

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: DEBRA SANTIAGO

Case No. V2007-90668

DEBRA SANTIAGO

Applicant

Commissioners:
Thomas H. Bainbridge, Presiding
Karl C. Kerschner
Tim McCormack

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} On September 26, 2006, the applicant filed a reparations application (Case No. V2007-90293) seeking reimbursement of expenses incurred with respect to the July 23, 2006 murder of Nicole Santiago (“Nicole”), her daughter. Nicole was shot by Christopher Graybill while she was in her vehicle. On December 27, 2006, the Attorney General granted an award totaling \$7,500.00 for unreimbursed funeral expense. On January 25, 2007, Debra Santiago filed a request for reconsideration contending that she incurred work loss in the amount of \$2,752.00 from July 23, 2006 through September 17, 2006 as a result of having endured the aftermath of her daughter’s homicide. On March 23, 2007, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On April 19, 2007, the applicant filed a notice of appeal to the Attorney General’s March 23, 2007 Final Decision. On October 3, 2007 at 11:30 A.M., the above case was heard by this panel of commissioners.¹

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On December 17, 2007, this panel severed case number V2007-90293 which lists Nicole Santiago as the victim and created case number V2007-90668 which lists Debra Santiago as the victim. Both case numbers involve the same criminally injurious conduct incident.

{¶2} Debra Santiago (“Ms. Santiago”) and Mary Moran (“Ms. Moran”), applicant’s counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel’s consideration. Ms. Santiago testified that she was sleeping when she received a telephone call from the hospital about Nicole, her daughter. Ms. Santiago also stated that someone knocked on her door around the same time and instructed her that there was an emergency and that she needed to go to the hospital immediately. Ms. Santiago testified that she left immediately and arrived at the hospital approximately 35 minutes later. Security had been waiting for her arrival. Ms. Santiago related that she was placed in a wheelchair and taken upstairs, where doctors informed her of Nicole’s condition. Ms. Santiago testified that she was told that Nicole had been shot in the head, was brain-dead, and was on life support. Ms. Santiago was instructed to prepare herself to see Nicole. Ms. Santiago stated that she screamed, wept, and almost fainted when she saw her daughter. Ms. Santiago reported that Nicole was connected to various machines, that her pillows were bloody, and that she felt ice cold. Ms. Santiago stated that she remained at Nicole’s bedside for three days, holding and talking to Nicole; until her organs were harvested for donation. Ms. Santiago described the experience as a “nightmare.”

{¶3} Ms. Santiago testified that during her stay at the hospital with Nicole, she was given medication for her nerves. She also stated that she saw her family physician the same day that Nicole died. Ms. Santiago explained that Dr. Govani prescribed her an anti-depressant and sleep aid and advised her to stay at home and get rest. Ms. Santiago related that she works for Lakewood Hospital as a caterer and that due to the trauma of the criminally injurious conduct she was unable at that time to cope with work and life. Ms. Santiago testified that Dr. Govani recommended that she go on Family

Medical Leave. Ms. Santiago testified that she remained off work for eight weeks. Her employer informed her though that if she did not return to work by September 21, 2006, she would no longer have a job. Ms. Santiago explained that she had no choice; she needed employment and thus returned to work.

{¶4} Ms. Santiago further testified that approximately 2 to 3 weeks after Nicole's death, she received a letter from the City of Cleveland impound lot indicating that she could retrieve Nicole's belongings from her vehicle. Ms. Santiago contended that after viewing the gruesome conditions of and contents of the vehicle, (i.e., blood "everywhere" and the back window blown out by gunfire) she was mentally unable to remove any contents from the vehicle and that she did not take the vehicle into her possession.

{¶5} Applicants' counsel asserted, based on the testimony presented, that the claim should be allowed. Counsel stated that Ms. Santiago meets all the criteria to qualify as a victim in her own right. Ms. Santiago meets the criteria that this panel has long recognized: 1) she had a close personal relationship with the victim- Nicole was her daughter; 2) she sustained severe psychological injury which impeded or prohibited her from performing or enjoying daily activities - which is evidenced by eight weeks of medication and work loss; and 3) had a direct awareness of the criminally injurious conduct and arrived at the scene in the immediate aftermath of the criminally injurious conduct - within an hour of the criminally injurious conduct she observed her brain-dead daughter on life support lying in a blood soaked hospital bed. She later viewed the crime scene which was virtually untouched. Counsel stated that Ms. Santiago is seeking \$2,752.00 in work loss from July 23, 2006 through September 17, 2006 (8 weeks).

{¶6} The Assistant Attorney General maintained that Ms. Santiago's claim should not be allowed since she failed to meet all of the criteria in order to qualify as a victim in her own right. The Assistant Attorney General argued that Ms. Santiago failed to prove that she had a direct awareness of the incident, because she was not present during the criminally injurious conduct and she did not arrive at the scene in the immediate aftermath. The Assistant Attorney General contended that Ms. Santiago's observation of her daughter in the hospital was not the "scene" of the criminally injurious conduct and therefore she did not experience sufficient shock or have the contemporaneous sensory perception to qualify as a victim in her own right.

{¶7} From full review of the written record and with careful consideration given to all the evidence proffered at the hearing, this panel makes the following determination. We find that Ms. Santiago qualifies as a victim in her own right.

