

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

FILED

2007 AUG 14 P 2:09

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioner,

CASE NO. 07-0436

RENDITION NO. DCF-07- 185 -FO

v.

PEARL WRIGHT,

FILED

Respondent.

AUG 10 2007

DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me for entry of a Final Order. The Recommended Order concludes that the Department presented clear and convincing evidence that respondent violated rule 65C-20.009(4)(a), Florida Administrative Code, by leaving children in her licensed family day care home unattended while she went to pick up her vehicle from the repair shop. The Recommended Order concluded that the Department should impose a \$100 fine and place respondent's license in probationary status for the violation for the violation. No exceptions to the Recommended Order were filed. The Recommended Order is approved and adopted, with two modifications.

Paragraph 23 of the Recommended Order implies that the Department could not rely upon past licensing violations as support for revocation of a license unless those violations resulted in separate "final orders" as defined in section 120.52(7), Florida Statutes. That is an incorrect statement of law. A final order means "a written final decision which results from a proceeding under section . . .


120.57". If the Department issues an appropriate administrative complaint imposing a sanction, and the recipient does not request an administrative proceeding, then no final order is required. That does not mean, however, that the violations have not been established. The Department cannot be prejudiced by the licensee's decision not to contest an administrative complaint. I agree, however, that if the Department seeks to rely on prior violations in a subsequent action and the licensee disputes the existence of the prior violations, the Department would at least be obligated to produce the administrative complaints and to establish that the licensee had been appropriately provided a point of entry into an administrative proceeding to contest the complaints. In this case, the record does not permit any reliance on the prior disciplinary actions.

I accept the ALJ's recommendation that respondent's license be placed in probationary status rather than being revoked. I reject the recommendation, however, that a \$100 fine be imposed. Section 402.310, Florida Statutes, authorizes a \$500 fine per violation per day for violations that could cause death or serious harm. Respondent was the sole caregiver in her licensed family day care home. She left the children in the home unattended so that she could retrieve her vehicle from the repair shop. This was not a crisis that required respondent to be absent from the home. When it developed that respondent would not be able to bring all five children with her to the repair shop, she should have arranged for someone else to get the vehicle, or she should have waited another day to retrieve it.

The ALJ recommended the \$100 fine because she found that the children were in no imminent danger as a result of respondent's action. Leaving children unattended is, however, an extremely serious violation of child care standards. Child care facilities and family day care homes exist for the very reason that unattended children can come to harm at any time. The instant violation is somewhat mitigated by the fact that the child who wandered from the home while unattended was 14 years old, and the fact that the younger children in care were, apparently, attended to by a 13-year old child during the relatively short period of time respondent was gone.

Accordingly, for the reasons stated above, a \$250 fine for child care facility minimum standards violations as described in the Recommended Order is hereby imposed against respondent. Respondent's license shall be placed on probationary status for a period of six months from the date of this Final Order. If respondent's current license will expire in less than six months, the probationary period will extend into the next licensing year. Respondent should remit payment of the fine to the Department within 30 days.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 9
day of August, 2007.



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 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:

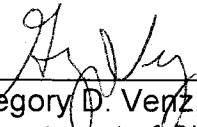
Lucy Goddard-Teel
District 3 Chief Legal Counsel
Department of Children and Family Services
P.O. Box 390, Mail Sort 3
Gainesville, FL 32602-0390

Pearl Wright
1826 Locust Ave
Palatka, FL 32177

Claudia Llado, Clerk
Division of Administrative Hearing
The DeSoto Building
1230 Apalachee Parkway
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 10 day of August, 2007.



Gregory D. Vertz, Agency Clerk
Department of Children and Families
1317 Winewood Blvd.
Bldg. 2, Rm. 204-X
Tallahassee, FL 32399-0700
Ph: (850) 488-2381