

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BILLIE AND WILLIE MAE BARNES,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. 00-0730
	)	
DEPARTMENT OF CHILDREN AND	)	
FAMILY SERVICES,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, this cause came on for final hearing before P. Michael Ruff, Administrative Law Judge of the Division of Administrative Hearings, in Ocala, Florida, on September 18, 2000.

APPEARANCES

For Petitioner: No appearance

For Respondent: Ralph J. McMurphy, Esquire  
Department of Children and Family Services  
1601 West Gulf Atlantic Highway  
Wildwood, Florida 34785

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether the Petitioners' foster home license should be denied on the basis that the abuse registry examined during the re-licensure process disclosed a verified finding of abandonment of a child, recorded against the Petitioners as perpetrators, under authority of Section 409.175(8), Florida Statutes.

### PRELIMINARY STATEMENT

This cause arose upon the denial of a re-licensure of the Petitioners as operators of a foster home. The denial letter is dated October 8, 1999. The license was denied on the basis that there was an intentional or negligent act materially affecting the health or safety of children in a foster home. Specifically, it is alleged that on March 26, 1999, the Petitioners, or one of them, left their adopted child, who had been in their care and custody, at the office of the Department of Children and Family Services in Ocala, Florida, abandoning the child with no provisions for the child's welfare and support. The Petitioners elected to formally challenge this denial and this proceeding ensued.

The cause came on for hearing as noticed. The Petitioners failed to appear at hearing and the counsel for the Department of Children and Family Services (Department), after waiting approximately one-half hour for the Petitioners to appear proceeded to present its evidence in support of its burden of proof. The Department presented the testimony of Angela Juaristic, James Grant, and Mary Kirnes, Department personnel charged with foster care supervision, licensing, and investigation. The Respondent's Exhibits numbered one through three were admitted into evidence. Upon conclusion of the proceedings, the Department submitted a proposed recommended order

which has been considered in the rendering of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioners were licensed as a foster home and sometime in the latter part of 1999, their licensure came due for renewal.

2. They were advised by a denial letter dated October 8, 1999, from the Department of Children and Family Services (Department), that their home would not be re-licensed as a foster home.

3. The initial agency decision to this effect was because the Petitioners, or at least Mr. Barnes, had an entry on the Department's abuse registry indicating a verified finding of abandonment against the Petitioners.

4. The finding of abandonment involved the Petitioners' adopted son, D.B., being left at the office of the Department's foster care staff.

5. Apparently the Barnes had had a great deal of trouble with D.B.'s behavior and had been unable to constructively discipline him and improve his behavior. This apparently made them very frustrated such that on March 26, 1999, Mr. Barnes called the Department regarding D.B., to inform the Department that they were simply unable to handle the child. Mr. Barnes talked to James Grant, supervisor of the foster care unit in the Department's Ocala office, and a witness for the Department in this case.

6. Mr. Grant offered to provide assistance to the family to help resolve the issues between the Petitioners and their child. That offer of assistance was refused, however.

7. Later that day, Mr. Barnes took D.B. to the Ocala offices of the Department's foster care unit and apparently left him sitting in the lobby of the building which houses the foster care staff.

8. Mr. Barnes did not speak to Mr. Grant or anyone else in a responsible position before leaving the building and permanently abandoning the child. He only informed the receptionist that he was leaving the child.

9. Because of the Petitioners' actions in leaving the child sitting in the lobby, a call was placed to the abuse hotline that same day. Joanne Hunter was assigned as the investigator of the abuse report. According to the final report of the investigation that was admitted into evidence, the case was closed with a verified indication of abandonment and neglect, the result of D.B. being abandoned in the Department's lobby.

10. On March 27, 1999, a shelter hearing was held before a circuit judge and D.B. was placed in the custody of the Department due to the Petitioner's act of abandonment at the Department's office. Subsequently, the child was adjudicated dependent and placed in a long-term foster care placement.

11. The child remained in that foster care placement at the time of the instant hearing. Certified copies of the judge's

shelter order and the order of adjudication and disposition have been entered into evidence in this case.

12. Prior to their adoption by the Petitioners, D.B. and his two siblings had been abused and neglected by their natural parents. They had, therefore, been placed in foster care by the Department. D.B.'s natural parents' parental rights had been terminated because of the uncorrected and continuing abuse and neglect of D.B. and his two siblings.

13. The Petitioners had adopted D.B. and his two siblings. Children who have been abused and neglected or abandoned by their parents are especially vulnerable and require the greatest degree of stability in their home life that is possible.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes, and Section 120.569, Florida Statutes.

15. Section 409.175(8), Florida Statutes, provides the Department with authority to deny a license for an intentional or negligent act that materially affects the health or safety of children in the home. The Department may also deny re-licensure for the violation of the requirements of Section 409.175, Florida Statutes, or the regulations adopted thereunder.

16. The Department has adopted Chapter 65C-13, Florida Administrative Code, in accordance with Section 409.175, to

regulate the licensure and operation of family foster homes such as that of the Petitioners.

17. Section 65C-13.010, Florida Administrative Code, sets out the foster parents' responsibilities as team members with the Department, the child, and the child's family. The responsibilities to foster children are set out in Section 65C-13.010(1), Florida Administrative Code. In Section 65C-13.010(1)(b)5.m., Florida Administrative Code, it is provided:

The substitute [care parent] must not threaten a child with removal or with a report to authorities as punishment for behavior. Threatening the child with removal plays into the child's convictions that they are doomed to a series of placements and rejections. The counselor's first task is to identify the child's specific behaviors which are causing the substitute parent to request removal. Once problems are identified the counselor along with the substitute parents and child assess ways to correct the problem. If problems are not corrected and the substitute family continues to request removal, a conference should be held by the counselor with the substitute family and the child to discuss the possibility of removal and replacement. Involving the child in the planning may help him feel he has some control of his life.

18. Pursuant to Section 409.175(2)(f), Florida Statutes, a foster home license is a public trust, not an entitlement. When the Petitioners adopted D.B., the adopted created a relationship between them and D.B. just as if he were their natural child. See Section 63.172(1)(c), Florida Statutes. By abandoning D.B. in the Department's offices and consigning him to long-term foster care

away from his natural siblings and adoptive family, the Petitioners demonstrated callous disregard for the mental and emotional health of the child. In addition, it showed disregard for the emotional welfare of D.B.'s two siblings whom Petitioners had also made their own through adoption. It is not significant that only Billie Barnes took the child to the offices and abandoned him, it was obviously the adoptive child and foster child of both Petitioners; and the abandonment could not have occurred without the assent and condonation of both Petitioners.

19. The Department, thus, had cause to deny re-licensure of the Petitioners as a licensed family foster home. The sanction of denial of re-licensure, as opposed to a suspension or lesser sanction is justified by the serious nature of the Petitioners' conduct and breach of their legal duty and public trust. If Petitioners show no more regard for the welfare of foster children than they did in this instance, the Department cannot in good faith place vulnerable foster children in their home to run the risk of being rejected in the same way.

20. Further, since the Petitioners failed to appear at the hearing or offer any justification for their failure to appear, there was no evidence produced on their behalf which shows mitigation or explanation concerning the cause for the violation in question or the sanctions sought to be imposed by the Department.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED that a final order be entered by the Department of Children and Family Services denying the re-licensure of the Petitioners as a licensed family foster home.

DONE AND ENTERED this 6th day of December, 2000, in Tallahassee, Leon County, Florida.

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P. MICHAEL RUFF  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of December, 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 should be filed with the agency that will issue the Final Order in this case.