

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

J. B. AND R. B.,)
)
 Petitioners,)
)
 vs.) Case No. 04-1829
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on July 13, 2004, in Ocala, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioners: J. B. and R. B., pro se
(Address of Record)

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

STATEMENT OF THE ISSUE

The issue is whether Petitioners' foster home license should be revoked.

PRELIMINARY STATEMENT

In a letter dated February 13, 2004, Respondent Department of Children and Family Services (Respondent) advised Petitioners

J. B. and R. B. (Petitioners) that their foster home license would be revoked. On April 29, 2004, Petitioners requested a formal hearing to contest the allegations that they were responsible for bruises and welts on a foster child and that they had provided inadequate supervision for the child.

Respondent referred the case to the Division of Administrative Hearings on May 20, 2004. A Notice of Hearing dated June 15, 2004, scheduled the hearing for July 13, 2004.

During the hearing, Respondent presented the testimony of five witnesses and offered six exhibits that were accepted into the record as evidence. Petitioners testified on their behalf, presented the testimony of two additional witnesses, and offered one composite exhibit, which was accepted into the record as evidence.

The parties did not file a copy of the transcript. Respondent filed its Proposed Findings and Conclusions. As of the date that this Recommended Order was issued, Petitioners had not filed proposed findings of fact and conclusions of law.

All citations referenced hereinafter shall be to Florida Statutes (2003).

FINDINGS OF FACT

1. At all times relevant to this proceeding, Petitioners were licensed to operate a family foster home. Their most current license was effective through April 7, 2004.

2. Petitioners have served as foster parents for about five years. There has been no report of child neglect or child abuse in their foster home prior to the time period relevant here.

3. A. H. is a 10-year-old male. At all times relevant here, A. H. was in the fourth grade.

4. Sometime prior to October 3, 2003, Respondent removed A. H. from his mother's custody and placed him in an initial foster home. A. H.'s first foster home shall be referred to hereinafter as the Gs' foster home.

5. Thomas Munkittrick worked for Respondent as a family service counselor. A.H. was one of Mr. Munkittrick's clients.

6. A. H. had separate visitations with his mother and father on October 6, 2003. Mr. Munkittrick supervised both visits.

7. During a visit to the Gs' foster home on October 14, 2003, Mr. Munkittrick noticed a rash on A. H.'s stomach. The rash appeared to be a ringworm. Mr. Munkittrick did not observe any bruises on A. H.'s arms.

8. On or about October 15, 2003, Mr. Munkittrick spoke to Petitioners to determine whether they would accept A. H. in their home as a foster child. For reasons that are not clear, Respondent changed A. H.'s placement to Petitioners' foster home that same day.

9. On October 16, 2003, Mr. Munkittrick took A. H. to see a medical doctor at Express Care of Belleview. Mr. Munkittrick and A. H.'s mother were present for the medical examination, during which A. H. removed his shirt. Mr. Munkittrick did not observe any bruises on A. H.'s arms.

10. A. H.'s medical record dated October 16, 2003, indicates A. H. had a scratch/bruise on his nose, a ringworm on his stomach, and a rash on his wrist. According to the doctor's notes, A. H. reported that he accidentally injured his nose while playing football with Petitioners' dogs. The doctor's notes do not refer to any bruises on A. H.'s arms.

11. On October 23, 2003, Mr. Munkittrick visited A. H. in Petitioners' home. Mr. Munkittrick saw no visible marks or bruises on A. H. Instead, Mr. Munkittrick observed what he believed was dirt on A. H.'s arms. Mr. Munkittrick also observed that A. H. was slightly flushed from playing outside with Petitioners' dogs, two large Doberman Pinchers.

12. During a visit to Petitioners' home on October 30, 2003, Mr. Munkittrick observed multiple bruises on both of A. H.'s wrists and arms. The bruises were round and as large as quarters. There were no scratch or bite marks on A. H.'s arms.

13. Prior to October 30, 2003, Petitioners had not advised Respondent about the bruises on A. H.'s arms. During the October 30, 2003, home visit, Petitioner R. B., the foster

mother, indicated that she had never seen the bruises on A. H.'s arms before Mr. Munkittrick pointed them out. She relied on A. H. to explain how he was injured. During the hearing, Petitioner R. B. admitted that she saw blue/purple bruises on A. H.'s arms for the first time two or three days after his medical examination on October 16, 2003.

14. Despite the inconsistency of Petitioner R. B.'s statements, the greater weight of the evidence indicates that Petitioner R. B. had no first-hand knowledge as to the cause of the bruises. Her testimony that she did not cause the bruises on A. H.'s arms is credible.

15. On October 31, 2003, Mr. Munkittrick went to A. H.'s school to photograph the bruises on his arms. He then took A. H. for an examination by Respondent's child protection team. The examination included an evaluation of the bruises by an advanced registered nurse practitioner. The nurse was qualified by training and experience to assess pediatric injuries resulting from physical and sexual child abuse.

