

THE FAMILY COURT OF THE STATE OF DELAWARE  
IN AND OF NEW CASTLE COUNTY

A---- H----,  
Petitioner,

v.

D---- P----,  
Respondent.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

File No. CN19-04439  
Pet. Nos. 19-23602  
19-25920

**REVIEW OF COMMISSIONER'S ORDER**

Date Submitted: November 18, 2019

Date Decided: February 12, 2020

Petitioner, *pro se.*  
Respondent, *pro se.*

J. Buckworth

## INTRODUCTION

This is the Court's decision regarding the Request for Review of Commissioner's Order ("ROCO"),<sup>1</sup> timely filed on November 18, 2019, by A----- H----- ("Petitioner"), *pro se*, against D----- P----- ("Respondent"), *pro se*. Petitioner's ROCO pertains to the Order Sealing All Files and Proceedings ("Amended Order"), entered by this Court on October 14, 2019.<sup>2</sup> For the reasons set forth below, Respondent's ROCO is **GRANTED** and the Order is **AFFIRMED in part and AMENDED in part**.

## PROCEDURAL HISTORY

On August 22, 2019, Petitioner filed a Petition for Order of Protection from Abuse ("Petition").<sup>3</sup> On September 11, 2019, Respondent filed a Cross-Petition for Order of Protection from Abuse ("Cross-Petition").<sup>4</sup> As a result of the filings, two (2) *Ex Parte* Protection from Abuse Orders were issued by the Court.<sup>5</sup> However, on September 16, 2019, the parties filed a Joint Motion to Rescind All Orders of Protection from Abuse. ("First Joint Motion")<sup>6</sup> The Court granted the First Joint Motion on September 17, 2019.<sup>7</sup> Consequently, the matters were dismissed before hearings on the merits occurred.

On September 17, 2019, the parties filed Confidential Joint Motions to Seal all Files and Proceedings and to Expunge all Records Associated with Petition and Counter-Petition ("Second Joint Motion").<sup>8</sup> In the Second Joint Motion, the parties argued despite lack of statutory authority,

---

<sup>1</sup> Req. for Rev. of Comm'r's Order, D.I. 31-32.

<sup>2</sup> Amended Order dated October 14, 2019, D.I. 29-30.

<sup>3</sup> Pet. for Order of Protection from Abuse, D.I. 1.

<sup>4</sup> Pet. for Order of Protection from Abuse, D.I. 10.

<sup>5</sup> Temporary Ex Parte Order of Protection from Abuse, D.I. 3; Amended Temporary Ex Parte Order of Protection from Abuse, D.I. 7; Temporary Ex Parte Order of Protection from Abuse, D.I. 14.

<sup>6</sup> Joint Mot. to Rescind All Orders of Protection from Abuse, D.I.19-20.

<sup>7</sup> Order Rescinding Order of Protection from Abuse and Dismissing Petitions with Prejudice, D.I. 21-22.

<sup>8</sup> Confidential Joint Mot. to Seal All Files and Proceedings and Expunge all Records Associated with Pet. and Counter-Pet., D.I. 25-26.

they should be entitled to relief via expungement.<sup>9</sup> The parties argued expungement was necessary to prevent injustice, as their reputations would be tarnished by temporary orders, despite the final dispositions of dismissal.<sup>10</sup>

### **THE COMMISSIONER'S ORDER**

On September 24, 2019, the Commissioner granted the parties' Joint Motion to Seal All Files and Proceedings and to Expunge All Records Associated with Petitioner's Petition for Order of Protection from Abuse and Respondent's Cross-Petition for Order of Protection from Abuse.<sup>11</sup> On October 14, 2019, the Commissioner amended the Order by redacting the portion related to expungement and adding language to clarify the Court lacks authority to expunge a civil record.<sup>12</sup>

### **OBJECTIONS TO THE AMENDED COMMISSIONER'S ORDER**

Petitioner submitted her ROCO, challenging the Amended Commissioner's Order on November 18, 2019.<sup>13</sup> A ROCO must be filed within 30 days after the entry of the commissioner's order.<sup>14</sup> The Court finds this ROCO was timely filed.

