

APR 14 2021

DCF Department Clerk

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,
v.

CASE NO. 18-5686
RENDITION NO. DCF-21-089-FO

DAWNDRELL MARTIN AND MARY
HIGHSMITH,

Respondents.

_____ /

FINAL ORDER

THIS CAUSE is before me for entry of a final order concerning the Department's September 28, 2018, notice of intent to revoke Respondents' foster home license. The Recommended Order found that the Department's decision to revoke Respondents' license is appropriate and the Department satisfied its burden in the matter. The Respondents filed exceptions to the Recommended order and Petitioner filed a response to Respondents' exceptions. Respondents also filed a "Respondent's [sic] Counter to Department's Response (to Respondents [sic] Exceptions);" however this filing will not be considered in the final order as Rule 28-106.217, Florida Administrative Code, does now allow for this additional filing.

EXCEPTIONS

Respondents take exception to Paragraphs 4, 10, 21, and 42 of the Findings of Fact.

4. Daniel Henry, a child protective investigator with the Department, was assigned to investigate the abuse report. He interviewed B.H., who told him that Ms. Martin had punished her by hitting her with a comb, a switch, and a flip-flop and that Ms. Highsmith had repeatedly "thumped" her forehead with a flick of her finger. Mr. Henry interviewed the reporter of the abuse. He contacted local law enforcement to facilitate a joint investigation, contacted the Department's

licensing staff, and interviewed Respondents. Based on B.H.'s statements, Mr. Henry immediately referred the case to the CPT.

10. During her interview with Ms. Griffin, B.H. described how her injuries were inflicted. This description was consistent with the story B.H. told to the abuse reporter, to Mr. Henry, and to Ms. Dykes. B.H. told Ms. Griffin that Ms. Martin had hit her on the head, in the face, and on the back with a comb, a switch, and a flip-flop, and that Ms. Highsmith had thumped her forehead.

21. Mr. Henry plausibly addressed both issues raised by Respondents. He testified that the Department bases its investigations on the identity of the alleged perpetrator. Because B.H. repeatedly and consistently identified Ms. Martin as the person who inflicted the injuries, Mr. Henry saw no reason to cast about for other suspects. Mr. Henry stated that he did not find it unusual for a busy day care to take a couple of hours to report to the abuse hotline.

42. Based on the Department's verified abuse report for inflicted injuries, the findings by the CPT, the results of the criminal investigation by the Jackson County Sheriff's Office, and the repeated and consistent statements of B.H., the Department's decision to revoke the license of Respondents is appropriate. The Department has satisfied its burden in this matter.

Respondents' argument in this exception is not clear but it appears that they are arguing Mr. Henry was not being truthful when he testified that B.H.'s account of the abuse was consistent. Respondent offers cites throughout the record to demonstrate their believed inconsistencies in B.H.'s statements. In this exception, Respondent seeks to have the findings modified to reflect their determinations on the evidence presented.

In reviewing exceptions to findings of fact, I remain mindful that it is the function of the administrative law judge (ALJ) to consider all evidence, resolve conflicts, judge the credibility of witnesses, draw permissible inferences from the evidence, reach ultimate findings of fact, and draw conclusions of law based on those findings.¹ An

¹ See Belleua v. Dep't of Environmental Regulation, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997). The weighing of evidence and judging of the credibility of witnesses by the Administrative Law Judge are solely the prerogative of the Administrative Law Judge as finder of fact. See Strickland v. Fla. A & M Univ., 799 So.2d 276 (Fla. 1st DCA 2001).

agency may not reweigh the evidence.² The findings in this exception are based on the ALJ's evaluation and determination of credibility of the evidence presented; it is not for the Department to reevaluate the same evidence and redetermine credibility. This would not be appropriate. This exception is denied.

Respondents take exception to Paragraphs 6, 7, 8, 10, 18, and 42 of the Findings of Fact.

6. Kimberly Dykes is an ARNP working for the CPT. She has undergone specialized training in child maltreatment, including the nature, origin, manifestations, and symptoms of abuse and injuries inflicted upon minor children. Her training included recognizing the difference between accidental and intentional injuries. Ms. Dykes performed a medical examination and interviewed B.H. about the cause of her injuries.

7. Ms. Dykes concluded that B.H.'s wounds were consistent with inflicted injury, and were consistent with the causation described by the child as "having been repeatedly struck with a comb and a switch and having been repeatedly thumped in the forehead."

8. Ms. Dykes testified that she spoke with the investigator for the Jackson County Sheriff's Office, Sergeant Cheree Edwards. Ms. Dykes stated that Sgt. Edwards provided her with the explanations that Respondents had offered for B.H.'s injuries. Ms. Dykes testified that she was able to medically rule out each of these explanations as lacking appropriate medical and testimonial support for their causation. Ms. Dykes further recommended that B.H. be removed from Respondents' home and placed in alternate custody.

10. During her interview with Ms. Griffin, B.H. described how her injuries were inflicted. This description was consistent with the story B.H. told to the abuse reporter, to Mr. Henry, and to Ms. Dykes. B.H. told Ms. Griffin that Ms. Martin had hit her on the head, in the face, and on the back with a comb, a switch, and a flip-flop, and that Ms. Highsmith had thumped her forehead.

