

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Petitioner,

vs.

Case No. 17-4170

BRANDI SPIERS,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

An administrative hearing was conducted in this case on November 6, 2017, in Marianna, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Brandi Spiers, pro se  
6601 Northwest Camp Head Road  
Altha, Florida 32421

For Respondent: Camille Larson, Esquire  
Michael Andrew Lee, Esquire  
Department of Children and Families  
2383 Phillips Road, Room 231  
Tallahassee, Florida 32308

STATEMENT OF ISSUES

The issues are whether Respondent made false reports to the Florida Abuse Hotline in violation of section 39.206, Florida Statutes<sup>1/</sup>; and, if so, what is the appropriate penalty.

PRELIMINARY STATEMENT

By letter dated March 30, 2017, the Department of Children and Families (Petitioner or the Department) notified Respondent that the Department intended to impose an administrative fine against Respondent for making false reports of abuse, neglect, or abandonment regarding Respondent's daughter, E.W.

Thereafter, the Department issued a document dated April 28, 2017, entitled "Notice of Intent Pursuant to §39.206, Florida Statutes, and Order Imposing an Administrative Fine"

(Administrative Complaint), which imposed an administrative fine in the amount of \$5,000 for the alleged false reports, and advised Respondent that the fine would become final unless Respondent requested an administrative hearing within 60 days from receipt of the Administrative Complaint.

Respondent timely requested an administrative hearing. On July 21, 2017, the Department referred this matter to DOAH, and this case was originally scheduled for an administrative hearing to be held September 12, 2017. The administrative hearing was continued due to the potential impact of Hurricane Irma and rescheduled for November 6, 2017.

At the hearing, the Department presented the testimony of Holly Cummings, a Department child protective investigator supervisor and Department representative; Amy Glass, E.W.'s kindergarten teacher; Sheila Ferguson, a Department senior child

protective investigator; Angela Griffin, a child protection team specialist with the Gulf Coast Children's Advocacy Center; Daniel Henry, a Department child protective investigator; and Loretta Worley, E.W.'s stepmother. Petitioner's Exhibits P-1, P-2, P-5 through P-12, P-14, P-17, and P-18 were received into evidence at the hearing, and P-19 was also admitted into evidence, a copy of which was filed after the hearing. Respondent testified on her own behalf and Respondent's Exhibits R-1 through R-3 were received in evidence. The parties were ordered to provide copies of their respective recordings (P-10 and R-3) to each other on or before November 16, 2017. Rulings on hearsay were preserved as to all of the evidence.

The proceedings were recorded and a transcript was ordered. The parties were advised that their respective proposed recommended orders would be due 10 days from the day the transcript was filed. The two-volume Transcript was filed on December 7, 2017. The Department timely filed its Proposed Recommended Order on December 15, 2017, and it has been considered in preparation of this Recommended Order. Respondent did not file a proposed recommended order.

#### FINDINGS OF FACT

1. The Department is the State agency responsible for managing the Florida abuse hotline and investigating allegations of abuse, abandonment, and neglect of children.

2. Respondent is the biological mother of E.W., a minor child.

3. Respondent called the Florida abuse hotline on August 14, 2014, and reported that the father of E.W., Derwin Worley, was physically abusing E.W. and exposing her to drunken behaviors.

4. In response to the call, the Department generated Intake Report number 2014-213532-01 (First Case), which contains the following allegation narrative:

The father spansks [E.W.] and leaves bruises. The father closes and locks the door when he spansks [E.W.]. The father may be using his hand or whatever he can pick up when he spansks [E.W.]. Two days ago, four bruises were observed on [E.W.'s] butt that were caused by the father. The bruises were red. [E.W.] also has bruises on her legs that were explained to have been caused by tubing down the river. It is not believed that the injuries match the explanation. The bruises are small and greenish. [E.W.] also has a bruise under her eye that goes from one side to the other. It was explained that the bruise was from a mosquito bite. The explanation does not match the injuries. The father drank Saturday or Sunday night and law enforcement had to be called to the home. When [E.W.] pees in her diaper, the father lets her sit around in the diaper. It is unknown how long she had been in the diaper. The father curses around [E.W.].

