

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**,

Petitioner,

vs.

Case No. 14-2066

DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.
_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on June 13, 2014, via video teleconference in Tampa and Tallahassee, Florida, before Lynne A. Quimby-Pennock, an Administrative Law Judge of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: **, pro se
(Address of Record)

For Respondent: Deanne Cherisse Fields, Esquire
Department of Children and Families
Suite 900
9393 North Florida Avenue
Tampa, Florida 33612

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application to adopt a minor child should be denied because it is in the best interest of the child.

PRELIMINARY STATEMENT

Petitioner was notified by letter dated March 19, 2014, that her request to be considered as an adoptive parent for the minor child had been denied by Respondent, Department of Children and Families. The Regional Adoption Applicant Review Committee (AARC) provided the following factors as the basis for denying Petitioner's application:

1. A pattern of child/abuse reports and criminal charges you've been involved in since 1990 for which you do not appear to have accepted responsibility, increasing the likelihood of reoccurrence;
2. You are currently on felony probation for Fraudulent Use of Credit Card, Grand Theft that occurred on November 20, 2010 and you have been violated three times, the most recent violation was on January 4, 2014;
3. There is a concern for the home environment, cleanliness and a pattern of unstable housing which does not provide needed stability for [the minor child];
4. Your financial stability is a concern as your monthly income is \$808 in disability benefits which is currently supplemented by one of your young adult daughters who is living in the home; however, she may be leaving the home with her son;
5. You have significant health issues including congestive heart failure, diabetes, high blood pressure and a bulging disc, affecting mobility and attending to a ten month old baby; and
6. You are legally married and have been separated from your husband for the past 20 years.

Petitioner timely filed a request for an administrative hearing with Respondent. On May 6, 2014, Respondent referred the case to the Division for assignment of an Administrative Law Judge. The case was noticed for hearing on June 13, 2014, and it was concluded on that date.

At the final hearing, Petitioner testified on her own behalf and called Aulena Maria Clement, Vanessa Ransom, and Alfreda Robinson as witnesses. Petitioner did not offer any exhibits. Respondent presented the testimony of Phyllis Ho-Zuhars, Peggy Niermann, Emily Perez, Lesa Sims, and Anita Spofford. Respondent offered Exhibits A through F and H through L, which were admitted into evidence without objection. Petitioner objected to Respondent's Composite Exhibit G, pages 1 and 2, as her name was not listed on the "CLERK'S CERTIFICATE OF DISPOSITION" (Certificate). Respondent was allowed 10 days to provide proof that the individual identified on the Certificate was, in fact, Petitioner. To date, no such proof has been provided.^{1/} Respondent's Composite Exhibit G, pages 1 and 2, are rejected; Respondent's Composite Exhibit G, pages 3 and 4, are admitted.

A court reporter was present during the hearing; however, no transcript was ordered. Proposed recommended orders (PROs) were to be filed by the close of business on Monday, June 23, 2014. Petitioner filed a two-page letter on June 23, 2014. To the extent that the letter contained new testimony or

evidence, not subject to cross-examination, that information has not been considered. Respondent timely filed its PRO.^{2/} Both parties' filings have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent, in accordance with chapters 39, 63, and 409 Florida Statutes (2013),^{3/} is the agency tasked with, among other things, the responsibility to deny or approve adoption applications.

2. The minor child was born in May 2013 and placed in Petitioner's home in that same month.^{4/} At all times relevant to this case, the minor child's biological parents were unable or unwilling to take responsibility for their child. Termination of parental rights was completed in October 2013. Petitioner is the minor child's step-grandmother.

3. Petitioner filed an application to adopt the minor child on November 25, 2013, listing her address as 4203 East Hanna Avenue, Tampa, Florida. A home study, which is an assessment of the potential adoptive parent's home environment, parental capacity to support the child and the relationships with individuals both inside and outside the home of the potential adoptive parent, must be conducted prior to an adoption. On November 26, 2013, the home study was conducted at the Hanna Avenue address. Several areas of concern were noted in the home

study; the home was cluttered and dirty with soiled dishes in the sink and fast food bags and wrappers throughout the home.

4. On February 11, 2014, the AARC met to review Petitioner's application to adopt the minor child. Petitioner was present at the AARC meeting. The following concerns were expressed during the AARC meeting: Petitioner's monthly expenses far exceed her income; Petitioner has a criminal history and is currently on probation for the last offense, and served 10 days in jail in January 2014 without telling Respondent where she was and who was attending the minor child; Petitioner has significant health issues including congestive heart failure, diabetes, high blood pressure and a bulging disc in her back; Petitioner is legally married but has been separated from her husband for over 20 years without any knowledge of whether her husband is alive or dead; and there have been multiple abuse reports, although some indicators of abuse were not substantiated. Additionally, Petitioner has moved from the residence where the home study was conducted in November. That move to a different address invalidated the home study and another home study would have to be conducted to evaluate Petitioner's current living situation.

