

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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| IN RE: JODI A. HILL | : | Case No. V2003-41158 |
| JODI A. HILL | : | <u>OPINION OF A THREE-</u> |
| Applicant | : | <u>COMMISSIONER PANEL</u> |
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{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to the August 24, 2001 murder of her husband, Michael Hill. On July 9, 2003, the Attorney General denied the applicant's claim contending that she failed to qualify as a victim in her own right asserting that she did not have a direct awareness of the criminally injurious conduct nor did she arrive at the scene in the immediate aftermath. On August 7, 2003, the applicant filed a request for reconsideration contending that she had a direct awareness of the scene since she saw the scene (her home) essentially unchanged two days later. On October 6, 2003, the Attorney General denied the claim once again. On November 5, 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 testimony and oral argument for this panel's consideration. The panel

informed the parties that this case and Case No. V2003-41174, the applicant's daughter's personal claim, would be heard simultaneously for efficiency purposes.

{¶3} Jodi Hill testified that she suffered severe emotional distress as a result of her husband's murder. Ms. Hill explained that over the course of her twenty year marriage to Michael, he had begun to abuse drugs and hence she filed for divorce. She stated that approximately three days prior to Michael's death she and Kayla, her minor daughter, had moved out of their home and were staying with friends. Ms. Hill contended that she had been watching television and saw the breaking news story about Michael's death. Ms. Hill indicated that she originally thought that Michael had committed suicide since he had always threatened to do so. The applicant stated that she immediately contacted the police and was notified to come to the police station for questioning. Sometime later, Ms. Hill explained that she was cleared as a suspect and was allowed to leave the police station. Upon release, Ms. Hill advised the panel that she immediately went to the scene of the incident, but was denied entry into her home. Ms. Hill explained that since the premises was still a crime scene, she was not permitted to enter her home until two days later. The applicant explained in great detail that the scene was inherently unchanged as she observed blood all over the house, particularly where the body was found. She even noted that everything was in disarray and that the air smelled of blood. Ms. Hill indicated that she hired a company to assist her with cleaning her home. However due to the poor service rendered, she stated that she had to hire another company to clean and sanitize the home once again. Ms. Hill stated that she never returned to live in the house and sold it sometime later. Ms. Hill explained that as a result of the incident, she has been in counseling since September 2001.

{¶4} Applicant's counsel asserted, based on the testimony presented, that Ms. Hill's claim should be allowed. Counsel stated that Ms. Hill meets all the criteria to qualify as a victim in her own right. For example, Ms. Hill had: 1) personal relationship with the victim, as she was married to the deceased; 2) sustained severe psychological injury which impeded or prohibited the person from performing or enjoying daily activities, she has sought and 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 *heard* about the matter on television as well as when she *saw* the scene virtually untouched two days later.

{¶5} The Assistant Attorney General maintained that Ms. Hill'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 Ms. Hill failed to prove she had a direct awareness of the incident, since she was not present during the crime nor did she arrive at the scene in the immediate aftermath, because she was prevented from entering her home by the police. The Assistant Attorney General contended that based upon what the applicant was allowed to see immediately after the incident (police tape and police cars) 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 evidence proffered 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 instant case, we find it clear that Ms. Hill held a close personal relationship with the victim, since they were married for twenty years and had a daughter together and that she sustained severe psychological injury which impeded her from performing or enjoying daily activities, which is documented by her long term therapy sessions. However, Ms. Hill's most challenging burden to overcome is the direct awareness/immediate aftermath requirement.

{¶10} We find that Ms. Hill held a contemporaneous sensory perception of the immediate aftermath of the incident, when she observed the scene of her husband's murder which was essentially unchanged two days later. We rely heavily upon the court's findings and holdings in In re Poling, V01-31953tc (12-28-01) and In re Freeman, V00-02330tc (1-14-02). In Poling, supra, the applicant was determined to be a victim in her own right when she testified that her mother murdered her father and placed his body parts in trash bags in their basement. After learning about the murder, Ms. Poling stated that she realized the gruesome contents of the trash bags once the bags were discovered along a road in Pennsylvania. The Poling panel held that "the applicant offered credible and convincing testimony that she saw the immediate aftermath of the crime. Moreover, we conclude that the gross abuse of the corpse combined with the sensationalism surrounding the case would create a severe and debilitating injury for the applicant."

{¶11} In Freeman, supra, the applicant arrived at the hospital within fifteen minutes of her son being stabbed and observed his severely wounded and bloody body prior to him expiring. The Freeman panel held that "the visual impact of perceiving the peril that had befallen her son was the cause of the applicant's psychological injury. Therefore, the fact that the applicant's son suffered a particularly bloody assault contributed to the severity of the impact on the applicant, as did the applicant's proximity to the place of the stabbing and to the hospital, as this facilitated the applicant's timely arrival "on the scene," causing her to be confronted by the severity of her son's injury. In this case, the hospital scene observed by the applicant was not a "more sterile" setting than the basketball court where the stabbing occurred . . . further we do not find that the

applicant's prior knowledge of an injury to her son lessened the impact of seeing him in the emergency room."

{¶12} Likewise, we believe Ms. Hill's visual impact of perceiving the peril that had befallen her husband was the cause of her psychological injury. The fact that Michael had suffered a particularly bloody assault contributed to the severity of the impact on the applicant, as did the location of the scene, which was their home. The applicant's home was not any more sterile two days later than it was on the day of the incident, except for the presence of her husband's dead body. We also do not believe that Ms. Hill's prior knowledge of Michael's injury lessened the impact of seeing the gruesome scene of her husband's murder. Ms. Hill testified that she never lived in their home again and that she put her home on the market shortly after the incident. Based upon the above findings and rationale, that are unique to this fact pattern, we find that Ms. Hill qualifies as a victim in her own right. Therefore, the October 6, 2003 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶13} IT IS THEREFORE ORDERED THAT

{¶14} 1) The October 6, 2003 decision of the Attorney General is REVERSED;

{¶15} 2) The claim is remanded to the Attorney General for economic loss calculations and decision;

{¶16} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

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

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

JAMES H. HEWITT III
Commissioner

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:

Filed 3-24-2004

Jr. Vol. 2253, Pg. 42

To S.C. Reporter 4-14-2004

