

AUG 20 2021

**STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES**

DCF Department Clerk

**LAURA'S LEARNING AND
ENRICHMENT CENTER,**

Petitioner,

v.

CASE NO. 20-0149

RENDITION NO. DCF-21-147-FO

**DEPARTMENT OF CHILDREN
AND FAMILIES,**

Respondent.

_____ /

FINAL ORDER

THIS CAUSE is before the Department of Children and Families for entry of a Final Order concerning the Department's denial of Laura's Learning and Enrichment Center's ("Laura's Center" or "Petitioner") application to renew its child care license based on a violation of section 402.305(2)(a), Florida Statutes. Section 402.305(2)(a), Fla. Stat., requires all child care personnel to maintain good moral character based upon screening as defined in s. 402.302(15), which shall be conducted using level 2 standards as provided in chapter 435. The Recommended Order dated April 19, 2021 concluded that the Department did not prove by clear and convincing evidence that Respondent's owner and operator, Laura Smith ("Ms. Smith") failed to maintain good moral character. Neither party filed exceptions.

LEGAL STANDARD FOR EXCEPTIONS

1. An agency has limited authority to overturn or modify an Administrative Law Judge's findings of fact. *See, e.g., Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (reasoning that "[i]t is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw

permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence.”); *Gross v. Dep’t of Health*, 819 So. 2d 997, 1000–01 (Fla. 5th DCA 2002) (stating, “the agency is not permitted to weigh the evidence, judge the credibility of the witnesses, or interpret the evidence to fit its ultimate conclusions.”) In addition, it is not proper for the Department to make supplemental findings of fact on an issue about which the Administrative Law Judge made no finding. See *Florida Power & Light Co. v. State of Florida, Siting Board, et al.*, 693 So. 2d 1025, 1026 (Fla. 1st DCA 1997).

2. Section 120.57(1)(l), Florida Statutes, provides the following with respect to modifying findings of fact and conclusions of law in a Recommended Order issued by an Administrative Law Judge:

(l) The agency may adopt the recommended order as the final order of the agency. **The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.** The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(Emphasis added).

3. The Administrative Law Judge correctly identifies the applicable statutes in paragraphs 45 through 47 of the Recommended Order. However, contrary to these conclusions, the Administrative Law Judge then concludes in paragraphs 50 and 51 of the Recommended Order that the background screening used to ascertain “good moral character” is limited to s. 435.04, Fla. Stat., which states:

The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction.

4. This section notably does not include the standards articulated in s. 402.302(15) and 402.305(2), Fla. Stat., which also include, “A search of the criminal history records, sexual predator and sexual offender registry, and **child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years**” (emphasis added). The Administrative Law Judge’s conclusion in paragraph 51 is correct but incomplete; although the owner and operator has not been arrested for a delineated offense, there is a verified finding of failure to protect her adopted son from bizarre punishment and physical injury. See ¶ 3 of the Recommended Order. Because s. 402.302(15) and 402.305(2), Florida Statutes, clearly include a search of the child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years, this too forms a basis for determining whether an applicant has “good moral character.” Accordingly, paragraph 51 of the Recommended Order is modified as follows:

51. The evidence did not prove Ms. Smith has been arrested for, has been found guilty of, entered a plea of nolo contendere, or entered a plea of guilty

to any of the listed provisions. However, it is uncontested that there is a verified finding of abuse by Ms. Smith against her adopted son for failing to protect him from bizarre punishment and physical injury.

This conclusion is as or more reasonable than the conclusion of law being modified in that it considers all applicable statutes, which are within the Department's substantive jurisdiction. *See supra* ¶ 2.

5. It is also worth noting that, although the Administrative Law Judge's findings of fact indicate he doubted the veracity of the allegedly abused child's narratives about his injuries, he nonetheless acknowledges the owner and operator of Laura's Center lacked any commitment to caring for her adopted child. *See Recommended Order* at ¶¶ 12 – 14. Additionally, the verified abuse reports and arrest of her daughter raise serious concerns about her "good moral character," as described in s. 402.305(2)(a), Florida Statutes. *See Respondent's Exhibit G.*

6. Similar to the previously modified paragraph, the Administrative Law Judge concludes as follows, in paragraph 52 of the Recommended Order:

Clear and convincing evidence did not prove that Ms. Smith observed Ms. Miles tase and pepper spray B.S. and took no action. Therefore, clear and convincing evidence did not prove that Ms. Smith lacked the required "good moral character."

