

[Cite as *In re G.R.*, 2016-Ohio-8609.]

IN RE: G. R.

MICHELLE RODIO

Applicant

Case No. 2016-00288-VI

Magistrate Daniel R. Borchert

DECISION OF THE MAGISTRATE

{¶1} On June 8, 2015, applicant, Michelle Rodio, filed a compensation application on behalf of G.R., a minor as a result of a history of abuse. On November 5, 2015, the Attorney General issued a finding of fact and decision determining that G.R. qualified as a victim of criminally injurious conduct as defined by R.C. 2743.51(C)(1). Applicant was granted an award of reparations in the amount of \$1,135.00, which represented counseling expenses incurred at Humanistic Counseling Center from August 1, 2011 until September 15, 2014, and counseling sessions with Mary Anne Ricci, LPCC on March 22, and April 12, 2012.

{¶2} However, the hypnotherapist counseling sessions provided by Kelly Pettry were denied since supporting documentation was not submitted. Finally, the Attorney General asserted the counseling expenses received from Willoughby Hill Behavioral Health Center were not related to the criminally injurious conduct.

{¶3} On December 3, 2015, applicant submitted a request for reconsideration. Applicant asserted that Kelly Pettry's services have helped G.R. and accordingly they should be reimbursed. On March 21, 2016, the Attorney General rendered a Final Decision finding no reason to modify the initial decision. On April 5, 2016, applicant filed a notice of appeal from the March 21, 2016 Final Decision of the Attorney General.

{¶4} Accordingly, a hearing was held before this magistrate on July 5, 2016 at 10:30 a.m.

{¶5} Applicant, Michelle Rodio, G.R., and applicant's attorney Kristie Campbell appeared at the hearing, while the state of Ohio was represented by Associate Attorney General Melissa Montgomery.

{¶6} Applicant addressed the sole issue on appeal whether the services received by G.R. from Kelly Pettry, meet the definition of allowable expense pursuant to R.C. 2743.51(F)(1). Applicant related that G.R. became involved with Pettry based upon a referral by Deborah Dawson, G.R.'s previous therapist. Accordingly, applicant seeks reimbursement of money paid for the hypnotherapy provided by Pettry.

{¶7} Initially, the Attorney General acknowledged that G.R. was the victim of criminally injurious conduct. However, the Attorney General stated Pettry has failed to submit requested treatment notes and plans to the Attorney General. The Attorney General contended applicant has been unable to prove the hypnotherapy was causally related to the treatment of G.R. which in turn was related to the criminally injurious conduct. Accordingly, the Attorney General's Final Decision should be affirmed.

{¶8} Applicant, Michelle Rodio was called to testify. Ms. Rodio testified she first learned G.R. was an abuse victim on March 9, 2012. Ms. Rodio sent G.R. to her counselor the next day, and the counselor determined quickly that G.R. had been the victim of sexual abuse. Wherein she notified appropriate officials in Cuyahoga County. An individual from Job and Family Services appeared at their residence and interviewed G.R. Since the criminal offenses occurred in two counties both the law enforcement agencies were contacted.

{¶9} Ms. Rodio related prior to the revelation on March 9, 2012, G.R. was having trouble in school, consequently she was seeing a counselor.

{¶10} Ms. Rodio was shown Applicant's Exhibits 42 and 43. These documents revealed based on G.R. test scores she qualified for the gifted program. Applicant's Exhibit 44, a Psycho-Education Report, prepared prior to learning of the sexual abuse, revealed slight problems at school with additional problems at home. However, when this report was discussed with school officials Ms. Rodio already learned the cause of G.R.'s problem.

{¶11} G.R. had to transfer schools because the Lakewood Catholic Academy would not accommodate G.R.'s court appearances. Ms. Rodio was shown G.R.'s report cards and they reflected a noticeable decline in her grades. Ms. Rodio noted G.R. was also suffering social relationship problems at this time.

{¶12} Ms. Rodio related due to G.R.'s problems at home and school, she began seeing a counselor, Deborah Dawson in 2010. After G.R.'s disclosure, Dawson tried to get G.R. to open up about the situation, however she was not successful. Accordingly, a decision was made to change counselors to Kelly Pettry.

