

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 02905

<p>Shelia's Wonderland Shelia Foster Petitioner,</p> <p>v.</p> <p>Division Of Child Development & Early Education Dept of Health & Human Services Respondent.</p>	<p>FINAL DECISION</p>
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BACKGROUND

This matter was heard before the Honorable Selina Malherbe Brooks, Administrative Law Judge, on October 3, 2016, in Charlotte, North Carolina.

APPEARANCES

Shelia Foster
1032 White Plains Road
Charlotte, North Carolina 28213
PETITIONER

Letitia C. Echols
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
ATTORNEY FOR RESPONDENT

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. §§ 14-190.7, 14-190.7A, 110-85, 110-88, 110-90(9), 110-90.2, 110-98 & 110-102.2(4), and Child Care Rules 10A NCAC 09 .0601, .2207, .2701 & 2702.

ISSUES

Whether Respondent acted erroneously when it summarily suspended the five star license issued to Shelia Foster to operate Shelia's Wonderland.

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner presented no exhibits. Respondent's Exhibits ("R. Ex.") 1-8, and 11 were admitted. Official notice was taken of Respondent's Exhibit 9.

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 the evidence presented 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 referred to her notes to refresh her recollection.

Parties/Witnesses

1. Respondent, Division of Child Development and Early Education (the "Division" or "DCDEE"), is a Division of the North Carolina Department of Health and Human Services and an administrative agency of North Carolina State Government 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. Gen. Stat. § 110-85, *et seq.*
2. Pursuant to N.C. Gen. Stat. § 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.
3. Child care is highly regulated in North Carolina.
4. Respondent has authority to summarily suspend a child care license when the Division determines that emergency action is required to protect the health, safety or welfare of children in a child care facility regulated by the Division. 10A NCAC 09.2207.
5. During investigations of abuse and neglect, the Division will summarily suspend a license when the Division determines that the facility is not a safe and healthy environment for children child in care pursuant to Child Care Rule 10A NCAC 09.0601.
6. Respondent's consultants and supervisors determine when to recommend taking administrative action against a facility or proposed facility. The field staff then submits the proposed action to Respondent's Raleigh office and this information is considered by an internal review committee ("IR") which recommends what action—if any—should be taken.

7. Melissa Stevenson is the Division's Licensing Enforcement Program Manager. Mrs. Stevenson has worked at the Division for eleven (11) years. Previously, Mrs. Stevenson worked as a child care center director at a corporate facility in Wake County. She holds a Bachelor of Science degree in Psychology with a Minor in Social Work from Meredith College. Prior to becoming a program manager, Mrs. Stevenson was the Division's Intake Supervisor. Her responsibilities as Licensing Enforcement Program Manager include overseeing the Licensing Enforcement Unit, processing administrative actions, facilitating informal meetings, and ensuring consistency of actions statewide.

8. Terry McCauley is the Criminal Records Check Unit Manager for the Division. Mr. McCauley has worked in this capacity for one (1) year and three (3) months. Previously, McCauley worked as an auditor for the North Carolina Community College System. Mr. McCauley has also worked in the Division's Education Section, served as a Lead Child Care Consultant who supervised Child Care Consultants as well as an Abuse and Neglect trainer. Mr. McCauley holds a Bachelor of Arts degree in Education from High Point College. His responsibilities as a Criminal Records Check Unit Manager include overseeing the performance of initial criminal background checks for child care applicants, three-year (3) rechecks and review requests based on new criminal charges filed against child care providers. In addition, Mr. McCauley's unit performs background checks for Department of Health and Human Services, Emergency Management Services, long-term care employees as well as foster care and adoption applicants.

