

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEBBY SCLAFANI,)	
)	
Petitioner,)	
)	
vs.)	Case No. 99-3441
)	
DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 12, 1999, at West Palm Beach, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mary Jane Fitzgerald, Esquire
Harvey Building, Suite 1300
224 Datura Street
West Palm Beach, Florida 33401

For Respondent: Colleen Farnsworth, Esquire
Department of Children and
Family Services
111 South Sapodilla Avenue, Suite 201
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

Whether Petitioner's application to adopt L. H. should be granted.

PRELIMINARY STATEMENT

By letter dated June 30, 1999, Respondent, Department of Children and Family Services (Department), notified Petitioner, Debby Sclafani (Sclafani), that her application to adopt had been denied. By letter dated July 23, 1999, Sclafani requested an administrative hearing. The case was forwarded to the Division of Administrative Hearings on August 11, 1999, for assignment to an Administrative Law Judge. The case was originally assigned to Administrative Law Judge William J. Kendrick and was transferred to Administrative Law Judge Susan B. Kirkland to conduct the final hearing.

At the final hearing Petitioner's Exhibits 2, 3, and 5 were admitted in evidence. Respondent's Exhibits 1-7 were admitted in evidence.

No transcript was ordered. The parties filed proposed recommended orders which have been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Debby Sclafani (Sclafani), is a former foster parent for Respondent, Department of Children and Family Services (Department). On March 4, 1998, L. H., a foster child born on December 18, 1993, was placed in Sclafani's home.

2. L. H. had been sexually abused when she lived with her biological mother. When she came to live with Sclafani, L. H. acted out sexually, including masturbating. L. H. also engaged

in self-mutilating behavior and had nightmares. L. H. was being seen by Marion Koch, a therapist at the Center for Children in Crisis. In midsummer of 1998, Sclafani also began seeing a therapist, Gloria Watt, at the Center for Children in Crisis.

3. During the therapy sessions with Sclafani, Ms. Watt became concerned with Sclafani's preoccupation with L. H.'s sexual behavior. Ms. Watt told the therapist that she had asked L. H. which finger she used when masturbating and to demonstrate what she did. The child complied with Sclafani's request. If Sclafani caught L. H. masturbating, she would take the child's stuffed toys away as punishment.

4. Ms. Koch and Ms. Watt attempted to educate Sclafani about parenting and child development, including ways to redirect L. H.'s sexual behavior. The therapists told Sclafani to stop focusing on L. H.'s masturbation, but Sclafani was unable to deal with the child's sexual behavior and could not follow the suggestions of the therapists.

5. In September 1998, the Center for Children in Crisis shut down, and the therapy sessions with L. H. and Sclafani stopped.

6. Sometime during the fall of 1998, the parental rights of L. H.'s mother were terminated. It was the Department's policy that once a parent's rights are terminated, the foster parent should not talk to the child again about the parent. However,

after L. H.'s mother's rights were terminated, Sclafani continued to pray with L. H. for L. H.'s mother's sins.

7. Sometime after L. H.'s mother's parental rights were terminated, L. H.'s father's parental rights were also terminated. L. H. became a candidate for adoption, and her case was transferred to the adoption section of the Department. Sclafani applied to the Department to adopt L. H.

8. L. H. was given a pre-adoptive psychological evaluation by Dr. Shelia King. L. H. told Dr. King that Sclafani spanked her and slapped her face. L. H. had been told by Sclafani not to tell the doctor that she had been spanked. When L. H. was returned home after the evaluation with Dr. King, L. H. told Sclafani, "The doctor knows that you whoop me."

9. When Sclafani became L. H.'s foster parent, she signed an "Agreement to Provide Substitute Care for Dependent Children" and agreed to abide by the following provisions of the agreement:

1. This child is placed in our home on a temporary basis and is at all times under the supervision of the Department.
2. We are fully and directly responsible to the Department for the care of the child.
3. We will take no action to acquire legal custody or guardianship of the child.
4. We will hold confidential all information about the child and his family and will discuss such information only with a representative of the Department or with appropriate specialists at the request of the Department.

* * *

8. We will participate with the Department in planning for the child, which may include adoption placement, transfer to another foster home, or return to parent(s) or relative(s).

* * *

15. We will comply will all requirements for a licensed substitute care home as prescribed by the Department.

16. We will immediately report any injuries or illnesses of a child in our care to the Department.

* * *

19. We will abide by the Department's discipline policy which we received during MAPP training.

10. Sclafani agreed to and executed the Department's discipline policy which states, "The substitute care parents must not use corporal punishment of any kind."

11. Sclafani admitted to spanking L. H. on several occasions.

12. The Department referred Sclafani to Dr. Shelia King for a psychological evaluation on January 5, 1999. In her evaluation report, Dr. King stated:

. . . [Sclafani] would come to expect a child to fill her needs as opposed to her filling the child's. Should a conflict arise, Ms. Sclafani would put her own needs first. As an aside, she would not accept or believe this was occurring. Due to her inability to take care of herself emotionally, she will become depressed and withdrawn from time to time.

