

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARY AND JAMES GILIO,

Petitioners,

vs.

Case No. 20-3219

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Respondent.

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RECOMMENDED ORDER

On September 24, 2020, Hetal Desai, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a hearing by Zoom conferencing.

APPEARANCES

For Petitioners: Anthony Duran, Esquire  
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For Respondent: Deanne Cherisse Fields, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioners should be issued a family foster home license.

PRELIMINARY STATEMENT

By letter dated June 8, 2020 (Notice Letter), the Department of Children and Families (Respondent or the Department) notified Mary and James Gilio (Petitioners) of its intent to deny their application for a foster home license. The decision in the Notice Letter was based on the unanimous recommendation of a licensing review committee (Committee) and a review of several reports of abuse of children for whom Petitioners were the caregivers. Additionally, the Department mentioned Petitioners' lack of willingness to provide positive methods of discipline, and Petitioners' experience with their adopted daughter as grounds for the denial. The Department cited sections 39.302(7)(a), Florida Statutes, and Florida Administrative Code Rules 65C-45.001, 65C-45.001(2)(e)3.a., 65C-45.003, and 65C-45.010(4) in its decision.

Petitioners filed a Petition for Formal Administrative Hearing on June 26, 2020, which was referred to DOAH, and assigned to the undersigned. A pre-hearing conference was held by Zoom on September 17, 2020, and the parties filed a Joint Stipulation of the Parties containing stipulated findings of facts which have been incorporated in the Findings of Fact below to the extent they are relevant.

On September 24, 2020, the hearing commenced as scheduled. At the hearing, Petitioners testified on their behalf, and Petitioners' Exhibits P1 and P3 were admitted into evidence. Respondent presented testimony from Frank Prado, Sheila DelCastillo, Michelle Costley, Brendale Perkins, Kristin Edwardson, and Rebecca Dorsey. Respondent's Exhibits R1, R2, and R5 through R7 were admitted into evidence.

The Transcript of the hearing was filed on October 10, 2020. Both parties timely filed Proposed Recommended Orders, which have been considered in preparation of this Recommended Order.

#### FINDINGS OF FACT

Based upon the testimony, exhibits, and stipulated facts in the Joint Stipulation, the following Findings of Fact are made:

##### Parties and Process

1. Petitioners, who are husband and wife, submitted an application for licensure as a family foster home. Although this was an application for initial licensure, Petitioners were previously licensed as a foster home from August 2013 to October 2019.<sup>1</sup>

2. The Department is the state agency responsible for licensing foster care parents and foster homes, pursuant to section 409.175, Florida Statutes, and Florida Administrative Code Chapter 65C-45.

3. Petitioners voluntarily relinquished their foster home license on or about October 28, 2019, around the time two female foster children, S.W. and H.C.S., were removed from their care. It is unclear whether the children were removed because of an abuse investigation related to H.C.S., or whether they were removed because Petitioners closed their home to foster children. Regardless, Mrs. Gilio testified that they let their license lapse because they needed a break after fostering H.C.S.

4. The Department administers foster care licensing by contracting with third-party private entities. In Circuit 13, where Petitioners are located, the Department contracted with Eckerd Community Alternatives, doing business as Eckerd Connects (Eckerd), to be the agency responsible for facilitating foster care licensing. Eckerd has subcontracted with Children's Home Network (CHN) to facilitate foster care licensing.

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<sup>1</sup> Petitioners had previously been denied a foster care license in 2009.

5. At the time relevant to Petitioners, the Department used the "attestation" model of foster home licensing. In this model, a private licensing agency with whom the Department has contracted will conduct a home study on the foster home applicants and attest to the applicants' fitness to be licensed. The Department does not have the discretion to deny the license once the licensing agency has attested to the appropriateness of the applicants, except if they have been named as caregivers in three or more abuse reports within five years. If there are such abuse reports, the Department is required to review those reports and make a final decision regarding the application. There is no requirement that the reports result in a finding of actual abuse for them to be reviewed by the Department.<sup>2</sup>

6. Although it is unclear when Petitioners submitted their application for the foster care license in this case, sometime in late 2019, CHN conducted and compiled a Unified Home Study (home study), which included Petitioners' background screening; previous reports of abuse, abandonment, or neglect involving the applicants, and references from all adult children.

