

3-13-02

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

02 JUN 24 AM 12:42  
ADMINISTRATIVE  
HEARINGS

ANGELA HARRIS,  
Petitioner,

Case No. 01-4260  
Rendition No. 02-DCF-182-FO

AP

SFD-CLOS

vs.

DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES

**FILED**

JUN 20 2002

Respondent.

DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me upon the Recommended Order that was issued by the Administrative Law Judge assigned to hear the case by the Division of Administrative Hearings. Transcripts of the proceedings were not filed. Each party filed a Proposed Recommended Order. The Respondent filed exceptions to the Recommended Order and the Petitioner filed a response to the Respondent's exceptions.

1. I agree with the ultimate conclusion of law in the Administrative Law Judge's Recommended Order, that the Department failed to prove the Petitioner intentionally struck her boyfriend with her car.

2. As a general rule, a judgment of conviction, in and of itself, is not conclusive proof of the facts upon which it is based. Kelly v. Department of HRS, 596 So.2d 130 (Fla. 2d DCA 1992). Likewise, a no contest plea represents only a defendant's desire to not contest charges against him or herself. Id. It does not constitute an admission of guilt, and may not be used as direct evidence of guilt

in an administrative proceeding. Id. Therefore, I also agree that the Department failed to establish that the Petitioner committed an act that constitutes domestic violence, based solely on the fact she pled nolo contendere to a charge of simple battery against her live-in paramour. As such, I agree with and adopt the Administrative Law Judge's findings of fact in paragraphs 1-25.

3. Paragraph 26 of the Administrative Law Judge's Recommended Order states as follows:

There was and is no reasonable cause for the employer to believe there were grounds to disqualify Petitioner from employment based upon Sections 435.04(2) or 435.04(4), Florida Statutes.

4. I believe paragraph 26 of the Recommended Order is a conclusion of law and not a finding of fact. Mislabeling a conclusion of law does not change it into a finding of fact. Florida Power Corporation v. State Of Florida, Department Of Environmental Regulation, 638 So. 2d 545 (Fla. 1<sup>st</sup> DCA 1994). See also, Sapp v. Florida State Board of Nursing, 384 So.2d 254 (Fla.2d DCA 1980). I believe paragraphs 10-13 establish grounds for the Petitioner's initial disqualification and accordingly, I hereby reject paragraph 26 as a misinterpretation of the law.

5. As will be explained below in paragraph nine, I disagree with the Administrative Law Judge's conclusion of law in paragraph 26 because it implies that an injunction is required before disqualifying an employee for an act that constitutes domestic violence. Therefore I substitute paragraph 26 as follows:

The relevant portion of Section 435.04(2) provides that:

The security background investigations under this section must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

Sections 435.04(4) and (b) provides that:

Standards must also ensure that the person:

b). Has not committed an act that constitutes domestic violence as defined in s. 741.30.

6. I agree with and adopt the Administrative Law Judge's conclusions of law in paragraphs 27-34.

7. Paragraph 35 is a finding of fact. Nevertheless, I agree that a simple battery charge or conviction is not a disqualifying offense and that, without evidence the Petitioner had committed an act constituting domestic violence, her disqualification would have been improper.

8. The record does not establish when the Department learned that the Petitioner was charged with an act that constituted domestic violence. Furthermore, the Notice of Dismissal does not indicate that the Petitioner was being dismissed for committing an act that constituted domestic violence. This is not good practice and it opens the Department up to expensive litigation and unnecessary due process challenges. Notice letters should always clearly and succinctly state the reasons for actions being taken by the Department.

9. I accept paragraphs 36 – 37. However, I disagree with the Administrative Law Judge's conclusion of law that implies an injunction is

required before disqualifying an employee for an act that constitutes domestic violence. Therefore, I reject paragraphs 38 - 43 of the Recommended Order and substitute them as follow:

In reviewing section 741.30, there is no definition of "domestic violence" given. Those definitions are found in section 741.28, which provides as follows:

**741.28 Domestic violence; definitions.--As used in ss. 741.28-741.31: (emphasis added)**

"Domestic violence" means any assault, aggravated assault, **battery**, (emphasis added) aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

"The rules of statutory construction require that courts give statutory language its plain and ordinary meaning, unless the words are defined by statute..." State v. Finelli, 780 So.2d 31, 32 (Fla. 2001). The legislature has clearly defined those acts that constitute domestic violence and has instructed that this definition is to be used in ss.741.28-741.31. Based on the clear definition of what constitutes domestic violence, Section 435.04(4)(b) does not require the issuance of a domestic violence injunction, before an act of domestic violence may be considered for disqualification purposes.

10. The above substituted conclusion of law is as or more reasonable than the rejected conclusions of law in the Recommended Order. To find otherwise places the issue of due process over the paramount concern of protecting society's most vulnerable citizens. The recommended conclusions of

law would eliminate the Department's ability to disqualify an abusive individual from having contact with Department clients, in cases when a victim of abuse refused to get an injunction issued. Even in a case where it has been previously established "beyond a reasonable doubt," or in a case where the Department has numerous credible witnesses to prove that a person committed an egregious act of domestic violence, the Department would be precluded from protecting its vulnerable clients by disqualifying the offender, since it could not establish that an injunction was issued.

11. I agree with the Administrative Law Judge's conclusions of law as contained in paragraphs 44 – 47 and hereby adopt them.

12. By implication in paragraph 8, *supra*, I reject paragraph 48 of the Recommended Order.

**WHEREFORE**, the district level decision is rescinded and the Petitioner's request for exemption is hereby **GRANTED**.

**DONE AND ORDERED** at Tallahassee, Leon County, Florida, this 16<sup>th</sup> day of June, 2002.

Kathleen A. Kearney  
KATHLEEN A. KEARNEY, Secretary  
Department of Children and Family Services

Copies furnished to:

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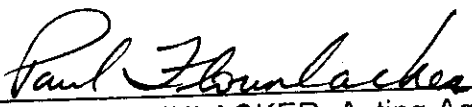
**NOTICE OF RIGHT TO APPEAL**

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.<sup>1</sup>

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of this Final Order has been served by U.S. Mail or by hand delivery to the above-named persons on this 20<sup>th</sup> day of

June, 2002.

  
PAUL FLOUNLACKER, Acting Agency Clerk  
Department of Children and Family Services  
1317 Winewood Blvd., Bldg. 2, Room 204Z  
Tallahassee, FL 32399-0700

<sup>1</sup>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.