

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: MEGAN HANNING

MEGAN HANNING

Applicant
Case No. 2014-00615-VI

Judge Patrick M. McGrath

DECISION

{¶1} This matter came on to be considered upon the Attorney General's (AG) appeal from the January 14, 2015 order issued by a panel of two commissioners. The panel's determination reversed the decision of the AG. The AG denied applicant's claim for reimbursement of a Civil Protection Order (CPO) she obtained after an incident of domestic violence that occurred on April 27, 2013. The claim was denied based upon the finding that the Civil Protection Order she obtained did not comply with R.C. 2743.51(F)(4), which requires a physical separation of the parties.

{¶2} R.C. 2743.51(F)(4)(b) provides:

- a) “‘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 a offender.”

{¶3} 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*, 455 N.E.2d 1374 (Ct. of Cl.1983).

{¶4} 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.”

{¶5} However, the court may reverse a decision of the panel of commissioners if it finds the decision is unreasonable or unlawful. “‘Unlawful’ means that which is not in accordance with law,” and “‘[u]nreasonable’ means that which is not in accordance with reason, or that which has no factual foundation.” *Johnson v. Kell*, 89 Ohio App.3d 623, 625-626 (10th Dist. 1993), citing *Citizens Commt. v. Williams*, 56 Ohio App.2d 61, 70 (10th Dist. 1977).

{¶6} In issuing the CPO for applicant, the Muskingum County Court of Common Pleas utilized the Ohio Supreme Court’s Domestic Violence Civil Protection Order standard form 10.01-I. This particular form has nineteen (19) provisions which, if checked, limit the respondent’s ability to interact with the petitioner. In the case at bar, the court decided to check only three (3) of the boxes, ordering Mr. McCandless (the father of applicant’s child) not to: 1) abuse/harm the applicant, 2) enter the applicant’s residence, place of employment, etc., and 3) cause any person to do an act prohibited by the order. The AG asserts in its brief (and during oral argument) that the court did not check the boxes which would have specifically ordered Mr. McCandless to stay away from applicant and prohibit him from contacting her.

{¶7} The AG argues that the CPO in question does not prohibit applicant from contacting Mr. McCandless. In fact, the AG asserts that the CPO actually permits the two parties to meet, so long as the meeting does not occur at Applicant’s residence, school, business, place of employment, day care centers, or child care providers. Therefore, according to the AG, applicant could agree to meet Mr. McCandless at any number of public locations not included in the enumerated list, including but not limited to movies theaters, malls, etc. Further, the CPO does not prohibit the two from communicating via text, email, and telephone.

{¶8} The AG maintains that the panel of commissioners decision is unlawful because it violates the physical separation requirement found in R.C. 2743.51(F)(4)(b) and conflicts with this court’s previous rulings. See *In re Warren*, Ct. of Claims No V2008-30014tc (9-5-07); *In re Pacey*, Ct. of Claims No. V2011-60760tc (2-10-2012), aff’d mag (7-11-12). In both of those cases, the CPO in question was more restrictive than the CPO in the case bar, as the boxes were checked requiring the offender to both stay away and have no contact with applicant. However, exceptions were later added which

allowed parties to meet for specific purposes without violating the CPO. No such exception was included in applicant's CPO.

{¶9} Applicant argues that Mr. McCandless is not permitted to contact or meet at any time, as suggested by the AG, because such contact would be deemed "stalking," conduct which violates the express conditions of the CPO. During the hearing applicant's counsel argued that there was no need for specific exceptions as in *Warren* and *Spacey*, because the stay away and no contact provisions were not checked. He explained that he requested protection to the full extent allowed by the form. However, it is outside of his control, or that of the applicant, which boxes the court chooses to check. He also argued that a consequence of denying attorney fees in matters like this will have the unfortunate result of limiting the number of attorneys who are willing to assist victims in obtaining CPOs. This, he argues, is contrary to legislative intent of compensating victims who need protection from their offenders.

{¶10} The goal of the Victim's statute is remedial in nature. Therefore, it should be liberally construed in order to compensate victims as defined by the statutory restrictions within R.C. 2743.51. See *In re Van Horn*, 2007 Ohio 3493 (2007); *In re Ross*, 2007 Ohio 2927 (2007); and *In re Martin*, 2007 Ohio 3494 (2007). The AG admits that there are exceptions to the physical separation rule. For instance, it will approve a claim for repayment when physical contact occurs due to medical emergencies or when a conflicting court order allows contact. These are situations often outside of applicant's control, and for which the applicant herself may not have sought exceptions for physical contact. The court finds that *Warren* and *Pacey* can be distinguished by the fact that the applicants in each case sought out specific exceptions to the stay away and no contact orders. Here, it was unnecessary for applicant to seek out any specific exceptions to these provisions because they were not checked. However, based on the testimony of applicant and the evidence before the court, applicant made no effort to contact Mr. McCandless or meet him in her home, business, etc. Any coincidental meeting that may have occurred in a place not specifically enumerated in the CPO would be by chance and outside the control of applicant. Further, the court agrees with applicant that any such physical contact would likely result in a violation of the first provision of the CPO in that it would be considered "stalking or harassing." As such, and only as applied to the particular facts of this case, the physical separation requirement of R.C. 2743.51(F)(4)(b) is met.

{¶11} Based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the two-commissioner panel, and hereby remands the matter back to the Attorney General for reconsideration.

{¶12} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and the Attorney General's appeal must be denied.

PATRICK M. MCGRATH
Judge

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: MEGAN HANNING

MEGAN HANNING

Applicant

Case No. 2014-00615-VI

Judge Patrick M. McGrath

ORDER

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

{¶14} IT IS HEREBY ORDERED THAT:

{¶15} The order of January 14, 2015, (Jr. Vol. 2289, Pages 77-80) is approved, affirmed and adopted;

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

{¶17} Costs assumed by the reparations fund.

PATRICK M. MCGRATH
Judge

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

Filed 7/14/15
Jr. Vol. 2290, Pg. 40
Sent to S.C. Reporter 4/1/16