

[Cite as *In re Davis*, 2003-Ohio-7083.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: PATRICIA S. DAVIS : Case No. V2002-52032

PATRICIA S. DAVIS : DECISION

Applicant : Judge Joseph T. Clark

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{¶1} This matter came on to be considered upon applicant's appeal from the May 19, 2003, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that applicant failed to qualify as a victim of criminally injurious conduct under the motor vehicle exception for R.C. 2743.51(C)(1).

{¶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 applicant failed to present sufficient evidence to meet her 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 her brief, applicant asserts that the panel's decision was unreasonable and unlawful because the driver of the car that struck the motorcycle she was riding on made an unexpected left-hand turn in front of the motorcycle. According to the police report contained in the claim file, the driver of the vehicle that struck the motorcycle fled the scene of the accident. Applicant contends that the offender was driving in a reckless manner, in violation of R.C. 2903.08. However, for applicant to establish her eligibility for an award of reparations pursuant to R.C. 2743.51(C)(1)(d) and 2903.08, it is necessary for her to show that the offender acted with an "absence of care or an absolute perverse indifference to the safety of others." *In re Calhoun* (1994), 66 Ohio Misc.2d 159, quoting *Roszman v. Sammett* (1971), 26 Ohio St.2d 94 at 98.

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

{¶6}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 three-commissioner panel, and hereby denies applicant's claim.

JOSEPH T. CLARK
Judge

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PATRICIA S. DAVIS : ORDER

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Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and applicant's appeal must be denied.

IT IS HEREBY ORDERED THAT:

- 1) The order of May 19, 2003, (Jr. Vol. 2250, Pages 22-23) is approved, affirmed and adopted;
- 2) This claim is DENIED and judgment entered for the State of Ohio;
- 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 Summit County Prosecuting Attorney and to: