

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SABRA PORTWOOD,)
)
 Petitioner,)
)
 vs.) Case No. 02-0167
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Diane Cleavinger, a duly-designated Administrative Law Judge of the Division of Administrative Hearings on April 3, 2002, in Perry, Florida.

APPEARANCES

For Petitioner: Sabra Portwood, pro se
140 Regina Road
Perry, Florida 32348

For Respondent: Steven Wallace, Esquire
Department of Children and
Family Services
2639 North Monroe Street, Suite 104A
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner, Sabra Portwood, is entitled to register her home as a family day care

home under the provisions of Chapters 402 and 435, Florida Statutes.

PRELIMINARY STATEMENT

Petitioner, Sabra Portwood, applied to the Department of Children and Family Services to have her home registered as a family day care home pursuant to the provisions of Chapter 402, Florida Statutes. Petitioner's application was denied based upon a history of domestic violence in her home perpetuated by her husband on Petitioner. Petitioner requested an administrative hearing to contest Respondent's decision. The request was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner testified on her own behalf and introduced four exhibits into evidence. Respondent introduced one exhibit into evidence.

After the hearing, Petitioner and Respondent submitted Proposed Recommended Orders on April 15, 2002, and April 2, 2002, respectively.

FINDINGS OF FACT

1. On August 10, 2000, Petitioner was married to Randy Shoaff. She had two children, twins, by him and is currently pregnant with another of his children. Although estranged at present, they remain married. Petitioner is in the preliminary

stages of dissolving the marriage and intends to complete the dissolution process.

2. Petitioner and Mr. Shoaff have had a rocky relationship. On October 4, 2000, less than two months into their marriage, Mr. Shoaff struck Petitioner several times in the head from behind. She was pregnant at the time of the attack. The incident was reported to law enforcement.

3. On March 12, 2001, Petitioner swore out a Petition for Injunction for Protection Against Domestic Violence, naming her husband as Respondent. The essential facts to which she swore and testified to at hearing were as follows:

On February 23, 2001, at 705 W. Wilcox the Respondent Randolph Shoaff told me that the only reason I was still alive was because I was pregnant and that I have 3 other children. He said that he wanted to shoot me & then kill himself. Because of his actions before I have been afraid of him on 3 or 4 different occasions, and I would just be quiet & not say anything & wait for him to go to work. On Oct. 4th (there should be a police report) there was a dispute between us & he started hitting me in the head repeatedly when I was 3 months pregnant & had only been home for 3 hrs from the doctor because I was bleeding during pregnancy. I am afraid because I asked his coworker if his (Randy's) gun was under the counter & he said it wasn't there.

4. As a direct result of Petitioner's request for a domestic violence injunction, the Third Circuit Court issued a Temporary Injunction. Subsequently, the injunction was

conditionally dissolved. However, Mr. Shoaff was ordered to have no personal contact with Sabra Portwood at her home. A third Order was subsequently entered in order to facilitate visitation with his children, allowing non-hostile contact between the parties.

5. Mr. Shoaff does not live with Petitioner. However, Petitioner and Mr. Shoaf are presently married. Therefore, Mr. Shoaf is currently a member of Petitioner's family and is required to undergo background screening for Petitioner's registration. Mr. Shoaff did not pass the background screening because of the injunction based on domestic violence entered against him. No exemption from disqualification was sought. Because of the failed background screening, Petitioner, who was the victim of domestic violence and took steps to protect herself from that violence, was denied registration based on the actions of her estranged husband.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57, Florida Statutes (2001).

7. Chapter 402, Florida Statutes, governs the licensure and registration of child care facilities. Section 402.302, Florida Statutes, states in pertinent part:

(3) "Child care personnel" means all owners, operators, employees, and volunteers working in a child care facility. The term does not include persons who work in a child care facility after hours when children are not present or parents of children in Head Start. For purposes of screening, the term includes any member, over the age of 12 years, of a child care facility operator's family, or person, over the age of 12 years, residing with a child care facility operator if the child care facility is located in or adjacent to the home of the operator or if the family member of, or person residing with, the child care facility operator has any direct contact with the children in the facility during its hours of operation. Members of the operator's family or persons residing with the operator who are between the ages of 12 years and 18 years shall not be required to be fingerprinted but shall be screened for delinquency records. (emphasis added)

