

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RAY HILL AND GLORIA HILL,)	
)	
Petitioner,)	
)	
vs.)	Case No. 01-3087
)	
DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was held in this case before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings, on September 14, 2001, and November 27, 2001, in Quincy, Florida.

APPEARANCES

For Petitioner: Ray and Gloria Hill, pro se
812 West Laura Street
Quincy, Florida 32351

For Respondent: John R. Perry, Esquire
Department of Children and Family Services
2639 North Monroe Street, Room 252-A
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUE

May the Department of Children and Family Services revoke Petitioners' foster home license for cause?

PRELIMINARY STATEMENT

The Department of Children and Family Services (DCF) referred this case to the Division of Administrative Hearings on or about August 6, 2001. Despite the style of this cause, DCF had the duty to go forward and the burden of proof herein.

The disputed-fact hearing began on September 14, 2001. At that time, DCF presented its case-in-chief in the testimony of J.B. and A.W. Mr. and Mrs. Hill testified on their own behalf at that time and had one exhibit (R-1) admitted in evidence. However, due to the sudden and unexpected refusal of one of Mr. and Mrs. Hill's witnesses to appear without a subpoena, the parties agreed to suspend the hearing until that witness's testimony could be compelled. After considerable difficulty in compelling the attendance of the recalcitrant witness, Sydney Smith, her testimony was presented on November 27, 2001. No rebuttal was offered by DCF.

A Transcript was provided by DCF on December 19, 2001. Mr. and Mrs. Hill filed a Proposed Recommended Order on January 15, 2002. DCF filed its Proposed Recommended Order on January 17, 2002. Both proposals have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioners Ray and Gloria Hill have operated a licensed foster care home in Gadsden County, Florida, for approximately

two years. Their home is licensed by DCF through Boys and Girls Town of Tallahassee, a private, not-for-profit organization which provides foster home placements for DCF.

2. During all or part of these two years, Petitioners had two teenage girls placed in their foster care by Boys and Girls Town. These girls were J.B. (twelve years old) and A.W. (fourteen years old).

3. Two altercations allegedly occurred between J.B. and Gloria Hill, who were the only witnesses to either event.

4. J.B. resided with the Hills for the better part of the two years. Two days before Christmas 2000, Mrs. Hill had an argument with J.B. as a result of J.B. having opened every holiday-wrapped Christmas present under the tree. When Mrs. Hill asked her if she had done this, J.B. would not respond. There is no dispute that J.B. had Chinese food, prepared by Mrs. Hill, in her hands at that point. J.B. denied throwing the food at Mrs. Hill and asserted that Mrs. Hill slapped the food out of J.B.'s hands, and that, after several misses, Mrs. Hill slapped J.B.'s face with an open hand, at which point, J.B. began hitting Mrs. Hill. Mrs. Hill denied "initiating" the violence, but it is uncontested and both witnesses testified to hitting each other several times at that point. Mrs. Hill requested that night that J.B. immediately be removed from her care. A mark was found on J.B.'s face when she was removed from the Hills' home by

authorities that night. There is no clear evidence as to what caused the mark.

5. According to J.B.'s initial testimony at the final hearing, Gloria Hill, in a rage, pushed J.B.'s face into the dashboard airbag area of a car driven by Mrs. Hill while J.B. was riding in the front passenger seat, causing J.B.'s lip to bleed. Gloria Hill denied doing so. J.B. did not report this alleged incident to anyone for many months. She only reported it the night she was removed from the Hills' home after the Christmas 2000 incident.

6. After J.B.'s removal from the Hills' home, and after interrogation by Boys and Girls Town social worker, Sydney Smith, J.B. recanted her accusation that Mrs. Hill had deliberately pushed her face into the dashboard airbag area of the car. At that time, J.B. stated to Mrs. Smith that Mrs. Hill had, in fact, extended her arm to keep J.B. from falling forward into the dashboard and windshield when Mrs. Hill was forced to suddenly apply the brakes to avoid a collision.

7. Accordingly, on the basis of the prior inconsistent statement, J.B.'s testimony about the dashboard incident is not credited as a true account, and the veracity of her version of the Christmas 2000 incident is thrown into doubt.

8. A.W. lived with Mr. and Mrs. Hill for only part of the two years that J.B. was with them. In August 2000, contrary to

Mrs. Hill's prior instructions, A.W. showed J.B. an unflattering internet jailhouse photograph of J.B.'s natural mother. The printout of this photograph also revealed J.B.'s natural mother's criminal record, which J.B. did not yet know about at that time. Although A.W. testified with less clarity than might be wished, her most coherent and credible version of subsequent events is that Mrs. Hill swung at her three times with the paper computer printout and one of those swings made contact with A.W.'s face.

9. A.W. also asserted that Mrs. Hill slapped her once in the face with her open hand before A.W. began striking and kicking Mrs. Hill. A.W. testified that she did not know if Mrs. Hill had been trying to grab her or hit her, but that Mrs. Hill's hands were "in my face." J.B. was present during this altercation, and she corroborated A.W.'s assertion that Mrs. Hill slapped A.W. before A.W. struck Mrs. Hill.

10. Once again, Mrs. Hill denied "initiating" any violence, but she offered no other explanation of her actions, and no specific denial that she hit A.W. with the computer photograph before the general fight broke out.

