

Cardyn Halfield

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

FILED

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DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

Petitioner,

CASE NO. 06-3433

RENDITION NO. DCF-07-122-FO

v.

DELORES WILSON,

Respondent.

FILED

MAY 21 2007

DCF Department Clerk

**FINAL ORDER**

THIS CAUSE is before me for entry of a Final Order. The Recommended Order concludes that the Department established that respondent violated rules 65C-13.009 and 65C-13.010 , Florida Administrative Code, and the bilateral services agreement she signed as a condition of licensure as a foster parent. The administrative law judge (ALJ) recommended that the Department revoke respondent's foster care license. No exceptions to the Recommended Order were filed. The Recommended Order is approved and adopted with the exception of the evidentiary standard the ALJ imposed upon the Department in paragraph 67.

The ALJ concluded in paragraph 67 of the Recommended Order that the Department had the burden to prove the alleged bases for revocation of respondent's foster care license by a preponderance of evidence. The ALJ recognized that the Legislature has expressly provided that there can be no property interest in or entitlement to a foster care license, and for that reason

concluded that the clear and convincing evidence standard that generally applies in license revocation proceedings should be relaxed to the preponderance standard. I agree that the Legislature, in section 409.175(2)(f), Florida Statutes, provided for a relaxed evidentiary standard for foster care license proceedings. For the reasons set forth below, however, I believe that the appropriate evidentiary standard for this proceeding is competent substantial evidence.

Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932, 934-935 (Fla. 1996), held that, because a licensee possesses a property interest in a professional or occupational license, an agency seeking to sanction that license through the imposition of fines or through revocation must be held to a heightened standard of proof. Osborne Stern also determined, however, that agencies need not present clear and convincing evidence to support the denial of an application for a professional or occupational license, because an applicant has no property interest in the license prior to obtaining it. Id. at 934. The court explained that “an agency has particularly broad discretion in determining fitness of applicants who seek to engage in an occupation the conduct of which is a privilege rather than a right.” Id. Notably, the court did not impose on agencies even a preponderance standard for supporting stated reasons for denying an occupational license. The court required only that an agency produce competent substantial evidence. Id. See also Mayes v. Department of Children and Family Services, 801 So. 2d 980 (Fla. 1<sup>st</sup> DCA 2001)(administrative decision denying a license must be supported by competent substantial evidence in the record).

Section 409.175(2)(f), Florida Statutes, exempts foster care licenses from the evidentiary standard applicable in administrative proceedings involving sanctions against professional or occupational licenses. The Legislature recognized that the Department's foster care licensing activities are primarily focused on the well-being of the child or children who may be placed in a foster home, rather than the interests of the license holder or applicant. Section 409.175(2)(f), Florida Statutes, provides:

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. This privilege must guide the finder of fact or trier of law at any administrative proceeding . . . .

(emphasis added). The statute is a response to the Florida Supreme Court's decision in Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987), later re-affirmed in Osborne Stern. The clear legislative intent is that foster care license recipients, just like professional license applicants have no property interest in, or entitlement to, the license.<sup>1</sup> It follows, therefore, that the evidentiary standard for revoking a foster care license should be no greater than that which the Florida

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<sup>1</sup> Section 409.175(2)(f), Florida Statutes, was enacted as chapter 96-402, section 6, Laws of Florida. The Final Bill Analysis and Economic Impact Statement of the House of Representatives Committee on Child Abuse and Neglect, makes clear that the Legislature was aware of the Florida Supreme Court decision in Ferris v. Turlington, 510 So. 2d 292 (1987), and that the intent of the legislation was to ensure that the Department's denial, suspension, or revocation of foster care licenses would not be required to meet the clear and convincing evidence standard that the Legislature believed Ferris to have established for professional or occupational licenses.

Supreme Court has determined is applicable to denial of a professional license – competent substantial evidence<sup>2</sup>.

