

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DAVID L. MOTES, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-3170  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A final hearing was conducted in this case on April 3, 2002, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

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

STATEMENT OF THE ISSUE

The issue is whether Respondent should revoke Petitioner's license to operate a foster care home.

PRELIMINARY STATEMENT

By letter dated June 19, 2001, Respondent Department of Children and Family Services (Respondent) advised Petitioner David L. Motes (Petitioner) that Respondent intended to revoke Petitioner's license to operate a foster home in Leon County, Florida. The letter alleged that Petitioner had violated Sections 409.175(8)(b)1. and 409.175(8)(b)2., Florida Statutes; and Rules 65C-13.010(1)(b)1.a., 65C-13.010(1)(b)1.b., 65C-13.010(1)(b)5.a., 65C-13.010(1)(c)1., 65C-13.010(1)(b)5.m., Florida Administrative Code.

Petitioner filed a Petition for Administrative Hearing with Respondent on July 19, 2001. Respondent referred this request to the Division of Administrative Hearings on August 14, 2001.

The parties filed a response to the Initial Order on August 20, 2001. A Notice of Hearing scheduled the case for hearing on October 29, 2001.

In a letter dated October 3, 2001, Petitioner indicated that a formal hearing might not be necessary. In a telephone conference on October 11, 2001, the parties discussed whether further administrative proceedings were required. At the conclusion of the conference, the undersigned directed the parties to file a joint status report on or before October 18, 2001.

By letter dated October 19, 2001, Petitioner asserted that Respondent had not contacted him as agreed during the telephone conference. Respondent filed a response to this letter on October 23, 2001.

On October 22, 2001, Respondent filed a Response to Order of Prehearing Instructions.

On October 26, 2001, Respondent filed an Emergency Motion to Reschedule Hearing. Petitioner filed a response in opposition to this motion that same day. The undersigned immediately issued an Order Granting Continuance.

Petitioner filed a letter dated November 21, 2001, advising that he would not be available for hearing until April 2002. According to Petitioner, he had plans to be out of town until March 10, 2002.

On November 28, 2001, the undersigned issued a second Notice of Hearing. The second notice scheduled the hearing for April 3, 2002.

Petitioner did not make an appearance at the hearing. Respondent presented the testimony of five witnesses and offered two exhibits, which were accepted as evidence.

A transcript of the proceeding was not filed with the Division of Administrative Hearings. Respondent filed its Proposed Recommended Order on April 12, 2002.

## FINDINGS OF FACT

1. At all times material to this proceeding, Petitioner was licensed as a therapeutic foster parent. Respondent issued this license to Petitioner through the Devereux Foundation, which operates and maintains a network of foster homes to serve dependent children in Respondent's custody.

2. Respondent places children in therapeutic foster when they have been exposed to a severe degree of physical, emotional, and/or sexual abuse, as well as extreme neglect and/or abandonment. Such children require special care and cannot be disciplined like children in a stable nuclear family. Therapeutic foster parents should never spank or use other physical methods of punishment or behavior management on these children.

3. Many therapeutic foster children have acute and unresolved issues with control and authority. In such cases, attempts by authority figures to assert rigid control over the children will likely provoke emotionally charged oppositional reactions by the children. This is especially true when the children have not developed a relationship with the authority figures. The likelihood that such oppositional reactions will occur is much greater when authority figures attempt to impose their will on the children with the use of physical force.

4. Children in foster care experience great difficulty in learning to trust others. The inability to trust others is reinforced when a near-stranger makes demands on therapeutic foster children, then uses physical force to compel submission.

5. Children from dysfunctional families often experience violence in the homes of their natural parents. The children learn at an early age to respond with violence to stressful situations. The use of physical force on foster children thus generates a real and severe risk of physical injury to the foster children, the foster parents, and innocent bystanders.

6. One purpose of therapeutic foster care is to help children learn that violent behavior is not acceptable. When foster parents use physical force to compel obedience, they reinforce the lessons learned in the homes of their natural parents at the expense of the lessons the foster care program attempts to teach.

7. Therapeutic foster parents undergo special training before they become licensed. The Model Approach to Parenting and Partnership (MAPP) training that all foster parents receive places special emphasis on the emotional fragility of children in foster care and the consequent need to avoid confrontation with foster children. In other words, MAPP training teaches foster parents not to engage in power struggles with their charges.

8. MAPP training emphasizes the use of positive discipline for the inevitable situations in which foster children test the boundaries set by the foster parents. These methods include reinforcing acceptable behavior, verbal disapproval, loss of privileges, and redirection. Any form of verbal abuse or physical force is strictly prohibited.

9. Petitioner received all of the training described above.

10. In March 2001, a sibling group of two sisters (S.M.1 and S.M.2) and a brother (D.M.) were living in a therapeutic foster home operated by Brad and Sharon Carraway through the Devereux Foundation. Mr. and Mrs. Carraway were licensed therapeutic foster parents.

11. Respondent and the Devereux Foundation have a policy that allows for substitute foster care when therapeutic foster parents need some time away from their foster children. In that case, Devereux arranges for another licensed therapeutic foster home in its network to care for the foster children for a period of time, usually a weekend. This arrangement is known as respite foster care.

