

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: K.D.

Case No. V2007-90447

ANNE MARIE DENNISON

Applicant

Commissioners:

Karl C. Kerschner, Presiding

Thomas H. Bainbridge

Tim McCormack

ORDER OF A THREE-
COMMISSIONER PANEL

{¶ 1} The applicant filed a reparations application seeking reimbursement for expenses incurred as the result of the victimization of K.D. between 1999 and 2006. On September 25, 2006, the Attorney General issued a Finding of Fact and Decision granting the applicant an award of reparations in the amount of \$1,879.75 for reimbursement of lost wages, mileage and counseling expenses incurred as a result of the criminally injurious conduct. On October 3, 2006, the applicant filed a supplemental compensation application. On December 29, 2006, the Attorney General issued a Supplemental Finding of Fact and Decision granting the applicant an additional award in the amount of \$1,248.07 for counseling expense, mileage, prescriptions and lost wages. On January 19, 2007, the applicant filed a second supplemental compensation application. On April 2, 2007, the Attorney General issued a supplemental award in the amount of \$1,666.59 for counseling expenses, medical expenses, mileage and lost wages. However, the applicant's claim for reimbursement of attorney fees incurred to obtain the protection order was not successfully obtained. On April 4, 2007, the applicant filed a request for reconsideration. On June 4, 2007, the Attorney General issued a Final Decision granting the applicant a supplemental award in the amount of \$1,703.12 which represents allowable expense and lost wages. However, the Attorney

General again denied the applicant's claim for attorney fees in conjunction with the civil protection order. On June 11, 2007, the applicant filed a notice of appeal from the Attorney General's Final Decision of June 4, 2007. On December 6, 2007 at 10:30 A.M., this matter was heard before this panel of three commissioners.

{¶ 2} The applicant, applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony for the panel's consideration.

{¶ 3} As a preliminary matter, an Assistant Attorney General and counsel for the applicant agreed that certain parking and mileage expenses had been miscalculated in the initial awards. Applicant's counsel asserted the unreimbursed parking and mileage expenses should amount to \$624.02, while the Attorney General contended the total amount should be \$606.95. The difference between the two figures \$17.07 was the amount of mileage and parking expenses incurred in conjunction with the civil protection order. The Attorney General's position is that the attorney fees for the civil protection order are not compensable and that the mileage and parking expenses associated with the civil protection order should also be denied.

{¶ 4} The applicant called the victim's aunt, Sharon McGlynn, to testify via telephone. Ms. McGlynn testified that she cared for the victim at summer camp in 2006 and 2007. The applicant paid \$300.00 for each camp session.

{¶ 5} Next the applicant, Anne Marie Dennison, testified regarding the events surrounding the victimization. As a result of the victimization, an ex parte anti-stalking order was issued against the offender. However, when the hearing was held to make the order permanent, a magistrate denied the order. The applicant also testified concerning the need for privacy manager, a phone service that allows for the identification of blocked callers. The applicant related that she received threatening telephone calls. In order to identify the caller(s) she chose to acquire privacy manager.

She felt this was a better option than having the telephone line tapped, in which case the police would have control over the identification of the caller. Applicant related that in the past the police had not been helpful with this situation and she felt she would rather handle this matter by herself. Finally, the applicant testified as to the necessity of sending the victim to summer bible camp for which she incurred expenses of \$300.00 per session.

{¶ 6} Under cross examination by the Assistant Attorney General the applicant admitted the magistrate denied the anti-stalking order based on a failure to prove by a preponderance of the evidence that the offender posed a threat to the victim.

{¶ 7} Applicant's attorney argued that the burden of proof had been met with respect to the additional mileage and parking expenses in the amount of \$624.02 and the 2007 summer bible camp expense of \$300.00. Applicant's attorney contends that the privacy manager expense was a reasonably incurred expense in accordance with R.C. 2743.51(F). Applicant's attorney argued that since the police were not providing the protection the applicant felt was necessary she had to subscribe to privacy manager to screen her own calls. Finally, applicant's counsel argued that the attorney fees for the anti-stalking order should be paid in conjunction with the remedial nature of the statute. Applicant's counsel asserted the panel should seek guidance by reviewing cases prior panels rendered in *In re Van Horn*, V2006-20241tc (6-29-07); *In re Ross*, V2006-20062tc (4-2-07); and *In re Martin*, V2006-21158tc (6-29-07). Applicant's counsel asserts these cases stand for the proposition that the Victims of Crime Compensation statute is remedial in nature. Accordingly, the statute should be interpreted to place the victim and applicant in the same position financially that they were in prior to the occurrence of the criminally injurious conduct. Hence the applicant should be reimbursed for the attorney fees she incurred in good faith.