7. The home study was reviewed at a meeting on December 19, 2019, by Eckerd, through the Committee. The Committee considered the application, home study, and licensing packet and heard from various agency staff. Petitioners were also allowed to voice comments and concerns at this meeting.

8. Had the Committee approved the application, it would have been sent to the Department along with an attestation that stated the foster home meets all requirements for licensure and a foster home license is issued by the Department. However, the Committee unanimously voted not to recommend approval of a foster home license to Petitioners.

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<sup>2</sup> The categories of findings for an abuse report are "no indicator," "not substantiated," and "verified." "No indicator" means there was no credible evidence to support a determination of abuse. "Not substantiated" means there is evidence, but it does not meet the standard of being a preponderance to support that a specific harm is the result of abuse. "Verified" means that there is a preponderance of credible evidence which results in a determination that a specific harm was a result of abuse.

9. Frank Prado, Suncoast Regional Managing Director for the Department, ultimately decided to deny Petitioners' application for a family foster home license due to their prior parenting experiences, the multiple abuse reports regarding their home, and the recommendation of the Committee. Mr. Prado expressed concern about the nature of the abuse reports and Petitioners' admission that they used corporal punishment on a child they adopted from the foster care system in the presence of other foster children.

#### Petitioners' Parenting History

10. Petitioners have seven children: one is the biological son of Mr. Gilio; another is the biological son of Mrs. Gilio; and five were adopted through the foster care system in Florida. Of these seven children, six are now adults. Three of the adopted children, Jay, Sean, and Jameson, are biological brothers who Petitioners adopted in 2001. Shawna, who was adopted around 2003, is the only adopted daughter.

11. The Petitioners' one minor child, H.G., is a nine-year-old boy and the only child who resides in their home. H.G. suffers from oppositional defiance disorder.

12. Petitioners admitted they adopted Shawna after there had been allegations of inappropriate behavior made against Jay, by a young girl who lived next door to Petitioners. Later, while they were living with Petitioners, Jay, Sean, and Jameson were arrested for sexually abusing Shawna at different times. As a result, one or more of the sons were court-ordered to not be around Shawna, and the other brothers were required to undergo treatment and never returned to Petitioners' home.

13. During the hearing, both Petitioners seem to blame Shawna, who was nine years old when the sexual abuse by Jay in their home allegedly began, for disrupting their home. They accused her of being "not remorseful" and "highly sexualized." Regarding the abuse by Sean and Jameson, which occurred when Shawna was approximately 12 years old, Mr. Gilio stated

Shawna thought it was okay to have sex with boys, and it was "hard to watch every minute of the day if they're, you know, having sex."

14. When Shawna was about 19 years old, she filed a "Petition for Injunction for Protection Against Domestic Violence" against Mr. Gilio in circuit court. The Petition outlined allegations of past sexual comments and inappropriate disciplinary behavior from 2007 to 2012, while she lived with Petitioners. Mr. Gilio denied at the hearing having any knowledge about the Petition against him, but admitted he made comments about Shawna's breasts.

15. As part of the application and home study process, the CHN collected references from Petitioners' former foster children and adult children. Shawna (Petitioners' only adopted daughter) gave them a negative reference and specifically stated she would not want female foster children to live with Petitioners.

#### Reports of Abuse

16. Petitioners were involved in 24 abuse reports during their time of licensure between 2013 and 2019. During the past five years, Petitioners were named as either alleged perpetrators or caregivers responsible in eight reports that were made to the Florida Child Abuse Hotline (Hotline). Of those eight reports, five of them named Mr. Gilio as the alleged perpetrator causing a physical injury, one report named Mr. Gilio as the caregiver responsible for a burn on a foster child, and one report named Mr. Gilio as an alleged perpetrator of sexual abuse against a foster child. Mrs. Gilio was named as an alleged perpetrator of asphyxiation as to a foster child.

17. Seven of the reports in the last five years against Petitioners were closed with no indicators of abuse. One of the abuse reports was closed with a "not substantiated" finding of physical injury. In this report, Mr. Gilio was the alleged perpetrator and the victim was H.G., Petitioners' minor adopted son.

