

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND )  
AND FAMILY SERVICES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 99-0011  
 )  
WANDA T. BARKER and )  
HOWARD R. BARKER, )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on May 5, 1999, in Largo, Florida, before Carolyn S. Holifield, an Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Frank H. Nagatani, Esquire  
Department of Children and Family Services  
11351 Ulmerton Road, Suite 100  
Largo, Florida 33778-1630

For Respondent: R. Michael Robinson, Esquire  
701 49th Street, North  
Saint Petersburg, Florida 33710

STATEMENT OF THE ISSUES

The issue presented in this case is whether the Respondents' family foster home license should be revoked for the reasons set forth in the Department of Children and Family Services' (Department) revocation letter.

PRELIMINARY STATEMENT

By letter dated November 13, 1998, the Department, notified the Respondents that after careful review of Abuse Report No. 1998-088200, it intended to revoke their license to provide foster care. Respondents requested a formal hearing and the matter was forwarded to the Division of Administrative Hearings for assignment of an administrative law judge.

At the hearing, Petitioner presented the testimony of the following witnesses: Peggy Goodale, a family service counselor with the Department; Scott Crawford, a child protective investigator with the Department; Scott Galley, an officer with the Pinellas Park Police Department; Tammy Douglas, a family service counselor with the Department; and Judith Adams, an advanced registered nurse practitioner and a member of the Suncoast Child Protection Team. The Department's Exhibits numbered 1-5 were offered and received into evidence. Respondents testified on their own behalf and presented the testimony of the following witnesses: Kristina Barker, Respondents' daughter; David Stewart; Catherine Stewart; Sandra Dooty; Mary Beach; and Faith Bennett. Except for Respondent's daughter, all witnesses called by Respondent were either current or former medical foster parents with Suncoast Child Protective Team. Respondents offered no exhibits into evidence.

The proceeding was recorded but not transcribed. Both parties submitted Proposed Findings of Fact and Conclusions of

Law which have been carefully considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department of Children and Family Services is the state agency responsible for licensing and regulating family foster homes in Florida. Section 409.175, Florida Statutes.

2. At all times relevant hereto, the home of Respondents, Wanda and Howard Barker (Respondents), was licensed by the Department as a family foster home, having been initially licensed in July 1997.

3. Prior to receiving the family foster home license, Respondents were required to and did attend the Department's Model Approach to Partnership in Parenting (MAPP) training. Upon completion of the training course Respondents were required to sign a discipline policy agreement in which they acknowledged that they had been informed of the Department's policy against "hitting a child with any object . . . , spanking a child and any other form of physical discipline." Respondents signed a copy of this agreement.

4. In August 1997, the Department placed D. G. and his brother, J. G., in Respondents' home. D. G. was born on October 21, 1993, and J. G.'s was born on January 7, 1995. At all times relevant to the proceeding, D. G. was four years old and J. G. was three years old.

5. Respondent Wanda Barker, is a registered nurse at Suncoast Child Protection Team, Inc. (Suncoast). A majority of the clients served by Suncoast are children with behavioral problems. As a nurse at Suncoast, Respondent Wanda Barker comes in contact with such children on a regular basis.

6. On August 10, 1998, Respondent Wanda Barker called the Department and reported to D. G.'s assigned children service counselor that she had slapped D. G. the previous day. Respondent Wanda Barker further advised the counselor that as a result of the slap, a mark had appeared on D. G.'s face.

7. Immediately after receiving the call, the counselor notified the appropriate Department personnel and made a report of abuse to the proper authorities. On that same day, August 10, 1998, the Department assigned a child protective investigator to conduct an investigation of the reported incident.

8. On August 10, 1998, both the Department's child protective investigator and an officer with the Pinellas County Police Department interviewed Respondent Wanda Barker at her home. In each of these interviews, Mrs. Barker stated that on the preceding day, August 9, 1998, she slapped D. G. in the face.

9. According to Respondent Wanda Barker, on the day of the incident, D. G. was in a bad mood. At some point that afternoon D. G. began yelling at Respondents' daughter. In an effort to discipline D. G. for yelling, Respondent Wanda Barker told D. G. to go to his room. When he refused, Respondent Wanda Barker took

D. G. by the arm and attempted to direct him to the room. While Respondent was holding D. G.'s arm and escorting him to his room, D. G. continued to yell and he also spit in Respondent Wanda Barker's face. Immediately after D. G. spit on Respondent Wanda Barker, she slapped D. G. in the face with an open hand hard enough to leave a mark on his face. The slap was so forceful that it caused a 2-3 inch long bruise that was visible the day after the incident.

10. In the past, Respondent Wanda Barker had sought the assistance of Department staff in addressing discipline problems involving D. G. The Department staff had suggested that Respondents implement various disciplinary methods, including the use of time-out and positive reinforcement. However, at no time did the Department personnel ever recommend that Respondents hit any foster child within their care. On the contrary, the Department's disciplinary guidelines expressly prohibit hitting a child or using any form of corporal punishment. As noted in paragraph 3, Respondents were aware of the Department's policy regarding corporal punishment and had signed a statement acknowledging that they would abide by the policy.

