[Cite as *In re West*, 2003-Ohio-4986.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: JOSHUA C. WEST	:	Case No. V2003-40208
DEBRA D. WEST	:	OPINION OF A THREE-COMMISSIONER PANEL
Applicant	:	

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{¶1} This appeal came to be heard before this panel of three commissioners on June 5, 2003 at 10:05 A.M. upon the applicant's March 13, 2003 appeal from the March 6, 2003 Final Decision of the Attorney General.

{¶2} Originally, the Attorney General granted the applicant an award in the amount of $17.14 for mileage reimbursement. The Attorney General however denied the counseling expense claim pursuant to former R.C. 2743.60(D), contending that the applicant had insurance coverage with Value Options. The Attorney General also denied reimbursement for guardian ad litem fees, wage loss and parking expense. On reconsideration, the Attorney General denied the claim contending that the applicant failed to report the criminally injurious conduct to the police. The applicant appealed the Attorney General's Final Decision.

{¶3} The applicant, applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel's consideration. Applicant, Debra West, testified that her sons, Joshua and Kurtis West, were sexually abused by Larry

Randlett from 1996-2000. Ms. West stated that she first met Larry in 1996 at a soccer game and he soon became a close family friend. Ms. West characterized her relationship with Larry as a brotherly friendship, since she had met him before her divorce from the father of her sons. Ms. West explained that after her divorce, Mr. Randlett remained a close friend and continued to spend a lot of time with her and her sons. The applicant stated that she connected with Mr. Randlett since he was a retired Lt. Colonel and she came from a military background. The applicant asserted that Mr. Randlett appeared to be an intelligent and mature individual who was well-liked by their friends and acquaintances and thus he appeared to be a good role model for her sons.

{¶4} Ms. West stated that one night in 1996 Kurtis told her that Larry Randlett had kissed him. Ms. West testified that she immediately spoke to Larry about the allegation, which he explained was a total misunderstanding. The applicant also stated that Larry promised both boys that it would never happen again. Ms. West informed the panel that after the incident, she felt uneasy and thus sought advice from a police officer about the matter but was told that, although the kiss was inappropriate, kissing itself was not against the law. The applicant explained that the boys seemed alright after the incident, since the family continued to participate in numerous activities with Larry. However, Ms. West stated that based on her training as a scout mother she felt it was important to monitor the activities of her sons with Larry and other adults so she developed a code for her children to use just in case any misconduct ever occurred. Ms. West asserted that she frequently asked her sons if everything was alright and that they consistently replied that everything was fine between them and Larry.

{¶5} Ms. West testified that she first learned of Larry's depravity on August 13, 2000 when she witnessed Larry secretly kissing Brian, one of Kurtis' friends. Ms. West stated that Kurtis was downstairs talking to Joshua on the telephone long-distance (he had moved to Florida) when she opened the door to Kurtis' room and found Larry kissing Brian. Ms. West stated that she was shocked but soon regained her composure and told Larry to immediately collect his belongings because she was taking him to the airport. Ms. West stated that she had the boys accompany her on the journey, so that Brian would not feel as though the incident was his fault. The applicant also explained that she did not tell Brian's parents what she witnessed for two weeks because she was afraid that Brian's father would have done something to harm Larry thereby causing Brian's family further problems. Ms. West advised the panel that even after that incident her sons continued to deny that any inappropriate conduct transpired between them and Larry. Ms. West stated that sometime later Kurtis eventually admitted to a detective that Larry had sexually abused him. The applicant also stated that shortly thereafter Joshua revealed that he too had been sexually abused by Larry.

{¶6} Ms. West testified that, although the guardian ad litem fees were incurred before she was aware of her son's victimization, she had in fact incurred those fees as a result of the criminally injurious conduct. Ms. West indicated that if Larry had not sexually abused her sons then the guardian ad litem fees would not have been incurred. Ms. West explained that Joshua, during the divorce proceedings, exhibited symptoms of sexual abuse as demonstrated by his acting out. Ms. West asserted that Joshua began acting out in order to be sent to live with his father in Florida. The applicant contended that Joshua was attempting to escape Larry's abuse.

The applicant noted that it was her divorce attorney who recommended a guardian ad litem for the boys.

{¶7} Applicant's counsel argued, based on the testimony presented, that the applicant's claim should be allowed. Counsel asserted that the applicant properly reported the incident to law enforcement officials in light of the circumstances surrounding this claim. Counsel stated that the applicant acted appropriately after having been advised by the police that nothing could be done about the kissing incident. Counsel also asserted that the applicant reasonably relied on her sons' statements that Larry had not touched them. Counsel noted that an Assistant Franklin County Prosecutor indicated that the applicant was instrumental in the investigation and prosecution of Larry Randlett. Counsel asserted that there was nothing more that the applicant could have done to protect her sons. Counsel also insisted that the guardian ad litem fee was related to the sexual abuse since the guardian ad litem helped provide remedial assistance to the applicant's sons.

