

[Cite as *In re Gregory*, 2007-Ohio-2945.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: D'ANN M. GREGORY

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Case No. V2006-20810

D'ANN M. GREGORY

□ □

Commissioners:

Applicant

□ □

Randi Ostry LeHoty, Presiding

Gregory P. Barwell

Lloyd Pierre-Louis

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ORDER OF A THREE-

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COMMISSIONER PANEL

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[Cite as *In re Gregory*, 2007-Ohio-2945.]

{¶1} The applicant (“applicant” or “Mrs. Gregory”) filed a reparations application seeking reimbursement of expenses incurred with respect to a series of domestic violence incidents. On April 26, 2006, the Attorney General granted the applicant an award totaling \$915.04, of which \$760.00 represented allowable expense and \$155.04 represented work loss incurred from September 21, 2005 through October 11, 2005. On May 18, 2006, the applicant filed a request for reconsideration asserting that she incurred additional legal fees to obtain a divorce from the offender that have not been reimbursed to her. On July 6, 2006, the Attorney General determined that the previous decision warranted no modification. On August 11, 2006, the applicant filed a notice of appeal to the Attorney General’s July 6, 2006 Final Decision. On February 21, 2007 at 11:40 A.M., this matter was heard before this panel of three commissioners.

{¶2} The applicant, the applicant’s attorney, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel’s consideration. Mrs. Gregory testified that she was married to Christopher Gregory (“offender”) for 19 years, but stated that she has not lived with him for 1 ½ years. The applicant testified that she left the marital residence in August 2005 because the offender had been physically and mentally abusing her since the early 1990’s (the applicant noted that the offender also abused their children). The applicant stated that in April 2005 she obtained a Civil Protection Order (“CPO”), however she had the order dismissed in June 2005 during a short period of reconciliation (when the offender promised her he would seek counseling). Mrs. Gregory asserted that two weeks later the abuse resumed and she attempted to obtain a new CPO, however for unknown

reasons a magistrate refused to grant her request. According to Mrs. Gregory, she filed for divorce in September 2005 but the offender has been uncooperative and hence the suit has not been finalized. The applicant contends she has contacted the police on numerous occasions, but has been advised that there is nothing they can do and that the matter will be addressed during the domestic proceedings. The applicant asserted that she is now hesitant to contact the police for assistance based on their reaction to her.

{¶3} Mrs. Gregory further testified that the offender continued to menace her during 2006. The applicant explained that in August 2006 she obtained a Temporary Protection Order, however that order remained in effect only during the criminal proceedings against her husband, which resulted in a conviction for disorderly conduct instead of domestic violence. The applicant stated that she is currently undergoing therapy, which she believes is helping and that she is making progress despite her circumstances.

{¶4} Applicant's counsel stated that the claim for additional legal fees should be granted based upon the applicant's testimony. Counsel argued that the offender is being uncooperative during the divorce proceeding and is thereby using the legal system to further abuse the applicant mentally and emotionally. Counsel argued that a divorce would establish the parties as "legal strangers" and would therefore afford the applicant both physical and psychological separation from the offender. However, the Assistant Attorney General maintained that the Final Decision should be affirmed since the applicant has failed to establish that her legal fees qualify as allowable expense.

The Assistant Attorney General argued that there has been no physical contact between the parties since she left the marital residence to warrant reimbursement of divorce fees. The Assistant Attorney General stated that historically the program has not paid for a competent adult victim/applicant's divorce fees. The Assistant Attorney General asserted that had the legislature intended to compensate victim/applicant's divorce legal fees it would have expressly stated such under amended R.C. 2743.51(F)(4).

{¶5} Revised Code 2743.51(F)(1) states:

“(F)(1) ‘Allowable expense’ means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for eyeglasses and other corrective lenses. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.”

{¶6} Revised Code 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.” (Emphasis added.)

{¶7} From review of the file and with full and careful consideration given to all the information presented at the hearing, find that the applicant suffered from systematic and ongoing domestic violence and menacing from April 2005 through December 2006. See *In re Mickunas*, V2005-80452tc (10-28-05), 2005-Ohio-6054. Nevertheless, we find that the applicant failed to establish any extenuating circumstances to support finding that a divorce was necessary for her continued safety (to avoid any future substantial threat of personal injury or death to the applicant), well-being, rehabilitation, treatment, and care. See *In re Howard*, V02-50765jud (2-4-03). Moreover, we find that a decree of divorce terminates a marital relationship but does not order physical separation between the parties. While we recognize Mrs. Gregory’s difficult situation and are sympathetic to her circumstances, we are unable to conclude that she is entitled to receive reimbursement for the claimed legal fees. Therefore, the July 6, 2006 decision of the Attorney General shall be affirmed.

{¶8} IT IS THEREFORE ORDERED THAT:

{¶9} 1) The July 6, 2006 decision of the Attorney General is AFFIRMED;

{¶10} 2) This claim is DENIED and judgment is rendered for the state;

{¶11} 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;

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

RANDI OSTRY LE HOTY
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

ID #\X-dld-laa-022807

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

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ORDER