

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

CASE NO. 11-6420
RENDITION NO. DCF-12-459-FO

v.

CHARLES AND GLENDA WILLIAMS,

Respondents.

FILED
OCT 12 2012
DCF Department

FINAL ORDER

THIS CAUSE is before me for entry of a final order. The recommended order concludes that the Department established by preponderant evidence respondents violated rules applicable to licensed foster homes such that their application to renew their foster care license should be denied. Respondents filed numerous exceptions to the recommended order, which are addressed below.

Respondents' "Exception 1" includes 16 separate numbered paragraphs generally directed toward the ALJ's findings of fact. Paragraphs 1 – 6, 8 – 10, 13 and 15 challenge the administrative law judge's (ALJ) findings of fact. An ALJ's findings of fact may not be disturbed without review of the entire record of the proceeding, including the hearing transcript, which respondents have not provided. § 120.57(1)(l), Fla. Stat.; *Department of Corrections v. Bradley*, 510 So. 2d 1122 (Fla. 1st DCA 1987); *Booker Creek Preservation, Inc. v. Dep't of Env. Reg.*, 415 So. 2d 750 (Fla. 1st DCA 1982). Additionally, most of these exceptions challenge findings based upon the weight of the evidence, rather than

alleging the findings are not **supported by** competent substantial evidence. The weight ascribed to particular evidence is the ALJ's exclusive province. The Department cannot reject or amend findings of fact, or develop additional or alternative findings, based on concerns over the weight of the evidence. *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

Paragraphs 7, 9, and 11 of "Exception 1" allege certain findings of fact are based upon **unpleaded allegations**. These exceptions are rejected. Paragraph seven complains the ALJ made findings in recommended order paragraph 20, concerning **a foster child playing with a rusty machete** and the foster mother's reaction to the event, which were not pleaded. The ALJ did not identify the machete incident as a rule violation in and of itself; rather, it was an example of the **unsafe conditions in respondents' home/yard**, which was pleaded in the administrative complaint. The same analysis applies to the ALJ's finding in recommended order paragraph 23 concerning the local government code violations related to the debris around respondents' home. The finding in recommended order paragraph 30 relates to a matter included in the administrative complaint. The administrative complaint identifies the issue with reference to a specific document, identified by author and date.

Paragraphs 12 – 14 of Exception 1 refer to respondents' contentions the Department violated foster care licensing rules in its dealings with respondents. These allegations are, in essence, defenses to the Department's allegations against respondents and are in the nature of alternative findings respondents

contend the ALJ should have made based on their view of the evidence. They are rejected. *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006)

Paragraph 16 of Exception 1 challenges evidentiary rulings made during the final hearing. Again, the Department cannot address such an exception without the transcript of the hearing. *Department of Corrections v. Bradley*, 510 So. 2d 1122 (Fla. 1st DCA 1987).

Respondents' "Exception 2" contains 24 numbered paragraphs generally directed toward the ALJ's conclusions of law. Paragraph one does not address any specific finding or conclusion in the recommended order and is rejected. § 120.57(1)(l), Fla. Stat. Paragraphs two and three challenge the ALJ's citation to *M. H. v. Dep't of Children and Family Serv.*, 977 So. 2d 755 (Fla. 2nd DCA 2008), to establish the evidentiary burden in this proceeding. While the Department does not necessarily agree *M. H.* was correctly decided, it is directly on point in this foster care licensing renewal case. Respondents incorrectly rely on *Coke v. Dep't of Children and Family Serv.*, 704 So. 2d 726 (Fla. 5th DCA 1998), which did not involve foster care and so does not address the impact of section 409.175(2)(f), Florida Statutes.

Paragraphs 4 – 7, 10 – 11, and 16 - 24 of "Exception 2" argue the weight of the evidence and are rejected for the reasons provided for the similar arguments in "Exception 1", above.

Paragraphs eight and nine of "Exception 2" restate paragraphs nine and eleven of "Exception 1" and are rejected for the same reasons.

Paragraphs 12 – 15 of “Exception 2” allege, in essence, the Department’s licensing action against respondents was not appropriate because the Department did not first provide respondents the opportunity to complete a “corrective action plan” as provided in Department rule. The ALJ correctly addressed this contention in recommended order paragraphs 56 and 57. Respondents have not demonstrated the ALJ’s and Department’s construction of the rule in question is an impermissible one. See generally, *Department of Agr. v. Sun Garden Citrus, LLP*, 780 So. 2d 922, 925 (Fla. 2nd DCA 2001)(agency interpretation of rule it administers is entitled to great deference). These exceptions are rejected.

The recommended order is approved and adopted.

Accordingly, the respondents’ application to renew their foster care license is DENIED.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 12th day of October, 2011.


David E. Wilkins, Secretary

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 DISTRICT COURT OF APPEAL WHERE THE APPELLANT RESIDES, OR IN THE FIRST DISTRICT COURT OF APPEAL. 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:

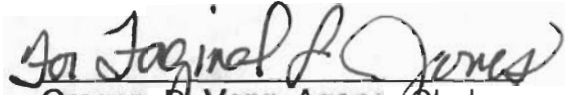
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this final order was provided to the above-named individuals at the listed addresses, by electronic or U.S. Mail, this 12 day of October, 2012.


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