[E.W.] curses because the father curses around her. The mother was allowing the father to babysit more and more, because she doesn't trust babysitters. The father will not give [E.W.] back to the mother. He has kept [E.W.] from her for one night. The

mother has full custody. The mother was trying to move in with he[r] grandmother. The father does not work. He gets disability income. The mother does not believe in spanking a child of [E.W.'s] age.

5. Investigation of the First Case was assigned to Department Child Protective Investigator Sheila Ferguson.

6. During her investigation, Investigator Ferguson found that there had been ongoing custody disputes over E.W. between Respondent and Mr. Worley, and that there were apparently times that Respondent needed assistance in getting E.W. back from Mr. Worley.

7. According to Investigator Ferguson, custody was Respondent's primary motivation for making the allegations against Mr. Worley.

8. Investigator Ferguson testified that, during her investigation in August of 2014, although Respondent claimed that she had photos of E.W.'s bruises, including injuries to E.W.'s eye and buttocks, Respondent delayed for over two months in providing any photographs, and when she did, Respondent only provided photos of E.W.'s legs.

9. According to Investigator Ferguson, the photos only showed bruises on E.W.'s legs and shins, which are common childhood injuries and not indicative of abuse.

10. At the time of the August 2014 allegations, Respondent and E.W. were living in the home of Mr. Worley and Loretta Worley, his wife, who was E.W.'s stepmother.

11. Investigator Ferguson said that when she questioned Respondent about the delay in showing the photos, Respondent explained that she delayed because she was afraid that the Worleys would put her out of their home. Investigator Ferguson felt that Respondent's explanation of delay did not make any sense.

12. Inspector Ferguson reported that she examined the child for marks and bruises and fully investigated the home and care given to E.W. by the Worleys and found no reason to question the child's safety. According to Inspector Ferguson, she observed a very loving and appropriate relationship between Mr. Worley and E.W.

13. Because of purported lack of evidence to support Respondent's allegations, and a belief that Respondent did not produce clear facts or timelines and was motivated by a custody dispute, Inspector Ferguson felt that the First Case was a false report. Inspector Ferguson's supervisor, Holly Cummings, agreed.

14. However, because the First Case was the first report called in by Respondent, Inspector Ferguson only warned Respondent against making false reports and closed the case as "No Indicators." According to the Department's internal

operating procedures manual, "no indicators" means there was no evidence to support the allegations.<sup>2/</sup>

15. On August 27, 2015, Respondent was involved in another call made to the hotline regarding Mr. Worley and E.W. The second report was assigned Intake Report number 2015-229587-01 (Second Case). The reporter who made the call in the Second Case identified herself as Respondent's friend and asked that the case not to be assigned to Inspector Ferguson. Respondent was in the background during the call at the location where the call originated.

16. The allegation narrative in the intake report from the Second Case states:

The father is an alcoholic. The father drinks alcohol to the point of intoxication every day. When the father drinks, he becomes aggressive and belligerent. Law enforcement has been called out to the home several times. When the father drinks he slurs his words and can barely talk on the phone. There are pictures of finger prints on the legs of [E.W.]. The pictures also depict a hand print to the inside thigh of [E.W.]. The pictures were taken about a month ago. It is unknown how the injuries were sustained. There are pictures of [E.W.] being held by her uncle. The uncle is a registered sex offender. There are no indications that the uncle has ever been left alone with [E.W.] or has been sexually abused by him. The mother and father do not get along. The mother temporarily signed over custody to the father but now the father refuses to allow the mother to have custody of [E.W.]. The mother is taking the father to court on 09-30-2015.

17. The Second Case was also investigated by Inspector Ferguson, who once again found that the evidence did not support the allegations. In addition, the Second Case was assigned to the Child Protection Team, a subcontractor of the Gulf Coast Children's Advocacy Center affiliated with the Florida Department of Health's Children's Medical Centers. The Child Protection Team is a separate entity from the Department and its employees are independent from Department personnel.

18. Inspector Ferguson again suspected false reporting because custody was still at issue and Inspector Ferguson did not believe that Respondent produced evidence to support the allegations. However, as in the First Case, instead of concluding that the report was false, the Second Case was also closed with a conclusion of "No Indicators."

