

[Cite as *In re Mihaljevic*, 2008-Ohio-6089.]

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: ANKICA MIHALJEVIC

IVAN STIMAC

ROBERT SNOCK

JAMES STEWART

Applicants

Case No. V2008-30448

Case No. V2008-30472

Commissioners:

Lloyd Pierre-Louis, Presiding

Gregory P. Barwell

Karl Kerschner

ORDER OF A THREE COMMISSIONER PANEL

{¶ 1} On September 24, 2007, Ivan Stimac filed a compensation application as the result of the murder of his sister, Ankica Mihaljevic. On October 1, 2007, the applicants, Robert Snock and James Stewart, filed a compensation application as the result of the same crime. On January 25, 2008, the Attorney General issued a consolidated finding of fact and decision denying the applicants' claims pursuant to R.C. 2743.60(E)(1)(a) since the decedent was convicted of two counts of possession of drugs, felonies of the second and third degrees; one count of trafficking drugs with school yard specifications, a felony of the first degree; two counts of trafficking drugs

with school yard specifications, second degree felonies; and possession of criminal tools, a fifth degree felony on January 30, 2003. These felony convictions were within ten years of the decedents murder which occurred on September 4, 2007.

{¶ 2} On February 19, 2008, the applicants, Robert Snock and James Stewart, filed a request for reconsideration. They requested they be reimbursed \$250.00 for a deductible for their homeowners insurance used to clean up the aftermath of the crime scene. On April 22, 2008, the Attorney General rendered a consolidated Final Decision finding no reason to modify the initial decision. On May 13, 2008, the applicant, Robert Snock, filed a notice of appeal from the April 22, 2008, Final Decision of the Attorney General. The applicant asserts that since he was in the apartment building and witnessed the aftermath of the crime scene he should qualify as a victim in his own right and his claim should not be barred by the felony exclusion. Hence, this claim was heard before this panel of commissioners on September 24, 2008 at 10:15 A.M.

{¶ 3} The applicant, Robert Snock, appeared via telephone while his attorney, Philip Gauer, appeared in person. The Attorney General's Office was represented by Assistant Attorney General Amy O'Grady.

{¶ 4} Attorney Gauer stated that it was the applicants' contention that the applicant, Robert Snock, was a victim in his own right and accordingly, his claim should not be barred by the felony exclusion which should apply to only the victim, Ankica Mihaljevic. Assistant Attorney General O'Grady asserted that the sole issue before this panel is whether the Attorney General properly denied the applicant's claim for crime scene cleanup. Assistant Attorney General O'Grady further stated that the issue of whether the applicant qualifies as a victim in his own right is not ripe for determination at this time.

{¶ 5} Robert Snock testified concerning the day of the incident. He stated due to the nature of the crime scene he had to hire someone else to clean the apartment and the area where the crime occurred. Mr. Snock asserted that as the landlord normally he would clean up the premises himself when the apartment was vacated. However, under these circumstances, he could not perform the clean up based upon the nature of the scene. The applicant asserted he was a victim because, although he did not witness the crime, he was on the premises at the time of the murder and observed the scene. Whereupon the applicant's testimony was concluded.

{¶ 6} The applicant's counsel asserts that this panel should consider the issue of the applicant's status as a victim in his own right. Although Mr. Gauer concedes it was not evident from the applicant's compensation application that the applicant was asserting this issue, it did become evident upon the filing of the appeal. Assistant Attorney General O'Grady stated that her office first became aware Mr. Snock sought to be considered a victim in his own right upon the filing of the notice of appeal. The Attorney General's office was not put on notice of the applicant's attempt to assert his status as a secondary victim since he sought solely an expense for crime scene cleanup, an expense which was incurred as a result of the death of Ankica Mihaljevic. Ms. O'Grady stated that the Attorney General has not had the opportunity to investigate the issue of whether Mr. Snock is a victim in his own right. Finally, the Attorney General asserted that this claim was properly denied by the Attorney General's Office due to the decedent's prior felony convictions and accordingly, the Attorney General's Final Decision should be affirmed. Whereupon the hearing was concluded.

{¶ 7} R.C. 2743.52(A) states:

{¶ 8} “The attorney general shall make awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.”

{¶ 9} R.C. 2743.51(T) states:

{¶ 10} “‘Cost of crime scene cleanup’ means reasonable and necessary costs of cleaning the scene and repairing for the purpose of personal security, property damaged at the scene where the criminally injurious conduct occurred, not to exceed seven hundred fifty dollars in the aggregate per claim.”

{¶ 11} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. The criminally injurious conduct in question is the murder of Ankica Mihaljevic. Accordingly, the claim for crime scene cleanup is related to Ms. Mihaljevic’s death, however, that claim is barred pursuant to R.C. 2743.60(E)(1)(a) which states:

{¶ 12} “(E)(1) Except as otherwise provided in division (E)(2) of this section, the attorney general, a panel of commissioners, or a judge of the court of claims shall not make an award to a claimant if any of the following applies:

{¶ 13} “(a) The victim was convicted of a felony within ten years prior to the criminally injurious conduct that gave rise to the claim or is convicted of a felony during the pendency of the claim.”

{¶ 14} The record reflects that Ms. Mihaljevic was convicted of multiple felonies on January 30, 2003, which was within ten years of the criminally injurious conduct of September 4, 2007.

{¶ 15} The applicant’s claim that he was a victim in his own right is not ripe for consideration because that issue was not presented to the panel as part of the appellate record and because the Attorney General has, therefore, not had the opportunity to

investigate this claim pursuant to R.C. 2743.59. Therefore, the applicant, Robert Snock may file a separate compensation application asserting he was a victim in his own right should he so choose.

{¶ 16} IT IS THEREFORE ORDERED THAT

{¶ 17} 1) The April 22, 2008 decision of the Attorney General is AFFIRMED;

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

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

LLOYD PIERRE-LOUIS
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

KARL C. KERSCHNER
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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To S.C. Reporter 11-24-2008

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ORDER