

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DHR 04463

Regina Joyner,

Petitioner,

v.

Division of Child Development and Early
Edu – Dept of Health and Human Services,

Respondent.

FINAL DECISION

BACKGROUND

This matter was heard before the Honorable Selina M. Brooks, Administrative Law Judge, on October 31, 2014 in High Point, North Carolina.

APPEARANCES

Regina Joyner
2004 Joseph McNeil Avenue
Greensboro, North Carolina 27405
PETITIONER

Alexandra Gruber
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
ATTORNEY FOR RESPONDENT

APPLICABLE STATUTES AND RULES

N.C.G.S. §§ 110-88, 110-90(9), 110-98, 110-102.2(4)
Child Care Rule 10A NCAC 09 .2207

ISSUES

Whether the Respondent otherwise substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, or acted arbitrarily or capriciously when it summarily suspended the license issued to Regina L. Joyner to operate First Steps Child Care.

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibits 1, 2 and 4 were admitted.

Respondent's Exhibits 2-10, and 12-17 were admitted.

Official notice was taken of the relevant statutes and rules in Respondent's Exhibit 20.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case. In the absence of a transcript, the Undersigned reviewed her notes to refresh her recollection.

BACKGROUND

Parties/Witnesses

1. Respondent, Division of Child Development and Early Education (the "Division" or "DCDEE"), is a state administrative agency operating under the laws of North Carolina and administering the licensing program for child care facilities in the State of North Carolina. *See* N.C.G.S. § 110-85, *et seq.*

2. Melissa Stevenson is the program manager for the Licensing Enforcement Unit at the Division. Previously, Ms. Stevenson worked for the Division as the intake supervisor and, before that, as an abuse/neglect supervisor for the northeastern region. Prior to coming to the Division, Ms. Stevenson worked at the Wake County Child Care Resource and Referral Agency as program director. Ms. Stevenson also worked as the director of a licensed, corporate child care facility in Wake County. Ms. Stevenson's responsibilities as licensing enforcement program manager for the Division include ensuring the consistency of administrative actions.

3. Elizabeth Nichols is an investigations consultant for the Division. Ms. Nichols has worked with the Division for thirteen (13) years. Ms. Nichols worked previously at Forsyth County Department of Social Services. Ms. Nichols holds a Master of Science degree in Child Development and Family Relations from East Carolina University. Ms. Nichols' responsibilities as an investigations consultant include

investigating complaints alleging child abuse/neglect and violations of child care requirements in child care facilities.

4. Regina Joyner (“Petitioner” or “Ms. Joyner”) is the operator and owner of First Steps Child Care (“center” or “the facility”). The facility is licensed as a “center in a residence” and operated pursuant to a five-star license issued by the Division. (R. Ex. 3, p. 7)

5. Petitioner’s facility was located in the home she and her husband, Namon Vincent Williams, occupied.

6. There is no means of access to any of the non-facility areas of the house without walking through the child care portion of the home.

Administrative Action

1. On June 6, 2014, the Division received a complaint regarding an alleged incident of domestic violence at Petitioner’s facility. The complaint alleged that two children enrolled at the child care facility were present at the time of the incident. (R. Ex. 2, p. 3)

2. At some point prior to the events that gave rise to the Summary Suspension, Ms. Joyner told the Division’s licensing consultant, Samantha McLeod, that she and her husband were going through a divorce.

3. At no time prior to May 13, 2014 did Ms. Joyner tell Division staff that she had concerns regarding the safety of the children and parents of children at her child care facility.

4. On May 13, 2014, Ms. Joyner and Mr. Williams were involved in an incident in which Mr. Williams approached Ms. Joyner in the child care part of the home while Ms. Joyner was caring for two (2) children. Mr. Williams hit Ms. Joyner in the mouth and grabbed her cellphone from her as she was attempting to take a video of Mr. Williams’ actions. Ms. Joyner’s cellphone was broken during the encounter. The children were sleeping at the time of the incident and did not awaken during the incident.

5. As a result of the June 6, 2014 incident, the Division criminally disqualified Petitioner from providing child care pursuant to N.C.G.S. § 110-90.2. Petitioner was later re-qualified after the charges against her stemming from the May 13, 2014 incident were dropped.