11. It is not disputed, however, that Mr. Hill, who was in another room, heard the commotion between Mrs. Hill and A.W. over the photograph, and came to Mrs. Hill's rescue by bodily removing A.W. to another area of the house. Apparently, neither A.W. nor J.B. thought Mr. Hill's actions were out of line, although he

allegedly touched A.W.'s stomach when he carried her out of the room to cool-off. A.W.'s testimony that Mr. Hill hung her upside down but placed her upright on her feet without hurting her is incredible, but also immaterial, because even A.W. admits that she was out of control, that she was unharmed by Mr. Hill, and that Mr. Hill placed her upright on her feet once she was out of striking distance of Mrs. Hill.

12. Mrs. Hill called Boys and Girls Town and demanded that A.W. be removed the night of the incident of the photograph, due to A.W.'s violent behavior. After counseling with both of them, Boys and Girls Town authorities talked Mrs. Hill into keeping A.W. until she could be placed elsewhere. A.W.'s stay with the Hills extended to two weeks, with Boys and Girls Town's approval. This indicates to the undersigned that Boys and Girls Town's social worker had no real-world concern for A.W.'s health and safety while in the Hills' care at that time.

13. After she was removed from the Hills' foster care, A.W. wrote a letter to Mrs. Hill thanking her for her care and apologizing for hitting Mrs. Hill. At the final hearing, A.W. insisted this missive was not inconsistent with her testimony that Mrs. Hill hit her first and she merely retaliated.

14. The removal of J.B. near Christmas 2000, resulted in either a foster care license revocation investigation or child abuse registry investigation or both types of investigation by

DCF. Moreover, it appears that Boys and Girls Town mounted an investigation of its own.

15. The outcome of any abuse investigation was not presented at the final hearing herein.

16. However, after DCF's licensing authorities determined that Petitioner's foster care license would not be renewed, another DCF employee contacted Mrs. Smith of Boys and Girls Town, seeking to place a third child, L.T., with Petitioners. Due to her sensitivity to confidentiality issues, Mrs. Smith gave very vague information to the DCF placement employee concerning the status of one or more of the investigations against Petitioners. DCF then either directly placed L.T. with Petitioners or placed L.T. with Petitioners through Boys and Girls Town. The placement of L.T. with Petitioners after A.W. and J.B. had complained against them does not repudiate or mitigate the foregoing Findings of Fact concerning Mrs. Hill's use of corporal punishment. The placement of L.T. with the Hills was purely a mistake which was corrected by the removal of L.T. from Petitioners' care soon thereafter.

17. Both Mr. and Mrs. Hill testified that they had severe behavioral problems with L.T. while he was with them. It is not clear whether they asked for his removal from their home or not.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Section 120.57(1) and Section 409.175, Florida Statutes.

19. The duty to go forward is upon DCF. The burden of proof in a license revocation case is by clear and convincing evidence.

20. Section 409.175(8)(b) 1., Florida Statutes, provides as follows:

(b) Any of the following actions by a [foster] home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.
2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

21. Rule 65C-13.010(1)(b)5.a.,c.,e., and f., Florida Administrative Code, provide guidelines for discipline of foster children as follows:

a. The substitute care parents must discipline children with kindness, consistency, and understanding, and with the purpose of helping the child develop responsibility with self control.

* * *

c. Substitute care parents should use positive methods of discipline, including the following:

- (I) Reinforcing acceptable behavior.
- (II) Verbal disappointment of the child's behavior.
- (III) Loss of privileges.
- (IV) Grounding, restricting the child to the house or yard, or sending the child out of the room and away from the family activity; and
- (V) Redirecting the child's activity, for example, if a child is playing with a sharp object, take the object away, and replace it with a safe toy.

* * *

e. The substitute care parents must not subject the children to cruel, severe, humiliating or unusual punishment, for example, to use soap to wash out the mouth, eating hot sauces or pepper, placing in hot water, kneeling on stones, etc.

f. The substitute care parents must not use corporal punishment of any kind. (Emphasis supplied).

22. J.B.'s testimony concerning the dashboard incident is entirely incredible and causes the undersigned not to believe her version of the Christmas 2000 incident as well. Since she and Mrs. Hill were the only witnesses to those alleged incidents, those allegations are not proven.

23. Likewise, J.B.'s lack of credibility for the two incidents in which she was allegedly directly involved casts doubt on the rest of her testimony concerning the photograph

incident. Without J.B.'s corroboration of the photograph incident, accounts of that altercation amount to A.W. stating that Mrs. Hill slapped her face with a photograph and slapped her face with an open hand and Mrs. Hill denying at least the slap with an open hand.

24. It is hard to conceive of how slapping A.W. with a photograph could have any material affect on A.W.'s health or safety. Mrs. Hill's slapping A.W. in the face with the photograph does, however, amount to humiliating corporal punishment which clearly escalated merely argumentative circumstances into a violent situation. A.W.'s violent retaliation to Mrs. Hill's slap with the photograph may have been excessive, but the entire incident does not bespeak Mrs. Hill's self-defense so much as it does her failure to manage a foster child's behavior by positive methods outlined in the foster care rules.

25. Moreover, the pattern observed here is that of three children placed in Petitioners' home, two (A.W. and J.B.) were considered unmanageable by Petitioners, who asked to have them removed, and even a third child, (L.T.), was considered by Petitioners to have severe behavioral problems.

26. There is no legal right to a foster care license. Section 409.175(2)(f), Florida Statutes, states:

(f) "License" means "license" as defined in Section 120.52 [Florida Statutes]. A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department. (Emphasis supplied)

RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED

That the Department of Children and Family Services enter a final order revoking Petitioners' foster care license.

DONE AND ENTERED this 14th day of February, 2002, in Tallahassee, Leon County, Florida.

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of February, 2002.

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.