

BRETHREN MUTUAL INSURANCE	:	IN THE SUPERIOR COURT OF
COMPANY,	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CYNTHIA MCKERNAN, ET AL.,	:	
Appellants	:	No. 895 MDA 2005

Appeal from the Order Entered May 5, 2005, in the Court of Common Pleas of Bradford County, Civil Division, at No. 02CV000094.

BEFORE: BENDER, BOWES AND PANELLA, JJ.

*****Petition for Reargument Filed November 14, 2007*****

OPINION BY BOWES, J.:

Filed: November 1, 2007

¶ 1 Cynthia McKernan challenges the propriety of the May 5, 2005 order granting summary judgment to her insurer, Brethren Mutual Insurance Company, on her counterclaim for reimbursement for funeral expenses that she paid as the result of restitution awarded in a criminal action. We reverse and remand for entry of an award in favor of Appellant.

¶ 2 On February 21, 2002, Appellee instituted this declaratory judgment action against Appellant, the estate of Joseph M. Gardner, and the co-guardians of Mr. Gardner’s two minor children.¹ It sought a declaration that under a homeowner’s policy it had issued to Appellant, it was not required to indemnify or defend her with respect to a civil action that had been instituted against Appellant by the estate and co-guardians (the “underlying action”).

¹ The estate and co-guardians have no interest in the outcome of the present appeal and have not participated in the current proceedings.

¶ 3 The homeowner's policy in question was issued by Appellee for the period from July 31, 1998, to July 31, 1999. In section II of the policy, Appellee agreed to insure Appellant as follows:

**SECTION II – LIABILITY COVERAGES
COVERAGE E. PERSONAL LIABILITY**

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which the "insured" is legally liable; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent

These definitions appear in the policy:

18. The following definitions are also set forth in the Policy:

1. "Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.

. . . .

5. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results during the policy period, in
 - a. "Bodily injury"; or
 - b. "Property damage".

¶ 4 Finally, the following relevant exclusion appears in the policy:

SECTION II – EXCLUSIONS

1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to “bodily injury” or “property damage”:

- a. Which is expected or intended by one or more “insureds”;

¶ 5 In the underlying action, the plaintiffs had averred that on February 1, 1999, Appellant caused Mr. Gardner’s death by negligently or recklessly stabbing him. Appellant was charged criminally in connection with the death. The circumstances surrounding Mr. Gardner’s death² and outcome of the criminal action bear upon our decision herein. Mr. Gardner and Appellant had cohabitated for approximately two years before Mr. Gardner’s February 1, 1999 death. Mr. Gardner was a very large man while Appellant was physically small. Mr. Gardner, who was a heavy drinker, had exhibited physically abusive behavior toward Appellant prior to February 1, 1999. On that day, the couple attended a party where Mr. Gardner consumed alcohol. When Appellant and the decedent left the party, the decedent drove and was arrested for drunk driving.

² The factual circumstances surrounding Mr. Gardner’s death were established when the estate and co-guardians supplemented the record herein with discovery documents produced in the underlying action and evidence from the criminal action. **See** Supplementation of Record Pursuant to Pa.R.C.P. 1035(b), 2/2/04.

¶ 6 Following the arrest, Mr. Gardner, who was upset by the arrest and impending loss of his driver's license, was released into Appellant's custody, and she began to drive home. When Mr. Gardner started to insist that Appellant stop the car to allow him to resume driving, Appellant refused, and Mr. Gardner became further upset.

¶ 7 Once they arrived home, Mr. Gardner struck Appellant, knocking her to the floor. The couple continued to argue in the kitchen, and Mr. Gardner, who was becoming increasingly agitated, advanced toward Appellant aggressively. Appellant grabbed a steak knife to defend herself and swung at Mr. Gardner, intending to frighten him away rather than strike him. The blade penetrated his chest and pierced the heart, causing his death. Appellant immediately called emergency medical personnel to the scene, telling them that she had accidentally stabbed the man.