6. Also on June 6, 2014, the Division assigned Elizabeth Nichols to investigate the complaint report. Ms. Nichols made an unannounced visit to Petitioner’s facility that same day, during which she delivered the Summary Suspension of Petitioner’s license based upon failure to provide a safe and healthy environment for children. Petitioner’s facility ceased operation that same day. (R. Ex. 3)

7. During the June 6, 2014 visit, Ms. Joyner told Ms. Nichols that she and Mr. Williams were going through a divorce and that Mr. Williams had “been doing things to try and get her in trouble with her daycare.” (R. Ex. 11, p. 2)

8. Ms. Joyner told Ms. Nichols that she had gone to court on May 23, 2014 to get a restraining order preventing Mr. Williams from being at the residence.

9. Ms. Nichols visited Petitioner’s facility again on June 9, 2014. At that time, Petitioner provided Ms. Nichols with copies of a restraining order from April of 2014. Ms. Nichols noted in the Visit Summary that the Division’s investigation was ongoing, and that Ms. Joyner would be notified. (R. Ex. 4)

10. During the Division’s investigation, Ms. Nichols learned that Ms. Joyner alleged Mr. Williams was making 911 calls about the facility. Ms. Nichols noticed that there was reference in the 911 calls to a 2013 restraining order.

11. The Division obtained copies of Ms. Joyner’s court files from 2013 and 2014, and determined that there had been numerous court filings alleging potential harm to Ms. Joyner, her own children, the children enrolled at her child care facility, and the parents of those children.

12. Ms. Joyner did not tell Ms. Nichols about any legal action she had taken against Mr. Williams in 2013.

13. On March 20, 2013, Ms. Joyner filed an ex parte Complaint and Motion for Domestic Violence Protective Order. In that order, Ms. Joyner alleges:

Defendant removing hinges and locks to door in my infant room to look through my belongings. This is state regulation to keep material lock up from children. 3/19 Also threaten to take off door knobs off main doors. Scared defendant will sabotage things at daycare to put in violation.

Also in that document, Ms. Joyner checked the box that says,

The defendant has attempted to cause or has intentionally caused bodily injury to the child(ren) living with me or in my custody and has placed my child(ren) in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against the child(ren).

Ms. Joyner did not give further details about these allegations in her motion. (R. Ex. 12) Also on March 20, 2013, the court found that Ms. Joyner had failed to prove grounds for ex parte relief and denied her motion. (R. Ex. 13) On March 27, 2013, Ms. Joyner voluntarily dismissed her case against Mr. Williams. (R. Ex. 14)

14. On March 28, 2013, Ms. Joyner filed a Complaint and Motion for Temporary Restraining Order. In that Complaint, Ms. Joyner alleged under oath that Mr. Williams: 1) had physically threatened her 14 year old son; 2) abuses prescription drugs and that Petitioner found bottles of Percocet and other drugs in her home with the labels torn off; 3) abuses alcohol and leaves “empty liquor, wine, and beer bottles strewn about the house”; 4) has taken off doors meant to provide a barrier between the child care facility and residential portion of the house; 5) has “comingled [sic] his alcohol bottles in a freezer where daycare supplies are stored”; 6) has taken pictures of children attending the child care facility without their parents’ permission; 7) “has threatened to remove door knobs off doors” leading to the child care area of the home; and 8) replaced the backyard fence lock without notifying Petitioner, and that Petitioner only discovered this when she conducted a fire drill at the day care. Finally, Ms. Joyner alleged that she “is fearful that Defendant will harm her, her children, the children under her care, or the parents of the children under her care.” (R. Ex. 15).

15. On March 28, 2013, Ms. Joyner obtained a Temporary Restraining Order prohibiting Mr. Williams from entering the “child care area” of the facility during business hours and setting a hearing on a Preliminary Injunction for April 8, 2013. (R. Ex. 17) The order was subsequently amended for technical corrections. (R. Ex. 18)

16. The April 8, 2013 hearing never occurred and the March 28, 2013 expired by its own terms because Ms. Joyner and Mr. Williams reconciled, and Mr. Williams continued to reside in the home.

17. Ms. Joyner testified that the reconciliation between Ms. Joyner and Mr. Williams was a purely practical one and meant to assist Ms. Joyner in maintaining her home and business.

