

IN THE COURT OF CLAIMS OF OHIO

IN RE: J. S.

DIAMOND SMITH

Applicant

Case No. 2025-00179VI

Magistrate Holly True Shaver

DECISION OF THE MAGISTRATE

{¶1} On May 22, 2025, a hearing was held on Diamond Smith’s (“applicant”) appeal of the Attorney General’s (“AG”) February 20, 2025 Final Decision denying applicant’s claim. At the hearing, Attorney Brian Benbow represented applicant, and Assistant Attorney General Candice Suffren represented the State of Ohio.

Procedural History

{¶2} This is the second case that applicant has filed to seek attorney fees incurred to obtain a Civil Protection Order (“CPO”) to separate her minor child, J.S., from J.S.’s father, who was charged with domestic violence. Initially, in Case No. 2024-00613VI, applicant filed a Crime Victims Compensation Application on March 26, 2024, requesting compensation for attorney fees rendered by Attorney Benbow in the amount of \$940.00 to obtain a CPO. Applicant listed herself as both victim and claimant on that application, although she noted on the application that the crime that occurred on February 24, 2021, was “child abuse.” After the AG denied the claim at both the Finding of Fact and Decision and the Final Decision stages as being untimely filed, a hearing was held before the undersigned magistrate on December 19, 2024.

{¶3} During the hearing in that case, the magistrate noted that applicant sought an award of attorney fees incurred to obtain a CPO based on the criminally injurious conduct of domestic violence. The AG had denied the claim on the basis that applicant failed to file the application within three years of the criminally injurious conduct, which is a requirement for adult victims over the age of 21 pursuant to R.C. 2743.60(A)(2)(a). Although the information in the claim file showed that applicant, an adult over the age of 21, was a victim of domestic violence, the evidence also showed that applicant’s minor

son, J.S., was a victim of domestic violence during the same incident. Because a minor was involved, and R.C. 2743.60(A) has an exception to the three-year statute of limitations for victims under the age of 21, the magistrate determined that the statute of limitations argument presented by the AG regarding applicant's claim may not be applicable to J.S.'s claim. At the conclusion of the hearing, the magistrate ordered the parties to file post-hearing briefs to address the statute of limitations.

{¶4} Before briefs were filed, applicant filed the instant claim, based on the same incident but naming J.S. as the victim. Case No. 2024-00613VI was stayed on February 11, 2025, pending the resolution of or an appeal in the instant case.

{¶5} With regard to the instant case, the AG denied the claim at the Finding of Fact and Decision and the Final Decision stages, arguing that the claim was still untimely filed, and noting that minor victims have three years after they reach the age of 21 to file an application for reimbursement of their own expenses. The AG argued that J.S. could file his own application for up to three years after his 21st birthday.

Underlying Facts

{¶6} On February 24, 2021, Officer Tyler Mann "was dispatched . . . in reference to an assault of a two year old child" where he spoke to Diamond Smith, the mother of the child, who "advised [Mann] that her son, two year old [J.S.] had been punched in the forehead repeatedly (three times) by his father, Brendan Stephens, and then struck in the back with a coat hanger." (Transmitted File, p. 48; Initial Report By Tyler Mann). Brendan Stephens was taken into custody where he stated "that he did in fact strike the child with the coat hanger" and was charged with "domestic violence, . . . endangering children, . . . obstruction, . . . and disorderly conduct." (*Id.*).

{¶7} On April 19, 2021, an Ex Parte Domestic Violence CPO was issued by the Coshocton County Court of Common Pleas against Brendan Stephens upon the request of petitioner Diamond Smith. (Transmitted File, p. 30). On June 1, 2021, the Coshocton County Court of Common Pleas held a hearing for the Ex Parte Order wherein Diamond Smith was granted exclusive legal custody of J.S. and the court made the finding of fact that "[Brendan Stephens] committed acts of domestic violence against [Diamond Smith] and [J.S.] in *April 2021*. Also, during *February 2021*, [Brendan Stephens] . . . used objects, a closed fist, and a knife during these instances of domestic violence. Objects

used include a cup and coat hanger. [Diamond Smith] was pregnant when she was assaulted on at least one occasion.” (Emphasis added). (Transmitted File, p. 36-42; Order of Protection June 1, 2021).

