HB 2012, May 31, 1977, Tape 40, Side 2). In a later meeting of the same committee, Senator Carson asked whether victims’ employers would be able to get restitution, to which Sullivan responded, “What we tried to include was not only the direct victim, but the victim’s family and also any third party who may have been injured. We tried to keep it as tight as possible while getting every conceivable victim.” *Id.* (quoting Tape Recording, Senate Committee on the Judiciary, HB 2012, June 2, 1977, Tape 38, Side 2). Similarly, in the floor debate in the Senate: “Given the right factual situation, ‘victim’ *** would include not only the person upon whom the assault takes place or the theft is made, but also those who are dependent upon him or her for income or support or whatever it may be. So we broaden the definition of victim.” *Id.* (citing Tape Recording, Senate Floor Debate, HB 2012, June 11, 1977, Tape 40, Side 1).

From 1977 until 2005, the definition of “victim” remained the same—a single-sentence definition of broad scope. *See State v. Hull*, 68 Or App 817, 820 n 1, 683 P2d 157, *rev den*, 298 Or 37 (1984) (stating that “victim” in ORS 137.103(4) was “to be broadly interpreted”). There was no reason or need to discuss different types of victims in restitution cases as the same law applied to all.

In 2005, the legislature amended the restitution statutes. It replaced the term “pecuniary damages” with “economic damages.” Or Laws 2005, ch 564, § 1 (amending

ORS 137.103); Or Laws 2005, ch 564, § 2 (amending ORS 137.106). It also rewrote the definition of “victim” to identify four specific categories, enumerated in paragraphs (a) to (d) of ORS 137.103(4). Or Laws 2005, ch 564, § 1. Those four categories remain in the current statute, along with two additional categories, paragraphs (e) and (f), that were added in 2015. ORS 137.103.

The legislative history of the 2005 amendments is silent as to how the legislature came to choose the specific language of ORS 137.103(4)(a), *i.e.*, “person or decedent against whom the defendant committed the criminal offense.” What the legislative history does indicate, however, is that paragraphs (a) and (b) are grounded in the same distinction articulated in *Stalheim* that led to the original legislation—a distinction between the “direct” victim of a crime and “other” people affected by a crime because of its ripple effects.

Most significantly, in a hearing before the House Committee on the Judiciary, Subcommittee on Civil Law, Fred Boss, an Assistant Attorney General and Chief Counsel of the Civil Enforcement Division of the Oregon Department of Justice, testified that the Attorney General’s Restitution Reform taskforce had proposed the bill to provide three clarifications to existing law, two of which related to the “victim” definition. Boss testified:

“Second, the bill provides for clarity in the definition of who is a ‘victim’ for the purpose of a restitution award. A ‘victim’ is defined as *the actual person against whom the crime was committed, and then all others who have suffered economic damages as a result of a crime.* What this does is clarify some confusion in the courts as to whether or not insurance companies or crime victims who are third party payers who have paid *the actual victim of a crime* can be included as part of the restitution award.

“[Third], the bill provides for an order of payment if there are multiple victims. First the payment goes to the *actual victim of a crime*, next to the Criminal Injuries Compensation Account and then to all others who have suffered economic damages as a result of the criminal action.

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“We would like to specifically include in the definition of a ‘victim’ insurance carriers and the Criminal Injuries Compensation Account so that there will be no confusion whether or not those entities can be included as payees in a restitution award.”

Audio Recording, House Committee on the Judiciary, Subcommittee on Civil Law, HB 2230, Jan 24, 2005, at 34:44 (comments of Assistant Attorney General Fred Boss), <http://records.sos.state.or.us> (accessed Sept 12, 2017) (emphases added).

Later in the same hearing, Boss and Representative Macpherson had the following exchange:

“MACPHERSON: What I think this does *** is to make it clear that the amount that an offender would be obligated to repay would include not only the damage to the individual victim of the criminal conduct, but, if for example, there were property damage to a vehicle or a home that was covered by an insurer that would become part of the judgment that an offender would be obligated to repay—is that a correct understanding?

“BOSS: Correct. That is exactly what it is intended to do. The Restitution Reform Taskforce had anecdotal evidence that in certain counties in that exact situation, for example, someone’s car was stolen and it was covered by insurance; there was a deductible of \$200 but the car was worth \$10,000. Restitution would be awarded for the \$200 not for the full value of the car even though the insurance company had paid for the full value of the car. That, in the view of the taskforce, was a windfall for a criminal defendant that they didn’t have to pay the full amount of the loss. What this does is clarify so that in that situation the full amount of the loss would be payable in the restitution judgment.”

Id. at 40:49 (comments of Assistant Attorney General Fred Boss and Rep. Greg Macpherson), <http://records.sos.state.or.us> (accessed Sept 12, 2017).

That brings us back to the proper construction of ORS 137.103(4)(a). As previously noted, the text and context of the statute itself give little insight into exactly what the legislature intended by the phrase “person or decedent against whom the defendant committed the criminal

offense.” The legislative history is quite helpful, however, elucidating what the legislature intended. It demonstrates that, ever since this issue first came to the legislature’s attention in 1977, the legislature’s understanding of what it means to be a “victim” of a crime for purposes of restitution has been shaped by the distinction that the Supreme Court made in *Stalheim*—between “the direct victim of a crime” and “other persons” who suffer economic damages as a result of the crime. 275 Or at 685. The legislative discussions in both 1977 and 2005 are consistent with that distinction. By contrast, we have found no legislative history to support defendant’s proposed interpretation of paragraphs (a) and (b) as distinguishing victims based on the type of crime committed, *i.e.*, whether the crime requires injury to another person as an element of the offense. Such an interpretation is not implausible in theory, but there is nothing whatsoever to support it in the legislative history.

Accordingly, we hold that the phrase “[t]he person or decedent against whom the defendant committed the criminal offense” in ORS 137.103(4)(a) refers to the direct victim of a crime or violation, as distinguished from an indirect victim such as a family member.² That conclusion effectuates the 1977 legislature’s intent to make restitution available to both direct and indirect victims, while also respecting the distinction between direct and indirect victims that the 2005 legislature incorporated into ORS 137.103 to effectuate new express provisions regarding insurance carriers and the Criminal Injuries Compensation Account.

Having concluded that the legislature intended ORS 137.103(4)(a) to refer to direct victims, as distinguished from indirect victims, we have no difficulty concluding that Reed is a direct victim of defendant’s reckless and careless driving. No one could seriously dispute that defendant’s crime directly caused Reed’s injuries. Accordingly, the trial court correctly concluded that Reed is a victim under

² Family members are the most frequently recognized class of indirect victims. *E.g.*, *State v. Ceballos*, 235 Or App 208, 230 P3d 954, *rev den*, 348 Or 669 (2010) (affirming restitution award to brother of direct victim for funeral expenses); *State v. Carrillo*, 125 Or App 52, 865 P2d 379 (1993) (recognizing that, when the direct victim is a child, the court may award restitution to the parent as an indirect victim).

ORS 137.103(4)(a) and that Moda is a victim under ORS 137.103(4)(d). Therefore, the court did not err in awarding restitution to Moda.

Affirmed.