

[Cite as *In re Shipp*, 2003-Ohio-7093.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: SHAHIDAH W. SHIPP	:	
DIEDRA SHIPP	:	Case No. V2003-40526
STEPHANIE A. DOUGLAS	:	Case No. V2003-40534
JAMES K. THOMAS, SR.	:	Case No. V2003-40542
Applicants	:	<u>OPINION OF A THREE-</u> <u>COMMISSIONER PANEL</u>
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{¶1} This matter came to be heard before this three commissioner panel on September 25, 2003 at 11:00 A.M. upon the June 2, 2003 appeal of the May 29, 2003 Final Decision of the Attorney General.

{¶2} Diedra Shipp, Stephanie Douglas, and James Thomas, Sr. filed reparations applications seeking reimbursement of expenses incurred with respect to the April 11, 2002 murder of Shahidah Shipp. Diedra Shipp is the victim’s mother, Stephanie Douglas is the victim’s sister and James Thomas, Sr. is the funeral service provider. The Attorney General denied Ms. Shipp’s and Ms. Douglas’ claims pursuant to R.C. 2743.60(E)¹ after determining that

both claimants had felony convictions within ten years of the criminally injurious conduct. The Attorney General denied Mr. Thomas' claim contending that a "service provider" does not qualify as an eligible claimant in order to receive an award of reparation. Mr. Thomas appealed the Attorney General's Final Decision.

{¶3} Attorney Michael Falleur, counsel for James Thomas, and Assistant Attorney General Stephanie Warner attended the hearing and each presented oral argument for this panel's consideration. Thomas' counsel asserted that under Amended S.B. 153, R.C. 2743.191(B)(1) requires that service providers be paid directly from the fund. Counsel stated that Mr. Thomas provided the funeral services for the victim and hence has standing to appeal and recover from the fund pursuant to R.C. 2743.191(B)(1). Attorney Falleur also argued that Mr. Thomas' claim should be allowed in accordance with the holding of In re Hamrick, V01-31911tc (11-9-01), where a panel of commissioners determined service providers to be proper appellants with rights to appeal as it relates to potential payment. ²Counsel also asserted, despite Ms. Shipp's and Ms.

All references to R.C. 2743 are to the version that was in effect prior to June 26, 2003, unless otherwise indicated.

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Under In re Hamrick, V2001-31911tc (11-9-01), the panel determined Attorney John McCarroll to be a service provider pursuant to R.C. 2743.191(B)(1) and a proper appellant. In Hamrick, the Attorney General initially granted the victim claimant an award of reparations for attorney fees related to a Civil Protection Order (CPO). The Attorney General's decision indicated that payment of the award would be made to the victim claimant. However, John McCarroll, counsel for the victim applicant, filed a request for reconsideration contending that, in accordance with the recent changes in the crime victims law pursuant to Amended S.B. 153, he should be paid directly as a provider of services to the victim claimant. The Attorney General issued a Final

Douglas' lack of eligibility, that the victim, if alive, would have been eligible to participate in the fund and hence Mr. Thomas should also be able to recover. Counsel contended that the real party in interest is Mr. Thomas since he must now assume the unpaid funeral expense.

{¶4} Assistant Attorney General Warner conceded that Mr. Thomas has the right to appeal and be heard, however maintained that Mr. Thomas is not eligible to participate in the fund because he does not qualify as a claimant in accordance with R.C. 2743.51(A)(1). The Assistant Attorney General argued that Mr. Thomas has not legally assumed or voluntarily paid the debt of the victim. Assistant Attorney General Warner also stated that Hamrick, *supra*, is distinguishable from the case at hand since Hamrick merely conveyed service providers the right to be proper appellants, but not the right to recover from the fund. Assistant Attorney General Warner also asserted that counsel for Ms. Hamrick appealed the Attorney General's Final Decision solely on Ms. Hamrick's behalf and not for himself. The Assistant Attorney General argued that Mr. Thomas may only recover through an eligible claimant and since Ms. Shipp and Ms. Douglas are ineligible claimants that Mr. Thomas is unable to receive payment for the funeral expense. Assistant Attorney General Warner also argued that if service providers are

Decision modifying his previous decision to pay the victim claimant. The Attorney General stated that "an award for legal fees associated with obtaining a CPO can be paid directly to the provider of legal services." However, the Attorney General also stated that "no award can be made to any party if the CPO has not been actually filed against the offender." Attorney McCarroll then filed an appeal on his own behalf seeking direct recovery of CPO related legal expenses. The panel in Hamrick eventually held that Attorney McCarroll was within his rights as a service provider to appeal the Attorney General's Final Decision. The Attorney General did not file a judicial appeal of the panel's decision.

allowed to file claims and recover from the fund, then seemingly floodgates would open and the victims' program would conceivably operate as an insurance company.

