

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: CAROLYN S. KINDLE	:	Case No. V2003-40607
CAROLYN S. KINDLE	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} This appeal came to be heard before this panel of three commissioners on September 11, 2003 at 10:35 A.M. upon the applicant’s June 18, 2003 appeal from the June 10, 2003 Final Decision of the Attorney General.

{¶2} The applicant filed a reparations application seeking reimbursement of expenses incurred in relation to a February 6, 2003 incident. The applicant contended that she was injured in a fall while attempting to stop her minor daughter from leaving her home with a male friend. The applicant asserted that the male friend committed the crimes of contributing to the delinquency of a minor and interfering with custody. The Attorney General denied the claim contending that the applicant failed to prove she qualifies as a victim of criminally injurious conduct. The applicant appealed the Attorney General’s Final Decision.

{¶3} The applicant, applicant’s attorney, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel’s consideration. Carolyn Kindle briefly testified that at the time of the incident her daughter, Trisha, was sixteen-years-old

and living at home. Mrs. Kindle explained that on February 6, 2003, she awoke to a noise around 1:00 A.M. and was told by her husband to call the police. Mrs. Kindle asserted that Jonathan Holtzslider, Trisha's friend, had come to her home to take Trisha away. Mrs. Kindle stated that her husband informed her later that Trisha had previously tried to leave twice, but that he had stopped her. Mrs. Kindle stated that both Trisha and Jonathan knew that Trisha was not permitted to leave the premise. Mrs. Kindle stated that Trisha tried to leave a third time in her presence and that was when she gave chase but fell injuring her leg. Mrs. Kindle stated that she fell before reaching the automobile.

{¶4} Applicant's attorney stated that, based on the testimony presented, the applicant's claim should be allowed. Counsel argued that Jonathan Holtzslider committed the crimes of O.R.C. 2917.11, disorderly conduct, O.R.C. 2917.31, inducing panic, O.R.C. 2919.23, interfering with custody, and O.R.C. 2919.24, contributing to the unruliness of a child. Counsel stated that even the Attorney General, in his Brief, acknowledged some unruliness on Trisha's part. Counsel stated, when examining the fact that Jonathan attempted to influence Trisha to leave, that Mrs. Kindle made a good faith effort to prevent criminally injurious conduct. Counsel further argued the mere fact that Jonathan was never charged with a crime is pure prosecutorial discretion and is not indicative of Jonathan not having engaged in criminally injurious conduct. Counsel asserted that Mrs. Kindle had an obligation to prevent Trisha, her minor daughter, from leaving home at 1:00 A.M. with a fellow minor.

{¶5} The Assistant Attorney General maintained that the claim should be denied since the applicant failed to prove, by a preponderance of the evidence, that she qualifies as a victim of criminally injurious conduct. The Assistant Attorney General argued that even if Jonathan had

committed a crime his conduct did not rise to the level of criminally injurious conduct. The Assistant Attorney General stated that Jonathan's conduct did not pose a substantial threat of personal injury or death to the applicant. The Assistant Attorney General asserted that Trisha attempted to leave home on her own and admitted to such. The Assistant Attorney General argued that Jonathan's presence and his vehicle did not contribute to Trisha's desire and willingness to leave home. In fact, the Assistant Attorney General stated that the applicant was advised by a prosecutor to file charges against Trisha.

{¶6} R.C. 2743.51(C)(1) in pertinent part states:

(C) "Criminally injurious conduct" means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.

{¶7} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find that the applicant has failed to prove, by a preponderance of the evidence, that she was a victim of criminally injurious conduct. Therefore, the June 10, 2003 decision of the Attorney General shall be affirmed.

{¶8} IT IS THEREFORE ORDERED THAT

{¶9} 1) The June 10, 2003 decision of the Attorney General is AFFIRMED;

{¶10} 2) This claim is DENIED and judgment is entered for the state of Ohio;

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

DALE A. THOMPSON
Commissioner

CLARK B. WEAVER, SR.
Commissioner

ASHER W. SWEENEY
Commissioner

ID #\1-dld-tad-100103

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

Filed 11-4-2003
Jr. Vol. 2251, Pg. 164-167
To S.C. Reporter