8. Section 402.313, Florida Statutes, governs family day care homes. Section 402.313(1) and (3), Florida Statutes, states in pertinent part:

(1) Family day care homes shall be licensed under this act if they are presently being licensed under an existing county licensing ordinance, if they are participating in the subsidized child care program, or if the board of county commissioners passes a resolution that family day care homes be licensed. If no county authority exists for the licensing of a family day care home, the department shall have the authority to license family day care homes under contract for the purchase-of-service system in the subsidized child care program.

* * *

(3) Child care personnel in family day care homes shall be subject to the applicable screening provisions contained in ss. 402.305(2) and 402.3055. For purposes of screening in family day care homes, the term includes any member over the age of 12 years of a family day care home operator's family, or persons over the age of 12 years residing with the operator in the family day care home. Members of the operator's family, or persons residing with the operator, who are between the ages of 12 years and 18 years shall not be required to be fingerprinted, but shall be screened for delinquency records. (emphasis added)

9. In interpreting the language of a statute, it is incumbent upon the tribunal to give meaning to all the words in a statute so that no words are discarded as meaningless or redundant. Chaffee v. Miami Transfer Company, 288 So. 2d 209 (Fla. 1974). Additionally, a specific statute covering a particular subject controls over a statute covering the same and general subject area. McKendry v. State, 641 So. 2d 45 (Fla. 1994); T.S. v. Clemmons, 770 So. 2d 1971 (Fla. 2d DCA 2000); and Terrinoni v. Westward Ho!, 418 So. 2d 1143. More importantly, where terms in one section of a statute have been omitted in another part of the same chapter, the statute should not be interpreted to include the omitted language. See Leisure Resorts, Inc. v. Frank J. Rooney, Inc., 654 So. 2d 911 (Fla. 1995). Where the language of a statute is clear, that language should be given its plain meaning. See Rollins v. Pizzarelli,

761 So. 2d 294 (Fla. 2000); and Klonis v. State Department of Revenue, 766 So. 2d 1186 (Fla. 1st DCA 2000).

10. A comparison between the language of Section 402.302(3), Florida Statutes, the general definition of child care personnel and Section 402.313(3), Florida Statutes, demonstrates that the term "child care personnel" for screening purposes for family day care homes includes any member of the operators' family regardless of contact with the day care's children or presence in the family home. The general definition of "child care personnel" includes only family members who have contact with the day care's children or reside in the home or close to the day care facility. Language in a specific statute controls over the language of a general statute. Therefore, according to the law as it is written, there are two separate categories of individuals who must be screened for family day care registration or licensure: (1) any family member, or (2) non-family members who happen to be residing with the family day care home operator. The language is clear and should be given its plain meaning.

11. Because Petitioner's husband, irrespective of whether he presently resides in the home, is by definition a member of her family, he is subject to applicable Chapter 435, Florida Statutes, screening standards pursuant to Section 402.305, Florida Statutes (2001). Chapter 435, Florida Statutes, Level 1

and 2 screening standards disqualify anyone who has committed an act that constitutes domestic violence. Here, Petitioner's own sworn testimony establishes that her husband has committed acts of domestic violence upon her in their home. Thus, Petitioner is not entitled under the applicable statutes for licensure or registration as a family day care home.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by the Department of Children and Family Services denying Petitioner's request to register her home as a family day care home.

DONE AND ENTERED this 24th day of May, 2002, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of May, 2002.

COPIES FURNISHED:

John R. Perry, Esquire
Department of Children and
Family Services
2639 North Monroe Street
Building A, Suite 104
Tallahassee, Florida 32399-2949

Sabra Portwood
140 Regina Road
Perry, Florida 32348

John Flounlacker, Agency Clerk
Department of Children and
Family Services
1317 Winewood Boulevard
Building 2, Room 204B
Tallahassee, Florida 32399-0700

Josie Tomayo, General Counsel
Department of Children and
Family Services
1317 Winewood Boulevard
Building 2, Room 204
Tallahassee, Florida 32399-0700

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.