9. Deanna Dillon (previously known as Deanna Hoxworth) is an Investigations Program Manager for the Division. She has worked with the Division since 2002. Ms. Dillon previously served as a case manager for a child abuse prevention center from 1992 to 1995 and with Child Protective Services Investigations from 1996 to 2002. Prior to being promoted to Investigations Program Manager, Ms. Dillon held the positions of Investigations Consultant with the Division from 2002 to 2007 and Investigations Supervisor from 2007 to 2010. Her responsibilities as an Investigations Program Manager for the Division include overseeing all investigations in her territory to ensure they are thoroughly conducted. Ms. Dillon manages three (3) Supervisors who supervise four (4) consultants each. She also provides oversight of any immediate actions the Division takes to ensure the safety of children and reviews any administrative actions issued as a result of her staff's investigations.

10. Petitioner, Shelia Foster, is operator of Shelia's Wonderland and Registered Agent for Shelia's Wonderland, LLC. The Division most recently issued a five star license to Shelia's Wonderland, LLC to allow Shelia Foster to care for children at the center in her residence, located at 1032 White Plains Road, Charlotte North Carolina, 28213 on February 25, 2013. (R. Ex. 1)

Violations of Child Care Requirements

11. North Carolina General Statute § 110-85 requires the State protect children in child care facilities by ensuring facilities provide a physically safe and healthy environment where the developmental needs of the children are met and where children are cared for by qualified persons of good moral character. N.C. Gen. Stat. § 110-85 (2016).

12. The Division gathered the following information regarding Shelia's Wonderland, LLC:

a. The Division received an Intake report from the Charlotte-Mecklenburg Police Department ("CMPD") on March 9, 2016, stating that CMPD detectives were at Shelia's Wonderland from 7:00 a.m. to 9:30 a.m., executing a search warrant based on the CMPD Cyber Unit's detection of the viewing and exchange of sexually explicit materials depicting minor children by someone at the facility. (Testimony of Melissa Stevenson; R. Ex. 2).

b. Petitioner's son, Bryan Foster, admitted to possessing and distributing child pornography which CMPD found on his computer at the center which is located in Petitioner's residence. (Testimony of Melissa Stevenson; R. Ex. 2).

c. On March 9, 2016, Bryan Foster was arrested at the child care center while enrolled children were present. Foster admitted to CMPD Detective Aleta Dunbar that he received and distributed child pornography. (Testimony of Melissa Stevenson; R. Ex. 2).

d. According to the Division's March 10, 2016, Criminal Record Check, Foster was charged with three (3) counts of second degree sexual exploitation of a minor and three (3) counts of third degree sexual exploitation of a minor in Mecklenburg County in violation of N.C. Gen. Stat. §§ 14-190.7 & 14-190.7A (2016). (Testimony of Terry McCauley; R. Ex. 11).

e. During the execution of the search warrant, Charlotte-Mecklenburg Police Department confiscated a computer, a phone, and portable gaming device belonging to Petitioner's son, Bryan Foster, who resided at the center in Petitioner's residence and viewed sexually explicit materials depicting minor children while at Shelia's Wonderland. (Testimony of Melissa Stevenson; R. Ex. 5).

f. Bryan Foster was disqualified from providing child care on March 9, 2016. Pursuant to N.C. Gen. Stat. §110-90.2, Foster may not own or be employed at a child care facility, be a household member in a family child care home or a center in a residence or be present at a childcare facility while children are in child care. N.C. Gen. Stat. §110-90.2 (2016). (Testimony of Terry McCauley; R. Ex. 11).

13. The conditions at Shelia's Wonderland, LLC raised additional concerns, including the facts that Bryan Foster used the facility's Internet Protocol ("IP") address to access and distribute child pornography; that Foster came to the CMPD's attention due to the increased activity in trading child pornography during February 2016; the close proximity between the center in a residence and Kertina Foster's apartment where Bryan Foster was residing; Foster's admission that he viewed sexually exploitive images of minors on his computer; and Foster's admission to CMPD that he found viewing those images was sexually gratifying. (Testimony of Deanna Dillon; R. Ex. 4, pp. 2-3).