19. On January 19, 2017, Respondent made another call to the Florida abuse hotline and reported that Mr. Worley had sexually abused E.W. The intake report from that call was assigned Intake Report Number 2017-018546-01 (Third Case). The allegation narrative in the Intake Report from the Third Case states:

The father has been touching [E.W.'s] vagina and buttocks when she gets up in the morning and while she is asleep. When [E.W.] takes a bath she cries. [E.W.] has been playing with herself. It was reported that [E.W.] learned this behavior from her father. [E.W.] does not feel safe in the father's home.



Three weeks ago, [E.W.] fell and hit a bed or dresser after jumping up and down on a mattress. She sustained a bruise on her head. The bruise looks like a handprint. She was taken to an emergency room. She had bruises on her body in the past.

The father has back and heart problems.

20. An additional, related call came into the hotline on February 12, 2017, and was assigned Intake Report number 2017-044728-01 (Fourth Case). The allegation narrative from the Fourth Case's Intake Report states:

The father has been sexually abusing [E.W.]. The father touches her private area while she sleeps. [E.W.] has been scratches [sic] her private area a lot lately, it is believed this is from the father sexually abusing her. [E.W.]'s private area are [sic] red. The mother is aware the father sexually abusing [E.W.] and is allowing her to go back to the father's house today, 02/12/2017.

21. The Fourth Case was based on the same allegations as the Third Case, but was reported by a Jackson County Sheriff's Office deputy after the Sheriff's office had received notice of Respondent's allegations of sexual abuse against Mr. Worley. Law enforcement officials are mandatory reporters.<sup>3/</sup>

22. The Fourth Case was eventually closed because the Third Case, based on the same allegations, was already opened.

23. Investigation of the Third Case was assigned to Department Child Protective Investigator Daniel Henry.

24. Given the nature of the allegations, Investigator Henry responded "immediately," which, according to the Department's protocol, requires investigation within four hours.

25. Investigator Henry arrived at Mr. Worley's home to investigate the allegations within four hours of the call, and, based upon his meeting with Mr. Worley and E.W., Investigator Henry concluded that E.W. was not in danger. According to Investigator Henry, interactions between E.W. and her father were very "comfortable and free" and the child did not seem afraid of her father in the least.

26. Allegations of sexual abuse, especially when made against a parent, are considered severe in nature and taken very seriously by the Department. Because of this, the Department once again referred E.W. to the Child Protection Team for a "forensic interview."

27. Angela Griffin with the Child Protection Team conducted the forensic interview of E.W. According to Ms. Griffin, a forensic interview is "a legally-sound interview, non-leading." From the interview, Ms. Griffin concluded that E.W. had not been abused by Mr. Worley. Ms. Griffin testified that she found E.W. to be very forthcoming and truthful with no hesitation in her statements. She recalled asking E.W. about anyone touching her inappropriately and no disclosures were made. Ms. Griffin reported that she saw no evidence of sexual abuse of

E.W. According to Ms. Griffin, after observing E.W. with Mr. Worley, she had no concerns. She reported that E.W. and Mr. Worley appeared to be bonded with a loving and appropriate father-daughter relationship.

28. Ms. Griffin's interview with E.W. was recorded and offered into evidence at the hearing. Although the recording was delivered to the undersigned at the hearing, ruling on the evidentiary value of that recording was reserved. After the hearing, the undersigned reviewed the recorded interview. Based upon that review, and considering the context and manner in which the recording was offered into evidence, it is found that the recording is non-corroborative hearsay<sup>4/</sup> that does not support a finding that Respondent made false accusations or a false report against Mr. Worley.<sup>5/</sup>

29. E.W.'s kindergarten teacher, Amy Glass, who has had daily contact with E.W. in her kindergarten class, is of the opinion that E.W. is a well-cared for child and is not concerned that E.W. has been abused. She described E.W.'s father and stepmother as loving and appropriate caregivers.

30. Ms. Glass believes that E.W. is the type of child that would tell her if she was being abused. According to Ms. Glass, E.W. has never told her that she has been abused by her father or stepmother.

31. While Ms. Glass further testified about statements made by E.W. concerning Respondent, those statements, and any other statements attributed to E.W., are hearsay and were not considered.

