

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: SAMUEL NICHOLSON

TAMMY SCARBERRY

Applicant

Case No. V2008-30596

Commissioners:

Lloyd Pierre-Louis, Presiding

Gregory P. Barwell

Karl C. Kerschner

ORDER OF A THREE-COMMISSIONER PANEL

{¶ 1} On October 29, 2007, the applicant, Tammy Scarberry, filed a compensation application as the result of the murder of Samuel Nicholson. On February 26, 2008, the Attorney General issued a finding of fact and decision finding that the decedent was a victim of criminally injurious conduct, however, he had been convicted of driving under the influence while under suspension, a felony of the fourth degree on November 3, 2004. In accordance with R.C. 2743.60(E)(2), only minor dependents of a deceased felon are eligible to receive an award and that award is limited to dependent's economic loss and counseling expenses. The Attorney General stated that the decedent's minor children, Tiffany and Alexandria Scarberry, were currently receiving Social Security benefits in the amount of \$729.00 per month each as a result of their father's death and these benefits outweighed any financial support they had been receiving from their father prior to his death.

{¶ 2} On March 26, 2008, the applicant submitted a request for reconsideration. The applicant reasoned that her children suffered a loss of child support arrearage in the amount of \$51,150.61, plus an additional \$9,431.97 the children would have

received in child support had Mr. Nicholson not been murdered. Therefore, the applicant contended the children suffered a loss in the amount of \$60,582.58, which when reduced by the money received from the Social Security Administration - \$20,956.93 - would result in a net dependent's economic loss of \$39,625.65. On May 27, 2008, the Attorney General rendered a Final Decision finding no reason to modify its initial decision. Accordingly, on June 24, 2008, the applicant filed a notice of appeal from the May 27, 2008 Final Decision. Assistant Attorney General Stacy Hannan appeared on behalf of the Attorney General's office. The applicant, Tammy Scarberry, was not in attendance. Assistant Attorney General Hannan offered a brief statement for the panel's consideration. Ms. Hannan stated the only issue in this case concerned child support arrearage that the applicant wishes to collect for her minor children through a compensation award. Ms. Hannan related that the long standing case precedent of this court is to determine dependent's economic loss based on things of financial value the dependents received in fact from the decedent prior to the decedent's death. A mere legal obligation to pay did not satisfy the statutory requirements of R.C. 2743.51(I). Accordingly, the Attorney General's Final Decision should be affirmed. Whereupon the hearing was concluded.

{¶ 3} R.C. 2743.51(I) in pertinent part states:

“Dependent's economic loss' means loss after a victim's death of contributions of things of economic value to the victim's dependents, not including services they would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.”

{¶ 4} The Court of Claims has consistently held an award can only be granted if it is established that there is dependency in fact rather than dependency in theory. The applicant must show that the decedent was contributing things of economic value for the care and support of the alleged dependents. Even arguments that a legal obligation to pay child support constitutes dependency have been rejected, because while such

obligations may create a right of action, they do not constitute actual dependency. *In re Dubics*, V77-1065jud (8-6-79); *In re Maddox*, V77-0849jud (8-22-70); and *In re Anderson*, V77-1323jud (11-14-79).

{¶ 5} From review of the file and with full and careful consideration given to all information presented at the hearing, we make the following determination. We find child support arrearage is not the proper basis for calculating dependent's economic loss. The statute clearly requires that the dependents prove that they had been receiving things of economic value from the decedent prior to his death. In the case at bar, the minor children received no benefit from the arrearage. Furthermore, the evidence shows that the children's current monthly Social Security benefits exceed the monthly child support payments that the decedent had been making prior to his death. Therefore, the decision of the Attorney General must be affirmed.

{¶ 6} IT IS THEREFORE ORDERED THAT

- {¶ 7} 1) The May 27, 2008 decision of the Attorney General is AFFIRMED;
- {¶ 8} 2) This claim is DENIED and judgment is entered for the state of Ohio;
- {¶ 9} 3) Costs are assumed by the court of claims victims of crime fund.

LLOYD PIERRE-LOUIS
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

Case No. V2008-30596

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ORDER

KARL C. KERSCHNER
Commissioner

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

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To S.C. Reporter 11-24-2008