12. During March 2001, the Carraways needed a weekend away from their foster children to take care of some family business. At that time, Loretta Kelly was the foster care program manager for Devereux in the North Florida area. Ms. Kelly made

arrangements for Petitioner and his wife to take the children during the weekend of March 23-25, 2001.

13. The children arrived in Petitioner's home late in the afternoon of Friday, March 23, 2001. As S.M.1 and S.M.2 settled into their room, Petitioner advised them that supper would be served in five minutes. S.M.1 then announced that she was not hungry and would not be going to supper. Petitioner replied that S.M.1 could either go to the table for supper or he would be back in five minutes and make her go to the table.

14. Five minutes later, Petitioner returned to the bedroom. He told S.M.1, who was sitting on the bed, to come in to supper. When S.M.1 refused again, Petitioner grabbed S.M.1 by the wrists and tried to drag her into the dining room. A struggle ensued with S.M.1 yelling for Petitioner to let go. During the struggle, S.M.1's wrist watch broke, leaving scratches on her arm.

15. S.M.2 was in the hall. Hearing her sister call for help, S.M.2 ran in to help S.M.1. S.M.2 pushed Petitioner away from her sister. Petitioner then grabbed S.M.2 by the wrists and struggled with her for over a minute. During the struggle, S.M.2 slid down to a sitting position with her back against the wall. S.M.2 then used her feet in an attempt to break free from Petitioner. The struggle left S.M.2 with a scar from a scratch she received on her arm.

16. Petitioner finally gave up and called the girls' therapist, Lori Farkas, to complain about the situation. S.M.2 heard Petitioner state that he wanted the girls out of his home.

17. The incident was reported to Respondent. Subsequently, Respondent commenced a child protective investigation into the allegations; the investigation was still open on April 20, 2001.

18. Petitioner became angry when he learned what the children told Respondent's investigators. He telephoned Ms. Kelly on the afternoon of April 20, 2001. He accused the children of lying and asserted that they should be punished. He threatened to file battery charges against the children and have them arrested if they did not change their story and "tell the truth."

19. Next, Petitioner telephoned Ms. Carraway. He told Ms. Carraway that she ought to be teaching the girls morals and honesty. He accused the girls of lying. Petitioner informed Ms. Carraway that he was going to consult an attorney and have the girls arrested at school for assault and battery. Petitioner told Ms. Carraway that he would be more believable in light of the children's background.

20. S.M.1 was with Ms. Carraway during Petitioner's telephone call. Ms. Carraway and S.M.1 wrote notes to each other regarding Petitioner's comments during the telephone call.



Both girls were apprehensive for some time after this telephone call about the possibility of being arrested.

21. Ms. Carraway called Ms. Kelly immediately after talking to Petitioner. Ms. Kelly then called Petitioner to instruct him not to make any further calls to the Carraway home.

#### CONCLUSIONS OF LAW

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

23. Section 409.175(2)(f), Florida Statutes, defines the term license as follows:

(f) "License" means "license" as defined in s. 120.52(9). A license under the 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.

24. Section 409.175(8)(b), 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.

25. Rule 65C-13.010(1)(b), Florida Administrative Code, provides as follows in relevant part:

(b) Family Care Activities.

1. Daily living tasks.

a. The substitute care parents are expected to provide structure and daily activities designed to promote the individual physical, social, intellectual, spiritual, and emotional development of the children in their home.

b. The substitute parents should assist the children in performing tasks and developing skills which will promote their independence and the ability to care for themselves.

\* \* \*

5. Discipline.

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.

d. The substitute care parents must not allow children in care to be subjected to verbal abuse, derogatory remarks about themselves and family members or threats of removal from the home.

\* \* \*

m. The substitute 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 conviction 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 the child's 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 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.

26. Petitioner's actions exposed S.M.1 and S.M.2 to physical danger when he attempted to physically control their behavior. In fact, his actions resulted in actual physical injury to both girls.

27. Petitioner's wrestling match with the children failed to teach them that violence in the home is unacceptable. Instead, the children learned the wrong message: that violence

is an appropriate method of dealing with conflict. They also learned not to trust people in authority.

28. Petitioner's use of force against the children violated Sections 409.175(8)(b)1. and 409.175(8)(b)2., Florida Statutes; and Rules 65C-13.010(1)(b)1.a., 65C-13.010(1)(b)1.b., 65C-13.010(1)(b)5.a., and 65C-13.010(1)(b)5.c., Florida Administrative Code. His actions constitute grounds for revocation under Section 409.175(8)(b), Florida Statutes.

29. After the struggle, one of the girls heard Petitioner state that he wanted them out of his home. Later they were aware of Petitioner's threats to have them arrested if they did not change their story. Petitioner's threats violate Section 409.175(8)(b)2., Florida Statutes, and Rule 65C-13.010(1)(b)5.m., Florida Administrative Code, and constitute grounds to revoke Petitioner's therapeutic foster license.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Respondent enter a final order revoking Petitioner's therapeutic foster license.

DONE AND ENTERED this 22nd day of April, 2002, in  
Tallahassee, Leon County, Florida.

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SUZANNE F. HOOD  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of April, 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.