* * *

It must be noted that no small measure of concern results from the fact that Ms. Sclafani attempted to prep this child prior to her (the child's) evaluation by admonishing her not to advise this psychologist of the fact that Ms. Sclafani spans her upon occasion. This indicates that while aware that this is not a behavior which would be acceptable to the Department of Children and Families, she nevertheless will engage in it as a method of discipline. More distressing is that she then not only will lie about it herself but also encourage the child to do something which is clearly wrong and tell a lie by omission in order to protect herself. A more appropriate response would be to merely admit that she believes spanking is an appropriate form of punishment and seek advice on how to handle misbehavior in a more acceptable fashion.

* * *

The area of concern most prominent in this evaluation is Ms. Sclafani's relationships. Testing indicates someone who is narcissistic and dependent upon others, including her child, for validation and self-esteem. Her history suggests a lack of boundaries between her own parent and herself. Some of Ms. Sclafani's comments suggest this same lack of awareness and boundaries with her foster child. While she does seem open to listening to interpretations and looking at her own behavior, testing also indicates that while she may appear to do so, anger and resentment build, eventually causing her to deny any problems or to reach out for help, and inhibit what appears to be genuine insight.

13. Dr. King recommended that the adoption proceedings be delayed and that Sclafani enter individual psychotherapy. Sclafani had begun working at a child care center, and her medical benefits did not begin until April 1999. Due to the lack

of insurance, Sclafani postponed seeing a therapist until April. She attended therapy sessions two times.

14. In May 1999, Sclafani engaged in a verbal altercation with her supervisor at the day care center where she worked. She told her supervisor that she was giving her thirty-day notice and quitting her job. The supervisor informed her that was not necessary because she was fired. The bottom line was that Sclafani was without a job and medical benefits. She had inherited some money from her father's estate and decided to take a vacation.

15. When the Department learned that Sclafani was without a job, a decision was made to remove L. H. from Sclafani's foster home. On May 21, 1999, L. H. was removed from her day care center and placed in another foster home with a couple who have applied to adopt her.

16. Sclafani was asked to pack a suitcase for L. H. with her clothes and other belongings. Sclafani did pack the suitcase, but she also hid notes to the child among the clothes in the suitcase.

17. A few days after L. H. was removed from Sclafani's care, Sclafani met with L. H., her guardian ad litem, and representatives from the Department to bring closure to the placement. Sclafani became very emotional during the meeting, which upset the child.

18. On July 1, 1999, Sclafani went to the day care center where L. H. had been placed by her new foster parents to see L. H. Sclafani told the assistant director of the day care center that she was inquiring about the pre-kindergarten class for a neighbor's child. The assistant director took her to the classroom where L. H. was in class. Sclafani immediately walked over to L. H. and asked her if she were happy. Sclafani told L. H. that if L. H. was not happy that she would fight for her. L. H. began to cry hysterically. The assistant director realized who Sclafani was and asked her to leave the building.

19. On the same day as the day care incident, L. H. and her foster father were eating ice cream outside an ice cream shop located in a shopping plaza. L. H. told her foster father that she saw Sclafani, who was in her car turning up a lane in the parking lot. A few minutes later, Sclafani drove by again in the opposite direction, waved at L. H., and left the shopping plaza.

20. Prior to the incidents at the day care center and the shopping plaza, L. H. had been transitioning to her new home very well. Following the incident at the day care center, L. H.'s play in therapy became aggressive, and L. H. told her therapist that she was afraid Sclafani would take her and expressed anxiety about the likelihood of this happening.

21. Because of Sclafani's actions, the Department sought a restraining order against Sclafani. On July 29, 1999, Judge Ronald V. Alvarez entered an Order Granting Emergency Petition

for Injunction, ordering that Sclafani refrain from contacting L. H. wherever the child may be found while the court had jurisdiction over the child. In the order, the court stated:

. . . Contact with Ms. Sclafani will hinder the child's future attachment with another family and create more, further damaging confusion in the child's life. The child's permanency is undermined by Ms. Sclafani's contact or attempted contact with her. The granting of a protective order is necessary to prevent such acts from happening. Permanency with her new family cannot be attained until [L. H.] is free to live without the fear of interruption by Ms. Sclafani. This order is necessary to protect the child's emotional and mental health from being at risk of grave and lasting harm and to support her permanency.

21. Since L. H. has been removed from Sclafani's home, she has ceased masturbating and no longer self-mutilates. She is happy and well adjusted in her new home. According to her guardian ad litem, L. H. has blossomed and is now being a child in contrast to her actions when she was with Sclafani, where L. H. appeared to be "cowed" by Sclafani.

