

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SISLYN GONSALVES DAYCARE,                    )  
  )  
      Petitioner,                                )  
  )  
vs.    )  
  )  
  )  
DEPARTMENT OF CHILDREN AND                )  
FAMILY SERVICES,                            )  
  )  
      Respondent.                             )  
\_\_\_\_\_  
  )

Case No. 05-2434

RECOMMENDED ORDER

This cause came on for formal proceeding and hearing before P. Michael Ruff, a duly-designated Administrative Law Judge of the Division of Administrative Hearings. The formal hearing was conducted in Deland, Florida, on September 27, 2005. The appearances were as follows:

APPEARANCES

For Petitioner: Sislyn Gonsalves, pro se  
2820 Lake Helen Osteen Road  
Deltona, Florida 32738

For Respondent: George P. Beckwith, Jr., Esquire  
Department of Children and  
Family Services  
210 North Palmetto Avenue, Suite 440  
Daytona Beach, Florida 32114-3269

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether the Petitioner's license to operate a family daycare

home should be suspended based upon the Petitioner's husband's plea of nolo contendere to a disqualifying second degree felony.

PRELIMINARY STATEMENT

This cause arose when it came to the Respondent Agency's attention that the husband of the Petitioner, Clayton A. Gonsalves, became involved in an incident with the Petitioner's and his son, wherein Clayton Gonsalves struck his son with a short length of PVC pipe on or about the left shoulder and right hand. The police became involved, charged Mr. Gonsalves and the criminal charge was ultimately disposed of by his entry of a plea of a nolo contendere to a criminal charge of "aggravated child abuse," a second degree felony. Thereafter, the Agency notified the Petitioner by letter that it was seeking suspension of her family daycare home license because of Mr. Gonsalves' residence in the home and as a result of his plea to a second degree felony. The Petitioner elected to contest this initial action by the Agency and the cause was ultimately transmitted to the Division of Administrative Hearings and the undersigned Administrative Law Judge

The cause came on for hearing as noticed. At the hearing the Petitioner presented her own testimony and that of Imelda Roberts; Pedro Ayallo, a state licensing inspector for the Department of Children and Family Services (DCF); and Jaheida Corchado, a parent of one of the children cared for in the

Petitioner's family daycare home. The Agency presented the testimony of its child care licensing unit supervisor, Freneau Surgine. Additionally, the Agency presented Exhibits A through E which were admitted into evidence. Exhibit F was admitted as corroborative hearsay only (police report) and Exhibit G was admitted into evidence (circuit court disposition order). Upon conclusion of the proceeding, the parties submitted Proposed Recommended Orders which have been considered in the rendition of this Recommended Order.

#### FINDINGS OF FACT

1. The Petitioner, Sislyn Gonsalves, has operated a family daycare home at times pertinent hereto, including in 2005 up through the time of the hearing, pursuant to license number F12V00010. The family daycare home is located at 2820 Lake Helen Osteen Road, Deltona, Volusia County, Florida.

2. The Petitioner and her husband Clayton A. Gonsalves have had repeated disciplinary problems with their 13 year old son, K. G. K. G. had been repeatedly in trouble at school and may have been involved in an incident involving a theft, of which his parents became aware. On or about April 16, 2005, an incident occurred in the Petitioner's home. The Petitioner's husband Clayton Gonsalves and the Petitioner were trying to leave for church that morning and to persuade their son K. G. to attend church with them. An argument between the son and

Mr. Gonsalves ensued. During the incident Mr. Gonsalves picked-up a short piece of light weight PVC pipe, approximately three feet by three quarter's of an inch, and struck his son several times on the left shoulder and the right hand. The persuasive evidence in this case is that the blows with the light weight PVC pipe did not leave marks. The son, K. G., being angry and upset at the time, abruptly left the family premises. The Petitioner and her husband and other child thereupon preceded to attend church. Later that day, after the incident had apparently been reported to the police, the police arrested Mr. Gonsalves and charged him as having committed child abuse.

3. On or about May 11, 2005, Mr. Gonsalves entered a plea of nolo contendere on a charge of aggravated child abuse, which is a second degree felony. This resulted from the incident described above. As a result of that plea Mr. Gonsalves was sentenced to a term of three years of probation, and adjudication was withheld. As a condition of his probation he was ordered to have "no violent contact" with the victim, K. G., and to "comply with the Department of Children and Family's conditions and case plans."

4. Mr. Gonsalves works in the State of New York as a plumber. He returns to his family residence, to be with his family, whenever possible, between jobs. He resides there with the Petitioner and their children at such times. He is often

present in the family residence while the Petitioner is providing daycare for other children and often assists her in providing care for the children.

5. The unrefuted, persuasive evidence adduced by the Petitioner through her testimony and that of her witnesses establishes that she and her husband are loving parents who do not maintain an abusive home. They treat their own children and the children they provide daycare for, as clients, in a loving, responsible and positive way. The Petitioner is in the process of earning her college degree in Early Childhood Education and desires to continue in the business of providing daycare. The lack of an abusive climate in the home is borne out by the fact that the Petitioner's and Mr. Gonsalves's children are in the gifted program in school, and by the fact that K. G.'s grades and scholastic standing at school have marketedly improved since the incident in question.