18. Additionally, after Petitioners let their foster license lapse in October 2019, a subsequent report was made against Mr. Gilio for improper contact with a former foster daughter. This incident was discussed at the Committee meeting, but it was unclear if this allegation was ever investigated.

#### Corporal Punishment

19. According to the Department's rules, discussed below, foster parents are forbidden to engage in corporal punishments of any kind. In 2019, there were two reports alleging Mr. Gilio of causing physical injury by corporal punishment on H.G. At the time, there were other foster children in the household.

20. Technically, Mr. Gilio was allowed to use corporal punishment on H.G. because he was no longer a foster child and had been adopted from foster care. If a parent uses corporal punishment on a child, there can be no findings of abuse unless the child suffered temporary or permanent disfigurement. However, foster care providers are not permitted to use corporal punishment. More than one witness at the hearing had concerns about the use of corporal punishment against H.G. because of his operational defiance disorder and because other foster children (who may have been victims of physical abuse) were in the household.

21. Brendale Perkins, who is a foster parent herself and serves on the Hillsborough County Family Partnership Alliance, an organization that supports licensed foster parents, testified she witnessed Mr. Gilio treating a foster child in his care roughly. At the time, she was concerned because this was not the way children in foster care (who may have previously been victims of abuse) should be treated. She did not, however, report it to any authorities.

22. The Department established through testimony that the policy against using corporal punishment is taught to all potential foster families. Mr. Gilio, however, denied ever being instructed not to use corporal punishment against

foster children or while foster children were in the home. He also claimed that H.G.'s therapist had never recommended any specific punishment techniques. The undersigned finds Mr. Gilio's testimony not credible.

#### Cooperation with Fostering Partners

23. The Department established that decisions regarding foster children are made within a "system of care" which includes input from case managers, guardian ad litem (GAL), and support service providers. The relationship between Petitioners and others working as part of this system during the time of fostering was not ideal; it was described by witnesses as "tense" and "disgruntled."

24. One witness, a supervisor at CHN, testified Mr. Gilio was not receptive or flexible when partnering with other agencies, and was not always open to providing information when questioned. As an example, Petitioners fired a therapist without consulting with the CHN staff or the GAL for the child. At the final hearing, Mr. Gilio continued to claim he did nothing wrong by not consulting with others in the system regarding this decision.

25. Kristin Edwardson, a child protection investigator for the Hillsborough County Sheriff's Office, was tasked with investigating the reports of abuse and neglect against Petitioners that had been reported to the Hotline. She testified she was concerned with the level of cooperation they provided her and other investigators. Although they ultimately would cooperate, Petitioners made it difficult for the investigators and would often "push back" and make the situation more stressful. She described Mr. Gilio as being disrespectful, belittling, and dismissive of her.

#### Licensing Review Committee

26. On December 19, 2020, the Committee, made up of eight individuals, was convened to review Petitioners' application for a foster home license. When determining whether a family should receive a foster home license, the Committee is to evaluate the applicants' background, parenting experience,



references from community partners, and the family's openness and willingness to partner.

27. Sheila DelCastillo, a regional trainer with the GAL program, was a Committee member. She had prior knowledge of Petitioners from a report that a foster child's room in Petitioners' home smelled strongly of urine during a home visit and that GAL staff had found a prescription bottle beside the child's bed that belonged to Mr. Gilio.

28. With regards to Petitioners' application, she read the licensing review packet and home study that contained numerous abuse reports. Ms. DelCastillo was concerned about the 24 abuse reports Petitioners' received during their time of licensure, the negative reference from Shawna, their use of corporal punishment on H.G., and Petitioners' downplaying of the events that led to multiple abuse reports.

29. Michelle Costley, a licensing director with CHN in charge of level 2 traditional foster homes, also served on the Committee. Ms. Costley has 14 years of experience, with seven of those years spent in foster care licensing. As director of licensing, Ms. Costley was concerned about the number of abuse reports received regarding Petitioners; Mr. Gilio's inability to be open and flexible when working in partnership with other agencies; and the needs of Petitioners' child, H.G. She was also concerned about Petitioners' decision to fire a therapist of a foster child without consulting the GAL or the other individuals involved with that child.

