

IN THE SUPREME COURT OF OHIO

STATE OF OHIO) CASE NO. 07 -1462
PLAINTIFF-APPELLANT) On Appeal from the
v) Crawford County Court
CHARLES W. BARTHOLOMEW) of Appeals, Third
DEFENDANT-APPELLEE) Appellate district
) Court of Appeals
) Case No. 3-06-0016

MEMORANDUM IN OPPOSITION TO CLAIMED JURISDICTION OF
APPELLANT STATE OF OHIO

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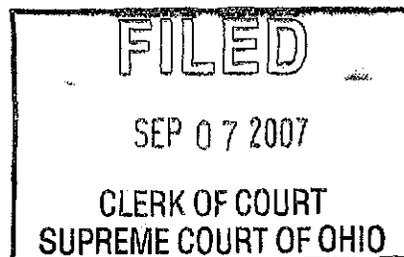


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CLAIMED PROPOSITION OF LAW NO. 1: "The restitution
statute, R.C. 2929.18(A)(1), and the crime victims
compensation statute, RC 2743.72(E), authorize the trial
court to designate the Attorney General's Crime Victims
Fund as the agency to receive the restitution payment."

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EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES NO SUBSTANTIAL CONSTITUTIONAL
QUESTION

This Honorable Supreme Court of Ohio must carefully chose the most pressing and important cases for decision. In every area of the law there are some appellate cases that seem to reach different results, or seem to read a decision of this Supreme Court in a different manner. This Supreme Court cannot expend its valuable resources correcting every supposed error. This case presents no unique or unsettled area of the law. This case does not even set a precedent, in that there are no cases following its holding at present.

The Appellant claims that this case is important in part because of Ohio Constitution Article 1, Section 10a, the "victims of crime" amendment to the Ohio Constitution. However, this amendment is not self-executing, and in fact states so: " * * * as the general assembly shall define and provide by law". Thus the mere citation to this constitutional provision does not make this instant case a case of constitutional dimension.

It is submitted that this case is not an appropriate one for this Honorable Supreme Court to expend its limited judicial resources to hear.

STATEMENT OF THE CASE AND FACTS

The State of Ohio, Appellant, appeals from the judgment of the Crawford County Court of Appeals. This judgment ruled that the restitution order against the Defendant must be reversed. This case involves the interpretation of State v Kreisler, 109 Ohio St. 3d 391, 2006-Ohio-2706 (hereinafter "Kreisler".)

The Court of Appeals decision was an appropriate and accurate interpretation of Kreisler based upon the facts presented in this case. Charles W. Bartholomew, the Appellee, (hereinafter, "Defendant") was charged with rape of his child. Upon his plea of guilty, he was sentenced as of record, including a provision that he make restitution to the Ohio Victims of Crime fund in the amount of \$426.00. This provision is the pertinent issue herein. The Court of Appeals, Third Appellate District, ruled that the provision was in conflict with this Supreme Court's decision of Kreisler, supra, in attempting to continue reimbursement to third parties after the legislature already had spoken clearly otherwise.

ARGUMENT IN OPPOSITION TO CLAIMED PROPOSITION OF LAW

The Appellant, the Victims of Crime fund of the State of Ohio, seeks to reverse this case upon policy arguments that the instant Third Appellate decision would prevent the Victims of Crime fund from seeking reimbursement from indigent criminals. However, there is nothing in the instant decision that would forbid the Victims of Crime fund from filing a civil lawsuit, based upon the theory of subrogation. The Victims of Crime fund could thereby seek to recover funds without running afoul of Kreischer.

Specifically, the most recent amendment to Ohio Revised Code 2929.18 deleted all references to restitution for third parties. One must ask whether the Appellant is a "third party". A "third party" is one who attempts to "stand in the shoes" of the individual, in this case the victim. This is precisely what the Appellant argues in this case, that the Victims of Crime fund should stand in the shoes of the victim and collect the restitution.

However, the General Assembly had its reasons for terminating third parties and insurers as recipients of restitution when the legislature amended the statute. Obviously, the General Assembly did not wish the trial courts of Ohio to be diverted from their primary mission, which is to deal with criminals and punishment, into an "unpaid collection agency", as suggested by Mr. Justice Pfeiffer's concurrence and dissent in Kreischer. The General Assembly's policy decisions apparently include the Victims of Crime fund among the definition of "third parties". If the General Assembly wished that the courts function as a collection agency, they could have easily have

written the legislation in that manner. The Appellant advances many policy arguments that could be made and reasons for a contrary result to that of the Third Appellate District. However, the place to make such policy arguments is the General Assembly. Whatever the merit there may or may not be to the Appellant's arguments in the abstract, the place to make the arguments is before the General Assembly. The General Assembly can legislate. The Honorable Supreme Court of Ohio does not legislate under the guise of interpreting the statutes of Ohio. In fact the headnote to Kreischer states:

"Statutory interpretation involves an examination of the words used by the legislature in a statute, and when the General Assembly has plainly and unambiguously conveyed its legislative intent, there is nothing for a court to interpret or construe, and therefore, the court applies the law as written."

This is what the Appellant seeks to do in the instant case; the Appellant seeks to have this Honorable Supreme Court re-write the statute and restore the prior language regarding third parties, under the guise of interpreting Kreischer.

A look at the statute, Ohio Revised Code 2929.18, will note that restitution is to be paid directly to the victim, or through the "adult probation" department, or to the "clerk of courts". The Appellant relies on the language of the statute that follows, that payment may be made to "any other agency." The intent is clear; the General Assembly obviously meant agencies designed for a clerical or bookkeeping function, such as the adult probation or the clerk of courts, be chosen to do such clerical or bookkeeping functions. The General Assembly was not making policy decisions as to what entity may be reimbursed in this part of the statute. Nor was the General Assembly intending either to

institute or to end any funding mechanism for the victims of crime fund when it amended Section 2929.18 of the Revised Code. The General Assembly was stating what agency or agencies may appropriately do the bookkeeping function. It was not making decisions regarding a funding mechanism,

The General Assembly did not leave the Victims of Crime fund without any recourse; the General Assembly took no steps to forbid the Victims of Crime fund from pursuing its civil remedies in civil court.

Realistically, most criminal defendants are indigent. Placing restitution orders onto defendants who are indigent and incarcerated is an exercise in futility. The General Assembly did not wish to turn the court system into an "unpaid collection agency" because of such futility. It is a different matter, when for instance a defendant is placed upon judicial release or post release control. Then a defendant can be ordered to seek employment and become able to pay his obligations. The civil judgments may then be paid into the Victims of Crime fund.

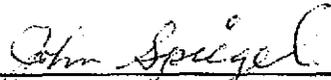
The civil courts are designed to deal with the collection of money owed. The criminal courts are not.

CONCLUSION

This case presents no unique or unsettled area of the law. The result in the instant cause naturally flows from the legislative determinations made. Policy arguments that the legislature should have done things differently should be addressed to the legislature. It is submitted that this case is not an appropriate one for this Honorable Supreme Court to expend its limited judicial resources to hear.

PROOF OF SERVICE

I certify that I mailed a copy of the foregoing Memorandum in Opposition to Claimed Jurisdiction to Appellant's attorneys, Stanley Flegm and Clifford Murphy, County Prosecutors, at 112 E. Mansfield, 3d floor, Bucyrus, Ohio 44820; also to Marc Dann and William P. Marshall, Attys. General, 30 E Broad St, 17th floor, Columbus OH 43215; by regular US mail this 7th day of September, 2007.



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