

# Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

IN RE: JESSICA RICHARDS

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Applicant

Case No. 2013-00700-VI

Judge Patrick M. McGrath

## DECISION

{¶1} This matter came to be considered upon the Attorney General's appeal from the June 19, 2014 order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General. The Attorney General determined that that applicant met the necessary requirements to qualify as a victim of criminally injurious conduct; however, her claim for attorney fees incurred to obtain a domestic violence civil protection order (CPO) was denied based upon the finding that the CPO and an addendum thereto failed to comply with the provisions of R.C. 2743.51(F)(4), which requires a physical separation of the parties. Applicant's attorney, Mark Poole, and Assistant Attorney General Heidi James attended the hearing.

{¶2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc.2d 4, 455 N.E.2d 1374 (1983). The panel found, upon review of the evidence, that applicant had presented sufficient evidence that the requirements necessary for an award of attorney fees incurred to obtain a CPO had been met. Specifically, the panel found that the CPO did require a physical separation of the parties as contemplated in R.C. 2743.51(F)(4).

{¶3} 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.”

{¶4} The Attorney General argued that, taken together, the CPO and the consent agreement did not provide for a physical separation between applicant and the offender as required by R.C. 2743.51(F)(4)(b). Applicant contends that the CPO and consent agreement comply with the requirements of R.C. 2743.51(F)(4)(b).

{¶5} R.C. 2743.51(F)(4)(b) provides:

{¶6} “‘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.”

{¶7} The CPO requires, among other things, that the offender stay at least 500 feet away from applicant and not have any contact with applicant, including electronic communications. Item 18 of the CPO incorporates the consent agreement as an addendum, which provides in relevant part:

{¶8} “1. As a limited exception to Item #6, Respondent is permitted to attend all school functions/activities and/or athletic events involving the minor children. At such events, Respondent may have no contact with Petitioner or be present within 25 feet of her;

{¶9} “2. As a limited exception to Item #6, the parties may have contact at any subsequent hearing or court matter involving the parties;

{¶10} “3. As a limited exception to Item #6, the Respondent is permitted to go to the hospital in the event either minor child is injured and requires medical treatment;

{¶11} “4. As a limited exception to Item #7, Respondent may have contact with the Petitioner via text message only for the exclusive purpose of informing and advising the Petitioner of medical or health issues/concerns regarding the minor children.”

{¶12} The court has previously held that the language of former R.C. 2743.51(F)(4) is clear and unambiguous. *In re Pacey*, Ct. of Cl. No. V2011-60760 (July 6, 2012). “In order for attorney fees incurred to obtain a CPO to be compensable pursuant to former R.C. 2743.51(F)(4), the CPO must physically separate the victim and offender.” *Id.*

{¶13} There is no question that the CPO provides for the physical separation of the applicant and the offender as contemplated in R.C. 2743.51(F)(4). The CPO requires the offender stay at least 500 feet away from the applicant and have no contact with the applicant. The CPO then allows minimal interaction solely for the purpose of participating in court proceedings and coordinating the medical care of their children. The interactions are designed to allow the offender and applicant to participate in court proceedings regarding their divorce and to allow coordination for the purposes of medical care for their children. As noted by the applicant before the panel of commissioners, the CPO has provided separation of the applicant and the offender during the two years it has been in force.

{¶14} Based upon the evidence, the court finds that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel.

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PATRICK M. MCGRATH  
Judge

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ORDER

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

{¶16} IT IS HEREBY ORDERED THAT:

{¶17} The order of June 19, 2014, (Jr. Vol. 2288, Pages 52-55) is approved, affirmed and adopted;

{¶18} This case is remanded to the Attorney General in accordance with this decision;

{¶19} Costs are assumed by the court of claims victims of crime fund.

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PATRICK M. MCGRATH  
Judge

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

Filed 10-13-14  
Sent to S.C. Reporter 3/7/16