{¶13} Since the change of counselors, G.R. has experienced significant improvement. She participates in extra-curricular activities. Ms. Rodio testified that G.R. has had significant improvement while seeing Pettry. No other counselor was able to make the progress with G.R. that Pettry did. She related that prior to this hearing G.R. was upset so G.R. will see Pettry this evening.

{¶14} Applicant's attention was then directed to Applicant's Exhibit 56, an e-mail from Deborah Dawson, Ph.D. wherein Dawson referred G.R. to hypnotherapy "to continue the treatment process of dealing with anxiety and intrusive traumatic thoughts."

{¶15} Applicant related that G.R. continues to have problems at school, but Pettry came and informed the teachers about G.R.'s problems so a more proactive approach could be tried.

{¶16} Applicant's attention was directed to Applicant's Exhibit 57, a letter authored by Kirsti Mouncey, LISW-S, LCDCCIII, Chief Program and Clinical Officer of the Cleveland Rape Crisis Center. The letter in pertinent part stated:

{¶17} "During her assessment, (G.R.) was diagnosed with PTSD due to her child sexual abuse. Recovery from PTSD is a lifelong process with often devastating long term symptoms and life challenges. It is important for survivors to find treatment that fits their needs so they have optimal chances of recovery. (G.R.) scored high on avoidance in her PTSD checklist and alternative therapies might be better suited for her than talk therapies. There are a variety of treatment modalities that can effectively treat PTSD and any victim of crime should have the ability to pick their treatment of choice."

{¶18} Next, Ms. Rodio's attention was directed to a series of affidavits, noted as Applicant's Exhibits 1-6. Initially she commented on her own affidavit, which evidenced the progress G.R. has been making since seeing Pettry.

{¶19} Applicant related incidents where G.R. self-mutilated. However, since she has been seeing Pettry this destructive conduct has ceased.

{¶20} Next, applicant discussed the affidavit of Michael Seliga, a family friend whose affidavit reflects the progress G.R. has been making since seeing Pettry. The affidavit of Mark Rodio, applicant's brother, also reflects the improvement since seeing Pettry and firmly believes counseling must be continued. The affidavits of Joseph Rodio, G.R.'s grandfather, and G.R's grandmother, Gloria Rodio, also reflect the progress G.R. has been making. Finally, an affidavit from Mike Pistorino, himself an abuse survivor, believed so strongly that Kelly Pettry could provide the help G.R. needed that he paid for three counseling sessions.

{¶21} Applicant's Exhibit 7, a letter from G.R.'s pediatrician, M. Kathleen Skoch, M.D., stating "[s]ince starting therapy with Kelly Anne Pettry, C.ht, MC.LC she has begun to heal."

{¶22} In conclusion, Ms. Rodio stated G.R.'s major problem is anxiety, since seeing Pettry there has been improvement on a daily basis.

{¶23} Upon cross-examination, Ms. Rodio believed G.R. was seeing Deborah Dawson from the time she was nine years old until she began seeing Pettry. Next, the Attorney General questioned applicant concerning Mike Pistorino. Applicant acknowledged that Mr. Pistorino recommended G.R. see Pettry. Ms. Rodio acknowledged Mr. Pistorino does not have a medical degree but is on the board of the Cleveland Rape Crisis Center, and an advocate for sexual assault victims. Finally, Ms. Rodio was asked if G.R. experienced seasonal depression, which she acknowledged she did. Whereupon, the testimony of applicant was concluded. Applicant made a motion to introduce Applicant's Exhibits 1-57 into evidence, however, the Attorney

General objected to the affidavits from Michael Seliga, Mark Rodio, Joseph Rodio, Gloria Rodio, and Mike Pistorino being introduced into evidence since the Attorney General did not have the opportunity to cross-examine these affiants.