¶ 8 Based on the facts of the incident, Appellant claims that she was entitled to coverage pursuant to her homeowner's insurance policy because she "swung the knife in the direction of the decedent, not intending to actually strike him and certainly not intending to cause serious bodily injury." Answer and New Matter, 4/4/02, at ¶ 27. She averred that her intent was to frighten him.³

³ Consistently with these facts, in the criminal action, Appellant was not convicted of any intentional crimes as a result of the killing. Instead, Appellant was convicted of reckless endangerment and simple assault by negligently causing bodily injury to another with a deadly weapon. **See *infra*.**

¶ 9 The court in the present action entered an order denying Appellee's request for summary judgment regarding its duty to defend and indemnify Appellant in the underlying civil action, and Appellee undertook representation in that action. That action was settled without exhausting the limits of the policy that Appellee had issued to Appellant.

¶ 10 With express permission of the trial court, Appellant then filed a counterclaim against Appellee. In the counterclaim, she sought reimbursement from Appellee for Mr. Gardner's funeral expenses in the amount of \$5,190. Appellant alleged that she paid those expenses in accordance with the requirements of a restitution award entered against her in the criminal action that had been instituted due to Mr. Gardner's death. This appeal followed the denial of Appellant's counterclaim.

¶ 11 Preliminarily, we note that our standard of review in a declaratory judgment action is plenary:

The interpretation of an insurance policy is a question of law that we will review *de novo*. Our primary goal in interpreting a policy, as with interpreting any contract, is to ascertain the parties' intentions as manifested by the policy's terms. When the language of the policy is clear and unambiguous, we must give effect to that language. Alternatively, when a provision in the policy is ambiguous, the policy is to be construed in favor of the insured to further the contract's prime purpose of indemnification and against the insurer, as the insurer drafts the policy, and controls coverage.

Plasticert, Inc. v. Westfield Ins. Co., 2007 PA Super 124, 8 (quoting ***Kvaerner Metals v. Commercial Union Ins. Co.***, 589 Pa. 317, 908 A.2d 888, 897 (2006)).

¶ 12 At the onset, we observe that the insurance company herein does not dispute that Appellant's actions were an occurrence, nor does it request application of the exclusion for intentional or expected bodily injury. In other words, Appellee does not challenge the trial court's initial determination that Appellant's actions leading to Mr. Gardner's death were an "occurrence" because they were accidental in that she did not intend to strike Mr. Gardner with the knife but merely wanted to frighten him. We also note that in the criminal action, Appellant was not convicted of any intentional crimes. Rather, she first was convicted of reckless endangerment. A person is guilty of that crime if she "**recklessly** engages in conduct" placing another in danger of death or serious bodily injury. 18 Pa.C.S. § 2705 (emphasis added). Appellant also was adjudged guilty of simple assault under 18 Pa.C.S. § 2701(2) (emphasis added), which provides that a person is guilty of assault if she "**negligently** causes bodily injury to another with a deadly weapon."

¶ 13 Thus, for purposes of the criminal action wherein the restitution at issue was awarded, Appellant's conduct remained an "occurrence" because there was no determination that she intended to cause the harm to Mr. Gardner; rather, it was determined that the harm was recklessly or negligently caused. Accordingly, the exclusion for bodily injury intended or expected by the insured does not apply due to the underlying facts as well as the nature of the criminal convictions. ***QBE Insurance Corp. v. M & S***

Landis Corp., 915 A.2d 1222 (Pa.Super. 2007); **Donegal Mutual Insurance Co. v. Baumhammers**, 893 A.2d 797 (Pa.Super. 2006), *appeal granted in part*, 589 Pa. 248, 908 A.2d 265 (2006).

¶ 14 Therefore, we review for purposes of this appeal the language regarding coverage contained in section II. That language states that Appellee will pay up to the limit of its liability for “damages for which the ‘insured’ is legally liable,” if “a claim is made or a suit is brought against an ‘insured’ for damages because of ‘bodily injury’ caused by ‘an occurrence.’” Appellee argues that coverage is not triggered under this policy language on two separate bases. First, Appellee contends that restitution is not a claim and second, that restitution is not in the nature of damages.

