

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THOMAS AND TAMARA HARRINGTON,)
)
 Petitioners,)
)
vs.) Case No. 00-4825
)
DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 8, 2001, in Jacksonville, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Diane Cleavinger.

APPEARANCES

For Petitioner: Keith G. Andrews, Esquire
337 East Bay Street
Jacksonville, Florida 32202

For Respondent: Robin Whipple-Hunter, Esquire
Department of Children and
Family Services
Post Office Box 2417
Jacksonville, Florida 32231

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioners' application to become adoptive parents should be granted.

PRELIMINARY STATEMENT

By letter dated October 20, 2000, Respondent informed Petitioners that, based on the eligibility criteria contained in Rules 65C-16.005(11)(a)(2) and 65c-16.007(1)(c), Florida Administrative Code, Respondent had denied Petitioners' application to become adoptive parents. The letter gave as its reason for the denial 1989 statements attributed to Ms. Harrington contained in an agency abuse report which only collaterally involved Ms. Harrington.

By Request for Administrative Hearing filed November 20, 2000, Petitioners demanded a formal hearing. The case was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioners testified in their own behalf and called one witness. Petitioners also introduced three exhibits into evidence. Respondent called one witness and offered into evidence three exhibits.

After the hearing Petitioners filed Proposed Recommended Orders on February 16, 2001. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. In the early part of the year 2000, Petitioners filed an application to become adoptive parents. On March 20, 2000, Respondent denied Petitioners' application.

2. The decision to deny Petitioners' application was based entirely on an abuse investigation from 1989. The subject of the abuse report was Michael Jones who is the ex-husband of Tamara Harrington. The incident occurred while Mr. Jones' mother, a responsible person, was watching Ms. Harrington's son and daughter while Ms. Harrington was at work. The alleged abuse consisted of fondling by Mr. Jones of Ms. Harrington's daughter who was then 12 years old.

3. The abuse allegation was confirmed against Michael Jones. The report was not confirmed against Tamara Harrington. She had not been the subject of the abuse report. She had not been present when the alleged abuse occurred and was not responsible for its occurrence. She had no prior knowledge that Mr. Jones might behave in such a manner. In fact, the only reason her name was in the report was that she was the mother of the victim of the report. She never saw the report and did not know what was in it. Because Ms. Harrington was not the subject of the abuse report she never had an opportunity to refute the statements. After the 1989 incident, neither Ms. Harrington or her children saw Mr. Jones again.

4. The Department made its decision based upon the 12 year old hearsay statements reported by the daughter to have been allegedly made by Tamara Harrington after the abuse incident occurred. Specifically, what allegedly occurred when she was

made aware of the incident by her daughter was that she said, "It's okay, he just wanted to see how big you were getting." These statements were unknown to Ms. Harrington. Ms. Harrington denies making any statement like the one contained in the report.

5. Indeed the report is incorrect that these alleged statements were made to the daughter. According to the daughter, who is now in her twenties, the statements were reported to her by her step-mother as being said to her father at a time when Ms. Harrington had come to check on her daughter. The daughter did not believe that her mother would ever say anything like what she reported. She testified that, at the time of the abuse, she had told her mother the touching was an accident and only involved her thigh. The report indicates Mr. Jones fondled the daughter's bust and buttocks. The daughter also reported, in 1989, that her mother was uncaring. The daughter made these statements because she was very angry with her mother for divorcing her father. None of the statements were true. In fact, the daughter testified that her mother was a very loving and caring individual, who was an excellent parent to both her and her brother. She also testified that Ms. Harrington would make an excellent parent for an adoptive child.

6. In all other respects, the Petitioners appear to be ideal candidates for adoptive parents. The home study approved both the Petitioners as potential adoptive parents. Ms. Harrington has already been approved for a license to provide home day care. In fact, the evidence did not demonstrate any credible basis for denying their application for adoption. Therefore, Petitioners' application to become adoptive parents should be approved.

CONCLUSIONS OF LAW

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

8. Rule 65C-16, Florida Administrative Code, states that the aim of Respondent is to select families who will be able to meet the ongoing and dynamic physical, emotional, social, and financial needs of a child placed in their home in order to safeguard the child from further loss and separation of primary caretakers. Additionally, the Respondent's goal is to select people who are stable, have common sense, are mature, loving and employ good child rearing practices.

9. The burden of proof is on Petitioners as the applicants. Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

10. In this case, Petitioners have met that burden and are entitled to approval of their application to become adoptive parents.

RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is

RECOMMENDED:

That the Department of Children and Family Services enter a final order granting and approving Petitioners' application to become adoptive parents.

DONE AND ENTERED this 2nd day of April, 2001, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of April, 2001.

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.