

[Cite as *In re Gess*, 2003-Ohio-7326.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: DESTINY M. GESS	:	Case No. V2003-40755
MICHELLE RAMSEY	:	<u>OPINION OF A THREE-</u>
BERNICE LE MASTER	:	<u>COMMISSIONER PANEL</u>
Applicants	:	

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On August 8, 2002, Michelle Ramsey filed a reparations application seeking reimbursement for expenses incurred with respect to the 1997 through November 2001 sexual abuse of her minor daughter. On December 4, 2002, the Attorney General granted Ms. Ramsey an award in the amount of \$478.22, of which \$420.00 was paid. On January 28, 2003, the Attorney General granted Ms. Ramsey an additional award in the amount of \$99.99, which included the \$58.22 not yet paid. On February 7, 2003, Ms. Ramsey filed a supplemental compensation application seeking additional reimbursement. On May 27, 2003, the Attorney General issued a Supplemental Finding of Fact and Decision granting Ms. Ramsey an award in the amount of \$20.00. The Attorney General however denied the claim for reimbursement of the victim's maternal grandmother's, Bernice LeMaster, counseling expense. On June 5, 2003, a request for reconsideration was filed along with additional documentation showing that Ms. LeMaster was sent to counseling in order to help her granddaughter. On August 4, 2003, the

Attorney General issued a Final Decision denying Ms. LeMaster's counseling expense claim once again. On August 6, 2003, an appeal of the Attorney General's Final Decision was filed. Hence, this appeal came to be heard before this panel of three commissioners on October 23, 2003 at 10:20 A.M.

Michelle Ramsey, via telephone, applicants' counsel, and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. At the beginning of the hearing, counsel and the Assistant Attorney General explained that Bernice LeMaster had not been added as an applicant to this claim. Applicant's counsel moved to have Ms. LeMaster added as an applicant. The Assistant Attorney General indicated that further investigation is required with respect to Ms. LeMaster's background in order to determine her eligibility to receive an award of reparations. The Assistant Attorney General stated that the results of this investigation would be supplied to the panel.

Michelle Ramsey, mother of the victim, briefly testified concerning the maternal grandmother's involvement in the life of the minor victim, Destiny, since the criminally injurious conduct. Ms. Ramsey stated that Ms. LeMaster lives approximately fifteen minutes away and that Destiny communicates regularly with her grandmother and usually stays with her on the weekends. Ms. Ramsey explained that she suffers from bipolar disorder and that sometimes she has difficulty controlling her daughter. Ms. Ramsey informed the panel that since the criminally injurious conduct, Destiny has experienced severe episodes of depression and anxiety during which Ms. LeMaster's presence has been extremely helpful.

Ms. Ramsey stated that lately her daughter has grown more difficult to control since Destiny became aware that the offender is due to be released from prison soon. Ms. Ramsey

explained that the offender is her brother and Ms. LeMaster's son. As a result of Destiny's increased behavioral problems, Ms. Ramsey advised the panel that Ms. LeMaster sought counseling in order to better cope with and assist her granddaughter during Destiny's instances of depression and anxiety. Lastly, Ms. Ramsey testified that Destiny's mental health counselor acknowledged that Ms. LeMaster's therapy and presence in Destiny's life has been beneficial for her recovery.

Applicants' counsel asserted, based on the testimony presented, that Ms. LeMaster's claim for reimbursement of her counseling expense should be allowed. Applicants' counsel argued that Ms. LeMaster is a quasi-parent who qualifies for an allowable expense award under former R.C. 2743.51(F) and In re Kaman (1991), 62 Ohio Misc. 2d 288. Counsel opined that the philosophy espoused in Kaman permits *any* reasonable expense incurred on behalf of the victim by *any individual* to be reimbursed.

Moreover, counsel argued that Ms. LeMaster serves as a second parent to the victim, due to Destiny's father's absence. Counsel also contended that Ms. LeMaster's presence in Destiny's life is vital considering Ms. Ramsey's own health issues. Counsel stated that Exhibit A, information from Dr. Lang, Ms. LeMaster's counselor, indicates that Ms. LeMaster was being seen for coping skills to help her granddaughter through current family situations (sexual abuse and subsequent family stressors). Counsel urged the panel to consider Ms. LeMaster's level of involvement in the victim's life and the benefit that Ms. LeMaster's presence brings to Destiny. Lastly, counsel asserted that since former R.C. 2743.51(F) did not restrict recovery to any particular class of persons that the only question left to decide is what percentage of Ms. LeMaster's therapy relates to the criminally injurious conduct. Accordingly, counsel requested

the claim be remanded to the Attorney General to determine the percentage of treatment related to the criminally injurious conduct.

The Assistant Attorney General continued to maintain that Ms. LeMaster is ineligible to qualify for counseling expense reimbursement. The Assistant Attorney General argued that Kaman limited the recovery of counseling expense to the parents of a victim. The Assistant Attorney General also noted that the latest version of R.C. 2743.51(F)(2) specifies the class of persons eligible for reimbursement of allowable expense. The Assistant Attorney General asserted that R.C. 2743.51(F)(2) only permits those persons related to the victim, who at the time of the criminally injurious conduct reside in the same permanent household as the victim, to recover an award for counseling expense.

