

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE A.S. : Case No. V2002-50919
JAMIE D. SEBENS : DECISION
Applicant : Judge J. Warren Bettis

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{¶1} This matter came on to be considered upon applicant's appeal from the December 12, 2002, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based on the finding that the victim engaged in substantial contributory misconduct.

{¶2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that the May 1, 2002, decision of the Attorney General should be affirmed.

{¶3} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment

on the claim. The decision of the judge of the court of claims is final."

{¶4} The Attorney General's determination that the victim engaged in criminally injurious conduct was based upon the finding that the victim had admitted to using the drug "ecstasy." Ecstasy, a commonly used name for MDMA (methylenedioxy-methamphetamine), is a Schedule I drug pursuant to R.C. 3719.41. The Attorney General contends that the victim's admission that she took ecstasy on the night of the assault requires a finding that she engaged in substantial contributory misconduct as defined in R.C. 2743.60(F).

{¶5} R.C. 2743.60(F) provides:

{¶6} "In determining whether to make an award of reparations pursuant to this section, the attorney general or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim.

{¶7} "When the attorney general decides whether a claim should be denied because of an allegation of contributory misconduct, the burden of proof on the issue of that alleged contributory misconduct shall be upon the claimant, if either of the following apply:

{¶8} "(1) The victim was convicted of a felony more than ten years prior to the criminally injurious conduct that is the subject of the claim or has a record of felony arrests under the laws of this state, another state, or the United States.

{¶9} "(2) There is good cause to believe that the victim

engaged in an ongoing course of criminal conduct within five years or less of the criminally injurious conduct that is the subject of the claim.

{¶10} "For purposes of this section, if it is proven by a preponderance of the evidence that the victim engaged in conduct at the time of the criminally injurious conduct that was a felony violation of section 2925.11 of the Revised Code [possession or use of a controlled substance], the conduct shall be presumed to have contributed to the criminally injurious conduct and shall result in a complete denial of the claim."

{¶11} R.C. 2743.51(M) states:

{¶12} "(M) 'Contributory misconduct' means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim."

{¶13} The court notes that the victim did not testify at the hearing before the three-commissioner panel and that the information regarding her statements to hospital staff and to law enforcement officials are contained in the claim file. In her statement to the Union Township Police Department, the 15-year-old victim acknowledged that she consumed alcohol at a party that she had attended without her mother's permission. After she had consumed alcohol, the victim was sexually assaulted by two adults who hosted the party. The victim provided a written statement to law enforcement wherein she reported the assault and then concluded with the following remark: "Oh, and I took x-tacy while I was there too." The narrative supplement prepared by the reporting officer states that the victim was given the ecstasy at the party. The victim now maintains that one of the offenders

gave her the drug and claimed that it was for her "headache."

{¶14} "For an award of reparations to be denied, rather than reduced, as a result of contributory misconduct on behalf of the victim or applicant pursuant to R.C. 2743.60(F), there must be a showing of *substantial* contributory misconduct. If [the court] does not find a *substantial* amount of contributory misconduct by the victim or applicant to deny an award of reparations, an award shall be granted but reduced by a percentage ***." *In re Spaulding* (1991), 63 Ohio Misc.2d 39. (Emphasis in original.)

{¶15} Upon review of the claim file, the court finds that the preponderance of the evidence establishes that the minor victim was sexually assaulted after she was provided with alcohol and drugs at the party that was hosted by the adult offenders. The court further finds that the offenders' act of providing the victim with drugs and alcohol prior to the assault contributed to the victimization. However, the court also finds that the victim illegally consumed alcohol and took what was later determined to be ecstasy.

{¶16} Although the court finds the victim engaged in contributory misconduct by illegally using alcohol and associating with others who used illegal drugs and alcohol, the court finds that the causal relationship between applicant's substance abuse and the criminally injurious conduct is, at best, tenuous. Therefore, the court concludes the victim's contributory misconduct warrants a 25 percent reduction of any reparations award, rather than denial. Accordingly, the decision of the three-commissioner panel shall be reversed.

{¶17} Upon review of the evidence, the court finds the order of the panel of commissioners must be reversed and applicant's appeal must be granted.

{¶18} IT IS HEREBY ORDERED THAT:

{¶19} 1) The order of December 12, 2002, (Jr. Vol. 2248, Pages 63-64) is reversed;

{¶20} 2) This claim is REMANDED to the Attorney General for economic loss calculations and decision;

{¶21} 3) Costs assumed by the reparations fund.

J. WARREN BETTIS
Judge

AMR/cmd

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Clermont County Prosecuting Attorney and to:

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To S.C. reporter 7-17-2003