¶ 15 Initially, then, we seek to determine whether an award of restitution is a “claim” or the criminal action was a suit “brought” against Appellant. As we have uncovered no case specifically addressing the definition of “claim,” we rely upon Black’s Law Dictionary for guidance. This keystone authority defines “claim” as follows:

To demand as one’s own or as one’s right; to assert; to urge; to insist. A cause of action. Means by or through which claimant obtains possession or enjoyment of privilege or thing. Demand for money or property as of right, *e.g.* insurance claim.

. . . .

Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment,

whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. Bankruptcy Code, § 101.

Black's Law Dictionary (6th ed. 1990).

¶ 16 Pursuant to this definition, restitution would be considered a claim as it was a means by which the victim of the crime obtained possession of money, a thing. In addition, restitution is a right to payment by the victim as awarded by the criminal court. We thus hold that restitution is a claim for purposes of this contract language. Similarly, the criminal action was a "suit brought" against Appellant, and the restitution was ordered in that suit.

¶ 17 While Appellee maintains that the term "claim" means only a civil claim and the word "suit" references a civil suit, we cannot agree with its position. These terms simply are not defined in that manner. Instead, the terms claim and suit are broad and unlimited, and they clearly and unambiguously provide coverage for any claim or any suit brought against the insured with regard to an occurrence. Furthermore, to the extent that it is unclear whether the terms "suit" and "claim" encompass criminal proceedings, in accordance with prevailing authority, we must construe those terms in the light most favorable to the insured. ***Plasticert, supra.***

¶ 18 We next consider whether restitution can be considered "damages" for purposes of coverage. Appellee relies upon our decision in ***In re B.T.C.***, 868 A.2d 1203 (Pa.Super. 2005), in support of its position that restitution cannot fall within the definition of "damages" under its policy. In that case, a

juvenile was adjudicated delinquent for committing vehicular homicide, and the trial court awarded as restitution the funeral expenses of the two victims who had died in the motor vehicle accident. On appeal, the juvenile claimed that restitution was unlawfully ordered because the funeral expenses already had been paid from the proceeds of the settlement of the civil action instituted as a result of the accident.

¶ 19 We rejected the contention that the restitution award was duplicative of damages already paid in the civil action. We noted that juvenile restitution was not in the nature of damages, since even though the award aids the victim, restitution's true purpose was to serve the goal of rehabilitating the juvenile offender by impressing upon him the loss caused and his responsibility for that loss. In so holding, we relied upon an older case involving adult restitution, ***Commonwealth v. Kerr***, 444 A.2d 758 (Pa.Super. 1982), wherein, based on the same reasoning, we rejected the defendant's position that restitution should not have been awarded because the victim had received compensation from the victim's insurer for the loss occasioned by the crime.

¶ 20 Herein, we hesitate to apply criminal decisions regarding the nature and purpose of restitution in defining the word "damages" in an insurance contract. Our sole task in this action is to interpret language in an insurance policy and determine whether coverage is triggered.

¶ 21 In determining whether restitution can be considered an award of damages for our purpose, we will examine the statutory definition of and authorization for restitution. Section 1106 provides that after a defendant has been convicted of “any crime” where “the victim suffered personal injury directly resulting from the crime,” the defendant “shall” be sentenced to make restitution. 18 Pa.C.S. § 1106(a). Restitution is mandatory and ordered regardless of the financial resources of the defendant “so as to provide the victim with the fullest compensation for the loss.” 18 Pa.C.S. § 1106(c)(1)(i). In addition, restitution must be awarded to any insurance company for loss compensated by the insurer. ***Id.***

¶ 22 Clearly, as outlined in this statute, restitution is in the nature of damages awarded to the victim because restitution is to be made to “fully compensate” the victim for his or her “loss.” Our Supreme Court actually has observed that the terms “damage” and “loss” are used interchangeably and thus, are synonymous. ***In re City of Pittsburgh***, 243 Pa. 392, 398, 90 A. 329, 331 (1914) (“These words, ‘damage,’ ‘loss,’ ‘injury,’ are used interchangeably, not simply in this particular statute, but generally; within legislative meaning and judicial interpretation they import the same thing.”).

