

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES

Petitioner,

vs.

CASE NO. 99-0011
RENDITION NO. DCF-00-025-FO

WANDA T. BARKER and
HOWARD R. BARKER

Respondent.

_____ /

FINAL ORDER REVOKING LICENSURE TO PROVIDE FOSTER CARE

THIS CAUSE is before me for entry of a Final Order. As determined by the Administrative Law Judge, the facts of the case reveal that the child in foster care suffered inappropriate punishment at the hands of one of the foster parents, who struck the four-year old child in the face. The force of the blow could have caused serious injury to the child's head and did, in fact, leave a "red/purple" linear bruise about two (2) inches long and 1 3/8 inches wide, which remained visible at least for twenty-four hours (240 after the slap).

I agree that the foster care license should be revoked.

I respectfully disagree, however, with paragraph 16 of the Recommended Order, and hereby reject it. In that paragraph, the Administrative Law Judge employed an inappropriate standard of proof. Her reasoning, while sound for cases involving the revocation of professional licenses, does not apply in cases involving the licensure of foster homes. Accordingly, I substitute the following for paragraph 16.

This case involves the revocation of the Respondent's family foster home license. This license is not a professional license of any individual," and its possession does not create a property right in the recipient. It is not an entitlement. Rather, it is a public trust, a privilege. Section 409.175(2), Florida Statutes. Accordingly, the clear and convincing" standard of proof made applicable in Ferris v. Turlington, 510

So. 2d 292 (Fla. 1987), does not apply. Rather, the standard of proof to be applied is a mere preponderance of the evidence. See. See Dept. of Banking and Finance v. Osborne Stem & Co., 670 So. 2d 932, 934-935 (Fla. 1996).

No exceptions to the Recommended Order have been filed. The Recommended Order, therefore, is approved and adopted except as modified herein.

It is hereby ORDERED that petitioner's; foster home license is revoked.

DONE and ORDERED this 11th day of January, in Tallahassee, Leon County, Florida.

JUDGE KATHLEEN A. KEARNEY, Secretary
Department of Children and Family Services

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

Carolyn S. Holifield
Administrative Law Judge
Division of Administrative Hearings
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701 49th Street, North
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing FINAL ORDER has been sent by U. S. Mail or hand delivery to each of the above-named persons this 13th, day of January, 2000.

Virgina Daire, Agency Clerk
Department of Children and
Family Services
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Tallahassee, FL 32399-0700
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