18. At the hearing, the Department presented 13 photographs, taken by Ms. Griffin, of B.H.'s injuries. The photos detail multiple sources of trauma and bruising to B.H.'s face, head, back, eyes, neck, and scalp. None of the wounds appeared deep or serious, but did appear to be more severe than the usual bumps and bruises a parent expects from an active child. Ms. Dykes testified

² When determining whether to reject or modify findings of fact in a recommended order, the agency is not permitted to weigh the evidence, judge the credibility of the witnesses, or interpret the evidence to fit its ultimate conclusions. See *N.W. v. Dep't of Children & Family Servs.*, 981 So.2d 599 (Fla 3d DCA 2008); *Rogers v. Dep't of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Aldrete v. Dep't of Health, Board of Medicine*, 879 So.2d 1244, 1246 (Fla. 1st DCA 2004); *Gross v. Dep't of Health*, 819 So.2d 997, 1001 (Fla. 5th DCA 2002).

that the injuries in the photos were entirely consistent with B.H.'s statements that Ms. Martin caused them by hitting her with a comb, a switch, and a flip-flop.

42. Based on the Department's verified abuse report for inflicted injuries, the findings by the CPT, the results of the criminal investigation by the Jackson County Sheriff's Office, and the repeated and consistent statements of B.H., the Department's decision to revoke the license of Respondents is appropriate. The Department has satisfied its burden in this matter.

Respondent's exceptions numbered two, three, and four are combined for purposes of this final order. Exceptions two and three are titled by Respondent as "Perjurious Statements by the ARNP No.1 (Switch Marks)," and "Perjurious Statements by the ARNP No. 2 (Forehead Mark, No Thumping)." Respondents argue in these exceptions that Ms. Dykes was administered an oath by the ALJ and then proceeded to perjure herself regarding "switch marks, forehead marks, and thumping." As fully articulated in the prior exception, it is the function of the ALJ to judge the credibility of witnesses and to resolve any conflicts in the evidence. It is not appropriate for the Department to reweigh the evidence and draw its only findings of fact. Exceptions two and three are denied.

Respondent's exception four is titled "Not a Flip-Flop, Not a Comb." In this exception Respondent attacks the credibility of B.H. and her statements regarding the abuse and implements used to carry out the abuse. As stated in the above exceptions two and three, and fully articulated in the first exception, it is appropriate for the Department to reweigh the evidence and evaluate a witness' credibility; this is the role of the ALJ. Exception number four is denied.

Respondents' exception number five, titled "Fairness" will not be ruled upon in this final order. Pursuant to section 120.57(1)(k), Florida Statutes, an agency need not

rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. In this exception, Respondent does not identify a disputed portion of the recommended order by page number or paragraph; therefore, the Department need not rule on this exception.

Respondents take exception to Paragraph 42 of the Findings of Fact.

42. Based on the Department’s verified abuse report for inflicted injuries, the findings by the CPT, the results of the criminal investigation by the Jackson County Sheriff’s Office, and the repeated and consistent statements of B.H., the Department’s decision to revoke the license of Respondents is appropriate. The Department has satisfied its burden in this matter.

Respondents begin this exception by stating, “This, however, is obviously false. The burden of proof was not met.” Petitioner is correct in stating this exception “is a collective exception seeking to modify the Presiding Officer’s findings of fact.” Respondents again argue about witnesses’ false testimony and the reliance on said false testimony. As found in prior exceptions, and fully articulated in Respondent’s first exception, it is the function of the ALJ to review all the evidence and judge a witness’ credibility. It is improper for the Department to reweigh this and come to an alternate conclusion. This exception is denied.

Respondents final section of their exceptions is titled “Secondary Proposed Recommendations” and will not be ruled upon in this final order as it is not appropriate content for exceptions. Respondents argue pursuant to Rule 60, Relief from a Judgment or Order, that they seek relief from this judgment “due to fraud on the court.”

There is no Rule 60 under the Florida Administrative Code or Florida Rules of Civil Procedure that would correspond to the relief sought by Respondent. It is presumed that Respondents are referring to a Federal Rule of Civil Procedure which would not be applicable in this administrative proceeding pursuant to Chapter 120 Florida Statutes.

Accordingly, the Recommended Order is approved and adopted and the Department's September 28, 2018, notice of intent to revoke Respondents' foster home license is **AFFIRMED**.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 9th day of April, 2021.



Shevaun L. Harris, Secretary

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY A PARTY PUSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE. SUCH APPEAL IS INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILIES AT 2415 NORTH MONROE STREET, SUITE 100, TALLAHASSEE, FL 32303, AND A SECOND COPY ALONG WITH THE FILING FEE AS PRESCRIBED BY LAW, IN THE DISTRICT COURT OF APPEAL WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED (RECEIVED) WITHIN 30 DAYS OF RENDITION OF THIS ORDER.³

Copies furnished to the following via Electronic or USPS Mail, as indicated below, on date of Rendition of this Order.¹

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³ The date of the "rendition" of this Order is the date that is stamped on its first page.