11. On August 10, 1998, after the child protective investigator interviewed Respondent Wanda Barker, he took D. G. to Suncoast for a physical examination. The examination revealed the D. G. had several bruises and abrasions typical of an active child. However, in addition to these bruises and abrasions,

D. G. also had a "red/purple" linear bruise about 2 inches long and 1 3/8 inches wide on his face. The impression of the advanced nurse practitioner who examined D. G. was that the bruise on D. G.'s face was the result of a non-accidental injury. Moreover, the bruise on D. G.'s face was consistent with one that could be caused by a slap.

12. It is likely that striking a four-year-old child in the face with an open hand will cause serious injury to the child, particularly to the child's head. In fact, an injury to the head of a child has the potential of causing more serious damage than an injury to any other part of the body. Accordingly, Respondent Wanda Barker's willful and intentional act of forcefully slapping D. G.'s face was one that was likely to result in physical injury to the child. This intentional act materially affected the health or safety of D. G.

13. During the course of the investigation, the Department removed D. G., his brother, and another foster child in Respondents' care from their home.

14. At the conclusion of his investigation, the child protective investigator entered a final report which concluded that "verified bruises/welts abuse" were found and that some indicators of "excess[ive] corporal punishment/abuse" were also found. This Florida Protective Services System Abuse Report was forwarded to the Department's licensing unit. After a review and

consideration of the facts contained in the abuse report, the Department revoked the Respondents' family foster home license.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569, 120.57, and 120.60, Florida Statutes.

16. This case involves the revocation of Respondents' family foster home license. In a license disciplinary proceeding such as this, the burden is on the regulatory agency to establish facts upon which its allegations of misconduct are based. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). Moreover, the Department must prove the material allegations by clear and convincing evidence.

Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Section 120.57(1)(h), Florida Statutes.

17. Section 409.175, Florida Statutes, provides in pertinent part:

(1)(a) The purpose of this section is to protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies, and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

\* \* \*

(8)(a) The Department may deny, suspend, or revoke a license.

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.

2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

18. According to Section 409.175(8)(b)1., Florida Statutes, quoted above, the Department has the discretion to revoke a foster home license where an intentional act materially affects the health or safety of a child. In this case, the Department's decision to revoke Respondents' foster home license was "due to the verified finding of [a]buse." If it is established that the abuse occurred and was perpetrated by Respondent Wanda Barker as alleged, the underlying act which constituted the abuse is clearly one that affects the health or safety of a child.

19. Striking the head of a child has a high probability of causing serious injury to a young child. Here, Respondent Wanda Barker slapped D. G., a four-year-old child entrusted to her care, with enough force to leave a bruise on his face for at least a day.

20. Section 39.01(2), Florida Statutes, defines abuse as follows:

"Abuse" means any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is

likely to cause the child's physical, mental, or emotional health to be significantly impaired. For the purpose of protective investigations, abuse of a child includes the acts or omissions of the parent, legal custodian, caregiver, or other person responsible for the child's welfare. Corporal discipline of a child by a parent, legal custodian, or caregiver for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child is defined in s. 415.503.

21. The term "harm" is defined in Section 415.503(9), Florida Statutes. That section provides in relevant part the following:

(9) "Harm" to a child's welfare can occur when the parent or other person responsible for the child's welfare:  
(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

\* \* \*

(4) Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered

excessive or abusive when it results in any of the following or other similar injuries:

- a. Sprains, dislocations, or cartilage damage
- b. Bone or skull fractures
- c. Brain or spinal cord damage
- d. Intracranial hemorrhage or injury to other internal organs
- e. Asphyxiation, suffocation, or drowning
- f. Injury resulting from the use of a deadly weapon
- g. Burns or scalding
- h. Cuts, lacerations, punctures, or bites
- i. Permanent or temporary disfigurement
- j. Permanent or temporary loss or impairment of a body part or function
- k. Significant bruises or welts

22. In the instant case, the evidence established and it is undisputed that Respondent was a licensed family foster home pursuant to Chapter 409, Florida Statutes, and was entrusted with the care of three small children, including D. G.

23. Moreover, the undisputed evidence established that Respondent intentionally slapped the face of D. G., a four-year-old child. This conduct by Respondent constituted inappropriate and excessively harsh disciplinary action that was likely to result in physical injury. That such disciplinary action was excessive is evidenced by the significant bruise on D. G.'s face.

24. The willful and intentional act committed by Respondent Wanda Barker as described in the findings of fact constitutes abuse within the meaning of Sections 39.01(2), Florida Statutes. Furthermore, the intentional act of Respondent Wanda Barker materially affects the health or safety of children living in her

home and, thus, constitutes the basis for revoking Respondents' family foster home license.

RECOMMENDATION

Based of all of the foregoing, it is recommended that the final order be issued revoking the Respondents' foster home license.

DONE AND ENTERED this 19th day of July, 1999, in Tallahassee, Leon County, Florida.

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CAROLYN S. HOLIFIELD  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of July, 1999.

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.