

[Cite as *In re White*, 2006-Ohio-3937.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: CORLISS D. WHITE : Case No. V2005-80541

CORLISS D. WHITE : DECISION

Applicant : Judge J. Craig Wright

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{¶ 1} This matter came on to be considered upon the Attorney General's appeal from the March 7, 2006, 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 additional award of reparations.

{¶ 2} The panel's decision was based upon the finding that applicant was injured as a result of a hit-skip collision and that she failed to qualify as a victim of criminally injurious conduct. Specifically, the panel determined that there is no authority to support a finding that a person injured in a motor vehicle collision caused by a hit-skip driver qualifies as a victim of criminally injurious conduct unless one or more of the motor vehicle exceptions listed in R.C. 2743.51(C)(1) apply. *In re Ward*, V2004-61136jud (7-27-05), 2005-Ohio-4231.

{¶ 3} 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.

{¶ 4} 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."

{¶ 5} At the judicial hearing, the Attorney General asserted that the panel was provided with testimony and evidence from law enforcement experts which shows by a preponderance of the evidence that most hit-skip drivers are impaired at the time of the offense. According to the Attorney General, "the only legitimate conclusion" that could be drawn from the evidence presented was that applicant was injured as a result of criminally injurious conduct because the driver that caused the accident in this case was never apprehended. Furthermore, the Attorney General asserts that the evidence established a presumption that all hit-skip victims should qualify as victims of criminally injurious conduct. The court disagrees.

{¶ 6} This court has consistently held that the issue of whether an applicant qualifies as a victim of crime pursuant to R.C. 2743.51(C)(1) must be determined on a case-by-case basis. See *In re Calhoun* (1994), 66 Ohio Misc.2d 159. Additionally, "[t]his proof must be established by factual evidence and probabilities, not by possibilities and speculation." *Id.*

{¶ 7} In his brief, the Attorney General asserts that "the panel was unreasonable and unlawful in its finding that the evidence did not prove that hit-skip crashes more likely than not

fall under one or more of the exceptions to the motor vehicle exclusion" that are set forth in R.C. 2743.51(C)(1).

{¶ 8} R.C. 2743.51(C)(1) provides:

{¶ 9} "(C) 'Criminally injurious conduct' means one of the following:

{¶ 10} "(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:

{¶ 11} "(a) The person engaging in the conduct intended to cause personal injury or death;

{¶ 12} "(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;

{¶ 13} "(c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OVI violation;

{¶ 14} "(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."

{¶ 15} Although the Attorney General asserts that the panel's decision was an unreasonable and unlawful application of

In re Ward, supra, the court finds that the panel considered the motor vehicle exceptions listed in R.C. 2743.51(C) and properly applied the facts of this case to the law consistent with the holding in *In re Ward*. The court notes that the Attorney General's own field investigation report states that Detective O'Neal of the Cleveland Police Department confirmed that no arrest was made in connection with the incident and that the detective reported that the offending driver would not be charged with fleeing a felony crime, an OMVI violation, or aggravated vehicular assault.

{¶ 16} Upon review of the information contained in the claim file, the court finds that the facts in this case are similar to the facts in *In re Ward*, supra. In both cases, the applicant was injured by a hit-skip driver who was never apprehended. Therefore, as this court noted in *In re Ward*, "[t]he Attorney General's assertion that the offender in this case was under the influence of drugs or alcohol is not persuasive because the driver was never apprehended. Furthermore, for applicant to establish his eligibility for an award of reparations pursuant to R.C. 2743.51(C)(1)(d) and 2903.08, it is necessary for him to show that the offender acted with an 'absence of care or an absolute perverse indifference to the safety of others.'" *In re Ward*, supra. (Citations omitted.)

{¶ 17} Although the court finds that the expert testimony presented before the panel of commissioners is somewhat compelling, such evidence should more appropriately be used in support of H.B. 570, the proposed amendment to R.C. 2743.51(C)(1) which would modify the statute to allow a person who suffers serious physical harm as a result of a hit-skip accident to qualify as a victim of criminally injurious conduct. The court

agrees with the Attorney General's position that, as a matter of policy, persons injured as a result of a hit-skip collision are "victims" of criminal conduct; however, the court must follow the law and apply the facts in every case in determining whether applicant would qualify as a victim of criminally injurious conduct under the Ohio Victims of Crime Compensation Program.

{¶ 18} Upon review of the file in this matter, the court finds that the panel of commissioners was neither arbitrary nor unreasonable in finding that applicant did not show by a preponderance of the evidence that she was entitled to an award of reparations.

{¶ 19} Based upon the evidence and R.C. 2743.61, in the court's judgment, 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.

J. CRAIG WRIGHT

Judge

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CORLISS D. WHITE : ORDER

Applicant : Judge J. Craig Wright

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

IT IS HEREBY ORDERED THAT:

- 1) The order of March 7, 2006, (Jr. Vol. 2259, Pages 161-162) 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.

J. CRAIG WRIGHT
Judge

AMR/cmd

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