THE FAMILY COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

S---- C------ Petitioner	§	
	§	File No.: CN24-04689
	§	
v.	§	Pet. No.: 25-20046
	§	
M------ M------- Respondent.	§	

REVIEW OF COMMISSIONER'S ORDER

Date of Order: 11/3/2025
Date of ROCO Filed: 12/2/2025
Transcript Received: 1/12/2026
Answer Filed: N/A
Order Entered: 1/12/2026

S---- C------, Patrick J. Boyer, Esquire
M------ M-------, pro se

Kerr, F., Judge

Pending before the Court is a Request for Review of a Commissioner's Order ("ROCO") filed by S---- C------ ("Petitioner"). Petitioner is seeking a review of the Order entered by Commissioner James J. Maxwell on November 3, 2025 denying a Motion for Contempt of a PFA which was filed regarding an Award of Attorneys' Fees entered on an Order for Petition for Protection from Abuse (PFA) filed by Petitioner against M------ M------- ("Respondent"). Specifically, Petitioner alleges that the Commissioner erred by not enforcing the Attorneys' Fees Order through a Motion for Contempt and found that Petitioner could pursue other means of enforcing the Order. For the reasons cited herein, the Court affirms the Commissioner's Order but notes that the Family Court can enforce the Attorneys' Fees Order through a Rule to Show Cause Petition where Respondent would be served with the petition.

PROCEDURAL HISTORY

On December 23, 2024, the Court issued Orders denying Respondent's PFA Petition and granting Petitioner's PFA Petition. The Court granted Petitioner leave to file a motion and affidavit of attorneys' fees and costs. On January 7, 2025, Petitioner's counsel filed a Motion for Attorneys' Fees and Costs with the accompanying affidavit. The Motion was filed in both Petition 24-26565 and 24-25088. No Response was filed to the Motion. On March 4, 2025, the Court Granted Petition attorneys' fees in the amount of $19,668.50 and indicated that the large award was warranted as Petitioner had to spend a great deal of time "to defend and prosecute these cases." Respondent was ordered to pay the fees within 90 days. The attorneys' fees order was amended on March 7, 2025 to indicate that it found by clear evidence that Respondent had acted in bad faith. On September 8, 2025, Petitioner filed a Motion for Contempt of an Order of

Protection from Abuse alleging that Respondent had not paid anything toward the legal fees owed. A hearing on the Motion for Contempt was scheduled for October 22, 2025, and notice was sent to the parties. Petitioner and his counsel appeared for the hearing and Respondent did not appear. The Commissioner Denied and Dismissed the Motion for Contempt, finding that the lack of payment on the attorneys' fees was not a violation of any of the provisions of the PFA Order issued on December 23, 2024. Additionally, the Commissioner determined that even if it were required to make a finding of contempt of the PFA Order that it would decline to issue any further sanction and that Petitioner could pursue methods of collection and enforcement.

STANDARD OF REVIEW

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

> 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 the rules of Court, within 30 days from the date of the 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.[1]

Because this was a Commissioner's final order, the Court reviews the Order *de novo.*[2] According to *Black's Law Dictionary* a *de novo* review is "[a]n appeal in which the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings."[3] Pursuant to Family Court Civil Rule 53.1(b), an appeal of a Commissioner's

[1] 10 *Del. C.* § 915(d)(1).
[2] *Id.*
[3] *Black's Law Dictionary* (10th ed. 2014).

Order must "set forth with particularity the basis for each objection."[4] 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.[5] 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.[6]

ARGUMENTS RAISED

The Argument raised in this ROCO is really a question of law and not fact. The facts which pertain to the ROCO are not in dispute. While the facts in the underlying PFA Petitions were in dispute, these facts are immaterial to the current issue. The Court has reviewed the pleadings, the decisions and the statute. The issue essentially comes down to whether failure to pay the legal fees in this case can be enforced through a Motion for Contempt of a PFA. Petitioner also alleges that the Court should not refuse to enforce its own Orders. However, the Order does not state anywhere that the Court is refusing to enforce its own Orders. Rules to Show Cause are filed routinely in this Court to collect legal fees awarded and there is nothing in the Commissioner's order that suggests that Petitioner cannot file a Rule to Show Cause Petition. The Commissioner did state in the original attorneys' fees award in January 2025 and the amended order on March 7, 2025 that "This debt may be reduced to a judgment and entered in the Superior Court Prothonotary's judgment book if it remains unpaid after 90 days and may be transferred to the appropriate jurisdiction for collection." This provision was likely added due to

[4] FAM. CT. CIV. P. R. 53.1(b).
[5] 10 *Del. C.* § 915(d)(1); *see also* FAM. CT. CIV. P. R. 53.1(e).
[6] *C.M. v. L.A.,* 2007 WL 4793042, at *1 (Del. Fam. Ct. Dec. 27, 2007).

Petitioner's emphasis on Respondent's ownership of a property without encumbrances. However, the provision in the original order and the amended order were not appealed to a judge.

ANALYSIS

CAN THE ORDER FOR LEGAL FEES BE ENFORCED THROUGH A MOTION FOR CONTEMPT OF A PROTECTIVE ORDER

Enforcement of and sanctions for violating a protective order are governed by 10 *Del. C*. §1046. This statute explains how the Orders are entered into the Delaware Criminal Justice Information System ("DELJIS") so that if a Respondent violates the "protective order" it can be enforced by the police. Protective orders state that "violations may result in criminal prosecution and imprisonment or a fine or both." Indeed, the Order entered on December 23, 2024 contains this warning.

The Orders entered on January 7, 2025 and March 7, 2025 differ from the Protective Order entered on December 23, 2024. First, these orders were entered on both the PFA that was denied where Petitioner was the respondent and on the PFA that was granted where Petitioner was the petitioner. The Order on the legal fees describes the efforts that Petitioner and his counsel had to take to defend against the PFA that was denied and was not broken down between the two petitions. A denial of a PFA as a Respondent is not a "Protective Order." Second, the legal fees award was not included in the Protective Order that was entered into DELJIS and does not contain the language which is printed on the Order of Protection explaining that failure to comply with the Order may result in a finding of contempt, criminal prosecution and imprisonment. A "protective order" is defined as "an order issued by the court to a respondent restraining said respondent from committing domestic violence against the petitioner, or a person

in whose interest a petition is brought and may include such measures as are necessary in order to prevent domestic violence."[7]

For these reasons, the Court does not find that the Order granting attorneys' fees in the two PFA Petitions combined is a "Protective Order". This does not mean that Family Court cannot enforce the Order through a Rule to Show Cause and the Commissioner's Order does not state that the Family Court cannot enforce its own Orders, but rather that the Family Court is limited in the relief it can grant. Specifically, a Family Court Order would not be a lien against Respondent's real property unless it is recorded in the prothonotary's office as a judgment. The Court need not reach the second argument raised by Petitioner as it Affirms the Dismissal and Denial of the Petition. Petitioner can file a Rule to Show Cause Petition. The Court recognizes that it is frustrating and that the Motion for Contempt would be easier and less expensive but that does not change the Court's decision.

For the foregoing reasons, the Court finds that the Commissioner's Order is **AFFIRMED.**

IT IS SO ORDERED.

/ Felice Glennon Kerr /

FELICE GLENNON KERR, Judge

Cc: Parties/Counsel
The Honorable James J. Maxwell

Date mailed:

[7] 10 *Del. C.* 1041(5).