

IN THE COURT OF CLAIMS OF OHIO

IN RE: CHANDLER M. CHILDRESS

KIMBERELY A. CHILDRESS  
JOHN CHILDRESS, III

Applicants

Case No. 2023-00631VI

Magistrate Holly True Shaver

DECISION OF THE MAGISTRATE

{¶1} On December 15, 2023, a hearing was held on Kimberly and John Childress' ("applicants") appeal of the Attorney General's ("AG") September 12, 2023 final decision denying their claim for reparations following the death of their adult son, Chandler Childress ("decedent"). The AG denied the claim on the basis that it was barred by the applicable three-year statute of limitations found in R.C. 2743.56(B) and R.C. 2743.60(A)(2)(a).

{¶2} As background, on March 11, 2023, Kimberly filed a crime victims compensation application on behalf of herself, her husband, and her minor granddaughter, A.N.C., the decedent's daughter. The application sought compensation for funeral and burial expenses, lost financial support for victim's dependent, and items held as evidence related to the homicide of decedent on November 8, 2019. A.N.C.'s date of birth is June 7, 2016: she was three years old at the time of the homicide and six years old when the application was filed. A.N.C. was listed as a claimant on the application.

{¶3} On July 10, 2023, the AG issued a finding of fact and decision denying applicants' claim because it was filed more than three years after the criminally injurious conduct occurred.

{¶4} On July 16, 2023, applicants filed a request for reconsideration stating that they did not know about the program until days before they filed their application.

{¶5} On September 12, 2023, the AG issued a final decision upholding its finding of fact and decision.

{¶6} On September 26, 2023, applicants filed their notice of appeal, reiterating that they were unaware of the program, stating that they have custody of A.N.C., and requesting that the court reconsider A.N.C.'s claim for dependent's economic loss.

{¶7} At the hearing, assistant AG Lauren Angell appeared on behalf of the State of Ohio and applicants represented themselves.

{¶8} Applicants Kimberely and John testified that they were not aware of the program until a few months after the three-year anniversary of the criminally injurious conduct and they filed their application within a week of hearing about it. They testified that they are the primary caregivers for A.N.C. and are trying their best to take care of her. They also testified that other family members have suffered physical and mental anguish following the death of decedent.

{¶9} The AG argued that this court has consistently held that not knowing about the program is not a valid reason to toll the statute of limitations because the statute of limitations is mandatory and jurisdictional. Thus, the parents' claim for funeral and burial expenses and evidence replacement is time-barred. The AG stated that should A.N.C. file a claim after she turns 18, the three-year statute of limitations for her claim does not start until her 21st birthday.

{¶10} On December 19, 2023, the AG filed a notice of additional authority and reiteration of cited authority. In this notice, the AG cited multiple cases in support of its argument that lack of knowledge of the existence of the Ohio Victims of Crime Compensation Program does not toll the statute of limitations.<sup>1</sup> Further, the AG cited *In re Jamie T. Lay*, Ct. of Cl. No. V89-83997sc (May 11, 1990) rev'd tc (Nov. 20, 1990) aff'd jud. (May 14, 1991) and *In re Sherry M. Johnson*, Ct. of Cl. No. V92-78656tc (May 31, 1994) as cases that allowed for the tolling of the statute of limitations when the claimant was a minor at the time of the criminally injurious conduct.

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<sup>1</sup> *In re Harold Thomas*, Ct. of Cl. No. V79-3929jud (Oct. 1, 1980), *In re Clarence Williams Jr.*, Ct. of Cl. No. V81-67747jud (Mar. 21, 1983), *In re Dora L. Clark*, Ct. of Cl. No. V82-39771jud (Sept. 30, 1983), *In re Anthony M. Proviano*, Ct. of Cl. No. V2007-90722tc (Aug. 22, 2008) aff'd jud (Feb. 19, 2009), *In re Terrence K. Robinson*, Ct. of Cl. No. V2009-40773tc (Mar. 12, 2010)(appeal denied as untimely), *In re Alfreda Packard*, Ct. of Cl. No. V2010-50388tc (Oct. 29, 2010) aff'd jud (Feb. 15, 2011), *In re Roger G. Temethy*, Ct. of Cl. No. V2010-50671tc (Jan. 14, 2011)aff'd jud (Sept. 20, 2011), and *In re Alfredo F. Torres*, Ct. of Cl. No. V2010-50761tc (Jan. 27, 2011)(appeal denied as untimely).

