

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ALFONSO ZAPATA AND LYNDA)
ZAPATA,)
)
 Petitioners,)
)
 vs.) Case No. 02-4311
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on February 10, 2003, in Tallahassee, Florida, before the Division of Administrative Hearings by its Administrative Law Judge, Diane Cleavinger.

APPEARANCES

For Petitioners: Alfonso and Lynda Zapata, pro se
1947 Treeline Drive
Tallahassee, Florida 32303

For Respondent: John R. Perry, Esquire
Department of Children and
Family Services
2639 North Monroe Street, Room 252-A
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUES

Whether Respondents should be granted a family foster home license.

PRELIMINARY STATEMENT

Petitioners, Alfonso and Lynda Zapata (Petitioners), filed an application for licensure as a family foster care home. By letter dated September 18, 2003, Respondent, Department of Children and Family Services (Department), denied Petitioners' application. Petitioners requested a formal hearing on the Department's denial.

At the hearing, Petitioners did not call any witnesses to testify and did not introduce any exhibits into evidence. Respondent called three witnesses to testify but did not introduce any exhibits into evidence.

After the hearing, Petitioner and Respondent filed Proposed Recommended Orders on February 19, 2003.

FINDINGS OF FACT

1. Petitioners, Alfonso and Lynda Zapata, applied to be licensed as a family foster home care with the Department through the Devereux Foundation. The Devereux Foundation maintains a network of foster homes to serve parents who need to temporarily place their children in foster care (private placements) and dependent children in the custody of the Department (public placements). Previously, Petitioners had been licensed as a family foster care home with the Department through Florida Baptist Children's Home (Florida Baptist). Like the Devereux Foundation, Florida Baptist maintains a network of

foster homes to serve parents who need to temporarily place their children in foster care and dependent children in the custody of the Department. Petitioners had withdrawn from the relationship with Florida Baptist after a disagreement with Florida Baptist personnel over the removal of a child from their home and reunification of that child with her mother.

2. In 2001, about half of the children placed in Florida Baptist's homes were placed by the Department in connection with cases of child abuse, or abandonment, while the other half were private placements by families whose circumstances necessitated that their children temporarily reside elsewhere.

3. In July 2001, Petitioners had two foster children living in their home. One of these children, T.D., also known as J., had been placed in the Petitioner's home by the Department. The other, C.R., a three-month-old boy, had been privately placed in the home by Florida Baptist at the request of the child's mother, E.R., who was single.

4. E.R. had placed her child in Florida Baptist care because she had enlisted in the United States Army and was undergoing basic training out of state. E.R. had enlisted in order to provide her family a better life. It was initially anticipated that E.R. would be gone six months, but due to injuries sustained during basic training, she was actually gone

for eight or nine months. There was no evidence of abuse, neglect or abandonment on E.R.'s part.

5. During C.R.'s stay, Petitioners developed a negative impression of E.R. They did not think that E.R. called or wrote frequently enough. Petitioners had commented to Florida Baptist staff that E.R. was an unfit mother, that Petitioners provided C.R. with a better home than E.R. could, that E.R. did not love C.R., and that Petitioners could love C.R. more than E.R. could. Petitioners' opinion was based on their belief that no really good mother would take a job which required her to be away from her child for extended periods and a belief that C.R.'s grandmother was physically abusive towards C.R. Unfortunately, Petitioners let their beliefs about appropriate parenting interfere in their duties as foster parents to aid in reunification of a child with that child's legal parents.

6. Florida Baptist staff also believed that Petitioners had become too attached to C.R., which caused them to attempt to undermine the Department's later attempts to reunify mother and child at the planned time E.R. would return from basic training and be able to provide a home to C.R.

7. In late July 2001, Florida Baptist staff also became concerned about other behavior exhibited by Petitioners involving confidentiality issues and concerned that the Department had removed T.D. (aka "J.") from Petitioners' home.

