

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SARAH FRENCH, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 06-1557FC  
 )  
 AGENCY FOR PERSONS WITH )  
 DISABILITIES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

FINAL ORDER

This case came before Administrative Law Judge T. Kent Wetherell, II, at a telephonic case management conference held on November 20, 2006.

APPEARANCES

For Petitioner: George F. Indest, III, Esquire  
The Health Law Firm  
220 East Central Parkway, Suite 2030  
Altamonte Springs, Florida 32701

For Respondent: Gail Scott Hill, Esquire  
Agency for Persons with Disabilities  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399

and

T. Shane DeBoard, Esquire  
Department of Children and Family  
Services  
400 West Robinson Street, Suite S-1114  
Orlando, Florida 32801

### STATEMENT OF THE ISSUES

The issues are (1) the amount of attorney's fees and costs that Respondent must pay to Petitioner for the appeal in French v. Department of Children and Families, 920 So. 2d 671 (Fla. 5th DCA 2006), and (2) Petitioner's entitlement to an award of attorney's fees and costs in the proceeding that gave rise to the appeal.

### PRELIMINARY STATEMENT

In French, supra, the court held that Petitioner is entitled to an award of appellate attorney's fees and costs against the Department of Children and Family Services (DCF) pursuant to Section 120.595(5), Florida Statutes. The court remanded the case for the appointment of an Administrative Law Judge to determine the amount of the award and also to consider Petitioner's request for an award of attorney's fees and costs pursuant to Section 120.595(1)(b), Florida Statutes, for the underlying proceeding before the DCF hearing officer.

On May 1, 2006, this case was referred to the Division of Administrative Hearings (DOAH) by the Agency for Persons with Disabilities (Agency). The Agency now administers the program at issue in the underlying proceeding, and pursuant to Section 87(3) of Chapter 2004-267, Laws of Florida, the Agency was substituted for DCF as the real party in interest. Petitioner's motion to strike the Agency's appearance and change the caption

of the case to designate DCF as the Respondent was denied through an Order entered May 12, 2006.

Pursuant to the agreement of the parties, as memorialized in the Supplemental Order of Pre-hearing Instructions entered May 12, 2006, Petitioner filed three separate motions for attorney's fees and costs on June 13, 2006. The first motion sought \$177,298.00 in attorney's fees (to be increased by a 2.5 multiplier), \$18,579.08 in costs, and interest, for the proceeding before the DCF hearing officer. The second motion sought \$44,800.00 in attorney's fees (to be increased by a 2.5 multiplier), \$2,844.43 costs, and interest, for the appeal. The third motion sought an award of attorney's fees and costs for this DOAH proceeding. The Agency filed responses to the motions on June 30 and July 3, 2006.

On August 31, 2006, the undersigned entered an Order on Petitioner's Motion For Attorney's Fees and Costs Related to this DOAH Proceeding, which concluded that Petitioner is not entitled to an award of attorney's fees for this DOAH proceeding, but that she may be entitled to an award of costs. On September 27, 2006, the Agency filed an amended affidavit of its expert witness who opined that Petitioner was entitled to attorney's fees and costs of only \$76,563 (with no multiplier) for the DCF hearing and only \$38,170 (with no multiplier) for the appeal.

The case was set for final hearing on November 15-16, 2006. However, on October 25, 2006, the parties filed an Agreed Motion for Continuance in which they represented that they had reached an agreement to settle this case. On that same date, the undersigned entered an Order Canceling Hearing and Placing Case in Abeyance, which required the parties to file a status report no later than November 9, 2006.

The Agency filed a status report on November 8, 2006, in which it stated that the parties' "tentative settlement agreement" fell through as a result of another petition for attorney's fees filed by Petitioner.<sup>1</sup> Petitioner filed a status report on November 9, 2006, which stated that the parties had a binding settlement agreement that should be given effect.

A telephonic case management conference was held on November 20, 2006, at which the undersigned determined that the parties had reached an agreement to settle this case. The purpose of this Final Order<sup>2</sup> is to memorialize that finding and close DOAH's file in this case.

All statutory references in this Final Order are to the 2006 version of the Florida Statutes.

#### FINDINGS OF FACT

1. This case concerns the amount of attorney's fees and costs that are due to Petitioner for the appeal in French,

supra, and Petitioner's entitlement to attorney's fees and costs for the DCF hearing that gave rise to that appeal.

2. The parties stipulated at the outset of the proceeding as to Petitioner's entitlement to an award of attorney's fees and costs for the DCF hearing.

3. On October 24, 2006, the parties reached an agreement as to the amount of the attorney's fees and costs that Petitioner is due for the appeal and the underlying DCF hearing.<sup>3</sup>

4. There are no other disputed issues of material fact between the parties on the issues remanded by the appellate court.

#### CONCLUSIONS OF LAW

5. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to French, supra, and Section 120.595, Florida Statutes.

6. Section 120.57(4), Florida Statutes, provides that "informal disposition may be made of any proceeding by stipulation, settlement, or consent order."

7. DOAH does not have jurisdiction to enforce the parties' settlement agreement. See, e.g., Peck Plaza Condominium v. Division of Florida Land Sales & Condominiums, 371 So. 2d 152 (Fla. 1979).

8. However, based upon the stipulation between the parties regarding Petitioner's entitlement to attorney's fees and costs

for the DCF hearing and their settlement regarding the amount of attorney's fees and costs due to Petitioner for the appeal and the underlying proceeding, there is no basis for DOAH to retain jurisdiction over this case. Therefore, DOAH's file will be closed pursuant to Section 120.57(4), Florida Statutes.

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is

ORDERED that the file of the Division of Administrative Hearings in this case is hereby closed.

DONE AND ORDERED this 27th day of November, 2006, in Tallahassee, Leon County, Florida.



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T. KENT WETHERELL, II  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th of November, 2006.

ENDNOTES

<sup>1/</sup> The new petition was referred to DOAH on November 13, 2006, and was assigned to the undersigned. It is DOAH Case No. 06-4565F.

<sup>2/</sup> The parties stipulated that the undersigned should issue a Final Order (rather than a Recommended Order) based upon the appellate court's decision and the Agency's subsequent stipulation as to Petitioner's entitlement to an award of attorney's fees and costs for the underlying proceeding before the DCF hearing officer. See Supplemental Order of Pre-hearing Instructions, at ¶ 5.

<sup>3/</sup> The documents attached to Petitioner's status report and the undisputed representations at the telephonic case management conference reflect that on October 24, 2006, counsel had full authority to settle this case on behalf of their respective clients; that the terms of the settlement negotiated by counsel, including the amount (\$129,595.00) and the scope of the settlement (issues in this case only), were approved by their respective clients; that the settlement was not conditioned on any subsequent events or the negotiation of additional terms; and that the terms of the agreement were memorialized in a letter from Petitioner's counsel to the Agency's counsel dated October 24, 2006. This is not the proper forum for the Agency to "renege on" or attempt to renegotiate the settlement agreement. See Palm Springs General Hospital, Inc. v. Health Care Cost Containment Board, 560 So. 2d 1348, 1349 (Fla. 3d DCA 1990) ("The principles which favor the settlement of existing controversies, and which require adherence to all enforceable contracts both have particular application to an administrative proceeding such as this. Indeed, it is no less than unseemly, perhaps even more than in the case of private litigants, for an agency of our government . . . even to attempt to renounce an agreement into which it has freely entered." (citations omitted)).

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.