

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

K. W. AND L. A. W., )  
 )  
 Petitioners, )  
 )  
 vs. ) Case No. 04-0694  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a final administrative hearing in this case on June 2, 2004, in Viera, Florida.

APPEARANCES

For Petitioner: Thomas J. Thompson, Esquire  
Thomas Thompson, P.A.  
100 South Washington Avenue  
Titusville, Florida 32780

For Respondent: Richard Cato, Esquire  
Department of children and  
Family Services  
400 West Robinson Street, Suite S-1106  
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STATEMENT OF THE ISSUE

Whether Petitioners, K.W. and L.A.W., should be granted a license to be foster parents.

PRELIMINARY STATEMENT

On January 27, 2004, Respondent, Department of Children and Family Services, notified Petitioners that their application to be foster parents would not be approved based on a series of incidents of domestic violence and a negative character reference. On February 16, 2004, Petitioners requested an administrative hearing. On February 26, 2004, the case was referred to the Division of Administrative Hearings.

On March 2, 2004, an Initial Order was sent to the parties. On March 22, 2004, the case was scheduled for final hearing in Viera, Florida, on April 22, 2004. On Petitioners' motion, the case was continued and rescheduled for final hearing on June 2, 2004.

The case was presented as rescheduled. Petitioners presented the testimony of Nancy Sley, William Carignan, John Wright, and Petitioners. Respondent presented the testimony of Anita Houchin and offered eight exhibits which were marked Respondent's Exhibits 1 through 8 and received into evidence.

The parties requested and were given 30 days after the filing of the Transcript of Hearing to file proposed recommended orders. The Transcript of Hearing was initially misfiled with the Clerk of the Brevard County, Florida, Civil Court; ultimately, it was filed with the Clerk of the Division of Administrative Hearings on August 30, 2004. On November 22,

2004, Respondent requested an extension of time to file its proposed recommended order. The request was granted, allowing Respondent until December 10, 2004, to file.

Petitioners' Proposed Recommended Order was filed on November 22, 2004. Respondent's Proposed Recommended Order was filed on December 10, 2004. Both parties' proposals have been given careful consideration in preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following findings of facts are made:

1. Petitioners are a married couple who applied to Respondent for a foster home license. Petitioners have three children.
2. The background investigation conducted by Respondent revealed reports of incidents of domestic violence and battery involving Petitioners and their children.
3. On October 4, 1999, police officers responded to Petitioners' home after receiving a report of domestic violence. The officer's investigation revealed that one of the Petitioners, L.A.W., had been battered by her son. The child had been involved in pastoral counseling for his aggressive behavior. Petitioner, K.W., advised the police officer that the

child, W.A.W., would be moving from the residence because of his continuing inappropriate behavior.

4. On April 7, 2002, another incident of domestic violence was reported and investigated. On this occasion, the two younger children of Petitioners were involved in an altercation that resulted in Petitioner, K.W., being rendered unconscious by a blow to the head with an object delivered by one of the children, C.W. C.W. was arrested for aggravated battery.

5. In February 2003, Petitioners desired to keep a six-month-old, unrelated child in their home. The child was placed in the home contingent on C.W.'s moving from the home and not residing in the home. Petitioners agreed to this contingency of placement, and the child was placed in Petitioners' home.

6. On November 5, 2003, Petitioners applied to be licensed as foster parents. Ten days after Petitioners applied to be licensed, another incident of domestic violence occurred. On November 15, 2003, two of Petitioners' adult children got into a fistfight which resulted in one having a broken nose. As a result, W.A.W. was arrested. At the time of the altercation, W.A.W., 21 years old and the oldest child who had moved out at an earlier time as a result of his behavior, was residing at Petitioners' residence. Although the police report indicates that the incident occurred at Petitioners' residence, the testimony indicated that it occurred "down the street."

7. All three of Petitioners' children continue to reside locally and frequent their parents' home.

8. Petitioners are highly recommended by a representative of The Children's Home Society, a Guardian ad Litem, and their pastor.

9. Respondent has the responsibility of placing foster children in a safe setting. But for the behavior of their children, Petitioners would qualify for licensure. As long as Petitioners' children frequent Petitioners' residence, any child placed in that residence is at risk. As a result, Petitioners are not qualified to be licensed as foster parents.

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57, Fla. Stat. (2004).

11. Respondent is the agency charged with the responsibility of licensing foster homes. § 409.175, Fla. Stat. (2004).

12. Petitioners are applicants for a foster home license. Accordingly, as the party asserting the affirmative of an issue before this administrative tribunal, Petitioners have the burden of proof. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Petitioners must establish facts which support their position by a

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

13. Subsection 409.175(1)(a), Florida Statutes (2004), authorizes Respondent to establish rules regarding qualifications of parties seeking to be licensed as foster parents.

14. Florida Administrative Code Rule 65C-13.011(11)(b) reads as follows:

(11) Physical Environment.

\* \* \*

(b) The home and premises must be free from objects, materials, and conditions which constitute a danger to children.

15. Respondent relies on Subsection 409.175(2)(f), Florida Statutes (2004), which reads, in pertinent part:

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. The privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department. (Emphasis supplied)

16. But for the conduct of their children, Petitioners meet the licensure standards. However, the preponderance of the evidence reveals that Petitioners' children frequent their

residence, and the unruly behavior of these children constitutes a danger to a foster child as contemplated by Florida Administrative Code Rule 65C-13.011(11)(b).

17. Given the Legislative directive contained in Subsection 409.175(2)(f), Florida Statutes (2004), Respondent's decision to deny Petitioners' application for licensure is appropriate.

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 foster care license application of Petitioners.

DONE AND ENTERED this 12th day of January, 2005, in Tallahassee, Leon County, Florida.



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JEFF B. CLARK  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of January, 2005.

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.