[Cite as *In re VanHorn*, 2007-Ohio-7277.]

Court of Claims of Ohio
Victims of Crime Division
The Ohio Judicial Center
65 South Front Street, Fourth Floor
Columbus, OH 43215
614.387.9860 or 1.800.824.8263
www.cco.state.oh.us

IN RE: BRADLEY L. VAN HORN

GWENDOLYN S. DAVIS

RACHEL RUMMEL

TAMMY VAN HORN

Applicants

Case No. V2006-20241

Case No. V2006-20321

DECISION

Judge J. Craig Wright

{1}This matter came on to be considered upon the Attorney General's appeal from the June 29, 2007 order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which had denied applicant's claim for an award of reparations based upon the finding that the victim had been engaging in substantial contributory misconduct when he was assaulted and killed.

{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 Attorney General bears the burden of proof by a preponderance of the evidence with respect to the exclusionary criteria of R.C. 2743.60. *In re Williams*, V77-0739jud (3-26-79).

{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}The Attorney General asserts that the panel's finding that the decedent attempted to purchase illegal drugs from the offenders requires a determination that the decedent engaged in substantial contributory misconduct as defined in R.C. 2743.51(M).

{5}R.C. 2743.60(F) provides, in pertinent part:

"In determining whether to make an award of reparations pursuant to this section, the attorney general or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim."

{6}R.C. 2743.51(M) provides: "'Contributory misconduct' means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the

conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim."

{7}According to the determination in *In re Spaulding* (1991), 63 Ohio Misc.2d 39, "for an award of reparations to be denied, rather than reduced, as a result of contributory misconduct on behalf of the victim or applicant pursuant to R.C. 2743.60(F), there must be a showing of substantial contributory misconduct."

{8}Although the court has previously held that involvement in an illegal drug transaction is inherently dangerous and may rise to the level of substantial contributory misconduct, the court declines to adopt the Attorney General's position that such conduct requires a denial of an applicant's claim in every case.

{9}"While impossible to specifically define 'substantial' this court evaluates all applications for reparations on the basis of case-by-case analysis * * * [The] panel of commissioners has the authority to deny or reduce an award due to contributory misconduct on behalf of the victim or claimant and their decision will be supported by the court unless unreasonable in a manner that approaches arbitrariness." *In re McKendry*, V91-26415jud (1-26-94).

{10}In this case, the panel had the opportunity to hear the testimony of both the decedent's former wife and the detective who investigated the incident. After considering the testimony and evidence, the panel found that the Attorney General had proven by a preponderance of the evidence that the decedent became involved in an illegal drug transaction. However, the panel determined that the decedent was "set up for a robbery" and that the decedent was "a very drunk man" when the offenders "mercilessly beat him to death." The panel further determined that the decedent "suffered a disproportionate level of harm" compared to the level of his misconduct.

{11}Based upon the evidence, and the holding in *In re McKendry*, it is the court's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel.

J. CRAIG WRIGHT
Judge

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ORDER

Judge J. Craig Wright

{12}Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and the Attorney General's appeal must be denied.

IT IS HEREBY ORDERED THAT:

{13}1) The order of June 29, 2007, (Jr. Vol. 2265, Pages 107-108) is approved, affirmed and adopted;

{14}2) This claim is REMANDED to the Attorney General for economic loss calculation and decision;

{15}3) All future awards shall be reduced by 40 percent;

{16}4) Costs assumed by the reparations fund.

J. CRAIG WRIGHT
Judge

AMR/cmd

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

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