

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND )  
FAMILY SERVICES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 00-0096  
 )  
BONNIE and STEVEN PRICE, JR., )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Tampa, Florida, on April 6 and May 12, 2000.

APPEARANCES

For Petitioner: Raymond R. Deckert  
District Legal Counsel  
Department of Children  
and Family Services  
4000 West Martin Luther  
King, Jr., Boulevard  
Room 500  
Tampa, Florida 33614

For Respondent: Bonnie and Steven Price, pro se  
Post Office Box 1015  
Mango, Florida 33550

STATEMENT OF THE ISSUE

The issue is whether Petitioner should revoke Respondents' foster parent license.

PRELIMINARY STATEMENT

By undated Administrative Complaint, Petitioner alleged that Respondents failed to supervise a four-year-old child placed in their care while she was swimming in Respondents' pool and the child nearly drowned. The Administrative Complaint alleges that this incident constitutes a "negligent act materially affected the health and safety of children in the home," in violation of Section 409.175(8)(b)1 and 2, Florida Statutes, and Rule 65C-13.011(12)(e)2, Florida Administrative Code.

The Administrative Complaint also alleges that Respondents failed to inform Petitioner that their adult son was living in their home and serving as a sitter for foster children at the home while the son was under house arrest for burglary and other felonies, in violation of Section 409.175(8)(b)3, Florida Statutes, and Rules 65C-13.011(9) and 65C-13.009(6)(b), Florida Administrative Code.

At the hearing, Petitioner called seven witnesses and offered into evidence five exhibits. Respondent called four witnesses and offered into evidence three exhibits. All exhibits were admitted except Petitioner Exhibit 2 and Respondent Exhibits 2 and 3.

The parties did not order a transcript.

FINDINGS OF FACT

1. Petitioner first licensed Respondents as foster parents on December 22, 1993. Initially, they were licensed to care for

their two nephews and a niece. On May 22, 1996, Petitioner relicensed Respondents so that they could provide foster care to children unrelated to them. The license provided that they could provide foster care to no more than four children.

2. During their tenure as foster parents, Respondents demonstrated average competence. At the same time, Petitioner's need for foster parents has become more urgent. In this district, the number of foster children placed by Petitioner has increased from 250 children to 1200 children in the past 18 years.

3. The combination of Respondents' competence and Petitioner's urgent need for foster parents resulted in ten foster children living in Respondents' six-bedroom home at the time of the incident. All of these foster children had been placed in Respondents' home by Petitioner.

4. Respondents' home had a swimming pool in a screened enclosure attached to the house. A door from the kitchen led to the swimming pool.

5. On September 3, 1999, five of the foster children were in the swimming pool for several hours during the afternoon. Three of the children were nine years old, and two were four years old. One of the four-year olds was Cheyenne. Cheyenne could not swim and typically wore inflated floaters over each arm to help her remain afloat in the water.

6. Neither Respondent was in the swimming pool area with the children, nor was their 19-year-old son, who sometimes helped supervise the children. No adult was present in or at the pool with the children during this three-hour period. In fact, during the entire period, an adult came out to the pool only one time.

7. At one point during the afternoon, one of the nine-year-old foster children removed the floaters from Cheyenne's arms. At some later point, Cheyenne entered the pool and sank to the bottom of the deep end. Cheyenne's sister noticed Cheyenne at the bottom of the pool and screamed for help. One of the nine-year-olds dived into the pool and dragged Cheyenne out of the water. As she lay on the pool deck, Cheyenne was not breathing.

8. Hearing the scream, Respondents ran out to the pool area. Respondent Steven Price and his 19-year-old son had been in one of the bedrooms where a nonworking television and dresser had fallen over.

9. On reaching the pool, Respondent Steven Price administered CPR and revived Cheyenne. EMS personnel transported Cheyenne to the hospital, but fortunately she suffered no injury.

10. Petitioner removed the other children and later began this proceeding to revoke the licenses of Respondents to care for foster children.

11. The children testified that Respondents had left them, unsupervised, swimming in the pool on other occasions.

12. The acts and omissions of Respondents on the afternoon

13. of the near-drowning constitute negligent acts materially affected the health and safety of the foster children entrusted to them.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes.)

15. Section 409.175(8)(b)1 authorizes Petitioner to revoke a license for an "intentional or negligent act materially affecting the health or safety of children."

16. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

17. Petitioner has proved the material allegations of neglect by clear and convincing evidence. Under the circumstances it is unnecessary to address the remaining allegations of the Administrative Complaint.

#### RECOMMENDATION

It is

RECOMMENDED that the Department of Children and Family Services enter a final order revoking the licenses of Respondents to serve as foster care parents.

DONE AND ENTERED this 19th day of June, 2000, in  
Tallahassee, Leon County, Florida.

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ROBERT E. MEALE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of June, 2000.

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 must be filed with the agency that will issue the final order in this case.