8. The behavior concerning confidentiality arose because Mrs. Zapata had discussed the fitness of E.R. to be C.R.'s custodial parent with a Department employee. C.R. was not a Department placement. However, it should be noted that the discussion was with a Department employee involved in the fostering program. Such an employee could reasonably be viewed as a person to report any suspected abuse or neglect to. In this instance, the conversation did not involve a report of abuse or neglect, but concerned Petitioners' belief that E.R. was not a good mother. On the other hand, the evidence was unclear whether the same confidentiality requirements regarding public placements by the Department appertain to private placements by the parents. The incident does cast doubt on Petitioners' awareness and desire to comply with privacy considerations should they be licensed by the Department.

9. During the month of July 2001, T.D., also known as "J.", lived in Petitioner's home. T.D. was a little less than a year old at the time and had been placed in Petitioner's home by the Department because of ongoing juvenile dependency proceedings.

10. On July 31 or August 1, 2001, the Department counselor, Wendy Cheney, picked T.D. up at Petitioner's home to take him to a doctor's appointment. Ms. Cheney noticed that there were crumbs and dirt in the car seat in which Petitioners

had placed T.D. Ms. Cheney also noticed that T.D.'s clothes and diaper bag had a strong odor of spoiled milk. A crust also appeared on the nipple of the baby bottle and the eye medicine bottle Mrs. Zapata gave her to take with T.D. to the physician's appointment.

11. During the preceding month, Ms. Cheney had visited Petitioners' home on at least a weekly basis to monitor T.D.'s situation. On many of these occasions, Ms. Cheney also observed that T.D.'s clothes had the same sour milk smell she experienced during the doctor's appointment. She also noticed during these visits that the nipples of T.D.'s baby bottles were not properly covered. On one occasion, Ms. Cheney saw T.D. drop his pacifier and then observed Mrs. Zapata pick it up and replace it in T.D.'s mouth without washing it off. This is of particular concern, as Petitioners had a long-haired dog whose hair was apparent on the floor of Petitioners' home. The Department removed T.D. from Petitioners' home because of these observations. Again, these observations cast serious doubt on the quality of hygienic care provided by Petitioners to foster children. There was no evidence offered to contradict the apparent lack of good hygienic care provided to T.D. However, there was also no evidence that Petitioners' care of T.D. constituted neglect or abuse of T.D., since a finding of neglect

or abuse requires demonstration of harm or significantly dangerous conditions.

12. Because of these concerns, Florida Baptist staff agreed that C.R. should be removed from Petitioners' home at least until these issues sorted themselves out. On August 1, 2001, Florida Baptist social worker Sue Kiser telephoned Mr. Zapata and scheduled an appointment for 4:30 p.m., on August 2, 2001, to discuss the reunification of C.R. with E.R.

13. Later that day, Florida Baptist staff decided that since E.R. had recently returned from basic training, the optimum way of accomplishing reunification was to have E.R. meet Ms. Kiser and C.R. at a previously scheduled medical appointment on August 2, 2001, following which C.R. and E.R. would stay together at another foster home.

14. Florida Baptist social worker, Jackie Barksdale, communicated this plan by telephone to Mr. Zapata on August 1, 2001. Mr. Zapata became angry and stated that he refused to allow C.R. to leave his home and go to visit with E.R. He accused Ms. Barksdale of "screwing with" C.R.'s life and committing "child abuse." He promised that "heads would roll" and disparaged E.R.'s family. Ms. Zapata then got on the telephone. She also accused Ms. Barksdale of child abuse and threatened to call the abuse hotline on Florida Baptist. Since no abuse reports were made by Petitioners, these threats were

made as a bluff in an attempt to coerce Florida Baptist to leave C.R. with Petitioners.

15. Given this conduct, the staff of Florida Baptist felt they had little choice but to remove C.R. from Petitioner's home. C.R. was removed from Petitioners' home on August 2, 2001. C.R. stayed in the other foster home without incident for about five weeks. C.R. and E.R. were then reunited, and continue to live together as a family. No reports of any problems between C.R. and E.R. have been received since that time. These facts clearly demonstrate Petitioners' unwillingness to cooperate in reunification plans for a child and mother. Petitioners permitted their low opinion regarding C.R.'s mother to interfere with their duty as foster parents. There was no evidence that Petitioners' attitude regarding the parents of foster children would not cause future interference in reunification efforts should their application for licensure be granted.