30. Regarding the alleged abuse, Ms. Costley was concerned that most of the reports regarding Petitioners involved allegations of physical abuse, inappropriate touch of a sexual nature, or sexual abuse, with most alleged victims being younger than eight years old. She explained that even though these reports could not be "verified," these types of allegations are harder to establish because testimony by children of that age often is unreliable and there usually must be evidence of physical injury, which no longer is present by the time the alleged abuse is investigated.

31. Ms. Perkins also served on the Committee. Ms. Perkins served as a foster parent mentor, working with foster parents to help them build co-parenting strategies and navigate the system of care. She has been a licensed foster parent for 13 years and has adopted 11 children from foster care. As stated earlier, she was familiar with Petitioners from the Hillsborough County Family Partnership Alliance meetings. Ms. Perkins was concerned with the number of abuse reports with similar allegations, but different victims. She also discussed Petitioners' use of corporal punishment, noting that they could have been using verbal de-escalation methods instead of corporal punishment due to the traumatic histories of many foster care children.

32. Ms. Edwardson also served on the Committee. In addition to her personal interactions with Petitioners, Ms. Edwardson was concerned about the totality of the information presented to the Committee regarding the abuse reports and Mr. Gilio's lack of cooperation. She noted that although they were not substantiated, the number and nature of the reports related to young children were of concern.

33. Based on the Committee notes and transcript of the meeting, Petitioners were allowed to respond to the Committee's questions at the December 2019 meeting. They argued that none of the abuse reports were proven true and any injuries were not their fault. They seemed more concerned about who made the abuse reports and why the abuse reports were called in than whether the foster children were protected in their care. For example, although Mr. Gilio admitted to hitting H.G. with a stick twice as big as a pencil, he denied any bruising was caused by the stick. A report of a burn on another child was explained by Mr. Gilio as an accident that occurred while he was teaching her how to iron; he could not understand why this was reported as possible abuse. Ms. Gilio explained that H.C.S. was a very active child which resulted in her needing stitches and requiring restraint.

34. After hearing from Petitioners, the Committee members discussed their concerns that Petitioners were not forthcoming about the various abuse incidents, and would not take responsibility for any of the injuries or issues raised by the abuse reports. All eight members voted to not move Petitioners' application forward.

#### CONCLUSIONS OF LAW

35. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020).<sup>3</sup>

36. As the applicant, Petitioners bear the burden of proof regarding their application for foster home licensure. *See Florida Dep't of Transp. v. J.W.C. Co., Inc.*, 369 So. 2d 778 (Fla. 1st DCA 1981).

37. Regarding the regulation of family foster homes, section 409.175 provides in relevant part:

(2) As used in this section, the term:

\* \* \*

(f) "License" means "license" as defined in s. 120.52(10). A license under this section is issued to a family foster home or other facility and *is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.* (emphasis added).

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<sup>3</sup> Unless otherwise provided, all references to statutes and administrative rules are to the 2020 codifications. *See Lavernia v. Dep't of Prof'l Regulation, Bd. of Med.*, 616 So. 2d 53 (Fla. 1st DCA 1993) (noting amendments to licensure requirements applied to pending application).

38. Petitioners do not dispute the number of reports of abuse made regarding foster children in their care. Rather, they challenge the review by the Committee and Department of these reports because they are not "verified." Petitioners rely on section 39.301(21), which states:

**39.301 Initiation of protective investigations.**

\* \* \*

(21) *When an investigation is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers, except that a previous report may be used to determine whether a child is safe and what the known risk is to the child at any stage of a child protection proceeding. (emphasis added).*

39. Although Petitioners' position is not addressed by the Department, this statute does not apply for three reasons. First, this statute only applies when a person is *not* identified as a responsible caregiver. As noted above in the reports for the past five years, either Mr. Gilio or Mrs. Gilio was identified as the caregivers reviewed by the Committee and Department.

