

[Cite as *In re Dyer*, 2005-Ohio-6047.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

www.cco.state.oh.us

IN RE: SHERRY J. DYER :

MARY J. COPPES : Case No. V2004-60261
MAUREEN MOLONEY

:
RICHARD E. DAY : Case No. V2004-60270
JEAN A. DAY :

ROXANNA L. DE BUSK : Case No. V2004-60288

SHEILA R. LACY-WILSON : Case No. V2004-60296

Applicants : DECISION

: Judge J. Craig Wright

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{¶ 1} This matter came on to be considered upon the Attorney General's appeal from the April 21, 2005, order issued by the panel of commissioners. The panel's determination modified the final decision of the Attorney General, which granted the decedent's minor son, Tyrese Finley, an award for dependent's economic loss, pursuant to R.C. 2743.60(E)(2).

{¶ 2} The panel's decision apportioned the \$50,000 maximum award among each of the decedent's minor children, Tyrese Finley, Kendra Dyer, and Da'Vaughn Staley based upon the determination that such an apportionment was in the best interest of the minor dependents.

{¶ 3} 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,

Case No. V2004-60261
Case No. V2004-60270
Case No. V2004-60288
Case No. V2004-60296

-2-

ORDER

455 N.E.2d 1374. The panel found, upon review of the evidence, that applicants had presented sufficient evidence to show that each of the decedent's minor children was entitled to an award of reparations.

{¶ 4} 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."

{¶ 5} The Attorney General's final decision granted an award of reparations to Tyrese Finley, finding that he was the only dependent entitled to receive an award because the decedent's other minor children, Kendra Dyer and Da'Vaughn Staley, received collateral source benefits from Social Security that outweighed their economic loss. The Attorney General's economic loss figures were based on "the William Bell formula" that has traditionally been used to calculate dependent's economic loss for minor dependents.

{¶ 6} R.C. 2743.51(I) provides, in relevant part:

{¶ 7} "'Dependent's economic loss' means loss after a victim's death of contributions of things of economic value to the victim's dependents, not including services they would have received from the victim if the victim had not suffered the

Case No. V2004-60261
Case No. V2004-60270
Case No. V2004-60288
Case No. V2004-60296

-2-

ORDER

fatal injury, less expenses of the dependents avoided by reason of the victim's death. ***"

{¶ 8} Although the panel of commissioners recognized that the Bell formula was devised to incorporate the relevant provisions of R.C. 2743.51(I) for calculating dependent's economic loss, the panel determined that it was proper to deviate from the formula in this case because the appointed guardians of Tyrese, Kendra, and Da'Vaughn each agreed that reapportioning the reparations award was in the best interest of the decedent's minor children. The panel's decision contains calculations that purport to show the amount of dependent's economic loss incurred for each of the victim's minor children.

{¶ 9} A review of the panel's dependent's economic loss calculations reveals that the figure used to represent decedent's annual net salary supports the Attorney General's assertion that the collateral source benefits received by Kendra and Da'Vaughn exceeded their share of the decedent's annual net income. At the hearing, applicant's counsel conceded that the panel's calculations were inaccurate because the panel used the decedent's entire annual net income in its calculation for each of the minor children, rather than apportioning the income among the three dependents. However, counsel argued that the panel nevertheless had the discretion to equitably reapportion the award based upon the testimony of the guardians of the decedent's minor children. The court disagrees.

{¶ 10} Although each of the three guardians testified before the panel of commissioners and urged the panel to apportion the

Case No. V2004-60261
Case No. V2004-60270
Case No. V2004-60288
Case No. V2004-60296

-2-

ORDER

award of reparations among the minor dependents, the court finds that such a reapportionment would be contrary to the provisions of R.C. 2743.51(I) because the evidence in the claim file shows that the collateral source benefits received by Kendra and Da'Vaughn exceeded the amount of their loss.

{¶ 11} Upon review of the file in this matter, the court finds that the panel of commissioners was arbitrary in finding that applicants had shown by a preponderance of the evidence that Kendra Dyer and Da'Vaughn Staley were entitled to an award of reparations.

{¶ 12} Based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners was unreasonable and unlawful. Therefore, the decision of the three-commissioner panel must be reversed and this claim shall be remanded to the Attorney General for payment of the award for Tyrese Finley.

J. CRAIG WRIGHT
Judge

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION
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Case No. V2004-60261
Case No. V2004-60270
Case No. V2004-60288
Case No. V2004-60296

-2-

ORDER

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Applicants	:	<u>ORDER</u>
_____	:	Judge J. Craig Wright
_____	:	

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Upon review of the evidence, the court finds the order of the panel of commissioners must be reversed.

IT IS HEREBY ORDERED THAT:

- 1) The order of April 21, 2005, (Jr. Vol. 2256, Pages 206-207) is reversed;
- 2) This claim is REFERRED to the Attorney General for payment of the award;
- 3) Costs assumed by the reparations fund.

J. CRAIG WRIGHT
Judge

AMR/cmd

Case No. V2004-60261

Case No. V2004-60270

Case No. V2004-60288

Case No. V2004-60296

-2-

ORDER

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

Filed 10-5-2005

Jr. Vol. 2258, Pgs. 151-152

To S.C. Reporter 11-10-2005