[Cite as *In re Thomas*, 2007-Ohio-7280.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION
www.cco.state.oh.us

IN RE:ISIAH M. THOMAS	:	Case No. V2006-20925
BARBARA J. THOMAS	:	DECISION
Applicant	:	Judge Clark B. Weaver Sr.

: : : : : : : : : : :

{¶ 1} This matter came on to be considered upon the Attorney General's appeal from the March 2, 2007, order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which denied applicant's claim for an award of reparations pursuant to R.C. 2743.60(D) contending that all of applicant's economic loss had been or may be recouped from a civil suit settlement.

{¶ 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 panel found, upon review of the evidence, that applicant presented sufficient evidence to meet her burden.

{¶ 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} Documents from the Mahoning County Probate Court show that applicant is the Administratrix of the Estate of the decedent, Isiah Thomas. According to the probate documents, the court approved a global settlement of the wrongful death and survival claims and ordered that applicant receive a distribution of the net proceeds in the amount of $25,440.10. The probate court allocated the entire net proceeds to the wrongful death claim. The panel determined that applicant was entitled to receive a full recovery of the funeral expense, pursuant to R.C. 2743.51(B)(9).

{¶ 5} The Attorney General asserts the panel's decision to grant applicant an award of reparations was unreasonable and unlawful in that the panel relied on R.C. 2743.51(B)(9) in making that determination. According to the Attorney General, R.C. 2743.51(B)(7) requires that the proceeds of the civil suit settlement be considered a collateral source.

{¶ 6} R.C. 2743.51 provides in pertinent part:

"(B) 'Collateral source' means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to the victim or claimant, from any of the following sources:

"***

"(7) Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct;

"***

"(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim that exceeds fifty thousand dollars."

{¶ 7} The Attorney General argues in his brief that "applicant did not receive money as a result of being named in a contract for insurance as a payable claimant on account of the victim's death" and that therefore, the panel's reliance on R.C. 2743.51(B)(9) was misplaced in that its determination disregarded the intent of the legislature. However, if the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn*. (1996), 74 Ohio St.3d 543, 1996-Ohio-291. Courts must give effect to the words explicitly used in a statute or rule rather than deleting words used, or inserting words not used, in order to interpret an unambiguous statute or rule. *State v. Taniguchi* (1995), 74 Ohio St.3d 154, 156.

{¶ 8} Inasmuch as the entire amount of the civil settlement was allocated to the wrongful death claim, the court finds that the panel was correct in its determination that the civil settlement qualifies as "[t]hat portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim." Therefore, the court concludes that applicant was entitled to an award of funeral expense pursuant to R.C. 2743.51(B)(9) because the amount of the settlement proceeds does not exceed $50,000.

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

{¶ 10} Based on the evidence and R.C. 2743.61, 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.

CLARK B. WEAVER SR.
Judge

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: : : : : : : : : : :

{¶ 11} 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:

{¶ 12} 1) The order of March 2, 2007, (Jr. Vol. 2263, Pages 147-150) is approved, affirmed and adopted;

{¶ 13} 2) This claim is DENIED and judgment entered for the State of Ohio;

{¶ 14} 3) Costs assumed by the reparations fund.

CLARK B. WEAVER SR.
Judge

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

Filed 6-29-2007
Jr. Vol. 2265, Pg. 125
To S.C. Reporter 10-19-11