

[Cite as *In re Shipp*, 2004-Ohio-1896.]

IN THE COURT OF CLAIMS OF OHIO  
VICTIMS OF CRIME DIVISION

IN RE: SHAHIDAH W. SHIPP	:	
DIEDRA SHIPP	:	Case No. V2003-40526
STEPHANIE A. DOUGLAS	:	Case No. V2003-40534
JAMES K. THOMAS, SR.	:	Case No. V2003-40542
Applicants	:	<u>DECISION</u>
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	:	Judge J. Warren Bettis

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{¶1} This matter came on to be considered upon the Attorney General's appeal from the November 17, 2003, order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which denied the claim for an award of reparations based upon the finding that James Thomas, Sr., a funeral service provider, did not qualify as a claimant. The Attorney General had previously determined that applicants Diedra Shipp and Stephanie Douglas were not eligible for an award of reparations because they had been convicted of a felony offense within ten years of the criminally injurious conduct.

{¶2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that

James K. Thomas, Sr. qualified as an applicant and presented sufficient evidence to meet his burden.

{¶3} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶4} At the hearing, the Attorney General asserted that James Thomas, Sr. is not an eligible claimant in this case and, as such, cannot be granted an award of reparations.

{¶5} R.C. 2743.51(A) defines a claimant as one of the following categories of persons who claim an award of reparations under Chapter 2743 of the Revised Code:

{¶6} "(a) A victim \*\*\*

{¶7} "(b) A dependent of a deceased victim \*\*\*

{¶8} "(c) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim \*\*\*

{¶9} "(d) A person who is authorized to act on behalf of any person who is described in division (A) (1) (a), (b), or (c) of this section."

{¶10} The panel of three commissioners did not find that James Thomas, Sr. qualified as a claimant as defined in R.C. 2743.51; however, it determined that a service provider may be

eligible to receive an award of reparations in the absence of a claimant. The panel's decision to grant an award of reparations to Mr. Thomas was based upon the language of R.C. 2743.191(B)(1) which allows the Attorney General to provide direct payment to a provider rather than to an applicant who has incurred an allowable expense. The panel observed that Amended S.B. 153 benefitted victims by paying certain providers directly. The panel concluded that it was "reasonable" and "helped the overall goal of the program" to allow service providers to pursue their derivative claim when the applicant is ineligible to receive an award of reparations.

{¶11} In this case James Thomas, Sr. filed his reparations application seeking reimbursement for funeral expense after the Attorney General had denied the claims filed by the original applicants, Diedra Shipp and Stephanie Douglas. The Attorney General's investigation revealed that Diedra Shipp was responsible for the funeral expense at issue. The documents in the claim file show that Diedra Shipp was billed for the funeral services and cemetery charges.

{¶12} As the panel noted in its decision, prior to the enactment of Am.S.B. No. 153, service providers could not be paid directly from the Victims of Crime fund pursuant to the holding in *In re Lawrence Cty. Gen. Hosp.*, V77-0644jud (3-6-79). In that decision, the court held that service providers were not intended to be recognized as claimants. The court further observed that "[i]t is for the legislature and not the Court to specifically designate providers as claimants if such is so intended because, in our view, so construing this statute would constitute an

undesirable act of judicial legislation." Id.

{¶13} In this case, the victim is deceased and the only proper claimants have been excluded from participating in the program pursuant to R.C. 2743.60(E). Am.S.B. No. 153 allowed the Attorney General to pay service providers directly when an award of reparations is granted; however, the amendment did not expand the definition of a claimant. Although R.C. 2743.191(B)(1) authorizes the Attorney General to pay service providers directly, the payments are made for expenses incurred by either a victim or a claimant and are not paid as a benefit for the provider. The court finds that the holding in *In re Lawrence Cty. Gen. Hosp.*, supra is applicable to the facts of this case. Accordingly, the Attorney General's decision to deny an award of reparations in this case was lawful because there was no eligible claimant.

{¶14} Furthermore, granting an award of reparations to Mr. Thomas would not benefit either a victim or an eligible claimant in this case. Diedra Shipp's reparations application requested reimbursement for the funeral and burial expense that she incurred. After Diedra Shipp's claim was denied, Mr. Thomas, the proprietor of Thomas Funeral Home, filed a separate reparations application that requested reimbursement for the funeral expense that was owed by Diedra Shipp. The court finds that it would be contrary to the purpose of the exclusionary provisions of R.C. 2743.60 to grant an award of reparations to a service provider when that award would directly benefit an individual who has been expressly prohibited from participating in the program.

{¶15} Based on the evidence and R.C. 2743.61, it is the

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court's opinion that the decision of the panel of commissioners was unreasonable. Therefore, this court reverses the decision of the three-commissioner panel, and hereby denies applicant's, James Thomas, Sr., claim.

{¶16} Upon review of the evidence, the court finds the order of the panel of commissioners must be reversed.

{¶17} IT IS HEREBY ORDERED THAT:

{¶18} 1) The order of November 17, 2003, (Jr. Vol. 2251, Pages 196-197) is reversed;

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

{¶20} 3) Costs assumed by the reparations fund.

J. WARREN BETTIS

Judge

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J. WARREN BETTIS  
Judge

AMR/cmd

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

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