More recently, we defined damages as follows:

“Damages” is a word of art meaning something paid in recompense for infringement of plaintiff's legal right by defendant's liability-creating conduct. ***Miller v. Weller***, 288 F.2d 438, 439 (1961), *cert. denied*, 368 U.S. 829, 82 S.Ct. 51, 7 L.Ed.2d 32 (1961). “Damages” is money compensation payable

by a tortfeasor who is liable for injuries caused by his tortious act. Restatement, Second, Torts, Sec. 12A.

Hodges v. Rodriguez, 645 A.2d 1340, 1348 n.13 (Pa.Super. 1994). In the present case, Appellant paid the victims of the crime recompense for her liability-creating conduct.

¶ 23 Restitution can, in fact, be awarded for a full panoply of financial loss occasioned by the conduct of the defendant, including lost wages, medical expenses, future medical expenses, and perhaps, future wage loss. Indeed, we recently affirmed a restitution award of \$1,229,229.09, which reinforces the conclusion that restitution is in the nature of an award of damages for the loss suffered by the crime victim. **See Commonwealth v. Oree**, 911 A.2d 169 (Pa.Super. 2006).

¶ 24 Appellee refers us to the case of **Grey v. Allstate Insurance Co.**, 769 A.2d 891 (Md. 2001), which involved a garnishment action instituted to recover the proceeds of an automobile insurance policy issued by the insurer to the insured, who injured two people and killed another while driving under the influence of alcohol. In an unrelated criminal action, the insured pleaded guilty to various crimes, and one of the terms of the plea agreement included payment of \$85,000 in restitution. The restitution was indexed as a money judgment. The injured parties had instituted another civil action against the insured, which remained unresolved when the **Grey** decision was issued. The injured parties then instituted the garnishment action, which

the insurer defended on the basis that it did not possess property belonging to the insured and did not then owe him a debt.

¶ 25 The Court of Appeals of Maryland concluded that restitution was not a civil money judgment within the contemplation of the garnishment act under consideration because there was a pending civil action against the insured and the liability of the insured had not yet been determined in that action. The court noted that if the restitution award was given effect as a civil money judgment, then the insured would be deprived of its opportunity to defend the insured's liability before a jury. The Court concluded that the restitution award, even though properly entered as a judgment against the insured, could not establish the insured's civil liability.

¶ 26 After a lengthy discussion of the historical origins of restitution, the Court held that a judgment constitutes a judgment only with respect to those issues that were or could have been resolved by the action. The Court noted that a restitution order establishes two items, those being the defendant's guilt and the individual who suffered loss as a result of the defendant's criminal actions. A restitution judgment, the Court continued, does not create a contractual liability between the defendant and a third party that did not previously exist. It observed that in the restitution setting, there is no consideration of the defenses that can be interposed in the civil setting, such as contributory negligence, the statute of limitations, or the negligence of joint tortfeasors. The Court held that a restitution

order, even when indexed as a civil judgment is not, in and of itself, sufficient to “create liability under a standard automobile insurance policy and thus does not convert the insurer’s contractual obligation of indemnity into property of the insured in the hands of the insurer that is subject to garnishment.” *Id.* at 905.

¶ 27 While the case contains an interesting discourse on the history and nature of restitution, certain key facts render its reasoning inapplicable. First, in this case, the insured herself is seeking reimbursement from her insurer for amounts that she has paid. Second, the insurer herein has already availed itself of the benefits of a civil trial and the civil liability of the insured has been established without exhaustion of the limits of the policy.

¶ 28 Appellee also refers us to *Shew v. Southern Fire & Casualty Co.*, 298 S.E.2d 380 (N.C. 1983), where, again, the insurer’s civil liability for the incident had not yet been fixed and where the insured’s actions involved intentional criminal conduct, which would not trigger coverage in the present case due to the policy language.