7. The Administrative Law Judge explained the alleged standard in paragraph 40, which states,

The Department must prove its charges by clear and convincing evidence. *See, e.g., Cristal Palace Resort PB, LLC v. Ag. for Health Care Admin., Case No. 19-1667 (Fla. DOAR Mar. 17, 2020), modified in part, ARCA No. 2019000548 (ARCA May 5, 2020), appeal docketed, No. 5D20-1168 (Fla. 5th DCA May 15, 2020), ¶¶ 222-226.*

8. The Administrative Law Judge cited no statutory authority for mandating the "clear and convincing" standard of proof in the Recommended Order, which is contrary

to the plain language in section 402.308(3)(d), Fla. Stat. *See also Haines v. Dep't of Children & Families*, 983 So. 2d 602, 608 (Fla. 5th DCA 2008) (holding the "preponderance of the evidence" standard applies to revocation of a foster care license). Section 402.308(3)(d) provides,

The department shall issue or renew a license upon receipt of the license fee and upon being satisfied that all standards required by ss. 402.301-402.319 have been met. A license may be issued if all the screening materials have been timely submitted; however, **a license may not be issued or renewed if any of the child care personnel at the applicant facility have failed the screening required by ss. 402.305(2) and 402.3055.**

(Emphasis added).

9. Although the Administrative Law Judge appears to rely on license revocation premised solely on s. 120.60, Fla. Stat., the plain language in s. 402.308(3)(d), Fla. Stat. requires the Department not to renew a child care license if any of the child care personnel at the applicant facility have failed the screening required by ss. 402.305(2) and 402.3055, Fla. Stat. The statute identifies ss. 402.305(2) and 402.3055, Fla. Stat., not merely s. 435.04, as the Administrative Law Judge concluded. *See supra* ¶¶ 3 – 4. The Supreme Court of Florida has held in *Overstreet v. State*, 629 So. 2d 125, 126 (Fla. 1993) that,

The legislature is assumed to know the meaning of the words in the statute and to have expressed its intent by the use of those words. . . "It is a settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language." *State v. Jett*, 626 So.2d 691 (Fla.1993). If the legislature did not intend the results mandated by the statute's plain language, then the appropriate remedy is for it to amend the statute.

10. As discussed *supra* paragraphs three through four, the applicant failed the screening required s. 402.305(2), Fla. Stat. In addition, section 402.3055(2)(g) states,

(g) Refusal on the part of an applicant or licensee to dismiss child care personnel who have been found to be in noncompliance with personnel standards of s. 402.305(2) shall result in automatic denial or revocation of the license in addition to any other remedies pursued by the department or local licensing agency.

11. Based on the verified finding, the Department properly denied Petitioner's application to renew its license. Accordingly, paragraph 52 of the Recommended Order is modified to read:

Due to the verified finding of abuse by Ms. Smith against her adopted son for failing to protect him from bizarre punishment and physical injury, section 402.308(3)(d), Fla. Stat., requires Petitioner's child care facility's license not be renewed for failing to comply with the screening required by ss. 402.305(2) and 402.3055.

This conclusion of law is as or more reasonable than the conclusion being modified.

12. Although the Department's substantive jurisdiction may not extend to the applicable standard of proof, the Department is charged with ensuring the health and safety of all children in child care, including establishing and enforcing child care licensing standards. See §§ 402.301 and .305, Fla. Stat. As such, that conclusion of law is within the Department's substantive jurisdiction. To clarify the Department's authority, the Recommended Order is modified to add a new paragraph 50 as follows:

Section 402.308(3)(d) provides,
The department shall issue or renew a license upon receipt of the license fee and upon being satisfied that all standards required by ss. 402.301-402.319 have been met. A license may be issued if all the screening materials have been timely submitted; however, a license may not be issued or renewed if any of the child care personnel at the applicant facility have failed the screening required by ss. 402.305(2) and 402.3055.

This conclusion is as or more reasonable than the conclusion being modified, i.e. the conclusion in paragraph 52 based on paragraph 40 of the Recommended Order.

Subsequent paragraphs in the Recommended Order are also renumbered to be consistent with this modification.

13. Similarly, paragraph 58 (renumbered paragraph 59) of the Recommended Order provides, "The Department did not prove by clear and convincing evidence that Ms. Smith observed Ms. Miles tasing or pepper spraying B.S. Consequently, it did not prove the charged lack of good moral character." As discussed *supra* paragraphs 3 through 11 of this Order, the Administrative Law Judge's conclusions are misplaced. As such, paragraph 58 is modified to read:

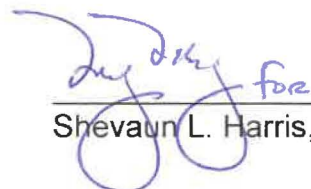
There is no dispute that Ms. Smith has a verified finding of child abuse that resulted in revocation of her foster care license. This finding appears in Florida's child abuse and neglect registry. As such, the Department cannot conclude that, pursuant to s. 402.305(2), Fla. Stat., Ms. Smith has maintained the "good moral character" required of all child care personnel. As such, denial of her application for renewal of Laura's Learning and Enrichment Center's license is required by s. 402.308(3)(d).

This conclusion is as or more reasonable than the conclusion of law being modified.

CONCLUSION

The Recommended Order is approved and adopted as modified and Petitioner's application for renewal is **DENIED**.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 19 day of August, 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 ST., STE. 100, TALLAHASSEE, FLORIDA 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.¹

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

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¹ The date of the "rendition" of this Order is the date that is stamped on its first page.