40. Second, as noted in section 409.175(2)(f), a foster care license is not considered a professional license, but rather, a privilege. Petitioners' interpretation of the statute is inconsistent with the guiding principle that approval of a foster home license is an act of public trust. The Department cannot ignore the number and nature of abuse reports which name Petitioners as caregivers. Nor is it improper to consider the sexual abuse of Shawna that occurred in their household. Separate from any reports, the circumstances were fully addressed in the hearing testimony, with troubling

implications as to whether foster children placed in the Petitioners' home in the future would be safe and protected if the license was approved.

41. Third, section 39.302(7)(a) specifically allows such review of abuse reports: where the person seeking the foster care license "is named in any capacity in three or more reports within a 5-year period, the department may review those reports and determine whether the information contained in the reports is relevant." *Id.*

42. Consistent with section 39.302, rule 65C-45.001(2)(e) addresses how abuse records can be used by the reviewing community-based care agency (CHN and Eckerd):

**65C-45.001. Background Screening Requirements for all Levels of Licensure.**

(1) The Department shall conduct background screenings for all persons considered by the Department for initial licensure, re-licensure, or re-screenings for 3-year licensure for out-of-home caregivers and all adult household members age 18 and older, pursuant to Sections 409.175 and 39.0138, F.S.

(2) These screenings shall include:

\* \* \*

(e) Abuse and neglect records check through the Department's Florida Safe Families Network (FSFN) which shall be documented on the "Central Abuse Hotline Record Search" form, CF 1651, April 2020, incorporated by reference and available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-11811>;

\* \* \*

3. The Department's Regional Family Safety Office shall review the following reports to determine whether a license shall be issued:

a. *When the applicant or any other household member was named in any capacity in three (3) or more reports within a five (5) year period, regardless of classification.* (emphasis added).

43. Moreover, rule 65C-38.002 provides that the Department or the attestation agency (in this case CHN and Eckerd) shall consider the information from the Hotline on all persons in the potential foster care household.

**65C-38.002. Child Abuse, Abandonment and Neglect Record Check.**

(1) The Department, community-based care lead agency and its subcontracted providers shall check the electronic FSFN case record for information on all persons being considered for placement of a child, including parents and all members of the household, 12 years of age and older, and other visitors to the home 18 years or older who have unsupervised contact with the child.

44. Relevant to this case, the Department or attestation agency was also required to assess whether Petitioners could work with the professional team supporting the foster child and consider their willingness to share information. Fla. Admin. Code R. 65C-45.003(3)(f)3. (including as part of home study: "How the caregiver(s) is (are) able to participate in a professional team supporting the child by sharing necessary information with other professionals on the team.").

45. Finally, foster parents are required to use positive methods of discipline and are prohibited from using corporal punishment on a foster child that is placed in their care. Fla. Admin. Code R. 65C-45.010(4)(b) and (d) ("Licensed out-of-home caregivers shall not use corporal punishments of any kind."); *see also Sanders v. Dep't of Child. & Fam.*, 118 So. 3d 899 (Fla. 1st DCA 2013) (ruling statute providing for religious curriculum or teachings in a family foster home did not deprive Department of legal authority to

prohibit corporal punishment). Although technically Petitioners did not violate this rule by using corporal punishment on their adoptive child, H.G., the Department and CHN could consider this fact when assessing whether Petitioners demonstrated the commitment to using positive methods of discipline instead of corporal punishment. Fla. Admin. Code R. 65C-45.003(3)(f)4.a. (listing the following as a consideration in licensure: "How the caregiver(s) is (are) willing and able to make a loving commitment to the child(ren)'s safety and well-being by [ ] providing supervision and positive methods of discipline.").

46. CHN, Eckerd, and the Department properly considered the abuse reports made against Petitioners in the past five years, Petitioners' use of corporal punishment in the foster home, Petitioners' lack of cooperation and tense relationship with other professional partners in the past, and Petitioners' past parenting experiences with Shawna. These are all required considerations pursuant to the statutes and administrative rules governing the licensure of foster care homes.

47. Based on these factors and the findings above, Petitioners have not met their burden in proving they currently meet the standards for family foster home licensure.

#### RECOMMENDATION

Based on the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore, RECOMMENDED that a final order be entered by the Department of Children and Families denying a family foster home license to Petitioners, Mary and James Gilio.

DONE AND ENTERED this 9th day of November, 2020, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of November, 2020.

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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.