

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JUANITA PITCHFORD,)
)
 Petitioner,)
)
vs.) Case No. 98-2389
)
DEPARTMENT OF CHILDREN)
AND FAMILY SERVICES,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, Don W. Davis, a duly designated Administrative Law Judge of the Division of Administrative Hearings, held a formal hearing in the above-styled case on August 13, 1998, in Jacksonville, Florida. The following appearances were entered:

APPEARANCES

For Petitioner: James C. Cumbie, Esquire
One Independent Drive, Suite 3204
Jacksonville, Florida 32202

For Respondent: Roger L. D. Williams, Esquire
Department of Children and
Family Services
Post Office Box 2417
Jacksonville, Florida 32231-0083

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner's foster parent application for adoption of the minor child, S. J., should be granted.

PRELIMINARY STATEMENT

By letter dated April 13, 1998, Respondent's representative informed Petitioner that Petitioner's foster parent application to adopt a foster child in Petitioner's care was denied.

Respondent subsequently requested a formal administrative hearing and the matter was transferred to the Division of Administrative Hearings to conduct a formal hearing pursuant to Section 120.57(1), Florida Statutes.

At the hearing, Petitioner presented the testimony of 7 witnesses and 26 exhibits of which 20 were admitted into evidence. Respondent presented testimony of 6 witnesses and 7 exhibits.

No transcript of the final hearing was provided. Additionally the parties did not file proposed recommended orders within the required time frames and none had been received at the time of preparation of this Recommended Order.

FINDINGS OF FACT

1. S.J. was abandoned at birth. Moses and Juanita Pitchford served as foster parents of the child from the age of two days until March 30, 1998, when the child was over two years old.

2. S.J. was observed by several of Respondent's employees as not behaving like other children her age. She had a flat affect, not laughing, playing or verbalizing as other children who visited Respondent's offices did. Subsequent evaluations of

the child established that S.J. was developmentally delayed in speech,

physical, and cognitive skills. S.J. was then referred to Easter Seals for services to assist her in the speech, physical, and cognitive skills areas.

3. The Pitchfords' care had never been criticized in any of the Respondent's home evaluation forms completed by Gwen Tennant, the home care counselor employed by Respondent. Only when Juanita Pitchford applied to adopt S.J. did Tennant assert that Juanita Pitchford was not providing adequate care for the child.

4. Tennant's concern was based on the fact that S.J. was not receiving the maximum exposure to an Easter Seals program for which she had qualified. The Pitchfords were never formally informed of this or any other deficiency. The evidence establishes that the Pitchfords presented S.J. at the program four days per week out of the total five days for which she was eligible.

5. Following Respondent's denial by letter dated April 13, 1998, of Petitioner's foster parent application for adoption, Respondent has continued to place foster children, including infants, in the Pitchford home.

6. The rights of the child's biological parents were terminated by court order dated June 17, 1997, due to their abandonment of the child. The court noted in its order that:

Testimony adduced revealed that the child can and has formed a significant relationship with the parental substitute as has been established in her current foster care placement. The foster parents are the only parents she has ever known.

7. The court's order also stated:

[T]he child is currently being given excellent care by foster parents who love and care for [S.J.], and consider [S.J.] to be their child.

8. On March 30, 1998, S.J. was removed to the home of Betty Allen, another foster parent. Allen is not married, cares for six other foster children under the age of six years, and works at a full-time job outside the home. Consequently, S.J. is delivered to day care on a regular basis for five days each week. During four of those days, she is later taken to the Easter Seals program by day care personnel for four and one-half hours. Allen cares for the foster children in her home from approximately 5:30 p.m. until 8:30 p.m. in the evening. She drops the children at day care before 8:00 a.m. each day. In contrast, Petitioner is not employed outside the home, remains there throughout the day, and is able to provide intense daily interaction with S.J.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter. Section 120.57(1), Florida Statutes

10. Rule 65C-16.002(7)(a)1.-5., Florida Administrative Code, promulgated by Respondent, states that the first adoption placement of choice in situations like this present proceeding is with the foster parents with whom the child is residing. The rule sets forth five exceptions to such placement: (1) when the child does not want to be adopted by the foster parents; (2) the

foster parents do not want to adopt the child; (3) the foster parents are willing to adopt the child, but none of its siblings; (4) the health status of the foster parents jeopardizes the child's security from loss or separation; and (5) the foster parents have withheld information that jeopardizes the permanency of the child's placement with them.

11. When it is considered that S.J. is receiving no more exposure to the Easter Seals program than she did when she was in Petitioner's home, Respondent's argument, that S.J. was not receiving maximum exposure to that program from Petitioner and should not be adopted by Petitioner, is unpersuasive. Absent a showing by Respondent that one of the five conditions set forth in Rule 65C-16.002(7)(a)1.-5., Florida Administrative Code, exists with regard to Petitioner, Petitioner's application should be granted by Respondent and adoption placement with Petitioner considered to be in the child's best interest as required by Rule 65C-16.002(8), Florida Administrative Code.

RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED that a Final Order be entered approving the application of Petitioner.

DONE AND ENTERED this 22nd day of September, 1998, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge

Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of September, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.