{¶5} R.C. 2743.191(B)(1) states:

(B) In making an award of reparations, the attorney general shall render the award against the state. The award shall be accomplished only through the following procedure, and the following procedure may be enforced by writ of mandamus directed to the appropriate official:

(1) The attorney general shall provide for payment of the claimant or providers in the amount of the award.

{¶6} From review of the file and with full and careful consideration given to all the information presented at the hearing, the panel makes the following determination. We recognize that R.C. 2743.53(A) provides that the panel of commissioners shall hear and determine all matters relating to appeals from decisions of the Attorney General. Therefore, this matter falls within the jurisdiction of this panel and we find Mr. Thomas to be a proper appellant with standing to recover with respect to this claim. We also find that Mr. Thomas qualifies as an applicant since anyone may file a reparations application. However, we note that not every applicant may qualify for an award of reparations. Therefore, we believe the real issue in this case is whether Mr. Thomas is eligible for direct reimbursement from the fund when there is a clear, eligible, and recognizable victim.

{¶7} In this case Mr. Thomas, a third person and a service provider, has ultimately had to bear the cost of the victim's funeral expense despite the fact that the victim, if alive, would have been considered an eligible claimant under this program. Moreover, applicable victim's law, does not indicate that a service provider is prohibited from filing a claim and receiving an award. In fact Amended S.B. 153 ushered in the term "provider" statutorily in R.C. 2743.191(B)(1). Prior to Amended S.B. 153, service providers were not allowed to participate in the fund merely

as a result of In re Lawrence County General Hospital, V77-0644jud (3-6-79), where a judge held that “service providers” do not qualify as claimants. Currently, however, service providers are being paid directly as a result of R.C. 2743.191(B)(1). Therefore, we must examine whether service providers were intended to participate directly in the fund since they have not been specifically excluded.

{¶8} It appears that with such a sweeping change to pay service providers immediately, (previously claimants were reimbursed and in turn they would reimburse service providers) that the General Assembly also intended to allow service providers the opportunity to recover from the fund directly via an eligible victim. What purpose would be served by denying a service provider’s claim, if an eligible victim would have been able to recover the same expense? We believe that the legal theory of *quantum meruit* strongly suggests that a service provider should be allowed to recover what he is due. These service providers are not non-profit organizations, but are businesses in pursuit of profit. The Assistant Attorney General’s contention that the victims’ fund will be depleted if service providers are allowed to qualify as claimants is not well-taken, since in essence, R.C. 2743.191(B)(1) has done just that. The fund is amply supplied and these service providers will not receive any more benefits than what they would have been entitled to receive had an eligible victim been able to file a claim on their own.

{¶9} Our premise recognizes that this entire program focuses on the “victim.” A “victim” is the vital link to the entire program and hence without a bona fide victim no one recovers. Therefore, since the nature of the process has changed (that is, service providers being paid directly) and if the victim is determined eligible to participate in the fund, then it seems only reasonable to allow service providers the opportunity to pursue their derivative claim via an

otherwise clean and eligible victim. The possibility of abusing the fund is minimal in light of the statutory safeguards of having a recognizable and eligible victim. Clearly, service providers have a stake in the claim and should be afforded some measure of due process where their property rights are at stake. The reality is that this service provider would have been paid anyway had the victim been able to file a claim herself. Furthermore, we fail to see who would be harmed by this process, since Mr. Thomas would have been paid directly had Ms. Shipp and Ms. Douglas been eligible claimants.

{¶10} The purpose of the Victim of Crime statute is to help victims and by paying providers directly the burden of victims having to pay the provider is eliminated as well as ensures that providers receive payment. This new process also helps the overall goal of the program, which is to place victims in the position they were in prior to the criminally injurious conduct. We find this to be a win-win situation when both sides operate in good faith. Moreover, we find interesting that not once since this program's existence has the General Assembly specifically declared that service providers may not file a claim and recover from the fund.

{¶11} In this case, claimants Diedra Shipp and Stephanie Douglas are ineligible to participate in the program, in accordance with R.C. 2743.60(E), due to their felony convictions. However, James Thomas, funeral service provider, filed a reparations application and appeal seeking reimbursement of funeral expense incurred with respect to Shahidah Shipp's death. There has been no demonstration of ineligibility as it relates to Mr. Thomas under R.C. 2743.60 and so we believe to deny this claim would be unreasonable and unfair, since the Assistant Attorney General has conceded that Mr. Thomas is

at least a proper appellant. Thus, we find Mr. Thomas eligible to receive an award of reparations. Therefore, the May 29, 2003 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for payment of the funeral expense award.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

JAMES H. HEWITT III
Commissioner

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IT IS THEREFORE ORDERED THAT

1) The May 29, 2003 decision of the Attorney General is REVERSED and judgment is rendered in favor of James Thomas, Sr.;

2) This case shall be remanded to the Attorney General for payment of the funeral expense award;

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ORDER

- 3) Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

JAMES H. HEWITT III
Commissioner

ID #\5-dld-tad-31022

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

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To S.C. Reporter 12-24-2003