32. E.W.'s stepmother, Loretta Worley, also testified. Ms. Worley's testimony confirmed that there have been ongoing disputes between Respondent and Mr. Worley regarding custody of E.W. Ms. Worley testified that she and Mr. Worley provide a loving home for E.W., where E.W. is well cared for. She said that neither she nor Mr. Worley spank E.W. Ms. Worley also testified that Respondent's accusations against Mr. Worley were false and motivated by Respondent's desire to gain custody of E.W. Ms. Worley further testified that Respondent has been ordered to pay child support to Mr. Worley for E.W., and that Respondent is over \$4,000 behind in those payments. Respondent confirmed that she is behind on child support payments.

33. On the other hand, Ms. Worley's testimony provided support for Respondent's allegations regarding Mr. Worley's drinking. Ms. Worley confirmed that law enforcement has been called to their home on a number of occasions, both before and after 2014. Ms. Worley testified that law enforcement had been called a couple of times while Respondent was living with them for six to eight months in 2014, when Mr. Worley would get angry with Respondent while he and Respondent were bickering back and

forth. Ms. Worley also testified that law enforcement had been called "three or four times, maybe" since 2014, because of Mr. Worley's drunkenness. According to Ms. Worley:

Yeah. I mean, I'm not for sure how many - - but I know it ain't been like she's claiming; that they're out there every single day. Her daddy does not drink every single day.

34. Ms. Worley's testimony regarding Mr. Worley's drunkenness is credited and inconsistent to departmental investigative findings of "no indicators" in the first two cases.

35. Ms. Worley also offered testimony about things that E.W. allegedly told her that Respondent had said. That evidence, however, was not considered because it is hearsay, is not corroborative of other non-hearsay evidence, and is not otherwise reliable.

36. Notably, while it is found that the video recording of Ms. Griffin's interview of E.W. offered by the Department is non-corroborative hearsay as to the Department's case, the video provides statements from E.W. that are contrary to Ms. Worley's assertion that Mr. Worley does not spank E.W. When asked whether she gets along with everybody in the house, E.W. stated during the recorded interview, "Daddy get me in trouble." When asked what happens when she gets in trouble, E.W. replied, "He pop my butt." When asked what her daddy pops her butt with,

E.W. responded, "With his hand." When asked does something happen to her butt when he pops her with his hand, E.W. stated, "When I be bad, he pops me." When further asked whether something happens to her butt when he pops her, E.W. shook her head from side to side, and Ms. Griffin stated, "No?" in confirmation of E.W.'s head gesture. When asked if something else happens when he pops her, E.W. changed the subject.

37. Aside from being hearsay that should not be considered because it does not corroborate any competent evidence, even if the video of E.W.'s "forensic interview" is taken into account, it does not support a finding that Respondent's reports were false, and does not disprove Respondent's allegation that Mr. Worley was sexually abusing E.W.

38. Contrary to the Department's findings of "no indicators," the evidence adduced at the hearing provided support for Respondent's allegations regarding Mr. Worley's drinking behavior, as well as for alleged bruises and E.W.'s contact with a sex offender while in Mr. Worley's custody. In addition, although the Department made an issue of the timing of Respondent's presentation of photographic evidence in support of her allegations, Respondent provided photographs of bruises to E.W.'s legs and a photograph of Mr. Worley's brother, a convicted sex offender, holding E.W. These photos were presented by Respondent to the Department prior to the hearing,

as well as at the hearing. In fact, during the time period of one of Inspector Ferguson's investigations, Respondent went to the Department's local office and attempted to present the photographs, but Department personnel involved in the investigation were too busy to see her.

39. Respondent also presented a compact disk that purportedly has a recording of E.W. making statements about sexual abuse by her father. That recording, however, is unintelligible and is otherwise non-corroborative hearsay.

40. The facts that Respondent and Mr. Worley were having ongoing custody disputes and that Respondent was behind on child support payments raise suspicions about Respondent's motive in calling in the reports. Those suspicions, however, are not more persuasive than the evidence supporting the first two calls to the hotline. The Department's failure to acknowledge that evidence in its investigations, instead finding "no indicators," undermines the Department's preliminary determinations and the reliability of its case against Respondent. And, while the evidence does not prove that E.W. was subjected to sexual abuse, the Department's submissions were insufficient to support a finding that E.W. was not sexually abused.