{¶24} However, the rules of evidence do not apply in Victims of Crime Compensation cases heard before the Court of Claims. *In re Grow*, 7 Ohio Misc.2d 26, 454 N.E.2d 618 (Ct. of Cl. 1983). Affidavits are admitted and evaluated in the same manner and their substantive value is tested by the same standards as all other evidence. *In re Rea*, 61 Ohio Misc.2d 732, 584 N.E.2d 1350 (Ct. of Cl. 1989). Accordingly, the Attorney General's objection is overruled and the affidavits will be given weight based on their probative value. *Grow*.

{¶25} Whereupon, applicant rested her case, as did the Attorney General.

{¶26} In closing, applicant asserted sufficient evidence has been submitted to prove that the treatment provided by Kelly Pettry to G.R. was an allowable expense defined by R.C. 2743.51(F), and should be compensated. Applicant points to the success of hypnotherapy with respect to G.R.'s recovery, as opposed to the shortcomings of traditional therapy. Accordingly, applicant requested that she be reimbursed for the hypnotherapy provided by Kelly Pettry.

{¶27} The Attorney General stated to determine if an expense is compensable pursuant to R.C. 2743.51(F)(1), it must be determined if the counseling was medically necessary for the remedial treatment and care of the victim, whether it was arising from the criminally injurious conduct and whether it was related to the conduct.

{¶28} In this case, Ms. Rodio acknowledged that the hypnotherapy was recommended by Mike Pistorino, who has no medical background. The court was directed to Mental Assessment by the Cleveland Rape Crisis Center where it was stated: "Client does not meet criteria for PTSD but does report avoidant behaviors." Then, the Attorney General references a Goals/Objectives document dated July 16, 2014, which states: "minimal to no symptoms resulting from sexual trauma." Based

upon this documentation the Attorney General determined since G.R. did not have PTSD or minimal symptoms the hypnotherapy was not related to her remedial treatment and care. Furthermore, no information was received from Kelly Pettry. The file is void of any letter predating the start of the hypnotherapy that such therapy was medically necessary.

{¶29} Finally, self-serving testimony is not sufficient to meet the burden of proof and applicant presented the testimony from no medical professional showing a causal connection between the hypnotherapy and the criminally injurious conduct. Accordingly, the Final Decision of the Attorney General should be affirmed.

{¶30} Applicant contended that G.R. has suffered emotional traumatic injury as the result of sexual abuse. Applicant argued to base a finding of PTSD on a short questionnaire filled out by a minor child who suffered years of sexual abuse, is unreliable, plus G.R. no longer wanted to participate in group counseling conducted by the Cleveland Rape Crisis Center. Accordingly, applicant asserted G.R. chose her answers for the sole purpose of leaving the group. However, testimony from Ms. Rodio indicated G.R. was suffering and still is suffering from a variety of issues arising from the sexual assaults.

{¶31} G.R. currently has to contact Pettry on a daily basis for her mental well-being. Applicant noted that G.R. worked with Deborah Dawson for over a year without sufficient progress being made, it was not until she received treatment from Pettry that her condition began to improve. Finally, applicant requested that an award be granted for past and future services rendered by Pettry since the evidence reveals that this treatment has been successful. Whereupon, the hearing was concluded.

{¶32} R.C. 2743.51(F)(1) in pertinent part states:

{¶33} “(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...”

{¶34} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims 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 (Ct. of Cl. 1983).

{¶35} Black’s Law Dictionary Sixth Edition (1990) defines burden of proof as: “the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.”

{¶36} Black’s Law Dictionary Sixth Edition (1990) defines preponderance of the evidence as: “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.”

{¶37} There is a positive requirement of long standing in the law of evidence in Ohio that damages for claimed personal injuries are recoverable only for injuries directly resulting from and as a natural consequence of the injury sustained. It is not permissible to establish a claimant’s claim to certain bodily disorders unless it is established such were connected with the criminally injurious conduct. Evidence that the complaint “might” or “may” result from the injury is not competent. The evidence must tend to show that reasonable certainty of such a result exists. *In re Saylor*, 1 Ohio Misc.2d 1, 437 N.E.2d 321 (Ct. of Cl. 1982).

{¶38} Applicant has the burden of proof to show by a preponderance of the evidence that expenses incurred for treatment received were related to the injuries sustained at the time of the criminally injurious conduct by a reasonable degree of medical certainty *In re Bailey*, Ct. of Cl. No. V78-3484jud (August 23, 1982).