{¶11} R.C. 2743.61(B) states, in pertinent part:

If upon hearing and consideration of the record and evidence, the court decides that the decision of the attorney general appealed from is reasonable and lawful, it shall affirm the same. If the court decides that the decision of the attorney general is not supported by a preponderance of the evidence or is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter judgment thereon.

{¶12} R.C. 2743.56(B) states that “[a]ll applications for an award of reparations may be filed at any time within three years after the occurrence of the criminally injurious conduct, except as provided in divisions (A)(2)(b) to (d) of section 2743.60 of the Revised Code.”

{¶13} R.C. 2743.60(A)(2)(a) states, in part, that “[e]xcept as provided in division (A)(2)(b), (c), or (d) of this section, the attorney general or court of claims shall not make or order an award of reparations to a claimant if the claim is based on criminally injurious conduct that occurred more than three years before the claim was filed.”

{¶14} R.C. 2743.60(A)(2)(b) states that “[i]f the claimant was under twenty-one years of age at the time of the criminally injurious conduct, the claim is not barred under division (A)(2)(a) of this section until after the claimant’s twenty-fourth birthday.”

{¶15} R.C. 2743.60(A)(2)(d) states: “Notwithstanding divisions (A)(2)(a), (b), and (c) of this section, the attorney general is permitted to make an award of reparations at any time for good cause shown.”

{¶16} The statute of limitations has been determined to be mandatory and jurisdictional. *In re Lattanzi*, 61 Ohio Misc. 2d 546 (1990). The statute of limitations is not tolled by an applicant’s lack of knowledge of the right to file a compensation application. *In re Clark*, 8 Ohio Misc.2d 34 (1983); *In re Alfredo F. Torres*, Ct. of Cl. No. V2010-50761tc (Jan. 27, 2011) (appeal denied as untimely). Therefore, the magistrate finds that applicants Kimberly and John are not eligible to receive an award for reparations because they failed to file their claim within three years of the criminally injurious conduct that caused decedent’s death. Accordingly, applicants’ claim for funeral and burial expense and evidence replacement was properly denied by the AG.

{¶17} However, the court has found that the statute of limitations as applied to minor victims is unconstitutional. *In re Jamie T. Lay*, Ct. of Cl. No. V89-83997sc (May 11, 1990) rev'd tc (Nov. 20, 1990) aff'd jud. (May 14, 1991). Furthermore, a panel of commissioners determined that the statute of limitations should be tolled for minor claimants as well. *In re Sherry M. Johnson*, Ct. of Cl. No. V92-78656tc (May 31, 1994). In *Johnson*, a panel of commissioners remanded a dependency claim, which was filed by a grandmother on behalf of her minor grandchildren, to the AG for further investigation while denying the grandmother's untimely claim for funeral expenses. This appeal involves an almost identical situation. Even though the statute has changed since *Johnson* was decided, the principle still applies and the grandparents, applicants Kimberly and John, have timely filed a claim on behalf of their minor granddaughter, A.N.C. Therefore, the magistrate finds that A.N.C.'s dependency claim is not barred by the three-year statute of limitations found in R.C. 2743.60(A)(2)(a), and that it was timely filed under R.C. 2743.60(A)(2)(b) and the case law cited above.

{¶18} From review of the file and with full and careful consideration given to all the information presented at the hearing, the magistrate finds that applicants Kimberly and John failed to file their application within three years of the death of the decedent and that no exception to the statute of limitations found in R.C. 2743.60(A)(2)(a) applies to their claim. Accordingly, the magistrate concludes that the final decision of the AG as it pertains to Kimberly and John is reasonable and lawful and recommends that it be AFFIRMED, in part. However, the magistrate further finds that claimant A.N.C. is a minor, and thus, her claim was timely filed pursuant to R.C. 2743.60(A)(2)(b) and the case law cited above. Therefore, the magistrate concludes that the final decision of the AG as it pertains to A.N.C.'s claim is not reasonable or lawful and recommends that it be REVERSED, in part. The magistrate recommends that the claim be remanded to the AG for further investigation and a new finding of fact and decision regarding the dependency claim of A.N.C. and any possible dependent's economic loss and dependent's replacement services loss incurred as a result of decedent's death.

{¶19} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files*

*objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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HOLLY TRUE SHAVER  
Magistrate

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