

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND )  
FAMILY SERVICES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 02-1435  
 )  
DOROTHY DEMPSEY FAMILY DAY CARE )  
HOME, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Upon due notice, this cause came on for a disputed-fact hearing June 20, 2002, in Ocala, Florida, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ralph J. McMurphy, Esquire  
Department of Children and Family Services  
1601 West Gulf Atlantic Highway  
Wildwood, Florida 34785-8158

For Respondent: Dorothy Dempsey  
1633 Northwest 14th Street  
Ocala, Florida 34475

STATEMENT OF THE ISSUE

Whether the Department of Children and Family Services (DCF) may revoke Respondent's Family Day Care Home License for cause.

PRELIMINARY STATEMENT

By a March 14, 2002, letter, DCF notified Respondent that it was immediately revoking her Family Day Care Home License for "known incidents of occurrence" as authorized in Section 402.310, Florida Statutes, and her failure to comply with Sections 402.301-402.319 et. seq., Florida Statutes. Respondent timely requested a disputed-fact hearing and DCF referred the case to the Division of Administrative Hearings on or about April 11, 2002.

At the disputed-fact hearing convened on June 20, 2002, DCF had five composite exhibits admitted in evidence. DCF also presented the oral testimony of Steve Davis and Cathy White. Petitioner testified on her own behalf.

No transcript of the proceedings was provided. Both parties submitted Proposed Recommended Orders, which have been considered in preparation of this Recommended Order.

FINDINGS OF FACTS

1. Since approximately September 3, 2001, Respondent has held a license from DCF to operate a Family Day Care Home for up to ten children in her residence Mondays through Fridays.

2. DCF seeks to revoke her current license due to her allowing her ex-husband, Eddie Morand, to have access to her home and the children entrusted to her care there.

3. Mr. Morand's name was submitted for background clearance as a resident in the home in connection with a different application to authorize Respondent to provide 24-hour per day care, which she submitted to DCF in 1997. DCF notified Mr. Morand by a notice dated January 16, 1998, that he was ineligible to have contact with children in a Family Day Care Home due to two prior felony convictions for crimes addressed in Section 435.04, Florida Statutes: aggravated battery and possession of crack cocaine. Respondent was sent a copy of this notice.

4. On April 13, 1999, Mr. Morand pled guilty to two felony counts for the sale and possession of cocaine and was sentenced to 23.8 months of incarceration with the Department of Corrections. These crimes are also disqualifying under Section 435.04, Florida Statutes. Respondent was still married to Mr. Morand in November 1998, when these charges arose.

5. Sometime in 1999, Respondent divorced Mr. Morand.

6. Sometime thereafter, Respondent changed her residence and secured a permanent injunction against Mr. Morand for protection against domestic violence. After about a year, Respondent believed that Mr. Morand had changed, and she lifted the injunction.

7. DCF's Abuse Hotline received a call alleging that on March 9, 2002, Mr. Morand had sexually molested a female day-care

registrant in Respondent's Family Day Care Home. March 9, 2002, was a Saturday, a day not authorized for day-care by Respondent's current license.

8. The child had reported to her foster mother that she had been fondled while at Respondent's Family Day Care Home. The Ocala Police Department was notified. After interviewing the child, the police went to Respondent's home. Mr. Morand was present, and he was arrested.

9. Respondent told police officers that while she was outside watching the other children in care, Mr. Morand was alone in the house with the accusing child for about ten minutes, getting something to eat. Respondent confirmed this at the disputed-fact hearing, but also maintained that she could see inside the house from the porch and observed nothing amiss. She believes the child's accusations were untruthful.

10. Child Protective Investigator Steve Davis was assigned to investigate the abuse report received by DCF. On the morning of March 10, 2002, Mr. Davis happened to be in court in connection with another case. Mr. Morand also was brought up for first appearance at that time and was allowed to bond out. In court, Mr. Morand gave his address of residence as that of Respondent's Family Day Care Home.

11. At about 3:15 p.m., the afternoon of March 10, 2002, Mr. Davis went to Respondent's Family Day Care Home to

investigate the abuse report. When he arrived, he saw Mr. Morand about to exit the front door of the home. Mr. Morand acknowledged that it was Respondent's home and held the door open for Mr. Davis to enter. Mr. Davis entered the home where he found Respondent caring for other children registered in her Family Day Care Home. This was Sunday, also a day not authorized for day-care by Respondent's current license. Respondent acknowledged that the man Mr. Davis had met at the door was Mr. Morand. Respondent told Mr. Davis that Mr. Morand got his mail at her home and stayed there occasionally. At the hearing, Respondent testified that she had no control over where Mr. Morand had his mail sent and that "he was not a man you say, 'no,' to."

12. Respondent's DCF Day Care Licensing Counselor was Cathy White. On March 16, 2002, Ms. White, accompanied by a law enforcement officer, went to Respondent's home to deliver the Notice of Revocation of Respondent's license. Mr. Morand was the only person at the home when Ms. White and the officer arrived. Mr. Morand told the officer and Ms. White that Respondent had taken the children to the park. He first said that Respondent had told him she was going to the park and then said she left him a note to that effect.