{¶ 8} Although the statutory section in question, R.C. 2743.51(F)(4), requires the successful obtaining of a civil protection order to trigger the payment of attorney fees, applicant's counsel argues the panel has, in the past, avoided unjust results by following the clear language of the statute. In the cases of *In re Zinn*, V2004-60733tc (1-6-06), and *In re Hollar*, V94-69891tc (12-29-99), a panel of commissioners allowed minor victims who had engaged in felonious conduct to receive an award in direct contravention to the language contained in R.C. 2743.60(E). Therefore, applicant's counsel argued that this panel should adopt the same approach in this case.

{¶ 9} Assistant Attorney General contended that the language of R.C. 2743.51(F)(4) is clear and unambiguous. The statute requires that the restraining order be successfully obtained, which in this case it was not. Since the language of the statute is clear and the applicant did not successfully obtain the restraining order attorney fees must be denied. With respect to the other issues concerning additional mileage and parking fees incurred by the applicant, the Attorney General believes an additional award of \$606.95 should be granted. This excludes the \$17.07 incurred for parking and mileage expenses as the result of the unsuccessful restraining order. The Assistant Attorney General concedes that the summer bible camp fees of \$300.00 incurred in 2007 were reasonable. Finally, the Attorney General asserts the applicant has failed to meet her burden of proof with respect to the privacy manager fees. The Assistant Attorney General asserts no medical documentation was presented nor were any telephone logs provided which prove the unwanted calls were originated by the offender or the father of the offender. It was also unclear from the evidence presented by the applicant whether the threatening phone calls were directed at the applicant or the victim.

{¶ 10} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determinations. Based on the facts of the case and the evidence introduced we agree with the parties and find the claim for \$300.00 for the summer bible camp fee is reasonable and should be awarded. With respect to the claim for mileage and parking fees the applicant shall be granted an additional award in the amount of \$606.95.

{¶ 11} The privacy manager expenses incurred by the applicant were reasonable, however, the applicant presented no evidence concerning who made the calls and whether, in fact, the calls were being made by the offender. It is also unclear to this panel whether the calls were directed at the applicant or the victim. Since the applicant has the burden by a preponderance of the evidence, we find the applicant has failed to sustain her burden. However, if the applicant is incurring future expenses for privacy manager and can present sufficient documentation, the applicant should submit a supplemental compensation application to the Attorney General.

{¶ 12} Finally, we address the issue of attorney fees with respect to the unsuccessful filing of the anti-stalking order. First, both counsel should be commended for the well researched and articulate arguments presented.

{¶ 13} R.C. 2743.51(F)(4) states in pertinent part:

‘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 . . .

{¶ 14} We have reviewed the Magistrate’s, Edwin Skeen, Decision Denying Petition for Civil Protection Order rendered November 17, 2006. Clearly, applicant’s anti-stalking order was denied. The language of the statute is clear and unambiguous,

an order physically separating the victim from the offender must be successful in order for attorney fees to be paid.

{¶ 15} “It is a cardinal rule that a court must first look to the language of the statute itself to determine the legislative intent. See, e.g. *Katz v. Department of Liquor Control* (1957), 166 Ohio St. 229. If that inquiry reveals that the statute conveys a meaning which is clear, unequivocal and definite, at that point the interpretative effort is at an end, and the statute must be applied accordingly. *Sears v. Weimer* (1944), 143 Ohio St. 312.” *Provident Bank v. Wood* (1973), 36 Ohio St. 2d 101, 105-106.

{¶ 16} “Where the words of the statute are free of ambiguity and express plainly and distinctly the sense of the lawmaking body, the courts should look no further in their efforts to interpret the intent of the General Assembly.” *State v. Smorgala* (1990), 50 Ohio St. 3d 222.

{¶ 17} In the case at bar, the language of the statute is clear that the General Assembly only intended to allow those attorney fees where a physical separation order had been successful. Applicant’s counsel argues this court should find the statutory provision to be remedial and make the applicant “whole.” However, the statute provides a condition precedent necessary for the award of attorney fees and that is a successful order. In this case the anti-stalking order was not successful. Finally, applicant’s counsel asserts we should follow the holdings in *Zinn* and *Hollar* which did not follow the direct language of 2743.60(E) (felony exclusion). However, in both of those cases medical evidence was presented to show the minor victims did not possess the requisite intent to commit their offenses but rather their conduct was directly related to their victimization.

{¶ 18} In this case the language of R.C. 2743.51(F)(4) is clear and applicant’s claim for reimbursement of attorney fees is denied.

{¶ 19} IT IS THEREFORE ORDERED THAT

{¶ 20} 1) The June 4, 2007 decision of the Attorney General is MODIFIED to render judgment in favor of the applicant;

{¶ 21} 2) The applicant shall be granted an additional award of reparations in the amount of \$906.95 and this case is remanded to the Attorney General's office for payment;

{¶ 22} 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;

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

KARL C. KERSCHNER
Presiding Commissioner

THOMAS H. BAINBRIDGE
Commissioner

TIM MC CORMACK
Commissioner

[Cite as *In re K.D.*, 2008-Ohio-5679.]

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