



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

IN RE: CAPRICE C. GRAY

CAPRICE C. GRAY

Applicant

Case No. V2008-31029

Commissioners:

Randi Ostry LeHoty, Presiding

Gregory P. Barwell

Clarence E. Mingo

ORDER OF THREE COMMISSIONER PANEL

{1}On May 27, 2008, the applicant, Caprice Gray, filed a compensation application as the result of an assault which occurred on October 19, 2007. On August 29, 2008, the Attorney General issued a finding of fact and decision finding the applicant met the jurisdictional requirements necessary to receive an award of reparations, however, the Attorney General determined the applicant's request for reimbursement of attorneys fees to obtain a civil protection order did not meet the requirements contained in R.C. 2743.51(F)(4). The Attorney General asserts the civil protection order did not successfully separate the applicant from the offender. On October 24, 2008, the applicant filed a request for reconsideration. On December 18, 2008, the Attorney General rendered a Final Decision finding no reason to modify its initial decision. On December 24, 2008, the applicant filed a notice of appeal from the December 18, 2008 Final Decision of the Attorney General. Hence, a hearing was held before this panel of three commissioners on March 18, 2009 at 10:45 A.M.

{2}The applicant's attorney, Dennis Yacobozzi, appeared on behalf of the applicant, while Assistant Attorney General Amy O'Grady represented the state of Ohio.

{3}The parties indicated that they had reached an agreement in this case. This case involves a civil protection order issued by the Domestic Relations division of the Court of Common Pleas of Hamilton County. The civil protection order contains the following language.

Paragraphs 5, 6, & 7 state:

“5. RESPONDENT SHALL NOT ENTER or interfere with the residence, school, business, place of employment, or child care providers of the protected persons names in this order, including the buildings, grounds and parking lots at those locations. Respondent may not violate this order even with the permission of a protected person.
[NCIC 04]

“6. RESPONDENT SHALL STAY AWAY FROM PETITIONER and all other protected persons names in this order, and not be present within 500 feet or _____ (distance) of any protected persons, wherever protected persons may be found, or any place the Respondent knows or should know the protected persons are like to be, even with Petitioner’s permission. If Respondent accidentally comes in contact with protected persons in any public or private place, Respondent must depart *immediately*. This order includes encounters on public and private roads, highways, and thoroughfares.
[NCIC 04]

“7. RESPONDENT SHALL NOT INITIATE OR HAVE ANY CONTACT with the protected persons named in this Order or their residences, businesses, places of employment, schools, day care centers, or child care providers. Contact includes, but is not limited to, telephone, fax, e-mail, voice mail, delivery service, writings, or communications by any other means in person or through another person. Respondent may not violate this order even with the permission of a protected person.
[NCIC 05]”

{4}However, paragraph 18 of the same order states:

“18. IT IS FURTHER ORDERED: [NCIC 08] RESPONDENT SHALL NOT BE IN VIOLATION OF THIS ORDER MERELY BECAUSE SHE/HE IS WITHIN 500 FEET OF THE PROTECTED PERSON(S) WHILE ATTENDING COURT ORDERED OR AGREED UPON COUNSELING AND/OR MEDIATION SESSIONS OR SCHEDULED COURT PROCEEDINGS FOR WHICH RESPONDENT IS EITHER A PARTY OR A SUBPOENAED WITNESS.”

{5}The Attorney General reasoned that while paragraph 18 would allow the parties to the civil protection order to contact one another for the purposes of counseling or mediation, in order to effectuate paragraph 18 the parties would have to go back to court to modify paragraphs 5, 6 and 7. In the case at bar, the applicant has not done so and has no intention to do so. Accordingly, the Attorney General asserts the civil protection order is in compliance with R.C. 2743.51(F)(4) and attorney fees should be paid. The Attorney General's position is that if a civil protection order provides the applicant with an option to contact the offender, and the applicant exercises that option then attorney fees pursuant to R.C. 2743.51(F)(4) should not be paid. However, if the court orders contact for children exchanges, counseling or mediation for example, then attorney fees should be reimbursed pursuant to R.C. 2743.51(F)(4). In the case at bar, the Attorney General recommends the applicant be granted an award in the amount of \$2,253.75.

{6}The applicant did not oppose the amount of the award proposed by the Attorney General. The applicant raised the issue concerning counseling when it dealt with children, as opposed to the reunification of the parents. The applicant believed an exception should be carried out in those situations where the well being of the children require joint counseling. The applicant asserted attorney fees should still be paid in those instances. Whereupon, the hearing was concluded.

{7}R.C. 2743.51(F)(4) states:

“(4)'Allowable expense' includes attorney's fees not exceeding two thousand five hundred dollars, at a rate not exceeding one hundred fifty dollars per hour,

incurred to successfully obtain a restraining order, custody order, or other order to physically separate a victim from an offender, if the attorney has not received payment under section 2743.65 of the Revised Code for assisting a claimant with an application for an award of reparations under sections 2743.51 to 2743.72 of the Revised Code.”

{8}The language of R.C. 2743.51(F) is clear and unambiguous, an order physically separating the victim from the offender must be successful in order for attorney fees to be paid. *In re K.D.*, V2007-90447tc (2-14-08), 2008-Ohio-5679.

{9}If a civil protection order is modified by the parties to allow contact for the purposes of discussion of the termination of the marriage or reconciliation it does not meet the requirements of R.C. 2743.51(F)(4), and accordingly, attorney fees are not compensable. *In re Warren*, V2008-30014tc (9-5-08).

{10}From review of the file and with full and careful consideration given to all information presented at the hearing and the agreement of the parties, we find the applicant has incurred an allowable expense pursuant to R.C. 2743.51(F)(4) in the amount of \$2,253.75. We reach this decision since the civil protection order issued by the domestic division of the Court of Common Pleas in Hamilton County would require the parties to seek modification of the existing order to facilitate counseling and mediation and this was not done. Therefore, the civil protection order complies with the intent of R.C. 2743.51(F)(4).

{11}While both the applicant and the Attorney General request this court provide guidance in dealing with a number of unresolved issues surrounding civil protection orders this panel cannot offer advisory opinions. While there remain many unresolved issues concerning the interpretation of R.C. 2743.51(F)(4), this panel will address those matters on a case by case basis. Therefore, the December 18, 2008 decision of the Attorney General is reversed and the applicant is granted an award of reparations in the amount of \$2,253.75.

IT IS THEREFORE ORDERED THAT

{12}1) The December 18, 2008 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant in the amount of \$2,253.75;

{13}2) This claim is remanded to the Attorney General for payment of this award;

{14}3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

{15}4) Costs are assumed by the court of claims victims of crime fund.

RANDI OSTRY LE HOTY
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

CLARENCE E. MINGO II
Commissioner

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