

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GWENDOLYN and WILLIAM PARKER, )  
 )  
 Petitioners, )  
 )  
 vs. ) Case No. 99-2202  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, on August 11, 1999, in Monticello, Florida.

APPEARANCES

For Petitioners: Brian T. Hayes, Esquire  
Brian T. Hayes, P.A.  
245 East Washington Street  
Monticello, Florida 32344

For Respondent: John R. Perry  
Assistant District Legal Counsel  
Department of Children and  
Family Services  
District 2 Legal Office  
2639 North Monroe Street, Suite 252A  
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioners, Gwendolyn and William Parker, should be granted a license to operate a family foster home pursuant to the provisions of Section 409.175, Florida Statutes (1997).

PRELIMINARY STATEMENT

On or about January 19, 1999, Petitioners, Gwendolyn and William Parker, filed an application with Respondent, the Department of Children and Family Services, for a license as a family foster home pursuant to Section 409.175, Florida Statutes (1997). By letter dated April 12, 1999, Respondent notified Petitioners that their application was denied "based upon the confirmed abuse report on Mrs. Parker for excessive corporal punishment and bruises and welts and the history of arrest for battery against Mrs. Parker, the last arrest being as recent as March 23, 1996."

By letter dated April 29, 1999, Petitioners requested a formal hearing to contest Respondent's denial of their application. On May 14, 1999, the request for hearing was filed by Notice with the Division of Administrative Hearings. The request was designated Case No. 99-2202 and assigned to the undersigned.

At the formal hearing of this case Petitioners testified on their own behalf and presented the testimony of Pasca Anderson and Tracey Cotton. Petitioners offered 2 exhibits. Both were accepted into evidence. Petitioners also requested that official recognition of the definition of "battery" found in Section 784.03, Florida Statutes (1997), be taken. The request was granted.

Respondent presented the testimony of Monica Miller, Vickie McCrary, and Matthew Duffy, Jr. Mr. Duffy's testimony was taken by telephone. Respondent offered 2 exhibits. Both were accepted into evidence.

No transcript of the hearing was ordered. Both parties were informed of their right to file proposed orders on or before August 23, 1999. Respondent filed a Proposed Recommended Order on August 23, 1999. Petitioners filed a Proposed Recommended Order on August 30, 1999. Although Petitioners' Proposed Recommended Order was filed late, it does not appear that Respondent will be prejudiced by consideration of the late-filed Proposed Recommended Order. The proposed orders have been fully considered in entering this Recommended Order.

#### FINDINGS OF FACT

1. Petitioners, Gwendolyn and William Parker, are husband and wife. The Parkers have been married since October 9, 1989. The Parkers have three children. Mr. Parker is the father of one of the children. The Parkers reside in Jefferson County, Florida, in a three bedroom, two bath home they own.

2. Mr. Parker is employed as a case officer at Greenwood Hills Academy, Greenville, Florida. Mr. Parker supervises youthful offenders under the Juvenile Justice Act.

3. Respondent, the Department of Children and Family Services (hereinafter referred to as the "Department"), is an agency of the State of Florida. The Department is charged with,

among other things, the authority and duty to grant licenses for family foster homes pursuant to Section 409.175, Florida Statutes (1997).

4. On or about January 19, 1999, Mr. and Ms. Parker submitted an application to the Department for licensure as a family foster home pursuant to Section 409.175, Florida Statutes (1997).

5. Mr. and Ms. Parker successfully completed a course for foster parents.

6. By letter dated April 12, 1999, the Department notified Mr. and Ms. Parker that their application was denied "based upon the confirmed abuse report on Mrs. Parker for excessive corporal punishment and bruises and welts and the history of arrest for battery against Mrs. Parker, the last arrest being as recent as March 23, 1996."

7. By letter dated April 29, 1999, Mr. and Ms. Parker requested a formal hearing to contest the Department's denial of their application.

