

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

WOODLAWN UNITED METHODIST CHURCH, INC., Petitioner,	:	Docket No.:
	:	OSAH-DECAL-CCLC-1343727-121-Woodard
	:	
v.	:	
	:	
GEORGIA DEPARTMENT OF EARLY CHILDHOOD CARE AND LEARNING, Respondent.	:	

INITIAL DECISION

I. Introduction

Respondent, the Georgia Department of Early Care and Learning (DECAL), issued a Notice of Intent to Impose Enforcement Fine to Petitioner, Woodlawn United Methodist Church, Inc. (hereafter “Woodlawn” or “Petitioner”), on May 22, 2013. Respondent informed Petitioner that it would be fined for a violation of Georgia Rules and Regulations § 591-1-1-.03(1)(e) following an injury to a child in Petitioner’s care.

Petitioner appealed, and a fair hearing was scheduled and held at Richmond County Department of Family and Children Services office in Augusta, Georgia on September 11, 2013. Petitioner was represented by Mr. Ken Nimmons, Attorney at Law, Augusta, Georgia. Respondent was represented by Ms. Clare Michaud, Attorney at Law and Legal Services Officer, Georgia DECAL, Atlanta, Georgia. For the reasons stated herein, Respondent’s decision to impose an enforcement fine on Petitioner is **AFFIRMED**.

II. Findings of Fact

1.

Petitioner operates Woodlawn Preschool and Childhood Development Center at 2220 Walton Way in Augusta, Georgia. *Respondent Exhibit 1.*

2.

Petitioner maintains a system of surveillance cameras in the child care rooms inside its facility. These cameras show the activities of each child and each staff member inside each room, including the room where the incident occurred that is the subject of this decision. The parties in this matter stipulated to the accuracy of the video surveillance footage, and provided the court with a digital copy. *Petitioner Exhibit 1.*

3.

One of the infants in Woodlawn's care was five-month-old "Mac" Mitchell, whose injuries are the subject of this decision. The Woodlawn facility typically took care of Mac from 9:00 a.m. until around 2:00 or 2:30 p.m. *Testimony of Ms. Wanda Thomas-Jackson; Petitioner Exhibit 1.*

4.

On February 26, 2013, Mr. Steve Mitchell, Mac's father, brought Mac to Woodlawn at approximately 9:00 a.m. and carried him into the day care room. Mr. Mitchell lifted the baby out of his car carrier and placed him in one of the automated rocking baby seats in the room. Mac displayed no signs of injury or pain after he was removed from the car carrier and placed in this baby seat by his father. Mr. Mitchell then departed, leaving his son in the care of Ms. Wanda Thomas-Jackson, an infant caregiver employed by Woodlawn. *Petitioner Exhibit 1; Respondent Exhibit 3; Testimony of Mr. Steve Mitchell; Testimony of Ms. Wanda Thomas-Jackson.*

5.

Ms. Thomas-Jackson left Mac in the rocking baby seat in the center of the room while she set about other tasks. The video surveillance shows the child repeatedly

moving and waving his left arm with no apparent discomfort as he rocked in the seat. Ms. Thomas-Jackson took a break, as was her normal schedule, at approximately 9:30 a.m., during which time she was relieved by Ms. Brittany Walden, another staff member. Ms. Walden knelt down in front of the rocking baby seat to greet Mac. Ms. Walden observed that Mac laughed and cooed at her, and seemed to be content. Ms. Walden fed Mac from a bottle at about 10:00 a.m. and then placed him in a crib. The video footage shows no indication that Mac suffered an injury while in Ms. Walden's care. *Petitioner Exhibit 1; Respondent Exhibit 3; Testimony of Ms. Wanda Thomas-Jackson.*

6.

Ms. Thomas-Jackson took her routine lunch break at approximately 10:30 while Mac was asleep. She was relieved by another staff member, Ms. Ann Lester, who monitored the infants in the day care room from 10:30 to 12:00 p.m. while Ms. Thomas-Jackson took her lunch break. *Testimony of Ms. Ann Lester; Petitioner Exhibit 1; Respondent Exhibit 3.*

7.

Mac awoke while Ms. Lester was in the day care room and began "fussing," so she tended to him by turning him over onto his stomach, a maneuver that is intended to calm the infant. This position did not quiet Mac, and Ms. Lester took him out of the crib and carried him around the room. Mac appears on the video using both of his arms to reach, grab, and swat without any discomfort while Ms. Lester carried him. Ms. Lester then placed Mac into a swinging baby seat in the corner, turning it on and sitting next to him as he swung back and forth. *Petitioner Exhibit 1; Respondent Exhibit 3; Testimony of Ms. Ann Lester.*

8.