The Court reduces Petitioner's argument to the following:

- (1) The Family Court should have the authority to expunge records in Protection from Abuse ("PFA") cases because they have implications on a party's criminal record, and therefore, possess the potential to cause a manifest injustice.

### **STANDARD OF REVIEW**

A party may seek a review of a Commissioner's order pursuant to 10 *Del. C.* § 915(d)(1), which provides:

---

<sup>9</sup> Confidential Joint Mot. to Seal All Files and Proceedings and Expunge all Records Associated with Pet. and Counter-Pet., D.I. 25-26.

<sup>10</sup> *Id.*

<sup>11</sup> Order dated September 24, 2019. D.I. 27-28.

<sup>12</sup> Amended Order dated October 14, 2019, D.I. 29-30

<sup>13</sup> Req. for Rev. of Comm'r's Order, D.I. 31-32..

<sup>14</sup> 10 *Del. C.* § 915(d)(1).

Any party, *except a party in default of appearance before a Commissioner*, may appeal a final order of a Commissioner to a judge of the Court by filing and serving written objections to such order, as provided by rules of the Court, within 30 days from the date of a Commissioner's order. A judge of the Court shall make a *de novo* determination of those portions of the Commissioner's order to which objection is made. A judge of the Court may accept, reject or modify in whole or in part the order of the Commissioner. The judge may also receive further evidence or recommit the matter to the Commissioner with instruction.<sup>15</sup>

Pursuant to Family Court Civil Rule 53.1(b), an appeal of a Commissioner's Order must "set forth with particularity the basis for each objection."<sup>16</sup> Upon taking the matter under review, a Judge of the Court will make a *de novo* determination regarding the objected to portions of the Commissioner's Order.<sup>17</sup> A Judge will make an independent decision by reviewing the Commissioner's findings of fact determined at the Commissioner's hearing, any testimony and documentary evidence on the record, and the specific objections of the moving party.<sup>18</sup> Findings of fact by the Commissioner, however, are accepted unless those findings were clearly wrong and justice requires a different result.<sup>19</sup> Because the Commissioner has "the benefit of assessing the witnesses' credibility firsthand," a reviewing Judge applies an abuse of discretion standard to factual findings made based on witness credibility;<sup>20</sup> however, the Commissioner must make an explicit finding as to why a witnesses' testimony was found to be more credible in order to allow the reviewing Judge some basis on which to review that determination.<sup>21</sup> In the absence of such evidence, the Court must apply *de novo* standard in determining whether that credibility is supported by the record.<sup>22</sup>

---

<sup>15</sup> 10 *Del. C.* § 915(d)(1); *see also* Fam. Ct. Civ. R. 53.1(e), *emphasis added*.

<sup>16</sup> Fam. Ct. Civ. R. 53.1(b).

<sup>17</sup> 10 *Del. C.* § 915(d)(1), *see also* Fam. Ct. Civ. R. 53.1(e).

<sup>18</sup> *C. M. v. L. A.*, 2007 WL 4793042, \*1 (Del. Fam. 2007).

<sup>19</sup> 10 *Del. C.* § 915(d)(1); *see also* *Moffett v. Archer*, 1998 WL 665582 (Del. Fam. 1998).

<sup>20</sup> *H.C. v. C.C.*, 2015 WL 6442057, at \*2 (Del. Fam. Ct. Apr. 1, 2015) (citing *D.H.M. v. D.T.M.*, 2012 WL 5844912 (Del. Fam. Ct. Sept. 18, 2012)).

<sup>21</sup> *M.D. v. S.D.*, 2012 WL 4862963, at \*1 (Del. Fam. Ct. Sept. 20, 2012).