¶ 29 Indeed, this case illustrates the convergence of two significant modern trends in the justice system. First, negligence is becoming increasingly criminalized by the legislature. This trend is evidenced by the enactment of statutes imposing criminal sanctions for behavior that is negligent rather than intentional. *E.g.*, 75 Pa.C.S. § 3732(a) (emphasis added) (“Any person who **recklessly or with gross negligence** causes the death of another

person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic . . . is guilty of homicide by vehicle, a felony of the third degree, when the violation is the cause of death"); 75 Pa.C.S. § 3735.1 (emphasis added) ("Any person who **negligently** causes serious bodily injury to another person as a result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and who is convicted of violating section 3802 commits a felony of the second degree when the violation is the cause of the injury."); 18 Pa.C.S. § 2701(2) (emphasis added) (a person is guilty of simple assault if he "**negligently** causes bodily injury").

¶ 30 Second, as noted above, the extent of restitution awards has become quite phenomenal in scope, and they have become increasingly duplicative of the type of compensation received in a civil action. Thus, section 1106 currently mandates payment from a defendant without regard to his ability to pay and compels reimbursement of an insurance company that provided monies to the crime victim. **See Commonwealth v. Smith**, 699 A.2d 1303 (Pa.Super. 1997) (city that acted as self-insurer of police officer injured by defendant was properly awarded \$6,203.67 in restitution for medical bills, indemnified wages and the repair cost of his portable police radio).

¶ 31 We cannot ignore the ramifications of these two phenomena. Even though an injured party has civil remedies available, criminal sanctions have

become increasingly coextensive with civil damages. As the **Grey** Court observed, criminal monetary sanctions originally were paid to the crime victim and then evolved into fines payable to the sovereign. When the crime victim's criminal remedies became restricted, civil actions were created to make the victim monetarily whole. Now, society has seen fit to revisit restitution in the criminal setting as an additional form of punishment to provide the victim with recompense while the civil courts still remain an avenue of redress.

¶ 32 Meanwhile, the insured, who has paid premiums to his insurer for years, could potentially be deprived of coverage for restitution that mirrors civil damages when convicted of negligently causing a motor vehicle accident resulting in bodily harm or death. The restitution statute, as applied in this situation, possibly could deprive the insured of a vested contractual right in derogation of constitutional guarantees. **See** U.S.Const. art. I, § 10, cl. 1.⁴

¶ 33 In the end, we must view this case in its proper context—a declaratory judgment action involving insurance coverage. The insured has paid for coverage and the bottom line is that the issue that we must decide is whether the terms of the insurance policy are triggered. Thus, we must

⁴ That provision of the Constitution states:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility

stress that there are three factors impacting on our decision: 1) Appellant's criminal convictions were for conduct that constituted an occurrence under the terms of the policy; 2) restitution awards are now made to fully compensate the crime victim for all losses; and 3) the insured's civil liability has been fixed through the completion of the civil action, where the insured had the opportunity to avail itself of all available civil defenses.

¶ 34 Appellee suggests that ordering it to reimburse Appellant thwarts the purpose of the restitution statute, which is rehabilitation of the offender. While we do not dispute the validity of that point, this action is a straightforward declaratory judgment action involving purely a question of coverage. Since the insurance policy at issue covers the claim in question, Appellee then is asking us to deny coverage based on the public policy behind restitution.

¶ 35 The restitution statute is silent on the issue, but ***Mamlin v. Genoe***, 340 Pa. 320, 17 A.2d 407 (1941), provides guidance. In that case, a creditor sought to garnish payments due a debtor from a private association of police officers that provided benefits to relatives of deceased policemen. No statute or contractual provision prohibited that garnishment, and while the trial court ruled in favor of the creditor, this Court reversed based on public policy considerations. Our Supreme Court disapproved of our decision, stating:

In our judicial system the power of courts to formulate pronouncements of public policy is sharply restricted; otherwise

they would become judicial legislatures rather than instrumentalities for the interpretation of law. "Generally speaking, the Legislature is the body to declare the public policy of a state and to ordain changes therein. This is peculiarly so where a matter of expediency is up for consideration"

The right of a court to declare what is or is not in accord with public policy does not extend to specific economic or social problems which are controversial in nature and capable of solution only as the result of a study of various factors and conditions. It is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in so declaring. . . . If, in the domain of economic and social controversies, a court were, under the guise of the application of the doctrine of public policy, in effect to enact provisions which it might consider expedient and desirable, such action would be nothing short of judicial legislation, and each such court would be creating positive laws according to the particular views and idiosyncrasies of its members. Only in the clearest cases, therefore, may a court make an alleged public policy the basis of judicial decision.