This position is fully consistent with the intent and structure of the foster care system. Although a foster parent serves as a substitute caregiver for a dependent child, the child remains at all times in the legal custody of the Department, and the Department continues to be responsible for the child's well-being. § 39.521(3)(d), Fla. Stat. The Department is vested with all the rights, duties, and responsibilities of the legal custodian, and the determination of whether to license particular persons to provide substitute care for these children must necessarily remain within the Department's broad discretion. Licensing decisions remain subject to the Administrative Procedures Act so that a license holder or applicant has an avenue to redress her substantial interest in being a foster parent, but that interest is, in the plain language of section 409.175(2)(f), Florida Statutes, made subordinate to the Department's mandate to serve the best interests of the children in its care. Id. Additionally, foster care license holders, like professional license applicants, can assert no economic interest in the foster care license. Foster care subsidies provided to foster parents are intended solely for the benefit of the children for whom they provide substitute care, and are not in any sense compensation for the foster parent. Accord Mann v. Department of Children and Family Services, 24 FALR 3114 (2002), Pfingston v. Department of Children and Family Services, 22 FALR 1261 (2000).

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<sup>2</sup> To the extent any prior Department Final Order, affirmatively or through adoption of a Recommended Order, assented to the application of a preponderant evidence standard in a foster care license proceeding, the Department hereby recedes from such Final Order.

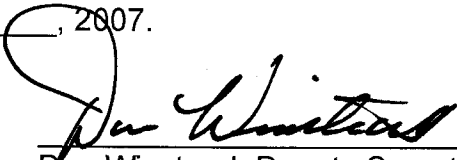
Appellate courts have adopted a comparable approach for administrative proceedings that involve denials of requests for exemption from disqualification from employment in positions of special trust pursuant to section 435.07, Florida Statutes – another arena where the Legislature has granted agencies broad discretion. Heburn v. Department of Children and Family Services, 772 So. 2d 561 (Fla. 1<sup>st</sup> DCA 2000), was an appeal from an administrative proceeding wherein the Department denied petitioner/appellant's request for an exemption from disqualification. In the administrative proceeding, the Recommended Order concluded that petitioner/appellant had presented clear and convincing evidence that he should not be disqualified from a position of special trust and responsibility. The Department's Final Order rejected that conclusion and the appeal followed. The Heburn court held that section 435.07, Florida Statutes, which provides that "the appropriate licensing agency may grant . . . an exemption" vested the Department with "broad discretion" to rule on the exemption request. 772 So. 2d at 563. The court analogized the Department's discretion to that "accorded a licensing agency determining the [] fitness of applicants to engage in a business or occupation potentially injurious to the public", and indicated that the Department's decision could be judicially reviewed to determine if it "meets the standard of reasonableness". Id. See also, Phillips v. Department of Juvenile Justice, 736 So. 2d 118 (Fla. 4<sup>th</sup> DCA 1999).

The evidentiary standard espoused by the ALJ in paragraph 67 of the Recommended Order is rejected. The appropriate evidentiary standard requires the Department to establish that its determination to revoke petitioners' foster

care license was a reasonable decision supported by competent substantial evidence. This modification of the Recommended Order does not, however, alter the outcome of this proceeding, given that the ALJ concluded that the Department satisfied the preponderance of evidence standard.

Accordingly, respondent's foster care license, issued under section 409.175, Florida Statutes, is hereby REVOKED.

**DONE AND ORDERED** at Tallahassee, Leon County, Florida, this 21  
day of May, 2007.

  
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Don Winstead, Deputy Secretary  
Department of Children and Family Services

**RIGHT TO APPEAL**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES, WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILIES, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, IN THE FIRST DISTRICT COURT OF APPEAL OR IN THE DISTRICT COURT OF APPEAL WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA RULES OF APPELLATE PROCEDURE. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**

Copies furnished to:

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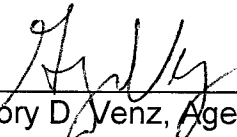
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Ann Cole, Clerk  
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The DeSoto Building  
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Tallahassee, FL 32399-3060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Final Order was provided to the above-named individuals at the listed addresses, by U.S. Mail, this 21 day of May, 2007.

  
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Gregory D. Venz, Agency Clerk  
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