

[Cite as *In re Littler*, 2004-Ohio-4612.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: JEANENE S. LITTLER	:	Case No. V2004-60172
LLOYD L. LITTLER	:	<u>OPINION OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
<hr/>		
: : : : :		

{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a May 31, 2003 motor vehicle accident involving his deceased wife, Jeanene Littler. The applicant contends that 14 year old Brandon Sharp recklessly caused the accident, since he was driving under the authority and direction of his intoxicated father, Roger Sharp. On November 5, 2003, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove that the decedent qualified as a victim of criminally injurious conduct under the motor vehicle exception, as defined in R.C. 2743.51(C). On December 1, 2003, the applicant filed a request for reconsideration. On February 6, 2004, the Attorney General denied the claim once again contending that the decedent died of natural causes and not as a result of the May 31, 2003 motor vehicle accident, based on

the coroner's report. On February 13, 2003, the applicant filed a notice of appeal to the Attorney General's February 6, 2004 Final Decision asserting that the initial coroner's report was inaccurate. Hence, this matter came to be heard before this panel of three commissioners on May 6, 2004 at 10:30 A.M.

{¶2} The *pro se* applicant and an Assistant Attorney General attended the hearing and presented testimony and brief comments for the panel's consideration. Lloyd Littler testified that he was traveling north bound on a two lane road, when a vehicle traveling south bound made a sudden and improper left turn from the wrong lane in front of him without warning, thereby causing severe injury to both he and his wife. Unfortunately, Mrs. Littler eventually died as a result of her injuries. Mr. Littler explained that he had no time to respond, since he was approximately one-quarter of the way thru the intersection when the crash occurred. Mr. Littler later learned that the driver, Brandon Sharp, was only 14 years of age and was operating the vehicle under the direction of his intoxicated father, Roger Sharp, who was a passenger in the vehicle, but was too inebriated to drive the van himself. Mr. Littler contended that Brandon Sharp acted recklessly, according to R.C. 2903.08, and hence his claim for reimbursement should be allowed.

{¶3} The Assistant Attorney General noted for the panel that the coroner revised his report to indicate that the May 31, 2003 motor vehicle accident was a factor in the decedent's death. Nevertheless, the Assistant Attorney General maintained that the decedent does not qualify as a victim of criminally injurious conduct under the motor vehicle exception as listed in R.C. 2743.51(C), since there is no evidence that the driver of the vehicle, Brandon Sharp: 1) attempted to intentionally harm the decedent; 2) was a fleeing felon; 3) was driving the vehicle

under the influence of drugs and/or alcohol; or 4) had operated the vehicle in a manner that would constitute Vehicular Assault or Aggravated Vehicular Assault as defined in R.C. 2903.08.

{¶4} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find that the applicant has proven, by a preponderance of the evidence, that the decedent qualifies as a victim of criminally injurious conduct under the motor vehicle exception as stated in R.C. 2743.51(C).

{¶5} R.C. 2743.51(C) states:

(C) "Criminally injurious conduct" means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, 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, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

(a) The person engaging in the conduct intended to cause personal injury or death;

(b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of this state;

(c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OMVI violation;

(d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code.

{¶5} R.C. 2903.08 in pertinent part states:

(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another's unborn in either of the following ways:

(1)(a) As the proximate result of committing a violation of division (A) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance;

(B) As the proximate result of committing a violation of division (A) of section 1547.11 of the Revised Code or of a substantially equivalent municipal ordinance;

(C) As the proximate result of committing a violation of division (A)(3) of section 4561.15 of the Revised Code or of a substantially equivalent municipal ordinance.

(2) Recklessly.

(B)(1) Whoever violates division (A)(1) of this section is guilty of aggravated vehicular assault . . .

(C) Whoever violates division (A)(2) of this section is guilty of vehicular assault. (Emphasis added.)

{¶6} R.C. 2901.22(C) defines the culpable mental state of "recklessly" as follows:

“(C) A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist.”

{¶7} In In re Calhoun (1994), 66 Ohio Misc. 2d 159, a judge of the Court of Claims ruled that * * * eligibility for an award of reparations pursuant to R.C. 2743.51(C)(1)(d) and 2903.08, it is necessary for the applicant to prove, by a preponderance of the evidence, that the offender operated his vehicle with “heedless indifference to the consequences” of his action. To establish this type of operation requires that the acts and risks of the offender must be known and disregarded. This proof must be established by factual evidence and probabilities, not by possibilities and speculation.

{¶8} According to information in the file and the testimony presented, we find that Roger Sharp participated in the operation of the vehicle while under the influence of alcohol on May 31, 2003 in violation of R.C. 2903.08. Mr. Sharp illegally authorized and directed his son to drive his van because he was unable to do so in light of his intoxicated state. Mr. Sharp permitted and probably compelled his son to drive the vehicle when he was clearly aware that his son held no valid driver’s license and knew or should have known that his son could not properly operate and control a motor vehicle at 14 years of age. Ronald Sharp’s conduct was reprehensible and demonstrated a wanton disregard for the safety of others by recklessly entrusting the vehicle to his son. It is Mr. Sharp’s heedless indifference to the consequences of known risks that we find was the direct and proximate cause of the accident in question. Mr. Sharp, a repeat DUI offender, totally disregarded the risks involved by having his 14 year old son illegally operate a motor vehicle, due to the fact he was so intoxicated that he could not operate the vehicle himself. Roger Sharp failed to consider the lives of others, his son’s life, and even his own life when he allowed and participated in his son’s operation of the vehicle, just to avoid another DUI charge. We also note that information contained in the Field Investigation Report

indicates that a prosecutor reviewed charges against Roger Sharp for vehicular homicide, but the charges were denied because the initial coroner's report listed the decedent's cause of death as natural causes. Furthermore, we find that Brandon Sharp also acted recklessly by driving without a valid driver's license and failing to yield the right of way. Therefore, based upon the above findings and rationale, the February 6, 2004 decision of the Attorney General shall be reversed and this claim remanded to the Attorney General for economic loss calculations and decision.

JAMES H. HEWITT III
Commissioner

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

[Cite as *In re Littler*, 2004-Ohio-4612.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: JEANENE S. LITTLER : Case No. V2004-60172
LLOYD L. LITTLER : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL

: : : : :

IT IS THEREFORE ORDERED THAT

- 1) The February 6, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision;
- 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;
- 4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

CLARK B. WEAVER, SR.
Commissioner

[Cite as *In re Littler*, 2004-Ohio-4612.]

THOMAS H. BAINBRIDGE
Commissioner

ID #\1-dld-tad-051804

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

Filed 7-1-2004
Jr. Vol. 2254, Pgs. 55-56
To S.C. Reporter 8-26-2004