

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TAMIEKA PETTY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 03-0931  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A final hearing was conducted on July 11, 2003, in Orlando, Florida, before William R. Pfeiffer, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jeremy K. Markman, Esquire  
800 North Ferncreek Avenue  
Orlando, Florida 32803

For Respondent: Richard Cato, Esquire  
Department of Children and  
Family Services  
400 West Robinson Street, Suite S-1106  
Orlando, Florida 32801-1782

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent should approve Petitioner's registration to operate a family day care home.

PRELIMINARY STATEMENT

Petitioner, Tamieka Petty, submitted an application with Respondent, the Department of Children and Family Services, to operate a registered family day care. As required by day care regulations, Respondent conducted a background screening on Petitioner and her husband, who resided in the family home. Petitioner's screening revealed that a child was removed from Petitioner's care in October 2000, following an allegation of abuse or neglect. Furthermore, the screening of Petitioner's husband revealed that he was arrested for allegedly committing a lewd act upon a minor girl in October 2000.

Respondent notified Petitioner that her application to operate a day care was denied. Petitioner timely requested an administrative hearing to challenge the denial.

At final hearing, Petitioner testified, presented three witnesses, and introduced two exhibits which were admitted into evidence. Respondent presented the testimony of four witnesses. The parties jointly introduced one exhibit which was admitted.

Neither party ordered a transcript of the hearing. Each of the parties timely filed its respective Proposed Recommended Orders, which have been duly considered.

All citations are to Florida Statutes (2002) unless otherwise indicated.

## FINDINGS OF FACT

### The Parties

1. Petitioner is a 25-year-old female who admittedly has been providing unlicensed child day care in her home for the past several years. While she has no formal training in child care, she has been employed in the child care field for many years and obtained her GED in 1995. Petitioner has been married to her husband, A.P., for six years, and they live together.

2. Respondent is the state agency responsible for regulating child care facilities pursuant to Chapter 402.

### The Application

3. On September 18, 2002, Petitioner submitted an application to Respondent seeking licensure to operate a registered family day care within her home located at 6351 Redwood Oaks Drive in Orlando, Florida. Respondent processed the application and effectuated the required background screening of the individuals living within the household, including Petitioner and A.P.

4. The screening of Petitioner revealed that on October 3, 2000, a young girl, living within Petitioner's home and under her supervision, was removed following a report to the abuse hotline and the subsequent investigation by Donald Griffin, a protective services investigator employed by Respondent.

5. The screening of A.P. revealed that he was arrested in October 2000 on charges of lewd, lascivious assault or act on a child; prostitution; lewd or lascivious molestation; renting space to be used for prostitution; and lewd or lascivious conduct. The screening further revealed that on May 15, 2002, the State Attorney's Office determined that the case was not suitable for prosecution and filed a "No Information Notice."

6. Upon receipt and consideration of the screening results, Respondent denied Petitioner's application on January 23, 2003, advising her that:

. . . the Department is unable to approve your application to operate a family day care due to safety concerns for children that may be placed under your care for the following reasons:

a. Background screening revealed that a child was removed from your care following an allegation of abuse or neglect.

b. Background screening revealed that a member of your household lacks moral character due to their arrest record involving minors which would place the children at risk of harm.

7. With respect to Petitioner's screening results, Petitioner admits that a child was removed from her home, but alleges that the removal was at her request. Petitioner denies any allegation of abuse and insists that the removed child, her friend's daughter, was "extremely unruly and too difficult to

handle." As a result, Petitioner claims that she requested that Respondent remove the child and Respondent complied.

8. Respondent's investigator, Mr. Griffin, testified otherwise. Investigator Griffin stated that he personally investigated Petitioner following a report to Florida's child abuse hotline. He separately interviewed both Petitioner and the child and noticed clear bruises and welts on the child. Investigator Griffin determined that Petitioner's home was not suitable for the young girl and removed her from the residence. Mr. Griffin's testimony was more credible. No evidence was offered to support Petitioner's assertion.

9. With respect to the screening results of A.P., Respondent presented compelling evidence that A.P. lacks the requisite good moral character. First, Respondent demonstrated and Petitioner admits that A.P. occasionally gets angry and lacks self-control. In fact, the local police department has responded to domestic disturbance calls from the family home on at-least two occasions.

10. In addition, the evidence surrounding A.P.'s arrest demonstrates that A.P. lacks good moral character. Specifically, A.B., the alleged victim of A.P., credibly testified at hearing that in October 2000, at age 12, she and her minor female friend, L.M. were walking near their school during the early evening when an unknown black male, later

identified as A.P., driving a green sports utility vehicle, offered them a ride. The female minors entered his S.U.V. and were taken to a convenience store and then to a hotel.