5. Petitioner's expenses, as she detailed, far exceed her income. Petitioner receives approximately \$820 a month in income, yet her living expenses include \$800 rent, \$150 in utility services, and \$50 for water. Currently, Petitioner's two

daughters and their children (each daughter has a child) live with her in a three-bedroom home. Petitioner has her own bedroom. Each daughter has her own bedroom which is shared with her child. One daughter, (B), currently works at a hotel. Daughter B supplements Petitioner's income to run the household. However, Daughter B has indicated she wants to move out. She has not given a specific move date. The other daughter, (M), was arrested in May 2014 for allegedly stealing electricity from Tampa Electric. The charge was dropped when Daughter M paid the electrical bill and court costs. That daughter is applying for a job but is without an income to support herself and her child at this time.

6. Respondent does not consider income from persons other than the applicant in its review of potential adoptive parent's application.

7. In November 2010 Petitioner entered a plea of guilty to allegations of fraudulent use of a credit card and grand theft. The circuit court in Hillsborough County withheld adjudication of guilt, but placed Petitioner on 24 months of probation with the requirement to re-pay the money and all mandatory court costs. Petitioner has been arrested three times on violation of probation (VOP) for her failure to timely pay the costs. Petitioner's last arrest, in January 2014 resulted in a ten-day jail term for the VOP. Although Petitioner's adult daughters

were tending to the minor child, neither Petitioner nor her daughters notified Respondent that Petitioner was not available for the minor child's needs. Petitioner anticipates paying the remainder of the costs within the next few weeks when one of her daughters receives her income tax refund.

8. Petitioner has significant health concerns. While at work several years ago, Petitioner sustained a back injury, a bulging disc. She is not seeking rehabilitation for her back, and is not planning on returning to work. Petitioner confirmed she has a history of high blood pressure and congestive heart failure, although she is currently feeling well. Additionally, Petitioner verified that she takes insulin four times a day to control her diabetes.

9. Petitioner married D.B. on June 28, 1993. Petitioner has obtained the form to file for a divorce, but to date no petition for divorce has been filed by either Petitioner or D.B.

10. Petitioner has had several reports of child abuse since 1990; however, some of those reports have been unsubstantiated.

11. Petitioner and the minor child have lived in no less than three different homes over the past year. Petitioner submitted her adoption application while residing at one home and Respondent conducted the requisite home study at that location. However, even before the AARC meeting could take place, Petitioner had moved to another home, thus voiding the home

study. Petitioner's frequent moves does not provide a stable living environment for the minor child.

12. Ms. Spofford has worked as a guardian ad litem (GAL) for over three years. A GAL advocates for the best interest of the child and may, at times, express different advocacy positions than the biological parents, potential adoptive parents, caregivers or, as in this case, Petitioner. GAL Spofford was appointed as the minor child's GAL approximately three weeks after his birth, and she has visited with the minor child at least once a month since that appointment. GAL Spofford makes both announced and unannounced visits to Petitioner's home to visit with the minor child.

13. As a small baby, the minor child was not mobile, and GAL Spofford was not as concerned about his home environment. However, the minor child is now mobile and GAL Spofford has a lot of concerns. On one particular unannounced visit, GAL Spofford was allowed into the home by a three- or four-year old child, when no adult was present.^{5/} GAL Spofford picked up the minor child and discovered he had a wad of paper in his mouth, which GAL Spofford removed. In this one instance alone, the supervision of the minor child and the other young children was inadequate. Based on the totality of the circumstances, GAL Spofford believes it is in the minor child's best interest to be adopted by another family.

14. There is no dispute that Petitioner loves the minor child. Petitioner has cared for the minor child since his discharge from the hospital. Petitioner's witnesses were unified in their observations of how Petitioner loved the minor child and looks out for his interest. Although Petitioner wants to adopt and care for the minor child, current circumstances do not render that a viable option.

15. Respondent has a formidable task in ascertaining the best interest of any child. It requires a look into the future and a prediction of what will happen. Petitioner's past indiscretions do not lend themselves to a stable and secure environment for the minor child. It is in the minor child's best interest to be adopted by someone other than Petitioner.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57, Florida Statutes.

17. Petitioner's substantial interests will be determined by Respondent's action on her application to adopt the minor child, and Petitioner has standing in this case.

18. Petitioner is entitled to an administrative hearing to contest Respondent's decision that it is in the minor child's best interest to reject Petitioner's application to adopt the

minor child. See Dep't of Child. & Fam. Servs. v. I.B. & D.B., 891 So. 2d 1168 (Fla. 1st DCA 2005) (substantially affected person has right to administrative hearing to change agency's mind before agency reaches final decision on approval of adoptive home for a particular child).

19. A request for a hearing commences a de novo proceeding intended to formulate agency action and not to review action taken earlier or preliminarily. Beverly Enterprises-Fla., Inc. v. Dep't of HRS, 573 So. 2d 19, 23 (Fla. 1st DCA 1990). Accordingly, no deference is given here to Respondent's preliminary decision to reject Petitioner's application to adopt the minor child.

