

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: CAROLYN S. KINDLE : Case No. V2003-40607

CAROLYN S. KINDLE : ORDER

Applicant : Judge Joseph T. Clark

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{¶1} On March 5, 2004, a hearing was held in this matter before a magistrate of this court. On March 30, 2004, the magistrate issued a decision wherein he found that applicant failed to prove by a preponderance of the evidence that she was entitled to an award of reparations.

{¶2} Civ.R. 53 states that: "[a] party may, within fourteen days of the filing of the decision, serve and file written objections to the magistrate's decision." To date, applicant has not filed an objection to the magistrate's decision.

{¶3} Upon review of the claim file, and the magistrate's decision, it is the court's finding that the magistrate was correct in his analysis of the issues and application of the law. Accordingly, this court adopts the magistrate's decision and recommendation as its own.

{¶4} IT IS HEREBY ORDERED THAT:

{¶5} 1) The March 30, 2004, decision of the magistrate is ADOPTED;

{¶6} 2) The order of November 4, 2003, (Jr. Vol. 2251, Pages 164-167) is approved, affirmed and adopted;

{¶7} 3) This claim is DENIED and judgment entered for the

State of Ohio;

{¶8} 4) Costs assumed by the reparations fund.

JOSEPH T. CLARK
Judge

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

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To S.C. Reporter 8-10-2004

{¶9} This matter came on to be considered upon applicant's appeal from the November 4, 2003, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that applicant failed to prove that she qualified as a victim of criminally injurious conduct.

{¶10} 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 applicant failed to present sufficient evidence to meet her burden.

{¶11} Pursuant to Civ.R. 53, the court appointed the undersigned magistrate to hear applicant's appeal.

{¶12} 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."

{¶13} The facts involved in this claim are largely undisputed. Applicant's injury occurred when she fell while she was running after her 16-year-old daughter Trisha in an attempt to prevent her from leaving the family's residence with her boyfriend, Jonathan Holtzslider. At the time of the incident, Trisha was in a motor vehicle that was operated by Holtzslider. Applicant contends that Holtzslider committed the crimes of disorderly conduct, inducing panic, interfering with custody, and contributing to the unruliness of a child. The Attorney General asserts that Trisha left the home voluntarily and that there is no evidence to establish that she was forcibly taken from the home. The panel concluded that applicant failed to prove by a preponderance of the evidence that she was a victim of criminally injurious conduct.

{¶14} R.C. 2743.51(C)(1) defines criminally injurious conduct, in pertinent part, as follows:

{¶15} "(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. ***"

{¶16} The court notes that the narrative report that was

completed by the police officer who responded to the incident states that Trisha had attempted to run away with her boyfriend and that Trisha's father wanted his daughter arrested and put in detention on an "unruly (runaway) charge." The officer's report did not mention any charges related to Holtzslider's conduct.

{¶17} The panel had the opportunity to consider applicant's testimony regarding Holtzslider's conduct and Trisha's attempts to leave the home. The panel noted that Holtzslider was not charged with a crime as a result of the incident and that applicant fell before she reached Holtzslider's vehicle.

{¶18} The issue of whether applicant qualifies as a victim of criminally injurious conduct involves, to some extent, a factual determination by the panel of three commissioners. The court finds that the panel's decision contains sufficient findings of fact to support its conclusion that applicant's injury was not the result of criminally injurious conduct. On appeal from a determination of fact, a court is not permitted to substitute its judgment for that of the trier of the fact. *In re Saylor* (1982), 1 Ohio Misc.2d 1.

{¶19} Upon review of the file in this matter, the magistrate finds that the panel of commissioners was not arbitrary in finding that applicant did not show by a preponderance of the evidence that she was entitled to an award of reparations.

{¶20} Based on the evidence and R.C. 2743.61, it is the magistrate's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, it is recommended that the decision of the three-commissioner panel be affirmed and applicant's claim be denied.

ANDERSON M. RENICK
Magistrate

AMR/cmd

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