Id. at 325, 17 A.2d at 409; ***see also Shick v. Shirey***, 716 A.2d 1231, 1235, 552 Pa. 590, 599 (1998).

¶ 36 The restitution statute does not examine the present scenario, and the coverage language of the insurance policy clearly applies. Indeed, while we recognize the policy of restitution is to promote rehabilitative goals of the defendant, there is another public policy consideration at play. This Appellant has a vested contractual right to coverage, which is subject to constitutional protection. Thus, we decline to deny coverage based upon considerations of public policy.

¶ 37 Order reversed. Case remanded for entry of an award in favor of Appellant. Jurisdiction relinquished.

J. A05039/06

¶ 38 Judge Panella files a Dissenting Opinion.

BRETHREN MUTUAL INSURANCE	:	IN THE SUPERIOR COURT OF
COMPANY	:	PENNSYLVANIA
	:	
v.	:	
	:	
CYNTHIA MCKERNAN f/k/a	:	
CYNTHIA STROBRIDGE; PAMELA	:	
GARDNER and WANDA COOLEY, as	:	
Co-Administratrixes of the Estate	:	
Of Joseph M. Gardner, deceased;	:	
PAMELA GARDNER and WANDA	:	
COOLEY, as Co-guardians of the	:	
Estate of Morgan Joseph Gardner,	:	
A Minor, and PAMELA GARDNER	:	
And WANDA COOLEY, as Co-	:	
Guardians of the Estate of Erica	:	
Elaine Gardner, a Minor	:	
Appellant	:	NO. 895 MDA 2005

Appeal from the ORDER entered May 5, 2005
 In the Court of Common Pleas of BRADFORD County
 CIVIL at No: 02CV000094

BEFORE: BENDER, BOWES and PANELLA, JJ.

DISSENTING OPINION BY PANELLA, J.:

¶ 1 I respectfully dissent. This Court has repeatedly held that an order of restitution is not equivalent to an award of civil damages. **See, e.g., Commonwealth v. Erb**, 428 A.2d 574, 580-581 (Pa. Super. 1981); **Commonwealth v. Kerr**, 444 A.2d 758, 760 (Pa. Super. 1982); **In the Interest of: B.T.C.**, 868 A.2d 1203, 1205 (Pa. Super. 2005). "While the order [of restitution] aids the victim, its true purpose, and the reason for its imposition, is the rehabilitative goal it serves by impressing upon the offender the loss he has caused and his responsibility to repair that loss as

far as it is possible to do so.” **Erb**, 428 A.2d at 581, quoting **State v. Stalheim**, 275 Or. 683, 689, 552 P.2d 829, 832 (1976).

¶ 2 As a result, I conclude that an order of criminal restitution is imposed for its effect on the defendant. It is meant to help rehabilitate a convict by impressing upon him, in some degree, the scope of the damage inflicted by his criminal conduct. The proposition that a third party insures against the ordered criminal restitution would defeat this purpose entirely. In fact, it could increase the likelihood of criminal conduct by transferring the responsibility of a restitution order, i.e., the ramifications of criminal conduct, to an insurance provider. Any rehabilitative effect, not to mention deterrence, would thus be negligible.⁵ I must therefore dissent.

⁵ In the words of our distinguished former colleague and President Judge, Edmund B. Spaeth, Jr., the point of restitution is to impress upon the defendant “the cruelty of his conduct, and deterred from repeating it, and encouraged to live in a responsible way.” **Erb**, 428 A.2d at 581.