<sup>22</sup> *M.D.*, 2012 WL 4862963, at n. 7 (quoting *DFS v. J.C.*, CN11-04854, Pet. No. 11-28019, at 5 (Del. Fam. Ct. May 23, 2012) (Cooper, J.) ("While it is plainly within the province of the Commissioner to believe some witnesses over

## DISCUSSION

**(1) The Family Court shall have authority to expunge records in Protection from Abuse cases resulting in a dismissal, to protect innocent persons from unwarranted damage from unfounded or unproven claims.**

***a. Basis for establishing Venue and Jurisdiction in Family Court for expungements related to the civil matter of Protection from Abuse.***

Notwithstanding the lack of statutory authority, the Family Court must offer procedural relief from PFA records, which have the potential to cause harm, despite a judicial dismissal. Under Article I § 9 of the Delaware Constitution, “every person for an injury done him or her in his or her reputation, person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered.”<sup>23</sup>

Family Court is the appropriate venue to establish procedure to overcome the obstruction of due process that exists without an appropriate expungement procedure for dismissed Petitions for Orders of Protection from Abuse.<sup>24</sup> Under current statutory authority for criminal expungements, if all of the charges to be expunged were disposed of in Family Court, Family Court for the county where the most recent case was terminated retains jurisdiction related to expungement of the matter.<sup>25</sup> PFA matters are exclusively handled by Family Court, therefore, Family Court retains jurisdiction over expungements of PFA matters.<sup>26</sup>

Although a PFA record is civil in nature, because temporary PFA orders are submitted to Delaware Justice Information System (DELJIS), a dismissed Petition for Order of Protection from

---

others, the Commissioner's Order must give the reviewing Judge a basis for the Commissioner's conclusion that one witness was more credible than another. In the absence of such evidence, the Court must step in and apply the de novo standard of review to determine whether that credibility determination is supported by the record.”)).

<sup>23</sup> Del. Const. art. I, § 9.

<sup>24</sup> Delaware states the statutory intention for expungements serves “to protect innocent persons from unwarranted damage, which may occur as a result of arrest and other criminal proceedings which are unfounded or unproven,” 11 Del. C. § 4371.

<sup>25</sup> 11 Del. C. § 4374 (c)-(d).

<sup>26</sup> 10 Del. C. § 952.

Abuse may impose unwarranted damage based upon an unfounded or unproven claim. The policy purpose behind Delaware’s criminal expungement statutes states that a criminal history is a hindrance to a person’s present and future ability to obtain employment, housing, education or credit.<sup>27</sup> Without similar relief from dismissed PFA proceedings, an obstruction of due process exists for civil litigants.

Due to the serious nature of PFA petitions, there are often temporary *ex parte* orders entered in an effort to protect the petitioner from the alleged abuser until a hearing on the merits can occur. When any PFA order is issued, it must be entered into DELJIS on or before the next business day.<sup>28</sup> An entry in DELJIS creates a public record in the court and criminal law enforcement management systems. If no hearing on the merits occurs, or a hearing occurs and no finding of abuse is made by the Court, the matter is dismissed, but the entry in DELJIS remains. If a party has had a temporary *ex parte* PFA order issued against them, their DELJIS report indicates “PFA History.” If the petition is dismissed after the issuance of a temporary *ex parte* PFA order, the “PFA History” indicator on the respondent’s DELJIS report remains.

DELJIS is the same platform used to manage Delaware criminal histories. Findings reported in DELJIS are discoverable in a number of background investigations. Therefore, a person designated by DELJIS to have “PFA History” without a finding of abuse or consent, is subject to the same unwarranted damage, which may occur as the result of an arrest or other criminal proceedings, which are unfounded or unproven.

In *Carlacci v. Mazaleski*, the Supreme Court of Pennsylvania found expungement to be the proper mechanism to remedy a potential harm to the reputation of an individual against whom a

---

<sup>27</sup> 11 Del. C. § 4371.

<sup>28</sup> 10 Del. C. § 1046 (b).

PFA was sought, but subsequently dismissed.<sup>29</sup> The Supreme Court of Pennsylvania further scrutinizes the potential effects of dismissed PFA actions to address the potential injustice associated with PFA actions that include a temporary order before dismissal.<sup>30</sup> The Supreme Court of Pennsylvania ultimately found when PFA proceedings are dismissed by court order or never evolve beyond a temporary order stage; they shall be subject to immediate expungement.<sup>31</sup> The Court finds *Carlacci v. Mazaleski* to be persuasive authority in determining the appropriate remedy for civil litigants subject to dismissed PFA proceedings in Delaware.