{¶8} The Assistant Attorney General maintained that the applicant's claim should be denied since the applicant knew about both kisses and never told the police about the incidents. The Assistant Attorney General stated that the applicant had a duty to report the incidents in order to prevent future criminal acts by Larry Randlett. The Assistant Attorney General asserted that the applicant acted contrary to her duty by (1) transporting Larry to the airport along with the minors thereby allowing him free reign to abuse other children, (2) not immediately telling Brian's parents, and (3) never having reported the incidents herself to the police. The Assistant Attorney General also insisted that the guardian ad litem fees are not recoverable since the fees

were incurred during the applicant's divorce proceedings which had nothing to do with her son's victimization, since the fees were not incurred to separate the victims from the offender.

{¶9} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. First, we find that the applicant reasonably complied with former R.C. 2743.60(A). According to In re Ries, V93-69316tc (1-31-95), the purpose of former R.C. 2743.60(A) is to (1) verify the occurrence and (2) ensure the investigation and/or prosecution of the offender. Based on the information presented, the sexual abuse of the victims has been verified and the offender has been prosecuted and convicted of the crimes he committed.

{¶10} Moreover, Ms. West testified that she told a police officer about the 1996 kissing incident, but was informed that the conduct did not qualify as a crime. Based on that information, we find it hard to deny the applicant's claim for failure to report when the applicant testified that she orally informed an officer of the situation. See In re Rea (1989), 61 Ohio Misc. 2d 732. Furthermore, we believe that the applicant reasonably relied on the officer's statements, as well as her children's statements that everything was alright. Based upon these facts, there is nothing else the applicant could have done. She was not aware of any additional misconduct or criminal activity and she had nothing to report but kissing, which the police had already told her was not criminal.

{¶11} The Attorney General asserted that Ms. West never told the police about the incident. However, based on the testimony presented, the applicant appropriately told an officer and sought advice. This panel notes that former R.C. 2743.60(A) did not require a victim or applicant to report the incident to law enforcement officials, but merely that the incident be

reported by someone within seventy-two hours of the incident. See In re Steel (1996), 85 Ohio Misc. 2d 43. We also note that Franklin County Assistant Prosecuting Attorney, David Zeyen, stated in his June 6, 2003 letter that "Ms. West was instrumental in first bringing the criminal acts of Larry Randlett to the attention of the police."

{¶12} Moreover, we find it perplexing that this is the first instance in which the Attorney General has raised the reporting matter. The Attorney General had previously paid the applicant an allowable expense award. However, now the Attorney General desires to deny the applicant's claim for failure to report the criminally injurious conduct when the applicant seeks guardian ad litem expense incurred on behalf of her sons. Once R.C. 2743.60(A) has been satisfied, then the requirement has been met for all potential and existing applicants. Moreover, this panel relies on the holding of In re Bebout (1996), 85 Ohio Misc. 2d 34, where it was determined that the reporting dereliction of a parent should not penalize the primary party in interest, the minor victim. Allowable expense is incurred on behalf of the victim. If an applicant incurred an expense which is determined to be allowable expense then the applicant should be rightfully reimbursed. Following that logic, if Ms. West incurred the guardian ad litem expense on behalf of her sons then the applicant should be reimbursed for that allowable expense item as well. We find no difference between mileage expense, co-pays or any other allowable expense that the applicant incurred on behalf of the victims, even though they have now reached the age of majority.

{¶13} With respect to the guardian ad litem fees, we find that the fee qualifies as allowable expense. Based on the testimony presented, the applicant stated that the guardian ad litem was appointed on behalf of her minor sons. Ms. West testified that Joshua was acting out

during the divorce proceeding and soon a guardian ad litem was appointed on behalf of her sons, even though no one was aware of the sexual abuse. We believe that had not the boys been victimized then the guardian ad litem fee would not have been incurred. The guardian ad litem fees qualify as pre-disclosure expenses that are related to the criminally injurious conduct. The court has previously held that pre-disclosure expenses related to the criminally injurious conduct are compensable as allowable expense. See In re Peters, V91-23734tc (1-14-94), affirmed jud (3-29-94) and In re Speaks (1996), 91 Ohio Misc. 2d 138. Therefore, this panel finds the March 6, 2003 decision of the Attorney General shall be reversed and this case shall be remanded to the Attorney General for economic loss calculations and decision based upon the above findings.

{¶14} IT IS THEREFORE ORDERED THAT

{¶15} 1) The March 6, 2003 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

{¶16} 2) This claim is remanded to the Attorney General for economic loss calculations and decision based upon the panel's findings;

{¶17} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application pursuant to R.C. 2743.68;

{¶18} 4) Costs are assumed by the court of claims victims of crime fund.

CLARK B. WEAVER, SR.
Commissioner

DALE A. THOMPSON
Commissioner

ROBERT B. BELZ
Commissioner

ID #\1-dld-tad-3626
Filed 8-1-2003
Jr. Vol. 2250, Pg. 172
To S.C. Reporter 9-19-2003