20. Petitioner has the burden to prove, by a preponderance of the evidence, that it is in the best interest of the minor child that her application to adopt the minor child be approved. E.C. v. Dep't of Child. & Fam. Servs., Case No. 05-2618 (Fla. DOAH Apr. 27, 2006), rejected in part, Case No. 06-090 (Fla. DCF May 22, 2006). See also Fla. Dep't. of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981) (party asserting the affirmative of an issue in administrative hearing has burden of proof); N.W. v. Dep't of Child. & Fam. Servs., 981 So. 2d 599 (Fla. 3rd DCA 2008) (findings of fact shall be based on a preponderance of the evidence).

21. Adoption proceedings are wholly statutory in nature since the right of adoption was unknown at common law. Hilton v. Beard, 490 So. 2d 1297, 1297 (Fla. 2d DCA 1986).

Section 409.145, Florida Statutes, provides:

(1) SYSTEM OF CARE.—The department shall develop, implement, and administer a coordinated community-based system of care for children who are found to be dependent and their families. This system of care must be directed toward the following goals:

* * *

(c) Reunification of families who have had children removed from their care.

(d) Safety for children who are separated from their families by providing alternative emergency or longer-term parenting arrangements.

(e) Focus on the well-being of children through emphasis on maintaining educational stability and providing timely health care.

(f) Permanency for children for whom reunification with their families is not possible or is not in the best interest of the child.

22. Rule 65C-16.005 provides for the evaluation of adoption applicants. It provides in pertinent part:

* * *

(2) A social study which involves careful observation, screening and evaluation shall be made of the child and adoptive applicants prior to the placement of the child. The aim of this evaluation is to select families who will be able to meet the physical, emotional, social, educational and financial needs of a

child, while safeguarding the child from further loss and separation from primary caretakers.

(3) In determining which applications for adoption should be approved, all of the following criteria, not listed in any order of priority, must be considered:

* * *

(c) The commitment of the applicant to value, respect, appreciate, and educate the child regarding his or her racial and ethnic heritage and to permit the child the opportunity to know and appreciate that ethnic and racial heritage;

(d) The family's child rearing experience. Applicants with previous child-rearing experience who exhibit the energy, physical stamina, and life expectancy which would allow them to raise the child to adulthood and who have a demonstrated history of having provided consistent financial support to other minor children, either birth or adopted, will be considered. . . .

(e) Marital Status. Applications to adopt will be accepted from married couples and from single adults. Couples married less than two years must be given particularly careful evaluation;

(f) Residence. Florida families must be prepared to remain in Florida long enough to have the adoption study completed, the child placed, and the adoption finalized. . . .

(g) Income. The family must have income and resources to ensure financial stability and security to meet expenses incurred in adequate care of the family. . . . Management of current income and the ability to plan for future changes in income so that the child's social, physical and financial needs will be met are as important as the amount of income;

(h) Housing and neighborhood. Housing and neighborhoods must provide adequate space and the living conditions necessary to promote the health and safety of the family;

(i) Health. Applicants will be required to fully disclose health history, current health status, including any condition that is progressive and debilitating in its course, and any past and current treatment and services received for such condition, regarding themselves and each member of the household. The physical, mental and emotional health of the prospective adoptive household members must not jeopardize the safety and permanency of the child's placement and will be considered in determining the best interest of the child;

* * *

(m) All adoptive parent applicants must disclose to the department or community based care provider any prior or pending local, state or national criminal proceedings in which they have been involved;

(n) All adoptive applicants must complete the requirements for background screening as outlined in Rule 65C-16.007, F.A.C. . . .

23. Here, Petitioner does not have a stable environment in that she has moved threetimes in less than one year. Petitioner does not have the means to support herself and the minor child. Petitioner has poor health at this time. Petitioner is on probation for criminal offenses. She anticipates resolving those issues in the near future but has not yet done so. Petitioner's marital status, by rule, is an issue (even if it alone does not require disqualification).

24. Adoption is not a right, but is a statutory privilege that will be granted only if it is in the best interest of the child.

25. Petitioner failed to meet her burden of proving that it would be in the minor child's best interest to be adopted by her. Consistent with the criteria set forth in chapter 409 and the Florida Administrative Code Rules set forth above, Petitioner's application to adopt the minor child must be denied.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families enter a final order denying Petitioner's application to adopt the minor child.

DONE AND ENTERED this 26th day of June, 2014, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of June, 2014.

ENDNOTES

- ^{1/} Respondent's discussion of Composite G, pages 1 and 2, in its PRO at paragraph 18, is insufficient.
- ^{2/} Respondent e-filed one PRO on June 23, 2014 at 5:00 p.m. Two additional PROs, which appear to be the same as the e-filed PRO, were fax-filed on June 23 at 5:08 p.m. and 5:13 p.m.
- ^{3/} All statutory references are to Florida Statutes (2013), unless otherwise indicated.
- ^{4/} The standard used to determine if a temporary placement for a child is acceptable is less demanding than the standard used for the permanent adoption process.
- ^{5/} Apparently an adult was in a back bedroom but did not come forward until GAL Spoffard sent one of the small children to find an adult.

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.