***b. Application of expungement of a PFA to the matter before the Court.***

As a case of first impression, the Court turns to policies, which have historically guided PFA order and criminal expungement procedures in Delaware. Further, the Court relies on statutory authority surrounding criminal expungements and PFA order procedures in Delaware to frame the analysis for procedure to expunge PFA orders.

When looking at the facts of the case at hand, neither party has a finding of abuse subsequent to a full hearing on the merits, nor a PFA order resulting from consent. Instead, the parties were each awarded temporary PFA orders resulting from *ex parte* hearings.<sup>32</sup> Before hearings on the merits could be heard, the petitions related to this matter were dismissed and the temporary *ex parte* PFA orders were subsequently rescinded.<sup>33</sup>

Further, there are no pending Petitions for Order of Protection from Abuse related to either party nor does either party have previous or subsequent PFA proceedings against them.

---

<sup>29</sup> *Carlacci v. Mazaleski*, 798 A.2d 186, 2002.

<sup>30</sup> *Id.* at 190.

<sup>31</sup> *Id.* at 191.

<sup>32</sup> Temporary *Ex Parte* Order of Protection from Abuse, D.I. 3; Temporary *Ex Parte* Order of Protection from Abuse, D.I. 7.

<sup>33</sup> Order Rescinding Order of Protection from Abuse and Dismissing Petitions with Prejudice, D.I. 19-22.

After reviewing the parties DELJIS summaries, neither party has any criminal domestic violence convictions nor pending criminal charges.

In the parties Second Joint Motion, the parties argued as public figures employed in the areas of law and civil service, their livelihoods are tied to their reputation.<sup>34</sup> The parties further argued the existence of record relating to their Cross-Petitions for Order of Protection from Abuse subjects the parties to manifest injustice.<sup>35</sup> The parties asserted the records will impact their reputations and therefore, their employability, resulting in a manifest injustice.<sup>36</sup>

The Court acknowledges the serious and often cumulative nature of the proceedings surrounding a Petition for Order of Protection from Abuse. Here, the nature of the dismissals coupled with the parties' recurrent agreement demonstrated through several joint filings, the lack of PFA history prior or subsequent to this matter, the lack of domestic violence related criminal history and the imminent manifest injustice, necessitates the Court to grant immediate expungement as the appropriate remedy.

### CONCLUSION

The Court retains jurisdiction for matters of expungement of dismissed PFA records based upon Delaware law and policy. Therefore, the Court finds the Commissioner's order stating the Court does not have authority is rejected. After thorough analysis, the Court finds it proper to **GRANT** the Joint Motion to Seal all Files and Proceedings and to Expunge all Records Associated with Petition and Counter-Petition in its entirety. Therefore, the portion of the Commissioner's Order granting all files and proceedings be sealed is affirmed. Further, the Court grants

---

<sup>34</sup> Confidential Joint Motions to Seal All Files and Proceedings and to Expunge All Records Associated with Petition and Counter-Petition, D.I. 25-26.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



expungement of all records related to the Cross-Petitions for Order of Protection from Abuse including all indicia of PFA History.

IT IS ORDERED, that the Motion for Expungement of Protection from Abuse Record is GRANTED.

IT IS FURTHER ORDERED, all indicia of PFA history, including police and court records and any electronic records relating to the PFA shall, within 60 days of receipt of this Order by DELJIS be removed from the files.

IT IS FURTHER ORDERED, copies of this Court's Order be delivered to DELJIS.

**WHEREFORE**, based on the aforementioned reasons, Petitioner's ROCO is hereby **GRANTED**, and the Amended Order is **AFFIRMED in part and AMENDED in part**.

**IT IS SO ORDERED.**

---

*Mark D. Buckworth, Judge*

MDB/rmwa 02/12/2020

cc: The Parties  
Commissioner  
DELJIS