

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

KRISTA L. BRADY)
)
 Plaintiff) **CIVIL ACTION NUMBER**
)
 v.) **08A-05-007-JOH**
)
)
 TERRI KAISER and THE DELAWARE)
 VIOLENT CRIMES COMPENSATION)
 BOARD)
)
 Defendants)

Submitted: October 31, 2008

Decided: February 2, 2009

MEMORANDUM OPINION

*Upon Appeal From The Delaware Violent
Crimes Compensation Board - **REVERSED and REMANDED***

Appearances:

Janice R. Tigani, Esquire, Wilmington, Delaware, attorney for Appellant

Ralph K. Durstein, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, attorney for Appellee

HERLIHY, Judge

Krista Brady on behalf of her minor daughter, Kayleigh, has appealed the decision of the Violent Crimes Compensation Board denying benefits for her daughter's mental health counseling.

The Court has been supplied with the hearing transcript from February 19, 2008. Ms. Brady testified along with a New Castle County Police Officer and a mental health counselor.¹

There are two troubling aspects to the transcript provided. First, as the quotes below show, there was a prior decision of the Board. Second, that decision or any other paperwork in connection with it were not in the record sent to the Court. The Board's Vice-Chairwoman stated:

Vice-Chairwoman: We are going to review this is a, I mean a live hearing because you did not like the decision of the board, is that correct?

Krista Brady: Yes.

Vice-Chairwoman: And our decision was, it was under the provisions, it was denied set forth in Title 11, Chapter 90, 90029 [sic] of the Delaware Criminal Code of the Violent Crimes Compensation. The claimant's request before the Board is being denied because the claimant does not meet the definition of a victim and no crime was established at this time. And the police report

¹ The job and qualification of this witness are not in the transcript or anything provided to the Court. The Court views that as a factor, but not the primary one preventing the necessary appellate review. Since this matter is being remanded, that gap also needs to be filled.

“Kayleigh was given a S.A.N.E. sexual assault nurse examination, examined by Dr. Reed which was normal and showed no signs of injury. Due to their being no evidence that any crime had been committed this case will be closed unfounded. Do you understand?”

Krista Brady: Yes.²

The Vice-Chairwoman next says (quoting from a letter Ms. Brady sent to the Board after some kind of earlier decision):

“To Whom it May Concern, I was recently denied my claim for my daughter Kayleigh Brady and I believe that a mistake was made.”³

After all the testimony had been presented, at least what is reflected in the transcript supplied to the Court, this statement is made:

Executive Director: I’m going to uphold the original decision and deny the claim under our burden of proof which is (inaudible). The petitioner which would be you has to proof [sic] the crime occurred because from the police report if you say there is no actual proof. You may think there might be something but there’s nothing that we can put out hands on, the actual proof something happened. And so because of that I have to uphold the original decision in the matter.⁴

Curiously, one Board member’s vote is not recorded (Stephen Manista). The Board did not send to the Court a copy of the original decision denying Brady’s application for

² Hearing Tr., February 19, 2008, at 3.

³ *Id.* at 4.

⁴ *Id.* at 22.

victim's benefits.⁵ It is clear from the transcript, particularly the portions noted above that (1) there was a prior decision; (2) it has not been supplied to the Court; (3) it played a role in the second denial decision, (4) one Board member's vote was not recorded (the vote recorded was 2-1 to deny); and (5) this Court is deprived of Board actions and decisions necessary to fulfill its appellate function.

The matter has to be remanded to the Board to rectify these issues before this Court can consider Ms. Brady's appeal.

Conclusion

The appeal of Krista Brady is **REVERSED** and **REMANDED** to the Violent Crimes Compensation Board for proceedings consistent with this opinion, jurisdiction is retained.

IT IS SO ORDERED.

J.

⁵ Nor is it clear what evidence testimony or documents the Board considered in reaching its original denial decision.