{¶8} On May 12, 2021, Brendan Stephens pled no contest and was found guilty of Domestic Violence, Obstruction of Official Business, and Aggravated Disorderly Conduct in the Coshocton Municipal Court. (Transmitted File, p. 44-47; Judgment Entry). On March 26, 2024, applicant filed the initial Crime Victims Compensation Application in Case No. 2024-00613VI, naming herself as both victim and claimant. On January 2, 2025, after the December 19, 2024 hearing in Case No. 2024-00613VI, applicant filed a second application which lists J.S. as the victim and Diamond Smith as claimant. Attorney Brian Benbow requests \$940.00 in CPO fees. (Transmitted File, p. 20-21; December 29, 2023 Invoice).

Arguments at the Hearing

{¶9} At the hearing in this case, applicant’s attorney stated that the statute of limitations in this case “belongs to the minor child.” Applicant’s attorney argued that the CPO itself shows that a judge found that domestic violence occurred in both February and April 2021, making the March 26, 2024 application in Case No. 2024-00613VI timely. Applicant’s attorney asserted that the claims for a minor child are not limited by the three-year statute of limitations in R.C. 2743.60(A)(2)(a). Applicant’s attorney stated that the AG’s position that J.S. cannot recover for this claim under the statute until after his 21st birthday would be an absurd result. Applicant’s attorney argued that J.S.’s claim is not barred until his 24th birthday pursuant to R.C. 2743.60(A)(2)(b).

{¶10} The Assistant AG asserted that, pursuant to R.C. 2743.60(A)(2)(a), the AG shall not make an award of reparations to a claimant for criminally injurious conduct that occurred more than three years before a claim was filed. The AG asserted that the criminally injurious conduct occurred on February 24, 2021, and that date is when the statute of limitations started. The AG stated that both the initial application in Case No. 2024-00613VI, filed on March 26, 2024, and the application in this case, filed on January 2, 2025, were filed more than three years after the criminally injurious conduct occurred. The AG cited *In re Tucker*, 2024-00574VI (Nov. 26, 2024), a case where the Court of Claims denied an award of reparations to an applicant who was the victim of domestic

violence because the application was filed more than three years after the criminally injurious conduct occurred.

{¶11} Further, the AG asserted that, although J.S., a minor, was a victim, Diamond Smith is listed as the claimant, and she was not a minor when the incident occurred. The AG stated that, pursuant to R.C. 2743.60(A)(2)(b), J.S. has until his 24th birthday to file an application for expenses he personally incurred, and that J.S. cannot be a claimant in this matter because he is a minor.

Law and Analysis

{¶12} An applicant must produce evidence which furnishes a reasonable basis for sustaining a claim. If the evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, the applicant fails to sustain the burden as to such issue. *In re Staten*, 2011-Ohio-4321 (Ct. of Cl.), citing *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82 (1954). Applicant has the burden of proof to satisfy the Court of Claims that the requirements for an award have been met by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc.2d 4 (Ct. of Cl. 1983).

{¶13} 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.

{¶14} Pursuant to R.C. 2743.51(E), “[e]conomic loss’ means economic detriment consisting only of allowable expense, work loss, funeral expense, unemployment benefits loss, replacement services loss, cost of crime scene cleanup, and cost of evidence replacement.” Attorney’s fees not exceeding one thousand dollars, at a rate not exceeding one hundred dollars per hour, incurred to successfully obtain a restraining order, custody order, or other order to physically separate a victim from an offender constitute an allowable expense pursuant to R.C. 2743.51(F)(5).

{¶15} R.C. 2743.51(C)(1) defines criminally injurious conduct as “any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death;

and is punishable by fine, imprisonment, or death.” In addition, R.C. 2743.51(L)(1)(a) defines “victim” as “[a] person who suffers personal injury or death as a result of . . . [c]riminally injurious conduct.”

{¶16} Based on the evidence in the claim file, the magistrate finds that both applicant and J.S. qualify as victims of criminally injurious conduct from a domestic violence incident that occurred on February 24, 2021. Further, R.C. 2743.60(A)(1) states: “The attorney general or the court of claims shall not make or order an award of reparations to a claimant if the criminally injurious conduct upon which the claimant bases a claim never was reported to a law enforcement officer or agency.” Evidence in the claim file shows that the February 24, 2021 incident of domestic violence was reported to law enforcement, as shown in the initial report by Tyler Mann. Although an incident of domestic violence in April 2021 was referred to in the June 1, 2021 Order of Protection, the evidence in the claim file does not show that the April incident was reported to law enforcement. Therefore, the magistrate finds that the date of the criminally injurious conduct that starts the statute of limitations is February 24, 2021. The magistrate notes that this date is also the date that was provided by applicant on the Crime Victims Compensation Application in both this case and in Case No. 2024-00613VI.

