

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

THOMAS BEUTE AND LIBBY BEUTE, )  
 )  
 Petitioners, )  
 )  
 vs. ) Case No. 02-4276  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 1, 2003, in Daytona Beach, Florida, before the Division of Administrative Hearings by its Administrative Law Judge, Diane Cleavinger.

APPEARANCES

For Petitioners: Thomas Beute, pro se  
Libby Beute, pro se  
817 Bayridge Lane  
Port Orange, Florida 32127

For Respondent: George P. Beckwith, Jr., Esquire  
Department of Children and  
Family Services  
210 North Palmetto Avenue, Suite 412  
Daytona Beach, Florida 32114-3269

STATEMENT OF THE ISSUE

Whether Petitioner's license as a family foster home should be disciplined.

PRELIMINARY STATEMENT

By letter Petitioners were informed by Respondent, Department of Children and Family Services, that their license as a family foster home would be revoked. Specifically the letter advised Petitioners that the revocation was based on two incidents that occurred on May 23, 2001, and December 2001, where Petitioner Libby Beute allegedly left an infant child unattended in her vehicle. Petitioners disagreed with Respondent's decision and requested a formal administrative hearing.

At the hearing, Petitioner Libby Beute testified in her own behalf and called three additional witnesses. Petitioners offered into evidence two exhibits, of which one was a composite exhibit. Respondent called three witnesses to testify and offered two exhibits into evidence.

After the hearing, Respondent filed a Proposed Recommended Order on April 14, 2003. Petitioners filed a Proposed Recommended Order on April 16, 2003.

FINDINGS OF FACT

1. In 2002, Petitioners were licensed by the Department of Children and Family Services (DCFS) as a family foster home holding License No. 01-0203-03. Petitioners provided foster services through Neighbor to Families, Inc.

2. On May 23, 2001, Petitioner Libby Beute (Ms. Beute) parked her van in a loading zone at the Sunshine Mall. At the time, she had an infant foster child riding with her in his car seat. She was there to deliver a package. She exited her vehicle, walked to the back and opened the back hatch door. She left the keys in the ignition and the van running. The air conditioning was on when Ms. Beute took out the baby stroller and the package. She placed the package in the stroller and entered the mall to deliver the package.

3. Mr. Dyksema was the security guard on duty at the Sunshine Mall on May 23, 2001. Mr. Dyksema saw Ms. Beute's blue van parked in a loading zone with the back hatch door opened. Even though the van was running and not knowing the infant was inside, he closed the van's back hatch door because he considered it a safety risk for patrons walking in and out of a restaurant within the mall. When the security guard closed the door, it locked all the van's doors. At least six minutes elapsed between the time he closed the van door and the time Ms. Beute came out of the mall. When Ms. Beute came out of the mall, she was very distraught, screaming, and asking why Mr. Dyksema closed the van door since the van was now locked and an infant was inside the van.

4. Eventually, the van was opened and the child, who had slept through the whole incident, was retrieved from the car.

5. Around June 5, 2001, as a result of a complaint that Ms. Beute left a child unattended at the Sunshine Mall, Gail Biro met with Ms. Beute. Ms. Beute was very remorseful about the incident and quite distraught during the meeting. Ms. Biro and Ms. Beute entered into a written "corrective action plan," whereby Ms. Beute agreed that children in her care would not be left unattended in her car even if the car were in full sight. Ms. Biro testified that she read the corrective action plan to Ms. Beute and that Ms. Beute, although very upset, seemed to understand the corrective action plan. Ms. Beute signed the corrective action plan.

6. In early December 2001, Ms. Beute parked her van at an elementary school so that she could drop off one of her foster children at that school. An infant foster child was in his car seat in the van. Ms. Beute left her van with the side door open while she walked the elementary student toward class. She never lost sight of the van and was only out of the van a short time. The first incident, while the most serious and neglectful, was forgiven by her supervisor because she felt Ms. Beute would not repeat the same mistake. The second incident did not amount to neglect but is troubling because Ms. Beute, probably unthinking, violated the corrective action plan. The ability to trust her representations are now in question. Therefore, revocation is an appropriate remedy.

7. Later Ms. Biro received a complaint from school officials reporting that Ms. Beute left an infant child in her van unattended in early December 2001, while Ms. Beute walked another foster child to class. Ms. Beute admitted to leaving the child in the van unattended only for a short time and that the van was in full sight at all times. The second incident resulted in a recommendation that Petitioners' foster care license be revoked.

8. Ms. Beute admitted that on May 23, 2001, and early December 2001, children were left in her van unattended. However, she never lost sight of the van or the children. Ms. Beute admitted to signing the June 2001 corrective action plan, but now claims that she did not read the plan carefully and that she did not understand the plan.

9. Other than these two incidents and even though Ms. Beute is somewhat disorganized, Ms. Beute was considered to be an excellent foster parent in caring for the children placed in her charge.

#### CONCLUSIONS OF LAW

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

11. Pursuant to Section 409.175(9)(a), Florida Statutes (2002), DCFS has the authority to deny, suspend, or revoke a

foster care license. Pursuant to Section 409.175(9)(b), Florida Statutes (2003), a negligent act, which materially affects the health or safety of children in the foster home, is a ground for taking such action. In the instant case, Ms. Beute clearly committed a negligent act on May 23, 2001, when she left an infant child in her van with the back hatch door opened and the keys in the ignition. On June 6, 2001, Ms. Beute entered into a written corrective action plan whereby she agreed that no children would be left in her car unattended even if the car is in full sight. Notwithstanding the corrective action plan, in early December 2001, Ms. Beute once again left a child in her van unattended. Such action was in direct violation of the corrective action plan.

12. In this case, DCFS has proven, by a preponderance of the evidence, that Petitioners' license to provide foster care should be revoked. Such revocation is justified as a result of Ms. Beute's leaving children alone in a van unattended on at least two occasions. Ms. Beute's actions on May 23, 2001, and again in December 2001, were dangerous and could have caused the health, safety, or welfare of the children in her care to be significantly impaired. Ms. Beute had been warned of her inappropriate actions and entered into a written corrective action plan wherein she agreed that she would not leave children in her car unattended even if the car was in full sight.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED:

That a final order be entered denying Petitioners' license as a family foster home.

DONE AND ENTERED this 27th day of May, 2003, in Tallahassee, Leon County, Florida.

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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 27th day of May, 2003.

COPIES FURNISHED:

George P. Beckwith, Jr., Esquire  
Department of Children and  
Family Services  
210 North Palmetto Avenue  
Suite 412  
Daytona Beach, Florida 32114-3269

Thomas Beute  
Libby Beute  
817 Bayridge Lane  
Port Orange, Florida 32127

Paul F. 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.