

[Cite as *In re Pethtel*, 2015-Ohio-5689.]

IN RE: BRANDON PETHTEL

MICHAEL PETHTEL
TONYA PETHTEL

Applicants

Case No. 2014-00744-VI

Judge Patrick M. McGrath

DECISION

{¶1} On April 16, 2015, a hearing was held in this matter before a magistrate of this court. On September 10, 2015, the magistrate issued a decision wherein he recommended that the Attorney General's determination that applicants' wrongful death proceeds were a collateral source be reversed, "since in [the magistrate's] opinion they do not qualify as a collateral source." The magistrate further recommended that the court affirm the Attorney General's decision denying applicants' monument expense because applicants had ample opportunity to present the expense to the probate court and they unreasonably failed to do so. See R.C. 2743.60(H).

{¶2} Civ.R. 53 states that: "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision * * *." Applicants timely filed their objection on September 22, 2015. The Ohio Attorney General timely filed its objection on September 24, 2015. On October 5, 2015, the applicants filed "Applicant's Concurrence with Attorney General's Request for Additional Hearing."¹

{¶3} This case arises from applicants', Michael and Tonya Pethtel, crime victim's award and subsequent supplemental compensation application. Their application stems from the death of their 15 year old son, Brandon Pethtel, on April 12, 2013. On August 12, 2013, the Attorney General issued a finding of fact and decision determining that Brandon's death resulted from aggravated vehicular homicide, and, accordingly, he qualified as a victim of criminally injurious conduct.

{¶4} Further, the Attorney General awarded applicants \$6,052.70 for family counseling and funeral related expenses. A few of applicants' requests, including a

¹Both parties' requests for a hearing before the court are DENIED.

family monument expense, were denied. On December 20, 2013, the Guernsey County probate court distributed a \$250,000 wrongful death settlement from Grange and Progressive Insurance Companies to Brenda Pethtel, the victim's sister, and applicants. The probate court order also included repayment to the reparations fund of \$6,052.70, the amount applicants were awarded in August 2013.

{¶5} On April 2, 2014, applicants filed their supplemental compensation application requesting compensation for additional funeral expense, including a monument expense totaling \$450.00, and family counseling expenses totaling \$40.00. On July 17, 2014, the Attorney General denied applicants' supplemental application because the Attorney General determined that the wrongful death settlement was a collateral source and the excess collateral source exceeded expenses incurred by applicants. Finally, on September 3, 2014, the Attorney General declined to modify its decision after applicants filed a request for reconsideration. Applicants filed their appeal to this court on September 8, 2014 and the magistrate issued his decision on September 10, 2015.

a) Applicants raised the following objection: Applicants object to the final conclusion of the magistrate as to payment of the monument expenses by the Guernsey County Probate Court in that Court's Distribution of Wrongful Death proceeds as issued December 20, 2013. That Court spoke by its Order distributing funds, and the Court of Claims does not have the authority to amend or set aside that Order and distribution of funds, which is occurring with the magistrate's conclusion regarding the monument costs.

{¶6} Applicants agree that the magistrate correctly relied on *In re Rosca*, V97-47953tc (9-10-99) and the case applies to the analysis of the wrongful death proceeds in this case. However applicants argue that "the error comes with the conclusion that

the applicants' didn't submit the monument expense bill to Probate Court, and if they had done so the costs would have been paid. This implies that ADDITIONAL MONEY above the \$250,000.00 policy limits would have been found by which to pay for the monument. * * * By denying reimbursement of monument costs in this claim, the Magistrate is directing the Pethtels to pay for the monument with funds from this claim which the Probate Court found were due for damages outside of funeral costs. The effect is the Magistrate unintentionally overruled the exclusive rights of the Probate Court to control distribution of Wrongful Death proceeds."

{¶7} The court is not persuaded by applicants' argument, and agrees with the magistrate's reasoning. In *In re Rosca*, V97-47953tc (9-10-99) the panel stated, in pertinent part, that "[u]nless coverage of funeral expenses is specifically designated in the wrongful death settlement, wrongful death proceeds do not constitute a collateral source." Here, applicants' April 2, 2014 supplemental application was not specifically designated in the wrongful death settlement, and thus the wrongful death proceeds do not constitute a collateral source for the expenses in the supplemental application. As such, the magistrate correctly determined that "in this case the proceeds from the Wrongful Death settlement for awards made pursuant to R.C. 2125.02(B) are not collateral sources as defined under R.C. 2743.51(B)."

{¶8} However, R.C. 2743.60(H) states as follows: "[i]f a claimant unreasonably fails to present a claim timely to a source of benefits or advantages that would have been a collateral source and that would have reimbursed the claimant for all or a portion of a particular expense, the attorney general or the court of claims may reduce an award of reparations or deny a claim for an award of reparations to the extent that it is reasonable to do so."

{¶9} The court concludes that applicants had a sufficient amount of time to submit their additional expenses to the probate court, and there is no indication that the probate court would have declined to allocate the additional funeral and counseling

expenses in its distribution of the wrongful death settlement. First, applicants entered into an agreement with the company preparing the monument on June 13, 2013, six months prior to the probate court order distributing the settlement. Second, applicants paid for a portion of the monument expense on August 19, 2013, leaving the monument balance at \$450.00. As of the date of this payment, there was four months remaining to present this expense to the probate court for consideration in its distribution of the settlement. Third, applicants incurred expenses for counseling services on July 3, 2013 and December 4, 2013, and also could have presented these expenses to the probate court.

{¶10} Accordingly, the court agrees with the magistrate's conclusion that "with respect to the monument expense, I find that applicants had ample opportunity to submit this expense to the Probate Court, but unreasonably failed to do so. Accordingly, pursuant to R.C. 2743.60(H), applicants' claim for reimbursement of the monument expense is denied." The applicants' objection to nonpayment of the expenses contained in the supplemental application is OVERRULED.

{¶11} The Attorney General raised the following objection: AGO objects to the Magistrate's finding of fact that "the wrongful death settlement must be adjusted to exclude the amount received by Brenda Pethtel who is not an applicant in this case."

{¶12} The Attorney General argues that "[t]he Court determined that before the Fout-Craig calculations could be done, Brenda Pethtel's portion of the Wrongful Death settlement should be removed stating that she 'is not an applicant in this case' (Order, 10). The Attorney General objects to this holding in that it will cause an inequality in the treatment of similar claims which require a Fout-Craig apportionment."

{¶13} The ultimate decision in this case does not require a Fout-Craig analysis because the proceeds from the wrongful death settlement do not constitute a collateral source. Further, the Fout-Craig discussion on page 10 of the magistrate's decision

does not result in any award or loss for the applicants and is dicta. As such, the Attorney General's objection is OVERRULED.

PATRICK M. MCGRATH
Judge

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ORDER

{¶14} Upon review of the claim file, the magistrate's decision, and the objections, it is the court's finding that the magistrate was correct in his analysis of the issues and application of the law. Accordingly, the objections are overruled and the court adopts the magistrate's decision and recommendation as its own.

{¶15} IT IS HEREBY ORDERED THAT:

{¶16} Applicants Michael Pethtel and Tonya Pethtel's objection is OVERRULED;

{¶17} The Attorney General's objection is OVERRULED;

{¶18} The September 10, 2015 decision of the magistrate is ADOPTED;

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

{¶20} Costs assumed by the reparations fund.

PATRICK M. MCGRATH
Judge

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

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