8. Ms. Parker was adjudicated guilty of battery on October 2, 1987. She was sentenced to six months' unsupervised probation. Ms. Parker was 22 years of age when this incident took place. The battery charge arose out of a fight between Ms. Parker, who was single at the time, and another woman of approximately the same age as Ms. Parker. It has been approximately 12 years since this incident took place.

9. Ms. Parker pled guilty to, and was adjudicated guilty of, battery a second time on January 20, 1989. Ms. Parker was fined. Ms. Parker was 23 years of age when this incident took place. It has been over ten years since this incident took place.

10. Also during 1989, Ms. Parker was investigated by the Department of Health and Rehabilitative Services for excessive corporal punishment. Ms. Parker admitted hitting her then five-year-old son with a belt. The punishment left bruises on her son's arm. Although it was determined that the incident was an isolated one, the report was classified as a confirmed report of abuse. This incident took place over ten years ago. No criminal charges arose out of this incident and Ms. Parker's son remained in her custody.

11. On February 21, 1996, Ms. Parker took her son and teenage daughter to school. After dropping them off, an altercation between her daughter and several other girls took place. Ms. Parker and several female students shouted at each other, at times trading obscenities. During the incident, Ms. Parker took hold of the arm of one of the students. No harm was caused to the student.

12. Ms. Parker was charged with three counts of battery as a result of the February 21, 1996, incident. Ms. Parker was tried and found guilty of one count of battery related to

Ms. Parker's taking hold of the arm of one of the students. Adjudication of guilt was withheld and Ms. Parker was placed on six months' non-reporting probation. Ms. Parker was found not guilty of the other two counts of battery.

13. Applicants for family foster home licenses must demonstrate self control and the ability to handle stressful situations with minimal anger and without violence. Children placed in foster care normally are taken out of homes where they have been subjected to physical, emotional, and/or sexual abuse or neglect. They often display behavior that tries the patience of their caregivers. Extreme care must be exercised in placing these children to ensure that they are not further abused.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction of the parties to, and the subject matter of, this proceeding. Section 120.57, Florida Statutes (1997).

15. Section 409.175(3)(a), Florida Statutes (1997), provides that no child over whom the Department has authority may be placed with any person or family foster home until that person or family foster home has "first procured a license from the department to provide such care."

16. The term "license" is defined in Section 409.175(2)(f), Florida Statutes (1997), in relevant part, as follows:

. . . . A License under this act is as public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or

trier of law at any administrative proceeding or court action initiated by the department.

17. Section 409.175(4)(a), Florida Statutes, requires that the Department adopt rules setting out the requirements for licensure and operation of family foster homes. Pursuant to this authority, the Department has adopted Rule 65B-6.009(5)(b), Florida Administrative Code, requiring that foster care providers "demonstrate ability to perform the duties required."

18. Of the highest and utmost importance is the duty of foster home providers to provide for the protection and well-being of children placed in family foster homes.

19. While the offenses which Ms. Parker has been found to have committed in 1987 and 1989 did not involve any serious injury and took place at least ten years ago, the incident in 1996 is a relatively recent incident and involved a teenage student. While there was no injury involved, Ms. Parker acted inappropriately when she touched the student and acted with anger.

20. All of the incidents which Ms. Parker has been involved in, including the abuse report from 1989, involve a lack of self-control. The incidents are of sufficient consequence to raise doubt about the appropriateness of placing children who have been taken out of abusive and/or neglectful homes under Ms. Parker's care.

21. A post-hearing exhibit was filed on behalf of the Parkers. The exhibit, which has been marked as Petitioners'

Exhibit 3, purportedly shows the criminal history of homes which received family foster home licenses. It has not been represented whether the Department has any objection to the exhibit. Regardless, the exhibit is hearsay. It is also insufficient to prove that the Department has issued licenses to individuals under circumstances similar to the circumstances of this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Department of Children and Family Services denying the application for licensure as a family foster home filed by Gwendolyn and William Parker.

DONE AND ENTERED this 1st day of October, 1999, in Tallahassee, Leon County, Florida.

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LARRY J. SARTIN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of October, 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.