

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center
65 South Front Street, Fourth Floor
Columbus, OH 43215
614.387.9860 or 1.800.824.8263
www.cco.state.oh.us

IN RE: JOSEPH A. FLETCHER

JOSEPH A. FLETCHER

Applicant

Case No. V2006-20836

Judge Clark B. Weaver Sr.

DECISION

{¶1} This matter came on to be considered upon the Attorney General's appeal from the February 9, 2009 order issued by the panel of commissioners wherein the panel summarized the procedural history of the appeal of the final decision of the Attorney General as follows:

{¶2} "On May 18, 2007, a panel of commissioners issued an order reversing the Final Decision of the Attorney General in this claim. The panel found that the applicant was a victim of criminally injurious conduct and that the Attorney General had failed to prove the applicant either engaged in contributory misconduct or failed to fully cooperate with law enforcement during the investigation of the incident. Accordingly, the claim was remanded to the Attorney General's office for calculation of economic loss.

{¶3} "On July 6, 2007, the Attorney General issued a finding of fact and decision granting the applicant an award of reparations in the amount of \$11,262.37.

{¶4} "On May 22, 2007, the applicant's Attorney Jack Carney DeBord submitted an invoice for legal services rendered from September 11, 2006 through May 22, 2007. Mr. Carney DeBord's invoice sought legal fees in the amount of \$1,449.00 and costs for

copying expenses in the amount of \$36.75. On October 23, 2007, Attorney Carney DeBord submitted a second invoice for work performed from September 11, 2006 through August 16, 2007. This invoice sought legal fees in the amount of \$1,527.00 plus \$36.75 for copying costs incurred. On November 20, 2007, Attorney Carney DeBord filed a request for costs incurred processing the applicant's claim. These costs included the copying expenses incurred at the Court of Claims of Ohio as well as long distance telephone charges for communication with his client.

{¶5}“On December 3, 2007, the Attorney General sent correspondence to Mr. Carney DeBord indicating that attorney fees would be granted in the amount of \$1,020.00, the maximum pursuant to R.C. 2743.65(A)(2). It appears this amount was calculated based upon Mr. Carney DeBord's fee petition of May 22, 2007. Neither the invoice of October 23, 2007 nor the November 20, 2007 request for costs appears to have been taken into consideration.

{¶6}“On February 1, 2008, Attorney Carney DeBord submitted a request for reconsideration. On February 14, 2008, the Attorney General's office issued a letter informing counsel that his request for costs in the amount of \$78.00 would be denied since 'statutory max of \$1,020 already awarded in this case.'

{¶7}“On March 27, 2008, Attorney Carney DeBord filed a notice of appeal from the Attorney General's letter of February 14, 2008. Mr. Carney DeBord stated that the sole issue on appeal was \$78.00 in costs he incurred representing the applicant.

{¶8}“On June 16, 2008, the Attorney General rendered a Final Decision regarding attorney fees. The Attorney General reasoned that Mr. Carney DeBord failed to show that obtaining a copy of the claim file from the Court of Claims was reasonable in lieu of submitting a public records request for a copy of the claim file from the Attorney General's office, which customarily is provided free of charge. Furthermore, it appeared to the Attorney General that the \$78.00 in costs concerned telephone calls made to the applicant on August 3, 2007, August 6, 2007, and August

16, 2007, not the copy costs incurred at the Court of Claims. The Attorney General concluded, regardless of the origin of the expenses, reimbursement would be denied since the maximum award of \$1,020.00 had been reached and insufficient evidence had been provided that 'reasonably demonstrat[ed] that the expenditure of an amount in excess of the maximum award was required in this claim.'"

{¶9}The panel of commissioners held a hearing on Attorney Carney DeBord's appeal from the final decision of the Attorney General. Prior to the commencement of the hearing, the Attorney General moved to dismiss the appeal for lack of jurisdiction. The panel held in abeyance its ruling on the Attorney General's motion and proceeded with the hearing on the merits.

{¶10}The panel issued a decision wherein it determined that it had jurisdiction to consider the appeal and that applicant's counsel could petition the panel to have administrative costs considered for reimbursement. The panel stated that it would then review the request "for relevancy and reasonableness, and if satisfied may direct the Attorney General's office to pay the expense in accordance with [the] panel's order."

{¶11}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."

{¶12}The Attorney General asserts that there is no right to an appeal or hearing from the Attorney General's final decision regarding an award for attorney fees and that the panel of commissioners lacks jurisdiction to consider such an appeal. The court disagrees.

{¶13}In its decision, the panel relied on both *State, ex rel. Graves v. State* (1983), 9 Ohio App.3d 260, and this court's decision in *In re Hogan*, V2001-32071jud (6-3-02).

In *Graves*, the Tenth District Court of Appeals found that Court of Claims commissioners may hold a hearing before making a final decision on an award of attorney's fees. In *In re Hogan*, the court found that pursuant to former R.C. 2743.65, attorney's fees is a matter relating to an award of reparations.