Ms. Thomas-Jackson returned from her break at a little before 12:00 p.m., and Ms. Lester exited the room. Mac was still in the swinging seat. After a few minutes, Ms. Thomas-Jackson removed Mac from the swing and placed him in the rocking seat that he had been in earlier. After a few more minutes, Ms. Thomas-Jackson moved Mac from the rocking seat to one of the cribs and placed him on his back. On the video recording, at the time Ms. Thomas-Jackson placed Mac in the crib, he still appears content and able to use his left arm freely and without pain. *Petitioner Exhibit 1; Testimony of Ms. Wanda Thomas-Jackson.*

9.

At approximately 12:49 p.m., Ms. Thomas-Jackson attempted to place Mac on his stomach, as Ms. Lester had done earlier. The video recording shows that Ms. Thomas-Jackson placed her left hand underneath the infant's torso and clasped his left upper arm with her right hand. Ms. Thomas-Jackson appeared to pull on Mac's left upper arm to move him onto his stomach. After she finished placing the child on his stomach, Ms. Thomas-Jackson immediately picked him up into her arms. Although the video footage has no sound, it appears from the expression on Mac's face that he was crying intensely. *Petitioner Exhibit 1.*

10.

Ms. Thomas-Jackson attempted to console Mac by sitting with him in a chair and rocking him. After about a minute she again placed him in the crib and changed his diaper. Although Mac then appeared calmer on the video, his arm remained limply at his side and continued to remain limp throughout the remainder of the video, though he

moved his other limbs freely. After a few minutes of lying in the crib, Mac fell asleep and Ms. Thomas-Jackson tended to the other infants in the room. *Petitioner Exhibit 1; Respondent Exhibit 3; Testimony of Ms. Wanda Thomas-Jackson.*

11.

While she was preparing to give Mac his afternoon feeding at about 2:00 p.m., Ms. Thomas-Jackson noticed that the baby was not using his left arm and that the arm appeared limp. She called Ms. Brenda Wallace, the Center Director at Woodlawn, for assistance. Ms. Wallace arrived and checked on Mac's left arm. *Respondent Exhibit 3; Testimony of Ms. Brenda Wallace; Testimony of Ms. Wanda Thomas-Jackson.*

12.

According to Ms. Wallace, after Mac reached and grabbed her finger with his left arm, she concluded that the arm was not injured, but she still returned to the office to contact Mac's parents about the incident. She informed Mrs. Mitchell of the problems with the arm. After speaking with Ms. Wallace, Mrs. Mitchell called her husband and asked him to pick Mac up from Woodlawn. *Respondent Exhibit 3; Testimony of Mr. Steve Mitchell.*

13.

Mr. Mitchell arrived at Woodlawn a few minutes later and picked up his son, who was screaming. The baby fell asleep in the car on the ride home. However, when the parents attempted to lift him out of his car seat, he woke and began screaming again. At that point, Mac's parents decided to take him to the pediatrician. *Respondent Exhibit 3; Testimony of Mr. Steve Mitchell.*

14.

Mac's pediatrician, Dr. Steve Jones, M.D., diagnosed him with a dislocated elbow and attempted to put the bone back in place. When the baby continued to scream well after the procedure, the pediatrician determined that something else was wrong. Mr. and Mrs. Mitchell took Mac to the emergency room, where doctors ordered x-rays on the baby's upper left arm. These x-rays showed that the humerus, the bone of Mac's upper arm, had suffered a fracture.¹ *Testimony of Mr. Steve Mitchell; Respondent Exhibit 3.*

15.

As required with any injury suffered by a child in its care, Petitioner reported the incident to Respondent, which began an investigation on or about March 5, 2013. Respondent conducted interviews with Mac's parents and Petitioner's staff, as well as a review of the surveillance footage. Following its investigation, Respondent concluded that Woodlawn had violated Respondent's regulation forbidding engaging in activities that could be detrimental to a child's health. Respondent notified Petitioner of its intent to impose an enforcement fine in the amount of \$499.00 in a letter dated May 22, 2013. Petitioner appealed on June 10, 2013 and the matter was brought before the Office of State Administrative Hearings. *Respondent Exhibit 1; Respondent Exhibit 3.*

16.

At the hearing on this matter, Petitioner introduced testimony pertaining to the safety record of its facility as well as that of its staff, including Ms. Thomas-Jackson. There is no evidence that Ms. Thomas-Jackson had ever committed abuse or neglect against any child in her care. In fact, the uncontroverted evidence shows that Ms.