13. Later on March 16, 2002, Ms. White returned to the residence where she found Respondent and several day-care

children. This was also a Saturday, not covered by Respondent's license. Ms. White explained why DCF was moving to close the day care home and that Ms. White could not leave until all the children had been picked up by their parents.

14. On March 28, 2002, Respondent executed another sworn petition for protection from domestic violence, seeking an injunction against Mr. Morand. In this, her second petition, Respondent stated that Mr. Morand had threatened her and was very violent when he was drinking.

15. On April 4, 2002, Mr. Morand was arrested for sexual battery, false imprisonment, battery on a person over the age of 65, and violation of a domestic violence injunction. The charges stemmed from an attack on Respondent.

16. Respondent's testimony at the disputed-fact hearing and documentary evidence leaves the impression that Mr. Morand had overpowered, beaten, and raped Respondent on or about April 4, 2002.

17. After the incident of April 4, 2002, Respondent moved to a new address in order to get away from Mr. Morand.

#### CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Sections 402.310(2) and 120.57, Florida Statutes.

19. Because this case involves the revocation of an existing license and not renewal of a license expiring by operation of the statute, DCF has the burden of demonstrating by clear and convincing evidence grounds for revocation under Section 402.310, Florida Statutes. Department of Banking and Finance v. Osborne Stern and Co., 670. So. 2d 932, 935 (Fla. 1996).

20. Under Section 402.313(3), Florida Statutes, child care personnel subject to background screening include any person over the age of 12 who is a member of the family of an operator or resides in the operator's home.

21. The credible evidence in this case establishes that Respondent permitted Mr. Morand to stay in her home off and on, and that he was there on March 9, and 10, 2002, while children were in her care, and that he was again there alone on March 16, 2002.

22. This case presents the typically tragic situation of a woman overpowered by love, wishful thinking, intimidation, or sheer force into permitting access to her day-care charges by a man she knew to be banned from such contact. The fact that Respondent divorced Mr. Morand, got the original injunction, and moved her place of residence, all demonstrate her initial resolve to avoid Mr. Morand and protect any children entrusted to her day-care. However, when she got that injunction lifted because

she "thought he [Mr. Morand] had changed," she also demonstrated that DCF cannot rely on her good intentions or her judgment.

Whether Mr. Morand had another address where he also stayed, is a de minimus legalistic consideration. Respondent permitted Mr. Morand to use her home at will as if he were an actual resident there during hours she had day-care children present, and that is the evil the law is designed to prevent.

23. There have been instances in which banned family members have been permitted to remain in the home during evening hours and on weekends when day-care children have not been present, but that does not mitigate or alter the situation here. Here, Respondent had day-care registrants in her home during hours and/or days not permitted by her license when Mr. Morand was simultaneously present. Therefore, DCF also cannot rely on Respondent adhering to the restrictions of her license.

24. The stated legislative intent in Section 402.301, Florida Statutes, is to protect the health, safety, and well-being of children. Placing a narrow construction in the instant case on the term "residing with the operator," would be raising form over substance. Respondent's duty to protect children in her care was abrogated by her allowing Mr. Morand free access to her home as if he resided there at a time vulnerable children were present, and had the effect of failing to dismiss an employee whom Respondent knew to be disqualified by reason of his



criminal record. Refusal to dismiss a disqualified employee requires DCF's revocation of a day-care license, pursuant to Section 402.3055(2)(g), Florida Statutes.

25. It is concluded that DCF's March 16, 2002, removal of children from Respondent's home was legally justified in this case. Mr. Morand's April 4, 2002, attack on Respondent underscores DCF's wisdom in immediately removing the children from Respondent's home. It is further concluded that revocation of Respondent's license is justified for her past failure to protect the children and the judgment considerations set out in Conclusions of Law 22 and 23.

26. A license is not transferable to a new home, and under Section 402.305, Florida Statutes, each day care facility or home must meet certain physical, sanitary, and safety standards in order to be licensed. In order for Respondent's new home to be licensed, she must now apply for licensure of that home, and the home must undergo the physical, sanitary, and safety inspections required by law. However, Respondent's move to a new residence after Mr. Morand's April 4, 2002, attack on her does not render moot the issue of whether DCF was justified in its immediate revocation of the existing license. Sub-sections 402.3055(1)(a) and (b), Florida Statutes, concern applicants for licensure or employment who have had a day care license revoked in the past and provide "real world" significance to the legitimacy, vel non,

of the revocation, in the event Respondent seeks to be re-licensed in her new residence.

27. In making an assessment of Respondent's new license application, DCF may consider the physical attributes of the new residence, the circumstances of this revocation, and any changed circumstances, including but not limited to Mr. Morand's predicted length of incarceration and the current permanent injunction against Mr. Morand.

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 ratifying the past immediate revocation of the Respondent's current license for a Family Day Care Home.

DONE AND ENTERED this 7th day of August, 2002, in Tallahassee, Leon County, Florida.

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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 7th day of August, 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.