

IN THE COURT OF CLAIMS OF OHIO

IN RE: CARLY CROW

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Applicant

Case No. 2022-00360VI

Magistrate Daniel R. Borchert

DECISION OF THE MAGISTRATE

{¶1} On October 29, 2022, Carly Crow, applicant, filed a compensation application seeking reimbursement for protection order fees. Along with her application, applicant submitted an invoice for attorney fees totaling \$945.00 from Attorney Tracy Comisford.

{¶2} On January 27, 2022, the Attorney General issued a Finding of Fact and Decision. Applicant was granted an award of \$480.00 for protection order fees, payable to Attorney Comisford. The Attorney General denied applicant's request for the portion of attorney's fees charged for discovery and deposition and travel for deposition.

{¶3} On February 18, 2022, applicant filed a request for reconsideration. Applicant's attorney, Tracy Comisford, stated: "Whereas here the court has ordered pursuant to Civil Rule 65.1 that the victim submit to a deposition, there is no basis under R.C. 2743.51 for the denial of attorney fees in connection therewith, as same are obviously 'incurred to successfully obtain a[n] order to physically separate a victim from an offender.'" Further, where a court has ordered that the victim submit to a deposition, attorney time to travel to the deposition is reasonably encompassed under allowable travel time to attend court hearings. A copy of the judge's order of Discovery in *Carly Crow v. Brook S. Williams*, from the Meigs County Common Pleas Court was attached to the request for reconsideration, Attorney Comisford argued that when a victim is ordered to attend a deposition, the attorney's travel time to said deposition should be considered travel time to attend a court hearing under R.C. 2743.51. Accordingly, applicant's attorney asserted applicant should be granted an award for the remainder of the attorney's fees.

{¶4} On April 18, 2022, the Attorney General rendered a Final Decision in which it was determined that the Finding of Fact and Decision would not be modified. On April 22, 2022, applicant filed a Notice of Appeal from the Attorney General's Final Decision.

{¶5} Hence, a hearing was held before this magistrate on July 6, 2022, at 10:00 a.m. Attorney Tracy Comisford appeared on behalf of the applicant, while Assistant Attorney General Mara C. Smith represented the state of Ohio.

{¶6} The parties agreed that there was only one issue before the court: whether attorney fees incurred for legal services related to discovery and deposition and travel for a deposition in civil protection order proceedings are an allowable expense such as defined by R.C. 2743.51(F)(4)(b).

{¶7} Applicant stated that under Civ.R. 65.1 it allows a respondent, in civil protection order proceedings, to conduct discovery, typically a deposition. Applicant explained that that is what happened in this case and what caused the fees related to the deposition. Applicant argued that it is unreasonable to have a victim attend a court ordered deposition undefended by her attorney. Further, applicant stated that if she did not attend the deposition, she would not have obtained the restraining order. Therefore, applicant asserted that the cost for her attorney to attend the deposition should be considered an allowable expense under R.C. 2743.52(F)(4)(b) because such expenses were incurred to successfully obtain a restraining order. As to the travel expenses, applicant argued that any court ordered event should be considered a court hearing under the statute.

{¶8} The Attorney General argued that under the clear and express language of the statute, the reimbursement of fees for attending a deposition and travel time to and from the deposition are beyond the scope of allowable expenses. The state asserted that there was no evidence that the deposition furthered the applicant's position or that it aided in the successful attainment of the order.

{¶9} R.C. 2743.51(F)(4)(b) states:

“‘Allowable expense’ includes attorney’s fees not exceeding one thousand dollars, at a rate not exceeding one hundred dollars per hour, incurred to successfully obtain a restraining order, custody order, or other order to physically separate a victim from an offender. Attorney’s fees for the

services described in this division may include an amount for reasonable travel time incurred to attend court hearings, not exceeding three hours round-trip for each court hearing, assessed at a rate not exceeding thirty dollars per hour.”

{¶10} The order for discovery attached to applicant’s Request for Consideration shows that applicant was ordered to attend a deposition in the proceedings related to the restraining order. Thus, such attorney’s fees for the preparation for and attendance of the deposition are allowable expenses under R.C. 2743.51(F)(4)(b).

{¶11} Regarding the travel expenses, I find that a court ordered deposition is an allowable expense under the statute.

{¶12} Therefore, I recommend that the Attorney General’s Final Decision of January 27, 2022, be reversed, and that this claim be remanded to the Attorney General’s Office for calculation of an award in accordance with this decision.

{¶13} A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

DANIEL R. BORCHERT
Magistrate