16. An abused child, V.V., was placed in shelter care with Petitioners. V.V. had sustained a broken arm from abuse she had suffered. She stayed less than three days with Petitioners because her crying kept them up at night and interfered with Mrs. Zapata's home schooling of her biological children. Petitioners acted appropriately in requesting the removal of the child when it became apparent that the placement could not work

out and does not demonstrate a lack of qualification for licensure.

17. Finally, a pregnant teenage girl who wished to place her child with Florida Baptist wanted to see the home her child was to live in. Florida Baptist arranged for the girl to look at Petitioners' home. After the visit, Petitioners asked Florida Baptist never to ask them to submit to such an inspection, as they felt they were under some heightened level of scrutiny. Florida Baptist staff explained that parents frequently made this request, and Petitioners repeated that they did not wish to undergo it again. Petitioners request is troubling since one of the duties of the foster parent is to work with the biological parent of a foster child. Again, Petitioners' negative attitudes toward the parents of foster children demonstrate that Petitioners' application for licensure should be denied.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding in accordance with Section 120.57(1), Florida Statutes.

19. Section 409.175(2)(f), Florida Statutes, which governs licensure of foster homes such as the one you now operate, defines the term "license" as follows:

(f) "License" means "license" as defined in s. 120.52(9). A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department. (Emphasis supplied)

20. As a consequence, a foster care license is a public trust and not a privilege. However, the Department cannot act unreasonably, arbitrarily or capriciously in denying requests for foster home licensure.

21. Petitioners did not testify. They did not call any witnesses to testify on their behalf. They introduced no exhibits into evidence. They did cross-examine the Department's witnesses. However, the witness' testimony was largely un rebutted.

22. Rule 65C-13.010(1)(c)1., Florida Administrative Code, requires that foster parents work cooperatively with their counselor as a member of a treatment team. Rule 65C-13.010(2)(a), Florida Administrative Code, requires that foster parents present a positive image of and demonstrate respect for the foster child's biological family and that they agree to maintain a working relationship with the child's family members. Moreover, Rule 65C-13.010(2)(b), Florida

Administrative Code, requires that foster parents participate in planning visits for the child with his family.

23. Petitioners' behavior regarding C.R. and the request by Petitioners that the parents of potential placements not view their home prior to placement demonstrate that they disregarded and willfully violated these standards. They routinely disparaged C.R.'s mother and her family. They attempted to prevent C.R. from visiting his mother at another foster home. They attempted to obstruct the efforts of Florida Baptist to reunify C.R. and his mother, even though there was no objective evidence to suggest that C.R. was in any way an unfit mother. Finally, Petitioners did not wish to have their home viewed by the parent of a foster child so that the mother would have some confidence in the safety and care of her child. These facts alone warrant denial of Petitioners' application for licensure.

24. Finally, Section 409.175(9)(b)1., Florida Statutes, provides as follows:

- (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.

25. Rule 65C-13.011(11)(b), Florida Administrative Code, requires that foster homes be free from objects, materials, and conditions which constitute a threat to children. Petitioners routinely allowed T.D. to wear clothing that smelled of sour milk. The nipples on T.D.'s baby bottle frequently were not properly covered. A crust was observed on his baby bottle when he went to the doctor. More importantly, Ms. Zapata replaced T.D.'s pacifier after it had fallen onto the floor without cleaning it first. While not shown to be neglect, Petitioners' inattention to hygiene, without contrary evidence, is sufficient reason to deny Petitioner's application.

26. Petitioners' persistent refusal to work cooperatively with Florida Baptist or with the parents whose children were placed in their home demonstrates an attitude of entitlement, which is completely inconsistent with the necessary requirements of foster care. Therefore, their application for licensure should be denied.

RECOMMENDATION

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

RECOMMENDED that the Department of Children and Family Services enter a final order denying the application for a foster care license submitted by Petitioners Alfonso and Lynda Zapata.

DONE AND ENTERED this 15th day of April, 2003, in
Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
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this 15th day of March, 2003.

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.