¹ The parties stipulated at the hearing that Mac had suffered extensive injury to his elbow and upper arm without agreeing to the cause of the injury.

Thomas-Jackson has an excellent reputation for providing high-quality child care. Petitioner disputed that Ms. Thomas-Jackson's conduct was the actual cause of Mac's injury and contended that Respondent had not met its burden in the absence of medical testimony attributing the infant's injury to conduct on the part of Petitioner's staff. Petitioner introduced a still frame of the video footage as Mac arrived at the facility that showed Mr. Mitchell lifting Mac by his left arm when he moved the infant from the car seat to the rocking baby seat. Petitioner postulated that this act might have caused the injury. *Testimony of Ms. Ann Lester; Testimony of Ms. Brenda Wallace; Testimony of Ms. Wanda Thomas-Jackson; Petitioner Exhibit 2.*

17.

In its closing argument, Respondent differentiated a rule violation from traditional tort-theory negligence. It averred that the issuance of the fine was not necessarily justified by conduct on the part of Petitioner that fell below the standard of care, but to the finding of a rule violation, which required only conduct on the part of Petitioner's staff that could cause injury.

III. Conclusions of Law

1.

This appeal concerns the imposition of a civil enforcement penalty by Respondent. Therefore, the burden of proof rests on Respondent to prove that its proposed action is correct Ga. Comp. R. & Regs. 616-1-2-.07(a). The standard of proof is by a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Respondent, the Georgia Department of Early Care and Learning (DECAL), is the state agency responsible for administering the early care and education needs of young children in Georgia. See O.C.G.A. § 20-1A-1 et seq. Its responsibilities include promulgating regulations that govern Georgia center-based child care facilities. O.C.G.A. § 20-1A-4(5) (2013). DECAL is authorized to impose a fine of up to \$500.00 on any facility that violates its regulations. O.C.G.A. § 20-1A-11(b)(1)(A) (2013).

3.

Respondent's regulations provide that:

Staff shall not engage in, or allow children or other adults to engage in, activities that could be detrimental to a child's health or well-being, such as but not limited to . . . picking up a child in a manner that could cause injury.

Ga. Comp. R. & Regs. 591-1-1-.03(3)(e).

4.

In the hearing on this matter, Respondent demonstrated that Ms. Thomas-Jackson, a member of Petitioner's staff, engaged in an activity that could be, and was, detrimental to a child's health when she picked up the child in a manner that could, and did, cause injury. Respondent showed, by video evidence and testimony, that the manner in which Ms. Thomas-Jackson picked up Mac and maneuvered him onto his stomach caused extensive injury to his arm.

5.

Arguably, it is difficult to discern violative conduct by simply looking at the seconds of video footage during which the injury allegedly occurred. The surveillance video does not replay in real time. Rather, it is essentially a compilation of a high

number of still frames. Thus, while a viewer of the surveillance footage can see Ms. Thomas-Jackson place her right hand on Mac's upper left arm, it is difficult to determine the speed at which she moved him from his back to his stomach and how much force was applied.

6.

However, Respondent has shown a rule violation by circumstantial evidence. Arnold Svcs., Inc. v. Sullins, 110 Ga. App. 19, 20–21 (1964) (“It is accepted generally as settled law that negligence, *like any other fact*, may be proved by circumstantial evidence as well as by direct testimony.”) (emphasis in original). The video demonstrates that, immediately before allegedly injurious maneuver by Ms. Thomas-Jackson, the child has use of his arm and appears to be calm, content, and unhurt. Immediately after the maneuver, however, the child appears to be in severe pain and ceases to use his left arm from that point forward. Ms. Thomas-Jackson was alone with the child at that point and there were no intervening events from which injury could have originated. This is sufficient evidence to show that the manner in which Ms. Thomas-Jackson picked up Mac, grabbing him on his upper left arm and turning him, could cause injury.

7.

Petitioner introduced into evidence still frames taken from the video surveillance footage that purported to show that Mac's father, Mr. Mitchell, picked up the child improperly. However, the video surveillance shows that, improper or otherwise, this maneuver did not cause Mac's injury. The child appeared content and used his arm freely for hours after Mr. Mitchell's allegedly improper conduct until Ms. Thomas-Jackson picked up the child and turned him onto his stomach.

IV. Decision

IT IS ORDERED that Respondent's decision to impose a fine on Petitioner in the amount of \$499.00 is hereby **AFFIRMED**.

SO ORDERED, this _____ day of October 2013.

M. PATRICK WOODARD, JR.
Administrative Law Judge