18. On April 8, 2014, Ms. Joyner filed a second Verified Complaint and Motion for a Temporary Restraining Order asking for a divorce from Mr. Williams. In that Complaint, Ms. Joyner stated under oath that Mr. Williams: 1) “abuses alcohol in the home, and becomes angry and verbally abusive”; 2) “intentionally interferes with Plaintiff’s daycare business” by harassing the parents of enrolled children as well as center staff ; 3) “Interferes with parents and the staff when they attempt to drop off their children in an effort to intimidate”; 4) “Slams doors and curses around the minor children when they are awake, and monitors who enters and leaves the daycare”; and 5) “Takes unauthorized and unwarranted pictures of the families of the children who attend Plaintiff’s daycare.” Finally, as with the 2013 divorce complaint, Ms. Joyner alleged that she “is fearful that Defendant will harm her, her children, the children under her care, or the parents of the children under her care.” (R. Ex. 5).

19. Ms. Joyner and Mr. Williams entered into an Order for Preliminary Injunction by Consent on April 8, 2014. The order prohibited Mr. Williams from communicating with or interfering with staff, children, or parents of children attending the child care

facility, but did not prevent Mr. Williams from being on the premises of the child care facility. (R. Ex. 6)

20. On April 21, 2014, Ms. Joyner and Mr. Williams entered into a Consent Order very similar to that of the April 8, 2014. The original text of the Order included a provision prohibiting Mr. Williams from being present at the child care facility during operating hours, but the parties struck through that provision and initialed the change. The Order included the language restricting Defendant to his bedroom, the kitchen, and the bathroom. (R. Ex. 7)

21. The first order entered restricting Mr. Williams from entering into or being present at Ms. Joyner's child care facility was entered on May 23, 2014 after Ms. Joyner once again alleged that Mr. Williams presented a "danger of serious and immediate injury" to her or her children. The order was entered ex parte. (R. Ex. 8, 9).

22. A Consent Order of Protection was entered on May 23, 2014 with similar provisions to the ex parte order. The Consent Order is in effect until May 23, 2015. (R. Ex. 10)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case pursuant to Chapters 110 and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder and the notice of hearing was proper.

3. The primary purpose of child care regulation in the state is defined as providing for the health, safety and developmental well-being of children in child care facilities. N.C.G.S. § 110-85.

4. Pursuant to N.C.G.S. § 110-85, the Division has a mandate to ensure that children in child care facilities are in physically safe and healthy environments where the developmental needs of the children are met.

5. "Centers in a residence" are licensed child care facilities operating in an occupied residence and follow child care center rules. Centers in a residence can be licensed to care for up to twelve (12) children when preschool children are in care. See 10A NCAC § 09 .1304.

6. At all times relevant to this matter, Petitioner's facility was subject to the child care licensure laws and rules of the State of North Carolina.

7. At all times relevant to this matter, Petitioner's facility operated pursuant to a license issued by the Respondent.

8. Although Petitioner told Respondent's staff that she was going through a divorce from Mr. Williams, Petitioner did not tell Respondent that she had concerns regarding safety of the children enrolled at her child care facility.

9. In spite of her repeated sworn assertions that Mr. Williams presented a risk of harm to the children in her care, Petitioner did not secure an order preventing Mr. Williams from being on the premises of the child care facility until May 23, 2014.

10. The May 13, 2014 domestic violence incident between Petitioner and Mr. Williams occurred in front of two (2) children enrolled at Petitioner's child care facility.

11. Petitioner's failed to take action to adequately protect the children in her care from Mr. Williams.

12. Respondent acted properly when it summarily suspended Petitioner's child care license because it determined that emergency action was necessary to protect the health, safety and welfare of the children enrolled at First Steps. 10A NCAC 09.2207.

13. Respondent did not otherwise substantially prejudice Petitioner's rights, did not exceed its authority or jurisdiction, did not act erroneously, did not fail to use proper procedure and did not act arbitrarily or capriciously.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

FINAL DECISION

The Respondent's decision to summarily suspend Petitioner's license is **AFFIRMED.**

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 10th day of December, 2014.

Selina M. Brooks
Administrative Law Judge