16. The nurse was unable to reach a conclusion as to the exact source of the bruises. She could not rule out that they were self-inflicted. However, the nurse's testimony provides competent evidence that the bruises on A. H.'s arms were consistent with being grabbed by another person and that they

were inconsistent with injuries resulting from roughhousing with dogs.

17. Bruises heal in stages identified by colors beginning with red and ending with brown before they disappear. The colors of bruises in order of healing are red, blue, purple, green, yellow, and brown.

18. In general, a bruise is: (a) red within one to two days of infliction; (b) blue within one to four days of infliction; and (c) yellow/green from the fifth or sixth day up to the tenth day after infliction.

19. A. H.'s bruises ranged in color from red to yellow/green to yellow. The yellow and yellow/green bruises were located on both of A. H.'s upper extremities. He had two forearm bruises with a red component.

20. It is highly unlikely that A. H. received the bruises prior to October 6, 2003. It is more likely that the injuries causing the bruises were inflicted approximately one to two weeks prior to October 31, 2003, i.e., between October 18, 2003, and October 31, 2003. A. H. was living in Petitioners' home and attending public school during this period.

21. On the evening of October 31, 2003, Respondent's staff decided to move A. H. to a third foster home. Respondent's child protective investigator took A. H. back to Petitioners' home to pick up his clothes and belongings.

22. Petitioner R. B. became excited and increasingly emotional when she learned that Respondent was changing A. H.'s placement to another foster home. Petitioner R. B. began yelling, in A. H.'s presence, that he was a liar and a "schizo" just like his "schizophrenic mother." The child protective investigator had to ask A. H. to leave the room when Petitioner R. B. began calling him and his mother names.

23. Petitioner R. B.'s behavior on the evening of October 31, 2003, was inappropriate. However, the deputy sheriff, who was assisting with the change in placement, did not make any arrests.

24. On the evening of October 31, 2003, and during the hearing, Petitioner J. B., the foster father, admitted that he had seen the bruises on A. H.'s arms sometime during the week before October 31, 2003. On both occasions, Petitioner J. B. stated that A. H. was crazy. Petitioner J. B. had no first-hand knowledge as to the cause of the bruises. During the hearing, Petitioner J. B. provided credible testimony that neither he nor his dogs caused the injuries.

25. In order to operate a foster home, foster parents must undergo training on an annual basis. The training includes knowing when to advise Respondent about injuries to their foster children. The requirement to report injuries is a part of the

annual service agreement signed by Respondent's staff and foster parents.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

27. Pursuant to Section 409.175(1)(f), Florida Statutes, a foster home license is not a professional license and the receipt of a foster home license does not create a property right in the licensee. Instead, foster home licenses are a public trust. See § 409.175(1)(f), Fla. Stat.

28. Respondent has the burden of proving by a preponderance of the evidence that Petitioners' foster home license should be revoked. See Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

29. Section 409.175(9), Florida Statutes, states as follows in relevant part:

(9)(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.

30. Florida Administrative Code Rule 65C-13.010 states as follows in pertinent part:

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

* * *

(b) Family Care Activities.

1. Daily living tasks.

a. The substitute care parents are expected to provide structure and daily activities designed to promote the individual physical, social, intellectual, spiritual, and emotional development of the children in their home.

* * *

5. Discipline.

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

* * *

d. The substitute care parents must not allow children in care to be subjected to verbal abuse, derogatory remarks about themselves and family members or threats of removal from the home.

* * *

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.

31. It is not necessary to report every minor bruise that appears on a child. However, Petitioners certainly should have advised Respondent about the multiple bruises suffered by A. H. in the week before October 30, 2003. Their negligent supervision and/or failure to report the bruises clearly violated Section 409.175(9)(b), Florida Statutes, and Florida Administrative Code Rules 65C-13.010(1)(b)1.a. and 65C-13.010(4)(j).

32. Petitioners made derogatory comments about A. H. and his mother in his presence on October 31, 2003. Their verbal abuse was a clear violation of Florida Administrative Code Rule 65C-13.010(1)(b)5.d.

33. The only remaining question is whether Petitioners or someone in their household and under their control was personally responsible for inflicting bruises on A. H.'s arms. Regarding this issue, it is significant that the following people did not testify at the hearing. (a) A. H.; (b) A. H.'s fourth-grade teacher; (c) another foster child who was in Petitioners' foster home for at least part of the relevant time

period; (d) the deputy sheriff who assisted in moving A. H. to the third foster home; and (e) the prior foster parents.

34. It is undisputed that A. H. received the bruises sometime while he was living in Petitioners' home. However, based on the record as it exists, Respondent did not present persuasive evidence that Petitioners were responsible for the bruises on A. H.'s arms.

35. Based on this record, Petitioners did not violate Florida Administrative Code Rule 65C-13.010(1)(b)5. by inflicting bruises on A. H.'s arms. However, Respondent met its burden of proving that Petitioners' foster care license should be revoked based on their negligent supervision and failure to report injuries.

RECOMMENDATION

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

RECOMMENDED:

That Respondent enter a final order revoking Petitioners' foster care license.

DONE AND ENTERED this 12th day of August, 2004, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of August, 2004.

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.