

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN)
AND FAMILY SERVICES,)
)
Petitioner,)
) Case No. 02-1753
vs.)
)
THOMAS STONE AND SHANA STONE,)
)
Respondents.)
_____)

RECOMMENDED ORDER

A hearing was held pursuant to notice, on July 17, 2002, by Barbara J. Staros, assigned Administrative Law Judge of the Division of Administrative Hearings, in Brooksville, Florida.

APPEARANCES

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

For Respondents: R. Eric Rubio, Esquire
2407 East Bloomingdale Avenue
Valrico, Florida 33594-6404

STATEMENT OF THE ISSUE

The issue in this proceeding is whether the Department of Children and Family Services should revoke the foster care license of Thomas and Shana Stone.

PRELIMINARY STATEMENT

By letter dated March 29, 2002, the Department of Children and Family Services (Department) advised Respondents, Thomas and Shana Stone, that their home would not be relicensed as a foster home. The letter based this decision on a Florida Abuse Hotline Information System report received by the Department on November 16, 2001, alleging physical abuse by the foster mother. The letter cited Section 409.175(8), Florida Statutes, and Rules 65C-13.009(1)(e)10., and 65C-13.010(1)(b)5. and (4)(j), Florida Administrative Code, as authority for the decision.

Petitioners disputed the allegations of the March 29, 2002, letter and requested an administrative hearing. The Department forwarded the request for a hearing to the Division of Administrative Hearings on or about May 3, 2002. A formal hearing was scheduled for July 17, 2002.

At the commencement of the hearing, counsel for the Department clarified the status of the Stones' licensure. That is, because the Stones' foster care license was not scheduled to expire until August 8, 2002, the action sought by the Department was revocation of the license rather than nonrenewal as stated in the March 29, 2002, letter. Accordingly, the hearing proceeded as a license revocation

hearing and the parties have been realigned to reflect the Department as Petitioner and the Stones as Respondents.

At hearing, Petitioner presented the testimony of two witnesses, JoAnn Lycett and Susan Sentman. Petitioner's Exhibits numbered 1 and 2 were admitted into evidence. Respondent Shana Stone testified on her own behalf. Respondents did not offer any exhibits into evidence.

The hearing was not transcribed. The parties timely filed Proposed Recommended Orders which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this proceeding, the home of Thomas and Shana Stone was licensed by the Department as a foster home.

2. Jeffrey G. was placed in the Stones' home on or about November 9, 2001, when he was approximately 10 months old. Two other children, who were eleven and four-year-old siblings, were also placed in the Stones' home around the same date that Jeffrey was placed in their home. The three children slept in the same bedroom which contained a bunk bed and a crib. According to Mrs. Stone, the siblings were unruly and she requested that the Department remove them from their home. The other children were removed from the home on November 12, 2001.

3. On November 16, 2001, the Department received a report alleging that Jeffrey had a bruise three inches in length on his thigh.

4. Jeffrey was brought to the Department's office by a foster care worker on November 16, 2001, for a scheduled visit with his mother. There is nothing in the record to indicate that Jeffrey was brought to the Department on November 16, 2001, as a result of the abuse allegation.

5. Joann Lycett is a licensed protective investigator supervisor for the Department. Prior to becoming a supervisor, she was a protective investigator. During the time she has been an investigator and a supervisor, she took part in between 400 to 500 reports of child abuse or neglect. In addition to her experience as an investigator and a supervisor, Ms. Lycett received specialized training in child abuse investigations and earned certification in the child protection field. Her training includes determining the nature and cause of injuries to children.

6. Ms. Lycett was present at the Department when Jeffrey was brought in for the visit. She observed an oval shaped bruise approximately three inches by two inches extending out from under the child's diaper onto his upper thigh. When the diaper was removed, Ms. Lycett could see bruising on the child's buttock as well.

7. Ms. Lycett observed the bruise to be dark which was an indication to her that the bruise was recent as opposed to a bruise yellow or green in color. From her experience and training, the bruise did not appear to be accidental.

8. Jeffrey was examined on November 16, 2001, by Richard C. Trump, a Child Protection Team medical doctor of the University of Florida.¹ Dr. Trump's report reads in part:

. . . on the buttocks there are some fairly fresh vertical and linear 1mm wide bruises which are external to the buttock crease. There is a 7x3cm bruise on the left buttock below the aforementioned linear bruises, which ends in a circular bruise at the lower left buttock. The thin linear bruises come together perfectly when the buttocks are compressed flat. All of the bruises are fairly superficial and are red and blue in color; no yellow or green is present. There are no bruises medial to the linear bruises in the crease of the buttocks.