22. L. H. has always wanted a daddy, and now she has a foster father in her new home. Sclafani had chosen a friend to be L. H.'s father figure. Unfortunately, her choice had an active, non-expiring domestic violence restraining order against him.

23. L. H. loves her new foster parents and wants to be adopted by them. The new foster parents love L. H. and want to

adopt her. Since L. H. has been with her new foster parents, she has not asked to see Sclafani.

24. Sclafani had listed her pastor and his wife as a reference on her application for adoption. The pastor and his wife indicated on the reference that they did not know Sclafani well enough to make a recommendation that she was qualified to adopt a child.

25. In order to process the adoption application, the Department looks at the applicant's medical history. Sclafani's medical records reflect a high frequency of doctor visits and current, on-going prescriptions for anti-anxiety medications.

26. The evidence was unclear if Sclafani had found gainful employment since the termination of her employment in May 1999. The evidence did show that while she was a foster parent for L. H. that she worked for three different employers and was unemployed when L. H. was removed from her care.

CONCLUSIONS OF LAW

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

28. Petitioner, as the applicant, has the burden to establish entitlement to the relief sought. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977) and Florida Department of Transportation v. J.W.C., Co., 396 So. 2d 778, 788 (Fla. 2d DCA 1981).

29. Section 409.145, Florida Statutes, provides that the Department is to conduct, supervise, and administer a program for dependent children. Among the goals to which the Department's services are to be directed is the permanent placement of children for which reunification with their families would not be in the best interests of the child.

30. Rule 65C-16.001(17), Florida Statutes, defines the suitability of intended placement of a child for adoption as including:

[T]he fitness of the intended placement with primary consideration given to the welfare of the child and the fitness and capabilities of the adoptive parents to function as parents for a particular child.

30. Rule 65C-16.005(6), Florida Administrative Code, provides guidelines for the evaluation of applicants wishing to adopt a child and states:

(6) The best interest of the child is the paramount concern in making an adoptive placement decision. Factors to be considered in making adoptive placement decisions include:

(a) The child's choice;

* * *

(f) Marital Status.

1. Families in which there is a mother and a father are considered important for the well-rounded growth and development of a child. The department will give primary consideration to the applications of couples who have been married a sufficient length of time to establish stability. . .

2. The department will accept the application of single persons seeking to

adopt a child. Single parent placements will be considered when a suitable two-parent home is unavailable and the alternative for the child is extended foster home care, when there is an already existing relationship which is meaningful and healthful for the child or when the particular needs of a specific child can best be met by a single parent.

* * *

(h) Income. The family must have income and resources to assure the financial stability and security to meet expenses incurred in adequate care of the family... . Management of current income and the ability to plan for future changes in income so that the child's social, physical and financial needs will be met, are as important as the amount of income.

* * *

(j) Health. The physical, mental and emotional health of the prospective adoptive household must not jeopardize the safety and permanency of the child's placement and will be considered in determining the best interest of the child.

* * *

(1) Working parents. It is desirable that one parent be free to devote full time to the care of the child for a period of time after placement. The exact length of time is determined by the needs and age of the child and the needs of the child must be given priority over the work situation of the parent.

31. Considering the factors used to evaluate an applicant who wishes to adopt, it is not in the best interests of L. H. to approve Sciafani's application to adopt. The child wishes to be adopted by her new foster parents, and she has adjusted well and

is happy with them. Sclafani is a single woman while the new foster parents include a mother and a father. L. H. has always wanted a daddy. It is not clear from the evidence whether Sclafani is gainfully employed at the present. The evidence did show that she held at least three different jobs while she was caring for L. H., and at the time that L. H. was removed from her custody Sclafani did not have a job or medical benefits. Sclafani's emotional problems do not make her a good candidate to adopt a child. There is a restraining order against Sclafani from having any contact with L. H., resulting from Sclafani's actions regarding L. H. after L. H. was placed with new foster parents. Additionally, numerous concerns were raised by Dr. King in her psychological evaluation report.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered denying Debby Sclafani's application to adopt.

DONE AND ENTERED this 9th day of November, 1999, in Tallahassee, Leon County, Florida.

SUSAN B. KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of November, 1999.

COPIES FURNISHED:

Mary Jane Fitzgerald, Esquire
Harvey Building, Suite 1300
224 Datura Street
West Palm Beach, Florida 33401

Colleen Farnsworth, Esquire
Department of Children and
Family Services
111 South Sapodilla Avenue, Suite 201
West Palm Beach, Florida 33401

Debby Sclafani
7581 West Lantana Road
Lake Worth, Florida 33467

Samuel C. Chavers, Acting Agency Clerk
Department of Children and
Family Services
Building 2, Room 204B
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

John S. Slye, General Counsel
Department of Children and
Family Services
Building 2, Room 204
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

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.