{¶14}The Attorney General asserts that *In re Hogan* and *Graves* are inapplicable in that both decisions addressed the panel's jurisdiction under the version of the Victims of Crime Act that was in effect prior to its amendment on July 1, 2000, by Sub.S.B. No.153. Former R.C. 2743.65(A) provided that either "a single commissioner or a panel of commissioners shall determine and award reasonable attorney's fees, commensurate with services rendered * * *." (Emphasis added.)

{¶15}Sub.S.B. No.153 amended R.C. 2743.65 which sets forth the process by which the Attorney General reviews applications for attorney's fees and provides in pertinent part:

"2743.65. Attorney and witness fees.

"* * *

"2743.65(C)

"(2) The attorney general shall forward a copy of this section to the attorney with the application form for attorney's fees. The attorney shall file the application form with the attorney general. The attorney general's decision with respect to an award of attorney's fees is final ten days after the attorney general renders the decision and mails a copy of the decision to the attorney at the address provided by the attorney. The attorney may request reconsideration of the decision on grounds that it is insufficient or calculated incorrectly. The attorney general's decision on the request for reconsideration is final.

{¶16}“(G) The attorney general may determine that a lesser number of hours should have been required in a given case. Additional reimbursement may be made where the attorney demonstrates to the attorney general that the nature of the particular claim required the expenditure of an amount in excess of that allowed.”

{¶17}The Attorney General determined that applicant’s counsel was entitled to \$1,020, the maximum attorney’s fees payable pursuant to R.C. 2743.65(A)(2). Applicant’s counsel requested reconsideration of the Attorney General’s decision on the ground that the fee was insufficient. Pursuant to R.C. 2743.65(C)(2), the Attorney General reconsidered the request and determined that counsel had not demonstrated either that the nature of the claim justified compensation in excess of the statutory maximum, or that the requested copying expenses were warranted.

{¶18}Applicant’s counsel asserts that R.C. 2743.65(C) conflicts with language contained in R.C. 2743.53(A) and R.C. 2743.55(A).

{¶19}R.C. 2743.53(A) states:

“A court of claims panel of commissioners shall hear and determine *all matters relating to appeals from decisions of the attorney general* pursuant to sections 2743.51 to 2743.72 of the Revised Code. The attorney general, a court of claims panel of commissioners, or a judge of the court of claims may order law enforcement officers to provide copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable the attorney general, a court of claims panel of commissioners, or a judge of the court of claims to determine whether, and the extent to which, a claimant qualifies for an award of reparations.” (Emphasis added.)

{¶20}R.C. 2743.55(A) in pertinent part states:

“The attorney general, a court of claims panel of commissioners, or a judge of the court of claims shall determine *all matters relating to claims for an award of reparations.*” (Emphasis added.)

{¶21}When reviewing statutes for a potential conflict, all statutes relating to the same general subject matter must be read in *pari materia*. *Johnson's Markets, Inc. v. New Carlisle Dept. of Health* (1991), 58 Ohio St.3d 28, 35. In reading statutes in *pari materia* the court must construe them together so as to provide a reasonable construction and give the proper force and effect to each statute. *Id.* “[T]he interpretation of related and co-existing statutes must harmonize and give full application to all such statutes unless they are irreconcilable and in hopeless conflict.” *Id.*, citing *Couts v. Rose* (1950), 152 Ohio St. 458.

{¶22}Both R.C. 2743.53(A) and 2743.55(A) refer to the panel's authority to determine an applicant's claim for an award of reparations. At the hearing before the panel of commissioners, the Attorney General conceded that a determination regarding attorney's fees and costs are matters “relating to” a claim for reparations. Reading R.C. 2743.53(A) and 2743.55(A) in *pari materia* with R.C. 2743.65(C), the court finds that no conflict exists between the statutes.

{¶23}Furthermore, the court finds that the holdings in *In re Hogan* and *Graves* support the panel's determination that it has jurisdiction to hear this matter inasmuch as those decisions recognized that an award of attorney's fees is a matter related to a claim for an award of reparations. Consequently, the court finds that pursuant to R.C. 2743.53(A) and 2743.55(A), the panel has the authority to hear an appeal from the Attorney General's final decision concerning an award of attorney's fees.

{¶24}Based upon the evidence and R.C. 2743.61, it is the court's opinion that the order of the panel of commissioners was reasonable and lawful. Therefore, the court shall affirm the decision of the three-commissioner panel.

CLARK B. WEAVER SR.
Judge

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ORDER

{¶25} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed.

IT IS HEREBY ORDERED THAT:

{¶26}1) The order of February 9, 2009, (Jr. Vol. 2271, Page 57) is approved, affirmed and adopted;

{¶27}2) This claim is DENIED and judgment entered for the State of Ohio;

{¶28}3) Costs assumed by the reparations fund.

CLARK B. WEAVER SR.
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: