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STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS
LMK

MARY LYLES,

Petitioner,

CASE NO. 00-2961
RENDITION NO. DCF-01-107-FO
(Nonrenewal of licensure)

v.

DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,
(DISTRICT 11)

Respondent.

_____ /

FILED

MAR 15 2001

DCF Department Clerk

**FINAL ORDER REJECTING RECOMMENDED ORDER AND DENYING RENEWAL OF
FAMILY FOSTER HOME LICENSURE AT PREVIOUS ADDRESS
WITHOUT PREJUDICE TO PETITIONER'S APPLICATION FOR FOSTER HOME
LICENSURE AT CURRENT ADDRESS**

THIS CAUSE is before me as the result of the attached Recommended Order that was issued by an Administrative Law Judge who had been assigned to hear the case by the Division of Administrative Hearings. The order recommends that the Department grant Ms. Lyles' application for renewal of a foster home license. I respectfully decline to accept that recommendation, not only because I reject certain conclusions of law contained within the Recommended Order, but also because the issue is moot.

The issue is moot because, at paragraph 18, the Administrative Law Judge found that Ms. Lyles no longer lives at the premises to which the foster home license applied. Instead, Ms. Lyles lives at another address and, according to Section 409.175(4) (a)3.,

Florida Statutes, a foster home license cannot be issued for that new address until the Department has assessed:

(t)the appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care and well-being of the children (to be) served.

Also, I reject paragraph 21 of the Recommended Order, where the Administrative Law Judge concludes that “(t)here is no evidence that any condition existed in (Ms. Lyles’) home that constituted a danger to the children.” This conclusion belies the application of the legally relevant facts of this case to the governing rule that the Administrative Law Judge embraced in paragraph 20. That rule requires, inter alia, that foster homes have a safe outdoor play area. In the instant case, the outdoor play area was littered with construction debris, a replacement bathtub and more than one replacement toilet, and several trash bags full of beer and soda cans (Paragraph 5). Whether the children had “access” to this outdoor play area is irrelevant.

I reject the first sentence of Paragraph 22 for the same reason. Like the first sentence of Paragraph 21, the first sentence of Paragraph 22 states that there was “no evidence” that the situation in Ms. Lyles former residence created a hazard to the health and physical well-being of the foster children there. This sentence suggests that expert testimony is required to establish whether the renovations created a hazard in this case because, otherwise, the sentence is inconsistent with the Administrative Law Judge’s findings of fact. In addition to the construction debris and the trash bags full of beer and soda cans in the outdoor play area, there was a hole in the kitchen ceiling (Paragraph 3); the house was very cluttered (Paragraph 4); and Ms. Lyles was twice unable to locate the

keys that would have allowed her to open the door while she was inside the house with the children.

The Administrative Law Judge minimized the danger because, in her opinion, the situation was "temporary." As illustrated by the finding of fact at paragraph 4, however, the speed with which the renovations would have been completed was a situation over which Ms. Lyles, as a tenant, "had no control..." In these respects, therefore, the conclusion of law at paragraph 27 belie the findings of fact. The Department did not fail to prove its allegations regarding whether the foster home met and maintained minimum standards. Consequently, I reject paragraph 27.

The granting of family foster home licenses is governed by Section 409.175(2), Florida Statutes. Such licenses are privileges and public trusts. Id. According to Section 409.175(2)(f), no petitioner is ever "entitled" to receive one, and the district did not abuse its discretion in denying renewal under the facts of the instant case.

Having said that, I note that Ms. Lyles apparently generated significant respect for her child caring skills and her concern for the children in her care under trying circumstances during a very tragic time in her life. She generated this respect not only in the Administrative Law Judge but also with a Department caseworker who visited her home a number of times before renovations began (Paragraph 17). For these reasons, and although I must deny renewal because Ms. Lyles has moved to other premises, the denial is without prejudice to any application that Ms. Lyles may make to operate a foster home license in her new home.

Accordingly, it is hereby **ORDERED** that the renewal of the foster home license is **denied** in Case No. 00-2961, but the denial is without prejudice to any application that Ms. Lyles may make for a foster home license where she now resides.

DONE and ORDERED this 12th day of March, 2001 in Tallahassee, Leon County, Florida.


KATHLEEN A. KEARNEY, Secretary
Department of Children and Families

Copies of this Final Order are being furnished to:

Linda M. Rigot
Administrative Law Judge
Division of Administrative Hearings
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NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the rendition of this final order.¹

¹ The date of the "rendition" of this Final Order is the date that is stamped on its first page. The Notices of Appeal must be received on or before the thirtieth day after that date.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing **FINAL ORDER** has been sent by U.S. Mail or by hand delivery to each of the persons named above on this 15th day of March, 2001.



Virginia Daire, Agency Clerk
Department of Children and Families
1317 Winewood Blvd. Bldg. 2 Room 204X
Tallahassee, FL 32399-0700