{¶39} To establish a claim by a preponderance of the evidence, an applicant must show, to a reasonable medical probability, that the claimed economic loss was

more likely than not the result of the criminally injurious conduct. *In re Ballachino*, Ct. of Cl. No. V79-3557sc (October 19, 1981) aff'd tc (March 17, 1983), quoting *In re Shope*, Ct. of Cl. No. V78-03002sc (April 16, 1981). Medical documentation must support the causal relationship between expenses, for which compensation is sought under the Compensation act, to the criminally injurious conduct. See *In re Travis*, Ct. of Cl. No. V2009-40668 (March 31, 2014), and *In re I.V.*, Ct. of Cl. No. V2010-50922tc (June 9, 2011).

{¶40} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St.61, 197 N.E.548 (1964).

{¶41} From review of the file and with full and careful consideration given to the testimony of applicant and the arguments of the parties, I find applicant has proven, by a preponderance of the evidence, that the hypnotherapy received from Kelly Pettry was causally related to the criminally injurious conduct and constitutes an allowable expense as "other remedial treatment and care."

{¶42} Applicant's testimony was compelling with regard to the years of abuse suffered by G.R. and a history of the treatment provided after G.R. disclosed the abuse to her. G.R. attended group therapy, individual sessions after the revelation of the abuse, but started self-mutilating when Mike Pistorino, of the Cleveland Rape Crisis Center, who was also a victim of child sexual abuse, recommended hypnotherapy. Applicant testified G.R. did not feel comfortable in a group setting and other participants were not from her age group.

{¶43} The decision to attend hypnotherapy was supported by her counselor Deborah Dawson who in an e-mail dated May 4, 2016, stated in pertinent part:



{¶44} “As a psychotherapist for (G.R.) from 2012 to 2015, we completed our treatment for current significant symptoms of Post Traumatic Stress Disorder. At that time, I referred (G.R.) to hypnotherapy to continue the treatment process of dealing with anxiety and intrusive traumatic thoughts.

{¶45} Because of the difficulty with focus and concentration from the PTSD, I suggested a follow up with behavioral Life Coaching to offer structure and planning which was a hurdle that (G.R.) continued to struggle with. These two treatment methods were a needed follow up to clinical therapy for (G.R.) remaining symptoms.”

{¶46} A letter dated June 23, 2016, from Kirsti Mouncey, Chief Program and Clinical Officer of the Cleveland Rape Crisis stated in pertinent part:

{¶47} “During her assessment, (G.R.) was diagnosed with PTSD due to her child sexual abuse. Recovery from PTSD is a lifelong process with often devastating long term symptoms and life challenges. It is important for survivors to find treatment that fits their needs so they have optimal chances of recovery. (G.R.) scored high on avoidance in her PTSD checklist and alternative therapies might be better suited for her than talk therapies. There are a variety of treatment modalities that can effectively treat PTSD and any victim of crime should have the ability to pick their treatment of choice.”

{¶48} This letter recognizes in the case of sexual assault victims for treatment to be effective it must be tailored to the needs of the victim. From the testimony of applicant and the affidavits submitted in support, it is evident that G.R. has made significant progress since entering hypnotherapy.

{¶49} This court is mindful that when R.C. 2743.51(F)(1) was drafted a laundry list of specific providers was not conceivable nor would it benefit the treatment and recovery of a victim. Accordingly, I find the hypnotherapy G.R. is receiving meets the “other remedial treatment and care” requirement.

{¶50} Therefore, I find G.R.’s treatment with Kelly Pettry was recommended by a qualified medical professionals who were able to assess G.R.’s needs and provide for treatment from an individual, Kelly Pettry who met those needs.

{¶51} Accordingly, I recommend Attorney General Final Decision of March 21, 2016, be reversed and the claim remanded to the Attorney General for calculation of

expenses incurred for treatment received from Kelly Pettry in the past and continuing on into the future.

*{¶52} 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).*

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DANIEL R. BORCHERT  
Magistrate