Furthermore, the Assistant Attorney General asserted that Ms. LeMaster's therapy was not sought solely for her granddaughter's benefit, but to also help herself cope with other family issues, in light of her son's abuse of Destiny. The Assistant Attorney General also explained that Ms. LeMaster was prescribed anti-depressant medication prior to the disclosure of the criminally injurious conduct and that Ms. LeMaster has only submitted one counseling bill, dated December 2001, for reimbursement. Lastly, the Assistant Attorney General insisted that even if the panel finds that Ms. LeMaster is eligible for counseling expense, the claim must still be remanded to the Attorney General for further investigation and to obtain Ms. LeMaster's therapy notes which are needed to determine what percentage of Ms. LeMaster's treatment directly relates to the criminally injurious conduct.

Former R.C. 2743.51(F) states:

(F) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for eyeglasses and other corrective lenses. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semi-private accommodations, unless accommodations other than semi-private accommodations are medically required.

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 note that former R.C. 2743.51(F) did not specify any particular class of persons eligible to receive an allowable expense award. Prior to Kaman, any person who was able to prove reasonably incurred charges on behalf of the victim was able to recover an allowable expense award. In Kaman, the parent of a sexually abused minor sought reimbursement of personal counseling expenses, which was purportedly incurred to provide for the care and rehabilitation of the minor victim. In Kaman, Judge Ringland found that the parent qualified as a victim in her own right and that she was entitled to reimbursement of the counseling expenses. Judge Ringland also noted that if the parent had not been a victim in her own right then the counseling expenses would have been reimbursed as allowable expense. Ms. Kaman suffered severe emotional distress, which ultimately impaired her ability to cope and function on a day-to-day basis: Eventually, Ms. Kaman sought therapy to enhance her parental functioning, communication, growth and development.

In this case, we do not find that Ms. LeMaster qualifies as a victim in her own right since the severity of her mental condition did not impair her ability to function on a daily basis.

Although Ms. LeMaster is Destiny's grandmother and not her parent, we believe that Ms. LeMaster did sustain a certain level of emotional distress as a result of the criminally injurious conduct and that she reasonably incurred such counseling expense for the rehabilitation and care of the victim. In fact, Ms. LeMaster may have actually experienced a higher level of emotional distress than Ms. Ramsey since the offender is her son.

Moreover, we rely heavily upon Judge Ringland's statement that unique circumstances arise in child sexual abuse cases that must be considered on a case-by-case basis. We are also cognizant that reporting this type of crime is generally delayed and that parents often feel personally responsible for not protecting their child. Thus, we believe that the revelation of this crime was not only deeply troublesome for Ms. Ramsey, but also for Ms. LeMaster as well as the entire family unit. According to information presented, the incidents occurred at Destiny's home as well as Ms. LeMaster's place of residence since the offender lived with Ms. LeMaster.

While this panel's decision may seem to some to open the floodgates for potential litigation, we however observe that this decision is limited to a caretaker. We cannot reasonably justify reimbursing counseling expense for an individual who had no significant relationship with the victim. In short, today's ruling may be best explained by the inquiry; how would that person's therapy benefit the victim? An applicant must still prove that the incurred counseling expense was reasonably necessary for the rehabilitation and care of the victim in order to recover. In this case, information in the file reveals that the counselor for the minor child indicated that Ms. LeMaster's therapy was beneficial to Destiny's recovery. Moreover, we believe that compensating Ms. LeMaster reaffirms the overall goal of this program, which is to help victims of crime. Therefore, the August 4, 2003 decision of the Attorney General shall be

reversed and this claim remanded to the Attorney General for further investigation and total economic loss calculations from November 2001 through February 2004. Bernice LeMaster shall submit any and all information needed for the Attorney General to perform the necessary background check and calculate economic loss.

IT IS THEREFORE ORDERED THAT

“1) Applicant’s October 17, 2003 motion for telephone testimony is hereby GRANTED;

“2) Bernice LeMaster’s motion to be added as an applicant is hereby GRANTED;

“3) The August 4, 2003 decision of the Attorney General is REVERSED;

“4) On or before **December 29, 2003**, the Attorney General shall file a supplemental memorandum addressing the applicants’ total economic loss in light of the above findings. The Attorney General shall also submit any information received with respect to this claim as well as Bernice LeMaster’s background investigation information;

“5) On or before **January 16, 2004**, the applicants shall file a response to the Attorney General’s supplemental memorandum;

“6) This claim is continued and the oral hearing on the applicants’ notice of appeal shall now be heard on **January 28, 2004 at 10:30 A.M.** at the Court of Claims of Ohio, Capitol Square Office Building, 65 East State Street, Suite 1100, Columbus, Ohio 43215, by a panel of three commissioners;

“7) The clerk shall send applicants a copy of this order and a VC-21 (Confirmation of Attendance) postcard;

“8) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

LEO P. MORLEY
Commissioner

KARL H. SCHNEIDER
Commissioner