6. The Petitioner's witnesses, particularly her mother, described Mr. Gonsalves as a loving husband and father who does not commit abuse, who does not drink, smoke or abuse his wife or children. Witness Ayallo, the agency's Licensing Inspector, established that the Petitioner's family daycare home is always in compliance with relevant regulatory rules and statutes, and he corroborated the Petitioner's testimony concerning the history of disciplinary problems caused by her son. Witness

Surgine, the Agency's Licensing Specialist established that the Agency only wanted to suspend the licensure because of the fact that the husband, Mr. Gonsalves, would, on occasion, be present in the home when child clients are present. The Agency did not feel that the incident justified a revocation of license.

7. This is an unfortunate, isolated incident. The persuasive evidence of record shows that Mr. Gonsalves is not an abuser of his children, the children of others or his wife, the Petitioner. The Petitioner is operating her facility as an exemplary family daycare home and desires to continue to do so. Even though she and her family are enduring rather straitened financial circumstances, she is successfully pursuing a college degree in Early Childhood Education. The testimony of Ms. Corchado, whose son has been cared for by the Petitioner in excess of three and one-half years, corroborates the exemplary record and caring atmosphere maintained by the Petitioner in operation of her family daycare home. Ms. Corchado has tried many daycare facilities and believes that the Petitioner's is the best one she found in terms of providing a loving, positive, environment for her son. Her son "adores the Petitioner and her family" and has become very close to them, even attending church with them on occasion. The Petitioner helps her son with his school work and Ms. Corchado has never observed or learned of any abuse occurring in the home.

8. The incident which occurred with Mr. Gonsalves and his son is clearly an isolated unfortunate occurrence. It was deeply regretted by all concerned even before the Agency Respondent became aware of it. It is ironic that the Petitioner, who has conducted an exemplary child care facility operation, has been placed at risk for losing her licensure status while other child care facilities licensed by the Respondent with more violations of record which can impinge on the adequate care of children can remain licensed under corrective plans and procedures. The Agency, commendably, has recognized the unjust, automatic operation of the statute at issue herein, in terms of the Petitioner's particular circumstances and incident, by declining to seek revocation of licensure but merely suspension until the issue of Mr. Gonsalves's residence in the daycare facility is resolved. In any event, this was unfortunate effort at child discipline which became a little too heated and went awry. As the Petitioner pithily and eloquently put it, "If you don't discipline your children, they will grow up and the police will do it for you."

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

10. Section 402.302(7), Florida Statutes, defines a family daycare home as "an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not for a profit." The Petitioner's home meets this definition of a family daycare home.

11. Section 402.302(3), Florida Statutes, defines child care personnel as including " . . . any member, over the age of 12 years, of a childcare facility's 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, or if the family member of, or person residing with, the child care facility operator has any direct contact with the children in the facility during its hours of operation." The Petitioner's husband, Clayton Gonsalves, meets the definition of "child care personnel."

12. Section 402.305(2), Florida Statutes, regulates the personnel background screening requirements for child care personnel. More specifically, Section 402.305(2)(a), Florida Statutes, mandates that screening for all child care personnel be conducted as provided in Chapter 435, Florida Statutes, using the Level II standards.



13. Section 435.04, Florida Statutes, sets forth the background screening standard by which all child care personnel shall be evaluated. More specifically, Section 435.04(2), states, in pertinent part:

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 nolo-contendere or guilty to any offense prohibited under any of the following provisions of the Florida Statutes . . .

(ee) Section 827.03 relating to child abuse, aggravated child abuse, or neglect of a child.

14. There is no question that the Petitioner's husband, Clayton Gonsalves, was sentenced in Volusia County, in Case No. 2005-00625CFAWS, to a term of three years' probation for the criminal charge of aggravated child abuse, which is a second degree felony under the above-cited statute. Adjudication was withheld by the court.

15. Because of his position as being "child care personnel," and because he is over 12 years of age and resides in the home of the Petitioner where she operates her child care facility, Mr. Gonsalves is disqualified from his position as child care personnel in accordance with Sections 402.305(2)(a) and 435.04(2)(ee), Florida Statutes, because of his plea of nolo

contendere to the criminal charge of aggravated child abuse, which is a second degree felony.

16. Accordingly, in light of the above findings of fact and the operation of the statutory authority referenced above, Mr. Gonsalves is disqualified from residing as child care personnel within the family daycare home facility, which is his family's residence as long as it is operated as a family daycare home, during such times as it is so operated. Thus the Agency, regrettably, is within its authority in seeking to suspend the licensure of the Petitioner while Mr. Gonsalves is resident within the family daycare home in question. It would seem that the Petitioner has two alternatives in order to avoid suspension of licensure and to continue to operate her facility: To move the facility to another location, perhaps to another residence of another family member or for Mr. Gonsalves, since he meets the above definition of "child care personnel" to seek an exemption from the disqualifying event of his plea of nolo contendere by applying for an exemption from that disqualification pursuant to 435.07, Florida Statutes (2005).

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the Department of Children and Family Services suspending the license of the Petitioner for the above found and concluded reasons but that the suspension be stayed while, under appropriate Department supervision, the Petitioner and Mr. Gonsalves resolve the issue of his residence within the family daycare home location possibility of the licensed daycare home being re-located to another premises or while Mr. Gonsalves acts to secure an exemption (if successful) from the above-referenced disqualifying offense.

DONE AND ENTERED this 4th day of January, 2006, in  
Tallahassee, Leon County, Florida.



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P. MICHAEL RUFF  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with Clerk of the  
Division of Administrative Hearings  
this 4th day of January, 2006.

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.