

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DHR 05782

<p>Yvonne Turner Petitioner,</p> <p>v.</p> <p>NCDCCD Respondent.</p>	<p>FINAL DECISION ORDER OF SUMMARY JUDGMENT</p>
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UPON CONSIDERATION of Respondent's Motion for Summary Judgment; Petitioner's late e-mail response dated November 16, 2015; Petitioner's failure to appeal her disqualification as prescribed by statute; and the entire record at the Office of Administrative Hearings, the undersigned GRANTS Respondent's Motion as follows:

UNDISPUTED FACTS

1. As of January 28, 2015, Petitioner, Yvonne Turner was the licensed operator of A Child's Place pursuant to a five star child care license issued to Petitioner by Respondent. This license allowed Petitioner to care for twelve (12) children during all shifts, but no more than two (2) children under age one (1) could be cared for at a time. A Child's Place was a child care center in Petitioner's residence located in Jacksonville, Onslow County, North Carolina.

2. Respondent Division of Child Development and Early Education is an administrative agency of North Carolina State government, operating under North Carolina law, which administers the licensing program for child care facilities in the State of North Carolina pursuant to N.C.G.S. §§ 110-85 *et seq.*

3. By letter dated June 25, 2015, Respondent Division notified Petitioner that she was disqualified from providing care, pursuant to N.C.G.S. § 110-90.2, based on her pending charges of identity theft in violation of N.C.G.S. § 14-113.2; forgery of an instrument in violation of N.C.G.S. § 14-120; and obtaining property by false pretenses in violation of N.C.G.S. § 14-100.

4. Petitioner received the June 25, 2015 disqualification letter on July 20, 2015 via Certified Mail, Return Receipt Requested. *See* Exhibit B. On July 21, 2015, the Division's Child Care Consultant, April Lester, reviewed the disqualification letter with Petitioner, which explained the procedure for appealing disqualifications pursuant to N.C.G.S. § 110-90.2(d). Specifically, the letter informed Petitioner that she had sixty (60) days from receipt of written notice of the disqualification to file an appeal in the district court of the county where she lives.

5. The June 25, 2015 letter also informed Petitioner that disqualified individuals cannot: 1) Be an owner of a center, family child care home, or a non-licensed home; 2) Be

employed by a center, family child care home, or a non-licensed home; 3) Be a member of the household in a family child care home, non-licensed child care home, or child care center in a residence; 4) Be present in a child care facility when children are in care; or 5) Be a participating provider in the subsidized child care program.

6. Petitioner had until September 14, 2015 to challenge her disqualification in Onslow County District Court. Upon checking with the court, Respondent's counsel found no record of a challenge of Petitioner's disqualification filed on or before September 25, 2015.

7. On August 10, 2015, Petitioner filed a Petition for a Contested Case Hearing in the Office of Administrative Hearings, alleging:

I was issued a summary suspension for the purpose of protecting children. The charges are in excess and have nothing to do with children. My parents are in support and stand with me. My business was closed and any total income immediately ceased. I do not and cannot afford to have [sic] business closed.

Petitioner further alleged that Respondent deprived her of property and acted arbitrarily or capriciously.

CONCLUSIONS OF LAW

1. A court may enter summary judgment where there is no genuine issue of material fact and judgment as a matter of law is appropriate. N.C.G.S. § 1A-1, Rule 56(c) (2013). *See Cooper v. Board of Educ. For Nash-Rocky Mt. Schs.*, 135 N.C. App. 200, 204, 519 S.E. 2d 536 (1999).

2. This contested case is subject to summary judgment pursuant to N.C.G.S. § 1A-1; Rule 56 of Civil Procedure; and N.C.G.S. §§ 150B-33(b)(10) and 150B-34.

3. Pursuant to N.C.G.S. § 110-90.2(d), individuals who are disqualified from providing child care may challenge their disqualification by filing a civil action in the district court in the provider's county of residence.

4. Because the North Carolina legislature chose the district court as the forum to hear criminal disqualifications, the district court of the county of Petitioner's residence, not the Office of Administrative Hearings, is the proper forum to hear Petitioner's appeal of Respondent's June 25, 2015 disqualification. The district court has no authority to delegate or transfer jurisdiction to hear disqualification appeals to another court. *Long v. State Dep't of Human Res., Div. of Child Dev.*, 145 N.C. App. 186, 548 S.E.2d. 832 (2001).

5. As the Office of Administrative Hearings is not the statutorily-mandated venue for Petitioner's appeal of Respondent's disqualification decision, the undersigned grants summary judgment of Petitioner's petition under Rule 56 of the North Carolina Rules of Civil Procedure as

Petitioner may not challenge her disqualification in this forum. Therefore, no genuine issue of material fact exists in this petition.

DECISION

After considering Respondent's Motion for Summary Judgment; Petitioner's failure to appeal her disqualification as prescribed by statute; the entire record at the Office of Administrative Hearings; and Petitioner's e-mail response to that motion, the undersigned finds there is no genuine issue of material fact and grants summary judgment in favor of Respondent.

NOTICE

This is a Final Decision issued under the authority of N.C.G.S. § 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 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 upon 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 to ensure timely filing of the record.

IT IS SO ORDERED.

This the 3rd day of December, 2015.

J Randall May
Administrative Law Judge