

7-18-02

Suzanne H.

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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FILED

JEAN THOMPSON,

Petitioner,

Case No. 02-0820

SFH-CWS

Rendition No. DCF-02- 213 FO

vs.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES

Respondent.

FILED

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DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me as the result of a Recommended Order (RO) that was issued by an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings, to hear this case.

1. Transcript of the hearing was filed with the Agency Clerk on July 31, 2002. Both parties filed Proposed Recommended Orders. In preparing this Final Order, the complete record has been reviewed.

2. I accept, adopt and incorporate herein, the findings of fact in paragraphs 1 through 8 of the ALJ's RO.

3. I accept, adopt and incorporate herein the conclusions of law in paragraph 9, 11, 12 and 13 of the ALJ's RO. And although I accept the conclusion of law as contained in paragraph 14 of the ALJ's RO, I also agree with, adopt and incorporate herein Respondent's Exception number 8. There is no interpretation of section 402.305(12) that allows for spanking, or any other form of physical punishment, as long as it is not abuse as defined in Chapter 39.

However, that is what is being inferred in paragraphs 15 and 16 of the ALJ's RO. I find that Chapter 402 explicitly prohibits spanking, and I find that putting hot sauce in a toddler's mouth is a prohibited form of physical punishment since it induces pain. This interpretation is as or more reasonable than the conclusion of laws in paragraphs 15 and 16 of the ALJ's RO, which are hereby rejected.

4. Paragraph 17 of the ALJ's RO is actually a finding of fact and is accepted as such, adopted and incorporated herein.

5. The first sentence of paragraph 18 of the ALJ's RO is a finding of fact that is not supported by competent substantial evidence from which even such an inference can be drawn. In the ALJ's preliminary statement, the ALJ references a letter dated February 1, 2002. In reviewing the record, I find this letter is the Notice of License Denial, which states in pertinent part that the licensure denial "is based on the non-compliance with ss. 402.301-319, Florida Statutes."

Therefore, I respectfully reject and replace the first sentence of paragraph 18 of the ALJ's RO as follows: "The Respondent has charged the Petitioner with violations of the provisions of ss.403.301-319, Florida Statutes." The remainder of paragraph 18 of the ALJ's RO is a finding of fact and is accepted as such, adopted and incorporated herein.

6. The Respondent filed exceptions to the ALJ's RO. As indicated on page 5 of the hearing transcript, the ALJ made a preliminary finding as follows:

"This is a case involving a denial of a renewal of licensors. So Mr. Scott I think you are supposed to go first here, you have the burden and then Mr. McMurphy, okay."

7. Based upon this finding by the ALJ, the Petitioner was allowed to put her case on first and allowed rebuttal, which is consistent with the due process requirements in cases where the burden of proof is on a petitioner.

8. As a result of the ALJ finding that the burden was on the Petitioner, some of the Respondent's witnesses, who were young children, were released, at their parent's requests, so they could return to school.

9. In the ALJ's RO, in conclusion of law 10, the ALJ now places the burden on the Respondent. In retroactively placing the burden on the Respondent, after allowing the hearing to proceed with the Respondent understanding that the burden of proof was on the Petitioner, the ALJ has denied the Respondent a fair hearing.

10. Additionally, I find that the burden was initially properly placed upon the Petitioner to establish her fitness to be licensed, since this was a licensure application action.

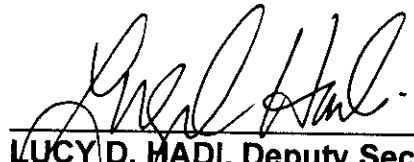
11. Accordingly, I respectfully reject the ALJ's conclusion of law in paragraph 10 of the RO and I accept, adopt and incorporate herein by reference, the Respondent's Exceptions 1 through 4. I find that the interpretations of law contained in this Final Order and within paragraphs 1 through 4 of the Respondent's Exceptions are as or more reasonable than the conclusion of law in paragraph 10 of the ALJ's RO.

12. The ALJ found, as conclusions of law, that there was clear and convincing evidence that the Petitioner spanked a child with her hand and spanked two other children with a rolled-up newspaper and that the Petitioner occasionally put hot sauce in the mouths of toddlers as a form of discipline. These actions are violations of s. 402.305(12), F.S. and support the Respondent's action of denying the Petitioner's application for licensure renewal.

13. Upon review of the complete record, I respectfully disagree that any of the mitigating factors referenced in the ALJ's RO, are a basis for finding that the Respondent abused its discretion in denying the Petitioner's license. Therefore, I accept, adopt and incorporate herein, the first sentence in paragraph 19 of the ALJ's RO. The last sentence of paragraph 19 of the ALJ's RO is rejected as is the ALJ's recommendation that the Petitioner's application for licensure be granted.

And the undersigned being otherwise duly advised, the Petitioner's licensure application is DENIED.

DONE and ORDERED on this 21st day of November, 2002 in Tallahassee, Leon County, Florida.



LUCY D. HADI, Deputy Secretary
Department of Children and Family Services

Copies of this Final Order are being furnished to:

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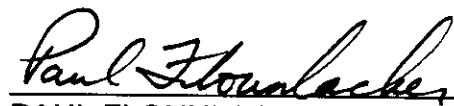
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NOTICE OF RIGHT TO APPEAL

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.¹

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing FINAL ORDER has been sent by U.S. Mail or hand delivery to each of the persons named above on this 21st day of November 2002.



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

¹The 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.