

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: ANTHONY M. PROVIANO

CARMEN PROVIANO

MARYANN PROVIANO

Applicants

Case No. V2007-90722

Judge Joseph T. Clark

DECISION

{¶1} This matter came on to be considered upon the applicants' appeal from the August 22, 2008 order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicants' claim for an award of reparations based upon the finding that the reparations application was not timely filed pursuant to R.C. 2743.56(B).

{¶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 applicants failed to present sufficient evidence to meet their 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}In its decision, the panel of commissioners summarized the procedural history of this case as follows:

{¶5}“On October 19, 2006, the applicants, Carmen and Maryann Proviano, filed a reparations application as the result of the death of their son, Anthony Proviano. On October 30, 2006, the Attorney General issued a Finding of Fact and Decision determining that the initial reparations application was not timely filed pursuant to R.C. 2743.56(B) and R.C. 2743.60(A), because it was not filed within two years of the criminally injurious conduct. The Attorney General found that while Anthony’s death occurred on December 23, 1997, the coroner initially ruled the death a suicide. On August 20, 2001, however, the succeeding and duly elected coroner reviewed the case, determined the initial cause of death was incorrect, and amended and corrected the death certificate to reflect the cause of death as murder. Notwithstanding this determination, the Provianos waited until October 19, 2006 to file their reparations application. The Attorney General determined the claim was not timely filed and the claim was denied. The Attorney General also contended that the decedent engaged in substantial contributory misconduct at the time of his death, another factor which could have resulted in a denial of the claim.

{¶6}“On November 20, 2006, the applicants filed a request for reconsideration asserting primarily that they were never informed of the existence of the Ohio Crime Victim’s Compensation Program until March 30, 2006. Furthermore, the applicants asserted an indictment in connection with this matter was not issued until October 22, 2004, which was within two years of the filing of the reparations application. The applicants dispute any contributory misconduct occurred and such an allegation was not supported by the testimony presented at the criminal trial of the offender.

{¶7}“On October 16, 2007, the Attorney General issued a Final Decision finding there was no reason to modify the claim denial pursuant to the statute of limitations.

The issue of contributory misconduct was not addressed. On November 9, 2007, the applicants filed a notice of appeal from the Final Decision of the Attorney General.”

{¶8}The panel determined that the statute of limitations commenced on August 20, 2001, the date that the Belmont County Coroner, Dr. Gene Kennedy, amended the death certificate to reflect that the decedent was a victim of homicide. Accordingly, the panel concluded that applicants’ claim was time barred inasmuch as it was not filed until October 19, 2006, well beyond the two-year statute of limitations.

{¶9}Revised Code 2743.56 provides, in pertinent part, as follows:

“(B) All applications for an award of reparations shall be filed as follows:

“* * *

“(2) If the victim of the criminally injurious conduct was an adult, within two years after the occurrence of the criminally injurious conduct.”

{¶10}Revised Code 2743.60(A) provides, in pertinent part, as follows:

“(A) The attorney general, a court of claims panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to any claimant who, if the victim of the criminally injurious conduct was an adult, did not file an application for an award of reparations within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which the victim is seeking an award of reparations.”

{¶11}The court has previously addressed the issue of whether the statute of limitations is tolled in the event that a coroner had incorrectly determined that the decedent’s death was not caused by criminally injurious conduct. See *In re Irwin* (1987), 33 Ohio Misc.2d 37. In *In re Irwin*, the decedent’s death certificate was amended by the county coroner approximately 11 months after the criminally injurious conduct to reflect that “the cause of death was probable homicide and not accidental.” *Id.* at 38. The court in *In re Irwin* concluded that, based upon the unique facts of that case, the statute of limitations should be tolled until the date that “all the elements that were necessary for a determination that the criminally injurious conduct existed”; the date that the death certificate was amended. *Id.* at 40.

{¶12}In this case, the determination that criminally injurious conduct existed was made on August 20, 2001; the date that the Belmont County Coroner amended the death certificate to show that the decedent was a victim of homicide. Thus, pursuant

to the holding in *In re Irwin*, the statute of limitations began to run on August 20, 2001, and applicants had until August 20, 2003, to file their claims.

{¶13}Applicants further assert that law enforcement officials failed to inform them of their rights under the Victims of Crime Program and that the statute of limitations should be tolled for that reason.

{¶14}R.C. 2743.71(A) provides:

“Any law enforcement agency that investigates, and any prosecuting attorney, city director of law, village solicitor, or similar prosecuting authority who prosecutes, an offense committed in this state shall, upon first contact with the victim or the victim’s family or dependents, give the victim or the victim’s family or dependents a copy of an information card or other printed material provided by the attorney general pursuant to division (B) of this section and explain, upon request, the information on the card or material to the victim or the victim’s family or dependents.”

{¶15}Contrary to applicants’ assertion, the court has held that the notice provisions set forth in R.C. 2743.71(A) regarding the availability of reparation awards are directory provisions and not mandatory provisions intended to modify the statute of limitations. *In re Clark* (1983), 8 Ohio Misc.2d 34.

{¶16}Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicants did not show by a preponderance of the evidence that they were entitled to an award of reparations.

{¶17}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 two-commissioner panel, and hereby denies applicants’ claim.

JOSEPH T. CLARK
Judge

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: ANTHONY M. PROVIANO

CARMEN PROVIANO

MARYANN PROVIANO

Applicants

Case No. V2007-90722

Judge Joseph T. Clark

ORDER

{¶18} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and applicants' appeal must be denied.

IT IS HEREBY ORDERED THAT:

{¶19}1) The order of August 22, 2008, (Jr. Vol. 2269, Page 134) is approved, affirmed and adopted;

{¶20}2) This claim is DENIED and judgment entered for the State of Ohio;

{¶21}3) Costs assumed by the reparations fund.

JOSEPH T. CLARK
Judge

AMR/cmd

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

Filed 2-19-09
Jr. Vol. 2271, Pg. 92
Sent To S.C. Reporter 12-15-11