

[Cite as *In re Burwell*, 2007-Ohio-4755.]

Court of Claims of Ohio

Victims of Crime Division

The Ohio Judicial Center

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IN RE: KRYSTYNA L. BURWELL

JANET BURWELL

Applicant

Case No. V2007-90218

Commissioners:

Karl C. Kerschner, Presiding

Thomas H. Bainbridge

Tim McCormack

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to an April 26, 2006 motor vehicle accident involving the applicant's daughter. On October 11, 2006, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove that her daughter qualified as a victim of criminally injurious conduct under any of the motor vehicle exceptions listed under R.C. 2743.51(C)(1). On October 20, 2006, the applicant

filed a request for reconsideration. On November 16, 2006, the Attorney General denied the claim once again. On March 20, 2007, the applicant filed a notice of appeal to the Attorney General's November 16, 2006 Final Decision. On June 6, 2007 at 12:45 P.M., this matter was heard, by this three-commissioner panel.¹

{¶12} Neither the applicant nor anyone on her behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. The Assistant Attorney General stated that she recently spoke to Officer Chad Guist ("Officer Guist") of the Perry Police Department. The Assistant Attorney General asserted that Officer Guist informed her that the juvenile offender had been driving recklessly in violation of R.C. 2903.08 and thereby caused severe injury to the victim. The juvenile offender was adjudicated delinquent of failure to control, driving without a license, and not wearing a seat belt. Officer Guist indicated that the offender was charged with failure to control due to his reckless driving. Officer Guist contended that he did not witness the incident and hence he was unable to charge the offender with reckless operation, despite the offender's conduct. The Assistant Attorney General stated that the Attorney General has revisited its position and now agrees the applicant's daughter qualifies as a victim of criminally injurious conduct. Accordingly, the Assistant Attorney General requested the matter be

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The panel has determined it appropriate to proceed with the merits of this matter in the interests of justice and, therefore, to deny the Attorney General's motion to dismiss. See *In re Nelson*, V01-32429tc (2-14-02), where the panel held that if the Final Decision of the Attorney General is not appealed within 30 days it is final, unless the panel determines the interest of justice allows hearing the untimely filed appeal. Also see *In re Ruffin*, V02-51524tc (1-16-03).

remanded to the Attorney General for economic loss calculations and decision. Consistent with the panel's request following the hearing, the Attorney General filed a supplemental memorandum setting forth her conversation with Officer Guist. On June 27, 2007, the applicant filed a statement indicating her agreement with the Attorney General's new position concerning the case.

{¶3} Revised Code 2743.51(C)(1)(d) states:

(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. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

(d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code.

{¶4} From review of the file and with full and careful consideration given to all the evidence presented at the hearing and based upon the parties' agreement, we find that the applicant has proven that her daughter qualifies as a victim of criminally injurious conduct pursuant to R.C. 2743.51(C)(1)(d). Officer Guist provided information that the offender was driving recklessly when he struck and severely injured the victim, which we find to be a violation of R.C. 2903.08. Therefore, the November 16, 2006

decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for total economic loss calculations and decision consistent with the panel's order.

{¶5} IT IS THEREFORE ORDERED THAT

{¶6} 1) The Attorney General's May 9, 2007 motion to dismiss is hereby DENIED;

{¶7} 2) The Attorney General's May 30, 2007 motion for telephone testimony is hereby GRANTED;

{¶8} 3) The November 16, 2006 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶9} 4) This claim is remanded to the Attorney General for total economic loss calculations and decision consistent with the panel's order;

{¶10} 5) 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;

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

KARL C. KERSCHNER
Presiding Commissioner

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THOMAS H. BAINBRIDGE
Commissioner

TIM MC CORMACK
Commissioner

ID #\4-dld-tad-062707

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

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To S.C. Reporter 9-13-2007

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ORDER