{¶17} The issue becomes whether the application in this case was timely filed.

{¶18} R.C. 2743.60(A)(2) states:

(a) Except 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* or if the claim was denied under the law as it existed prior to the effective date of this amendment.

(b) *If 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.*

. . .

(d) 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.

(Emphasis added).

{¶19} At the hearing, the AG asserted that the statute of limitations had run for applicant to recover for the CPO fees. Although the AG cites *In re Tucker*, a case where the Court of Claims denied an award of reparations because the criminally injurious conduct occurred three years before the application was filed, the facts of this case are different. Specifically, the victim in *In re Tucker* was over 21 years old, and there was no child victim involved in that case. In the instant case, J.S. was two years old at the time of criminally injurious conduct on February 24, 2021. Because J.S. was a minor victim at the time of the criminally injurious conduct, the magistrate finds that the application on his behalf was timely filed pursuant to R.C. 2743.60(A)(2)(b).

{¶20} The AG argues that J.S. cannot be a “claimant” because he is a minor. Thus, a review of the definitions of “claimant” is warranted.

{¶21} R.C. 2743.51(A)(1) states, in relevant part:

(A) “Claimant” means both of the following categories of persons:

(1) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

(a) A victim who was one of the following at the time of the criminally injurious conduct:

(i) A resident of the United States;

(ii) A resident of a foreign country the laws of which permit residents of this state to recover compensation as victims of offenses committed in that country.

(b) A dependent of a deceased victim who is described in division (A)(1)(a) of this section;

(c) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, who is described in division (A)(1)(a) of this section, which obligations are incurred as a result of the criminally injurious conduct that is the subject of

the claim and may include, but are not limited to, medical or burial expenses;

(d) A person who is authorized to act on behalf of any person who is described in division (A)(1)(a), (b), or (c) of this section;

(e) The estate of a deceased victim who is described in division (A)(1)(a) of this section.

{¶22} Although the AG argues that J.S. cannot be a claimant because he is a minor, the magistrate finds that R.C. 2743.51(A) does not prohibit a minor from being a claimant. A closer examination of the definition of “claimant” in R.C. 2743.51(A)(1) shows that a claimant can be a victim, a dependent of a deceased victim, or a person authorized to act on behalf of a victim or dependent. Moreover, 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.” (Emphasis added). The language in R.C. 2743.60(A)(2)(b) contemplates that a “claimant” could be a minor victim. Indeed, the magistrate finds that the language in R.C. 2743.60(A)(2)(b) contemplates that a minor victim, i.e., a claimant under twenty-one years of age at the time of the criminally injurious conduct, may pursue a claim until that individual is 24 years old. This court has previously found that the statute of limitations as applied to minor victims is unconstitutional. See *In re Lay*, Ct. of Cl. No. V89-83997tc (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 victims and dependents. *In re Johnson*, Ct. of Cl. No. V92-78656tc (May 31, 1994) (“Whether one is dealing with a minor victim or a minor dependent, there may be legitimate unreimbursed economic loss that can be addressed by this court, and the claim of a minor dependent should not be given any less weight than the claim of a minor victim.”); see also *In re Childress*, 2024-Ohio-709 (Jan. 9, 2024), a case where the adults’ claims were time-barred but the child’s claims were allowed. In this claim, the evidence shows that the CPO was obtained to separate J.S., who was under the age of 21, from the offender. Therefore, the magistrate finds that the claim for attorney fees for a CPO to separate J.S. from the offender was timely filed pursuant to R.C. 2743.60(A)(2)(b)

because the statute of limitations on J.S.'s claim does not expire until he reaches the age of 24 years.

Conclusion

{¶23} Accordingly, the magistrate finds that the Final Decision of the Attorney General is not supported by a preponderance of the evidence. Upon review of evidence presented at the hearing, including the evidence in the case file, the magistrate recommends that the Final Decision of the Attorney General be reversed and the claim be remanded to the Attorney General for economic loss calculations consistent with this decision.

{¶24} 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 a 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).

HOLLY TRUE SHAVER
Magistrate

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