11. A.B. testified that while in the hotel room, the male inappropriately touched her butt, pushed her on the bed and solicited her to have sex with him for money. A.B. said "no" to his offer and asked him to stop. Shortly thereafter, the male departed the hotel and abandoned the girls in the hotel room with the room key.

12. The police were contacted and investigator Rick Salcido conducted an investigation. After interviewing the girls, Mr. Salcido acquired physical evidence at the hotel linking A.P. to the room and supporting A.B.'s allegations. He retrieved a copy of A.P.'s driver's license and hotel credit card used at check-in from the hotel manager.

13. In addition to the physical evidence linking A.P. to the hotel, A.B. positively identified A.P.'s photo as the perpetrator. Moreover, the investigator determined, and Petitioner admits that A.P. owned and drove a green sports utility vehicle at the time of the alleged incident. While Petitioner asserts that she and A.P. were out of town and on vacation on the date of the incident, she admits that they returned home at approximately 7:00 p.m. that evening.

14. Although A.P. was subsequently arrested, the State Attorney's Office later declined to prosecute and filed a "No Information Notice."

15. At hearing, counsel for A.P. indicated that the statute of limitations had not expired and A.P. invoked his Fifth Amendment privilege to remain silent. A.P. declined to testify and answer questions related to his moral character and the circumstances of his arrest.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings pursuant to Section 120.57(1).

17. Generally, the party asserting the affirmative of an issue has the burden of presenting evidence as to that issue. *See Florida Department of Transportation v. J.W.C. Company*, 396 So. 2d 778 (Fla. 1st DCA 1981). Pursuant to Subsection 120.57(1)(j), "Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized."

18. While Petitioner bears the burden of presenting evidence supporting her application for registration to operate a family day care within her home and Respondent has the burden

of presenting evidence demonstrating that she is unfit, Petitioner bears the burden of ultimate persuasion at each and every step of the licensure proceedings, regardless of which party bears the burden of presenting certain evidence.

*Department of Banking and Finance v. Osborne Stern and Company*, 670 So. 2d 932 (Fla. 1996).

19. Section 402.305 sets forth the licensing standards for child care facilities. Subsection 402.305(2)(a) states that minimum standards for "child care personnel" shall include minimum requirements as to "good moral character based upon screening" that is conducted as provided in Chapter 435, using the "level 2 standards for screening set forth." Section 402.302(3) defines "child care personnel" as all owners, operators, employees and volunteers working in a child care facility, including "any member, over the age of 12 years, of a child care facility operator's family, or person, over the age of 12 years, residing with a child care facility operator if the child care facility is located in or adjacent to the home of the operator."

20. The Level 2 screening standards set forth in Section 435.04 are as follows:

(1) All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued



employment. For the purposes of this subsection, security background investigations shall include, but not be limited to, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction: . . .

21. Petitioner failed to prove that her husband, who resides within the proposed day care home and will inevitably be exposed to the children, possesses the requisite good moral character. First, A.P. declined to testify and present direct evidence of his alleged good moral character. While A.P.'s pastor indicated that A.P. has a reputation for being an upstanding individual, Pastor Smith spends very little time with A.P. and his testimony provides little value.

22. Second, neither A.P. nor Petitioner provided any reliable evidence refuting Respondent's persuasive evidence supporting A.B.'s allegation. The mere fact that the prosecutor declined to prosecute the case does not demonstrate that A.P.

possesses good moral character. Clearly, when determining good moral character, it is not necessary for a person to be charged with or convicted of a crime in order to be denied licensure. *Katz v. Education Practices Commission*, 771 So. 2d 1248 (Fla. 4th DCA 2001).

23. Pursuant to Section 39.202, Respondent is privy to all reports made to the central abuse hotline, and all records generated as a result of such reports, when reviewing licensure applications for child care facilities and family day care homes. Respondent proved that a young child was removed from Petitioner's home following an allegation of child abuse and subsequent investigation. Respondent proved that the protective investigator personally interviewed Petitioner and the child and witnessed visible injuries on the child while she was in Petitioner's care.

24. Although it is uncertain whether Petitioner personally caused the injuries, the competent evidence demonstrates that Petitioner's home is not a safe or appropriate environment for child day care services.

25. In sum, Petitioner failed to demonstrate that her home is a safe and appropriate site for a registered family day care. To the contrary, Respondent proved by a preponderance of the evidence its determination to deny a registration to Petitioner.

RECOMMENDATION

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

RECOMMENDED that Respondent enter a final order denying Petitioner's application for a registration to operate a child care facility.

DONE AND ENTERED this 29th day of August, 2003, in Tallahassee, Leon County, Florida.



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WILLIAM R. PFEIFFER  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of August, 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.