

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LAURA'S LEARNING AND ENRICHMENT CENTER,

Appellant,

v.

DEPARTMENT OF CHILDREN AND FAMILIES,

Appellee.

No. 2D21-2635

December 2, 2022

Appeal from the Department of Children and Families.

Jean M. Henne of Jean M. Henne, P.A., Winter Haven, for Appellant.

Javier Enriquez, General Counsel, Tallahassee; and Raquel Ramos, Assistant General Counsel, Department of Children and Families, Bartow, for Appellee.

SMITH, Judge.

Laura's Learning and Enrichment Center appeals the final order entered by the Department of Children and Families. After

the administrative hearing on the Department's denial of Laura's Center's application to renew its child care license, an administrative law judge (ALJ) issued an order recommending that the Department grant the renewal application after finding there was no clear and convincing evidence that the owner of the Laura's Center child care facility lacked "good moral character." Upon review of these recommendations, the Department rejected in part the ALJ's recommended order concluding that the owner of Laura's Center did not maintain "good moral character" as required under section 402.305(2), Florida Statutes (2019), where there was a verified finding of abuse. Ultimately, the Department denied the renewal application. Because a verified finding of abuse does not disqualify an applicant under section 402.305(3)(d), it was error to deny the renewal application solely on this basis.¹ Accordingly, we reverse and remand.

Laura's Center is owned by Laura Smith, who has operated Laura's Center since 2009 as a child care facility. In 2019, Ms. Smith also maintained a license to operate a family foster home,

¹ Because this issue is dispositive, we do not reach the remaining issues on appeal.

which was revoked after the Department made a verified finding of abuse based upon allegations made by her adopted son.

In December 2019, Laura's Center filed for renewal of its child care license. The Department denied the renewal application, and Laura's Center requested a final administrative hearing challenging the denial. Pursuant to the parties' joint prehearing stipulation, the parties agreed that the only issue of fact that remained to be litigated at the final hearing was "whether [the adopted son] was [abused] in Ms. Smith's presence and/or her knowledge." After the two-day evidentiary hearing, the ALJ issued a recommended order and found inter alia that the "parties plainly agree that if Ms. Smith observed [the abuse] and did nothing to protect [her adopted son] or report the acts, that inaction would establish that she lacked the required good moral character."² The ALJ found that the evidence presented did not establish that Ms. Smith observed any abuse after finding the adopted son's version of the events not credible.

² The ALJ also determined that Ms. Smith did not fail the level two screening required under section 435.04 because she was never arrested, found guilty, or entered a plea of nolo contendere or guilty to the alleged abuse. This finding was not disturbed by the Department.

The ALJ ultimately determined in its recommended order that there was no clear and convincing evidence³ that "Ms. Smith lacked the requisite 'good moral character.' "

Upon review of the ALJ's findings and conclusion, the Department approved in part but modified in part the ALJ's recommended order. Significantly, the Department disagreed with the conclusion that the Department failed to prove that Ms. Smith did not maintain the statutorily required "good moral character" where Ms. Smith violated section 402.305(2)(a)—based upon the verified abuse report—and ultimately denied the renewal application and issued its final order. The Department did not modify the ALJ's findings regarding the adopted son's credibility, or rather the lack thereof, nor did the Department modify the finding that the Department failed to prove by clear and convincing evidence that Ms. Smith observed the abuse and did nothing to protect her adopted son.

³ The Department questioned the ALJ's application of the clear and convincing evidence standard. We note that the Department argued the clear and convincing standard below. And so, we decline to reach this issue.

This case involves an interpretation of a statute by the Department, the correct interpretation of which compels particular action. *See Manuel v. Dep't of Child. & Fam. Servs.*, 880 So. 2d 714, 716 (Fla. 2d DCA 2004); § 120.68(7)(d), Fla. Stat. (2019).

Accordingly, we review the Department's conclusions of law de novo. *M.H. v. Dep't of Child. & Fam. Servs.*, 977 So. 2d 755, 759 (Fla. 2d DCA 2008). We do not give any deference to the Department's interpretation of the pertinent statutes. *See* art. V § 21, Fla. Const.; *Doral, LLC v. Dep't of Bus. & Prof'l Reg., Div. of Alcoholic Beverages & Tobacco*, 292 So. 3d 850, 853 (Fla. 1st DCA 2020) (acknowledging the abolishment of deference to the agency's interpretation of its own statutes with the passage of article V, section 21, Florida Constitution).

The minimum licensing standards for child care facilities require

[g]ood moral character based upon screening as defined in s. 402.302(15). This screening shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter, and include employment history checks, a search of criminal history records, sexual predator and sexual offender registries, and child abuse and neglect registry of any state in which the current or prospective child care personnel resided during the preceding 5 years.

§ 402.305(2)(a) (emphasis added).

"Screening" means the act of assessing the background of child care personnel, in accordance with state and federal law, and volunteers and includes but is not limited to:

. . . .

(b) 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.

§ 402.302(15) (emphasis added). Section 402.308(3)(d) controls the issuance of a child care facility license and 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.)

Here, the parties stipulated prior to the final hearing that the sole determinative issue—whether Ms. Smith had "good moral character"—turned on the factual issue of whether Ms. Smith observed the abuse of her adopted son and/or failed to do anything to protect him. That factual issue was tried before the ALJ and

determined in Ms. Smith's favor. Those same factual findings by the ALJ were left untouched by the Department in its final order. However, the Department asks us to uphold the Department's determination in the final order that Ms. Smith lacked "good moral character" based upon its construction of section 402.305(2). Contrary to the Department's interpretation, the statute does not provide that a verified finding of child abuse amounts to a lack of "good moral character." The screening to be conducted under section 402.305(2)(a) requires the "act of assessing the background" of an applicant. *See* § 402.302(15). The child abuse and neglect registry is just one of many databases listed that are required to be "assessed" by the Department. And it is only after this "assessment" that the Department can determine whether the applicant "failed the screening." *See* § 402.308(3)(d). Therefore, the language of the statute does not support the Department's erroneous construction. *See Conage v. United States*, 236 So. 3d 594, 598 (Fla. 2022) (explaining "[t]he plainness or ambiguity of the statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole" (quoting *Robinson v. Shell Oil Co.*,

519 U.S. 337, 341 (1997)); *see also Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d. 942, 946 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012) ("[T]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.")).

Prior to the final hearing before the ALJ the parties identified the only issue in dispute was whether Ms. Smith abused or failed to protect her adopted son. As to that factual issue, the ALJ found that the evidence did not support a finding that Ms. Smith abused or failed to protect her adopted son from abuse. We cannot hold that the record here supports a conclusion that Ms. Smith lacked "good moral character." Accordingly, the Department's interpretation of the statute was erroneous. § 120.68(7)(d). We reverse in part the final order below to the extent that it determined that Ms. Smith lacked "good moral character" under section 402.305(2)(a) and denied the Laura's Center's renewal application. We remand with instructions for the Department to enter a final order consistent with this opinion and granting the renewal application.

Reversed and remanded with instructions.

VILLANTI and ATKINSON, JJ., Concur.

Opinion subject to revision prior to official publication.