

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: KAYLA A. HILL	:	Case No. V2003-41174
JODI A. HILL	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>

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{¶1} The applicant, the mother of Kayla Hill, filed a reparations application seeking reimbursement of expenses incurred with respect to the August 24, 2001 murder of Michael Hill, her late husband. On July 9, 2003, the Attorney General denied the applicant’s claim contending that Kayla Hill does not qualify as a victim in her own right. On September 4, 2003, the applicant filed a request for reconsideration. On November 3, 2003, the Attorney General denied the claim once again contending that Kayla Hill did not have direct awareness of the criminally injurious conduct nor did she arrive on the scene in the immediate aftermath. On November 20, 2003, the applicant filed a notice of appeal to the Attorney General’s Final Decision. Hence, this matter came to be heard before this panel of three commissioners on January 28, 2004 at 10:30 A.M.

{¶2} The applicant, applicant’s counsel and an Assistant Attorney General attended the hearing and presented a brief summary of the case. The panel informed the parties that this case

and Case No. V2003-41158, the applicant's personal claim, would be heard simultaneously for efficiency purposes.

{¶3} Jodi Hill testified that Kayla suffered severe emotional distress as a result of her father's murder. Mrs. Hill stated that in order to protect Kayla, who was four years old at the time of the criminally injurious conduct, she kept her away from the scene, until after the first cleaning of their home was completed. The applicant also stated that she kept Kayla from attending Michael's funeral. Ms. Hill explained that Kayla has been in therapy since September 2001.

{¶4} Applicant's counsel asserted, based on the testimony presented, that Kayla's claim should be allowed. Counsel stated that Kayla meets all the criteria to qualify as a victim in her own right. For example, Kayla had: 1) personal relationship with the victim, as she was the daughter of the deceased; 2) sustained severe psychological injury which impeded or prohibited her from performing or enjoying daily activities, testimony revealed that Kayla continues to seek counseling as a result of the incident; and 3) a direct awareness of the criminally injurious conduct or arrived at the scene in the immediate aftermath of the incident, when she *saw* the scene after the first cleaning.

{¶5} The Assistant Attorney General maintained that Kayla's claim cannot be allowed since she failed to meet the third criteria in order to qualify as a victim in her own right. The Assistant Attorney General argued that Kayla failed to have direct awareness of the incident, since she was not present during the crime nor did she arrive at the scene in the immediate aftermath. In short, Kayla did not view the crime scene since her mother was not permitted entry into the home until two days after the murder occurred. The Assistant Attorney General also

stated that Kayla did not enter her home until after it had been sanitized by the cleaning company. The Assistant Attorney General contended that based upon what Kayla saw, she did not experience the shock or have the contemporaneous sensory perception needed to meet the third element to qualify as a victim in her own right.

{¶6} 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.

{¶7} Based on the Supreme Court holdings in Paugh v. Hanks (1983), 6 Ohio St. 3d 72, 451 N.E. 2d 83 and Burris v. Grange Mut. Cos. (1989), 46 Ohio St. 3d 84, 545 N.E. 2d 83, the Court of Claims has espoused certain qualitative factors to be examined when determining who may qualify as a victim in their own right. The original factors to have been considered were: 1) the relationship between the person and the direct victim; 2) the shock directly attributable to the sensory and contemporaneous observance of the incident; and 3) the person's proximity to the location of the incident.

{¶8} This court recognized in In re Clapacs (1989), 58 Ohio Misc. 2d 1, 567 N.E. 2d 1351 and In re Fife (1989), 59 Ohio Misc. 2d 1, 569 N.E. 2d 1078, that emotional distress due to a direct awareness of a criminal incident can be classified as personal injury. As such, persons other than the victim per se may qualify as victims in their own right. However, that determination of whether a person qualifies as a victim in their own right is to be based upon a case-by-case analysis. In re Clapacs, supra. Additionally, the court also determined that the psychological injury suffered by the injured party must be so debilitating that it impedes or prohibits participation in day-to-day activities in order to qualify. However, the court emphasized that one must analyze the nature of the alleged injury and its relationship to the

criminal incident. In re Fife, supra. Subsequently, a panel of commissioners, in In re Anderson (1991), 62 Ohio Misc. 2d 268, also modified the contemporaneous sensory perception requirement to allow for instances where an individual arrives at the scene shortly after the incident.

{¶9} In the instance case, its clear that Kayla held a close personal relationship with the victim since Michael was her father and that she sustained severe psychological injury which impeded her from performing or enjoying daily activities. These circumstances are documented by her long term therapy sessions. However, we do not believe that Kayla held a contemporaneous sensory perception of the incident or of its immediate aftermath, since she was neither present during the murder nor did she arrive at the scene immediately thereafter. Ms. Hill testified that she kept Kayla away from the scene and even Michael's funeral. Kayla first observed the crime scene after it had been sanitized by a cleaning company. Based upon the above findings and rationale, we find that Kayla Hill fails to qualify as a victim in her own right. Therefore, the November 3, 2003 decision of the Attorney General shall be affirmed.

{¶10} IT IS THEREFORE ORDERED THAT

{¶11} “1) The November 3, 2003 decision of the Attorney General is AFFIRMED;

{¶12} “2) This claim is DENIED and judgment is rendered in favor of the state of Ohio;

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

[Cite as *In re Hill*, 2004-Ohio-1886.]

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

JAMES H. HEWITT III
Commissioner

ID #\1-dld-tad-021004

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

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