41. In sum, the Department did not prove that Respondent called in false reports to the hotline.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to section 120.57(1), Florida Statutes (2017).

43. The Department is the state agency responsible for receiving and investigating reports of abuse, abandonment, and neglect for Florida's children and is empowered to bring administrative action against those making false reports.

44. A "false report," as defined by section 39.01(27), Florida Statutes, is:

A report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

- (a) Harassing, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child.

§ 39.01, Fla. Stat.<sup>6/</sup>

45. In an administrative action alleging false reporting, the Department must prove by a "preponderance of the evidence" that a false report was made. § 39.206(5), Fla. Stat.

46. "A preponderance of the evidence is 'the greater weight of the evidence,' [citation omitted] or evidence that



'more than not' tends to prove a certain proposition." Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

47. While the Department submitted some evidence of financial and custodial motive on the part of Respondent, the evidence, as outlined in the Findings of Fact, above, was insufficient to prove, by a preponderance, that Respondent made false reports to the Florida Abuse Hotline in violation of section 39.206.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered dismissing the Administrative Complaint.

DONE AND ENTERED this 2nd day of February, 2018, in Tallahassee, Leon County, Florida.



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JAMES H. PETERSON, III  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of February, 2018.

## ENDNOTES

<sup>1/</sup> Unless otherwise indicated, all cited references to the Florida Statutes are to the current versions, which have not substantively changed since the facts, circumstances, and allegations that are the subject matter of this case.

<sup>2/</sup> The citation for that Departmental internal operating procedure is: CFOP 170-5, p. 22-1.

<sup>3/</sup> See § 39.201(d)6., Fla. Stat.

<sup>4/</sup> "Hearsay evidence [in administrative actions under chapter 120 of the Florida Administrative Code] may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."  
§ 120.57(1)(c).

<sup>5/</sup> Hearsay reports of statements by children may be admitted as direct evidence under the hearsay exceptions created by sections 90.803(23) and 90.803(8), Florida Statutes. However, in this case, neither exception applies. During the hearing, Petitioner did not invoke the hearsay exception created by section 90.803(23) and failed to establish the predicates for admission of hearsay statements that it requires. In addition, the "public records" exception to hearsay found in section 90.803(8) is not applicable to reports of E.W.'s statements in this proceeding. For a thorough analysis, equally applicable in this case, rejecting both exceptions, see Administrative Law Judge John Newton's discussion in Dep't Child. & Fam. Servs. v. G.D. and R.D., Case No. 09-6712, slip op. at 16-24 (Fla. DOAH Sept. 28, 2010), adopted in toto, Rendition No. DCF-11-025-FO (Fla. DCF Feb 1, 2011).

<sup>6/</sup> Consistent with the statutory criteria, the Department has also promulgated Florida Administrative Code Rule 65C-29.010, which states, in substantive part:

(1) When a child protective investigator suspects that a false report has been made, the investigator shall advise the reporter of the potential administrative fines, civil and criminal penalties associated with the filing of a false report.

(2) In determining whether a report has been filed maliciously, the Department shall consider the following factors:

(a) There are no indicators of abuse, neglect or abandonment as alleged in the report.

(b) The reporter has made contradictory or inconsistent statements when questioned about how the reported information was obtained.

(c) Prior allegations made by this reporter have been determined to be patently unfounded or to have no indicators of abuse, neglect or abandonment.

(d) There is credible evidence that the reporter has a history of disputes or seeking retaliation against the alleged perpetrator or other family members.

(e) There is a history of unresolved custody issues between the reporter and the alleged perpetrator or other family members.

COPIES FURNISHED:

Brandi Spiers  
6601 Northwest Camp Head Road  
Altha, Florida 32421

Camille Larson, Esquire  
Michael Andrew Lee, Esquire  
Department of Children and Families  
2383 Phillips Road, Room 231  
Tallahassee, Florida 32308  
(eServed)

Lacey Kantor, Agency Clerk  
Department of Children and Families  
Building 2, Room 204  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700  
(eServed)

John Jackson, Acting General Counsel  
Department of Children and Families  
Building 2, Room 204  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700  
(eServed)

Mike Carroll, Secretary  
Department of Children and Families  
Building 1, Room 202  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700  
(eServed)

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.