14. Bryan Foster was disqualified from providing child care due to his six (6) pending felony charges of sexual exploitation. Pursuant to the disqualification, Foster is not allowed to reside on the premises of a child care center, own or operate a child care facility or be present when children are in care. The close proximity of Shelia's Wonderland to the apartment Foster shared with his sister after his arrest would make monitoring Foster's presence difficult for the Division on evenings and on weekends. (Testimony of Deanna Dillon; R. Ex. 4).

15. Based on the information it gathered, the Division determined that Shelia's Wonderland, LLC is not a safe and healthy environment for children pursuant to Child Care Rule 10A NCAC 09.0601. (Testimony of Melissa Stevenson; R. Ex. 5).

16. The Division's internal review panel ("IR") reviewed the information received regarding Shelia's Wonderland, LLC. The IR panel recommended summary suspension of the license to operate Shelia's Wonderland, LLC, because the conditions at the home represented immediate danger to the health, safety and welfare of children receiving care at the home. (Testimony of Melissa Stevenson; R. Ex. 8).

17. The Division issued an Order Requiring Summary Suspension on March 10, 2016, and Investigations Consultant Hillary Walker hand-delivered the Order to Ms. Foster on the same day. (Testimony of Melissa Stevenson; R. Exs. 3, 5).

18. When this matter was came on for hearing on October 3, 2016, Mr. Foster's six (6) felony charges were still pending. (Testimony of Terry McCauley; R. Ex. 7).

19. Ms. Foster informed the Division that Bryan moved in with his sister Kertina, "down the street" from Shelia's Wonderland, LLC after his arrest but she wants Bryan to return home. (Testimony of Deanna Dillon; R. Ex. 4, pp. 2-3).

20. Petitioner filed a Petition for Contested Case Hearing in the Office of Administrative Hearings on March 21, 2016.

21. At the contested case hearing, Petitioner presented no evidence that contradicted the Division's evidence. Rather, Mrs. Foster testified that she was upset because she could no longer care for the children, whom she considered family, at Shelia's Wonderland.

22. Mrs. Foster further testified that after his arrest, Bryan Foster sought psychiatric treatment.

23. The Summary Suspension of Shelia's Wonderland, LLC does not restrict Ms. Foster from being employed by another child care facility and providing child care at that facility.

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. Gen. Stat. § 110-85 (2016).

4. 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.

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

6. Petitioner did not meet her burden of proof of showing that the Division acted erroneously in summarily suspending her license.

7. Respondent made a sufficient showing of a basis for summarily suspending Petitioner's license.

8. Respondent correctly decided to summarily suspend Petitioner's five star child care license to provide child care in her home due to the unsafe environment created by Bryan Foster's viewing and distribution of sexually explicit depictions of minor children and the six (6) pending felony charges against him. Bryan Foster was charged with three (3) counts of Second Degree Sexual Exploitation of a Minor and three (3) counts of Third Degree Sexual Exploitation of a Minor.

9. Bryan Foster's March 9, 2016, disqualification from providing child care based on his pending felony charges made him ineligible to own, operate, be employed by, provide transportation, participate in the subsidized child care program, work in a child care facility or be present when children are in care.

10. Bryan Foster's residence was in such close proximity to the center as well as Mrs. Foster's desire to have Bryan Foster return home would make it extremely difficult for the Division to ensure that Foster would not be present at Shelia's Wonderland while children were in care or that he would not come home to live at the facility.

11. Petitioner submitted no evidence that contradicted Respondent's evidence.

12. Petitioner may provide child care in a location other than the center in her residence. The Summary Suspension does not restrict Mrs. Foster from being employed at child care facility or owning a child care center in which she does not reside.

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

DECISION

The Respondent's decision to summarily suspend Petitioner's five star child care license is AFFIRMED.

NOTICE

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

Under N.C. Gen. Stat. § 150B-45, any party wishing to appeal this Final Decision 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 a Petition for Judicial Review within 30 days after being served with a written copy of this 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.** 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. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review, and requires service of the Petition for Judicial Review on all parties. 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 20th day of October, 2016.

Selina Malherbe Brooks
Administrative Law Judge