{¶8} Based upon the Supreme Court holdings in *Paugh v. Hanks* (1983), 6 Ohio St. 3d 72, 6 OBR 114 451 N.E. 2d 83 and *Burris v. Grange Mut. Cos.* (1989), 46 Ohio St. 3d 84, 545 N.E. 2d 83, the Court of Claims has espoused certain qualitative factors to be examined when determining who may qualify as a victim in their own right. The original factors to have been considered were: 1) the relationship between the person and the direct victim; 2) the shock directly attributable to the sensory and contemporaneous observance of the incident; and 3) the person's proximity to the location of the incident.

{¶9} This court recognized in *In re Clapacs* (1989), 58 Ohio Misc. 2d 1, 567 N.E. 2d 1351 and *In re Fife* (1989), 59 Ohio Misc. 2d 1, 569 N.E. 2d 1078, that emotional distress due to a direct awareness of a criminal incident can be classified as personal injury. As such, persons other than the victim per se may qualify as victims in their own right. The determination of whether a person qualifies as a victim in one's

own right is to be based upon a case-by-case analysis. See *In re Clapacs*. Additionally, the court also determined that the psychological injury suffered by the injured party must be so debilitating that it impedes or prohibits participation in day-to-day activities. The court emphasized that one must analyze the nature of the alleged injury and its relationship to the criminal incident. See *In re Fife*. Subsequently, a panel of commissioners *In re Anderson* (1991), 62 Ohio Misc. 2d 268, 598 N.E. 2d 223, modified the contemporaneous sensory perception requirement to allow for instances where an individual arrives at the scene shortly after the incident. Also in *Anderson*, the court recognized that the rationale in *Clapacs* would not be viewed to open a floodgate for fraudulent or imagined injury claims. *In re Hill*, V2003-41158jud (6-9-04), 2004-Ohio-4169.

{¶10} After examining the particular facts of this case, we conclude that it is fully appropriate to find Ms. Santiago qualifies as a victim in her own right. It is clear that Ms. Santiago had a close personal relationship with the victim; the victim was her daughter. The extent of loss for the surviving parent from such a gruesome crime cannot be measured. It is clear that Ms. Santiago sustained severe psychological injury which impeded her from performing her work or undertaking daily activities, which is evidenced by her testimony and physician's letter documenting her inability to work from July 23, 2006 through September 17, 2006. It is Ms. Santiago's burden to prove that the facts of her case fulfill the direct awareness/immediate aftermath requirement.

{¶11} We find that Ms. Santiago held a contemporaneous sensory perception of the immediate aftermath of the incident, when she, shortly after the criminally injurious conduct observed in the hospital the severity of Nicole's injuries. We hold that Ms. Santiago's observance of Nicole, whether she lay in the vehicle where she was shot or shortly thereafter in a hospital bed is sufficient to satisfy her burden in this regard. For

three days Ms. Santiago directly attended to her brain-dead, bleeding daughter who was on life support.

{¶12} The full impact of having perceived the peril that had befallen her daughter was the direct cause of Ms. Santiago's psychological injury. Therefore, the fact that Ms. Santiago's daughter suffered particularly gruesome gunshot wounds contributed to the severity of the impact upon Ms. Santiago, as did Ms. Santiago's direct observance of her daughter's injuries and resulting condition. We note that Ms. Santiago did not view her daughter in a "more sterile" setting at the hospital than that of the crime scene. Furthermore, we do not believe Ms. Santiago's prior knowledge of her daughter's gunshot wound in any way lessened the impact of seeing Nicole.

{¶13} We are especially mindful of precedent in this area of law and, thus do not intend to expand the doctrine of indirect victim status in this case. This decision respects the existing precedent. This decision is based on a fact-specific analysis of the case before us. Applying this standard to the specific facts here, we find Debra Santiago meets all of the requirements to be classified a victim in her own right. Moreover, this panel places reliance upon the court's findings and holdings in *In re Freeman*, V2000-02330jud (4-23-02) and *In re Hill*, V2003-41158jud (6-9-04), 2004-Ohio-4169. In *Freeman*, the court upheld the panel's decision finding that a mother who had arrived at the hospital within fifteen minutes of her son being stabbed and who had observed his severely wounded and bloody body prior to his death satisfied the requirements to be a victim in her own right, even though the body was observed at the hospital. In *Hill*, the court found that an estranged spouse who had learned of her husband's murder from a television report and had subsequently observed the murder scene two days after the incident satisfied the direct awareness/immediate aftermath requirement.

{¶14} Based upon the above findings and rationale unique to this matter, we find that Ms. Santiago qualifies as a victim in her own right. Ms. Santiago incurred work loss from July 23, 2006 through September 17, 2006. Therefore, the March 23, 2007 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculation and decision.

{¶15} IT IS THEREFORE ORDERED THAT

{¶16} 1) The March 23, 2007 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶17} 2) This claim is remanded to the Attorney General for economic loss calculations and decision;

{¶18} 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;

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

THOMAS H. BAINBRIDGE
Presiding Commissioner

KARL C. KERSCHNER
Commissioner

Case No. V2007-90668

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ORDER

TIM MC CORMACK
Commissioner

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

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