9. Mrs. Stone first observed the bruise the morning of November 16, 2001. Mrs. Stone did not report the bruise to the Department.

10. Jeffrey generally attended daycare from seven or eight o'clock in the morning until 5:30 or 6:00 in the evening. Jeffrey attended day care on November 16, 2001. Mrs. Stone conceded that the bruise could not have happened at the daycare center because she observed the bruise the morning of November 16, 2001, before Jeffrey attended the center.

11. According to Mrs. Stone, Jeffrey wore a brace on his leg which caught on the crib a couple of days before the incident. This, however, would not explain a fresh bruise as described by Ms. Lycett and supported by Dr. Trump's report. Likewise, the other foster children could not have caused the bruise as they were removed from the home four days prior to the incident in question.

12. While the evidence did not prove that Mrs. Stone directly caused the injury, the evidence did prove that the child suffered harm while in the custody and control of Respondents.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case.

14. The Department is the agency charged with the responsibility of licensing foster homes. Section 409.175, Florida Statutes.

15. The Department seeks revocation of the Stones' foster care license. Accordingly, as the party asserting the affirmative of an issue before this administrative tribunal, the Department has the burden of proof. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). However, in accordance with the definition of "license" contained in Section 409.175(2)(f), Florida

Statutes, the licensure status previously awarded to Respondents is not a professional license and does not create a property right. Therefore, the Department must establish facts which support its position by a preponderance of the evidence rather than by the clear and convincing standard normally imposed in professional license cases. Department of Banking and Finance v. Osborne Stern Company, 670 So. 2d 932 (Fla. 1996).

16. In its letter of March 29, 2002, the Department relies in part on Section 409.175(8), Florida Statutes, which reads in pertinent part as follows:

(8)(a) The department may deny, suspend, or revoke a license.

(b) Any of the following actions by a 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.

17. The Department also relies on Rule 65C-13.009(1)(e)10., Florida Administrative Code, which reads as follows:

(e) The goal of the Group Preparation and Selection Program is to prepare individuals and families to make an informed decision about becoming foster or adoptive families.

The decision is made with the department and is based on the capability and willingness to take on the "role" and develop the skills needed to foster or adopt. Foster and adoptive families who make good decisions and grow in their new roles work best with the department, birth families and others. These partnerships help children and youth have stability and permanence with a family. As successful foster and adoptive parents you must be able to:

* * *

10. Assure health and safety. Provide a healthy and safe environment for children and youth and keep them free from harm.

18. Finally, the Department relies on Rule 65C-13.010(1)(b)5. and (4)(j), Florida Administrative Code, which read in pertinent part as follows:

(1) Responsibilities of the Substitute Parent to the Child.

* * *

(b) Family Care Activities.

5. Discipline.

a. The substitute care parents must discipline children with kindness, consistency, and understanding, and with the purpose of helping the child develop responsibilities with self-control.

* * *

f. The substitute care parents must not use corporal punishment of any kind.

* * *

(4) Responsibilities of the Substitute Care Parents to the Department

(j) The substitute care parents must notify the department immediately of illness or accidents involving the child.

19. The evidence presented does not establish that Respondents used corporal punishment on Jeffrey. However, the preponderance of the evidence shows that Jeffrey received the bruise while in the custody and control of Respondents, thereby failing to keep the child free from harm in violation of Rule 65C-13.009(1)(e)5., Florida Administrative Code.

20. Further, Respondents did not report the bruise to the Department, thereby violating Rule 65C-13.010(4)(j), Florida Administrative Code.

RECOMMENDATION

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

RECOMMENDED:

That the Department of Children and Family Services enter a final order revoking the foster care license of the Stones.

DONE AND ENTERED this 16th day of August, 2002, in
Tallahassee, Leon County, Florida.

BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of August, 2002.

ENDNOTE

1/ The doctor did not testify. The doctor's report was received into evidence pursuant to Section 120.569(2)(g), Florida Statutes. The portion of the report which describes the bruise, while hearsay, supplements Ms. Lycett's testimony describing the bruise and, therefore, supports findings of fact as contemplated by 120.57(1)(c), Florida Statutes. However, the portion of the report containing his opinion as to the cause of the bruise goes beyond Ms. Lycett's description of the bruise, is hearsay, and is not competent to support a finding of fact as contemplated by Section 120.57(1)(c), Florida Statutes.

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.