

[Cite as *In re Butts*, 2006-Ohio-3941.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: MISTY D. BUTTS : Case No. V2006-20038
LARRY A. BUTTS : ORDER OF A THREE-
TIMOTHY BUTTS : COMMISSIONER PANEL
Applicants :
: : : : :

{¶ 1} The applicants filed a reparations application seeking reimbursement of expenses incurred with respect to the May 16, 2005 murder of Misty Butts. On September 28, 2005, the Attorney General denied the claim pursuant to R.C. 2743.60(E) contending that the decedent tested positive for cocaine and methamphetamines on the coroner's toxicology report. The Attorney General also denied a dependent's economic loss award to Kearston Moore, the decedent's minor daughter, pursuant to R.C. 2743.60(D), contending that she has collateral source benefits, namely Social Security, that outweigh her economic loss. However, the Attorney General did grant a dependent's economic loss award to Trevor Moore, the decedent's minor son, in the amount of \$7,819.00. On October 12, 2005, the applicant filed a request for reconsideration asserting that the Attorney General's dependents' economic loss calculations are incorrect and that the file lacks a toxicology report to deny the adult's claims pursuant to R.C. 2743.60(E). On December 12, 2005, the Attorney General denied the claim once again. On January 7, 2006, the applicant filed a notice of appeal. Hence, this

matter was heard by this panel of three commissioners on April 5, 2006 at 10:15 A.M.

{¶ 2} The applicants, applicants' counsel, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Larry Butts, an applicant and the decedent's father, testified that he and his wife now have custody of his deceased daughter's two children. Mr. Butts explained that having obtained custody of his grandchildren has placed a financial strain on him and his wife. Mr. Butts stated that his wife had to quit her job to care for the grandchildren because they are unable to afford daycare for the children. Mr. Butts indicated that the \$369.00 per month Social Security death benefit each child receives is insufficient to properly care for their growing needs. Mr. Butts also testified that prior to his daughter's death, Misty had attempted to obtain child support, a GED, and better employment. Mr. Butts stated that Misty had been the sole provider for her children.

{¶ 3} Brenda Butts, the decedent's mother, briefly testified regarding the social and financial impact that her daughter's death has had upon their family. Mrs. Butts' testimony essentially mirrored her husband's testimony.

{¶ 4} Applicants' counsel stated that the claim should be allowed based upon the testimony presented. Counsel argued that the panel has the discretion to equitably reapportion the decedents' economic loss award based upon the testimony presented. Counsel asserted that the Attorney General's calculations are flawed because one dependent should not receive an award while the other dependent receives nothing, especially

when the children are only one year apart in age. Counsel urged the panel to consider the Butts' income, the decedent's age and circumstances, and the total impact of the decedent's death upon her children and her parents. Counsel also noted that child support should be considered income to the decedent and used in the dependents' economic loss calculations.

{¶ 5} The Assistant Attorney General maintained that the Final Decision should be affirmed. First, the Assistant Attorney General introduced the toxicology report into evidence, the Complaint to Determine Parentage, and the Motion to Set Support. Second, the Assistant Attorney General stated that, pursuant to R.C. 2743.51(I), dependent's economic loss must be calculated based solely upon the victim's contributions of things of economic value, occurring at the time of death, to the victim's dependents. The Assistant Attorney General contended that R.C. 2743.51(I) does not allow the Butts' contributions of economic value to be considered in the calculation process.

{¶ 6} R.C. 2743.51(I) states:

(I) "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 fatal injury, less expenses of the dependents avoided by reason of the victim's death. If a minor child of a victim is adopted after the victim's death, the minor child continues after the adoption to incur a dependent's economic loss as a result of the victim's death. If the surviving spouse of a victim remarries, the surviving spouse continues after the remarriage to incur a

dependent's economic loss as a result of the victim's death.

{¶ 7} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel, while recognizing the Butts' significant loss, must make the following determination. Reapportioning the award for dependent's economic loss is disallowed under R.C. 2743.51(I). While being mindful of the Butts' financial burdens resulting from their daughters' death, we must also be mindful of the statutes that apply to this claim. The evidence in the claim file shows that the collateral source benefits received by Kearston Moore exceed her amount of economic loss, hence we must, under the statute, deny this claim. See *In re Dyer*, V04-60261jud (10-5-05), 2005-Ohio-6047. Therefore, the December 12, 2005 decision of the Attorney General shall be affirmed.

IT IS THEREFORE ORDERED THAT

- 1) The December 12, 2005 decision of the Attorney General is AFFIRMED;
- 2) This claim is remanded to the Attorney General for payment of the award;
- 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;

4) Costs are assumed by the court of claims victims of crime fund.

RANDI OSTRY LE HOTY
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

TIM MC CORMACK
Commissioner

ID #\1-dld-tad-041206

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

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