

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

PALMETTO BROWNLEE, :
Petitioner, : Docket No. [REDACTED]
v. : [REDACTED]-OSAH-DECAL-FCCLC-121-
Schroer :
GEORGIA DEPARTMENT OF EARLY :
CARE AND LEARNING, :
Respondent. :

INITIAL DECISION

Petitioner Palmetto Brownlee appealed the decision of Respondent Georgia Department of Early Care and Learning (“DECAL”) to revoke her license to operate a family childcare learning home at 4209 Redcliff Court, Augusta, Georgia 30909. The hearing was conducted on February 1, 2023 by the undersigned Administrative Law Judge from the Office of State Administrative Hearings (“OSAH”). Petitioner was represented by Jule McReynolds, Esq. DECAL was represented by Daphne Parker, Esq.

For the reasons stated below, DECAL’s decision is **AFFIRMED**.

FINDINGS OF FACT

1.

Petitioner was licensed to operate a family childcare learning home (the “facility”) in her residence in Augusta, Georgia. Petitioner is the owner of the facility and was licensed to provide care for at least three but not more than six children under the age of thirteen. Petitioner’s husband, Richie Brownlee, resided in the home and assisted Petitioner with the day-to-day operation of the facility, including providing some care and supervision of the children. (Testimony of Petitioner, Dr. D [REDACTED], Tasha McDonald, Inv. Clark; Ex. R-4.) See Ga. Comp. R. & Regs. 290-2-3-.03(k).

2.

In or around September 2022, Dr. R [REDACTED] D [REDACTED] brought her three-year-old daughter to the facility for temporary childcare while her regular childcare provider built a new facility. After about a month, Dr. D [REDACTED] noticed changes in her daughter's appetite and behavior, and she complained that her "pee is hot." On or about October 22, 2022, Dr. D [REDACTED]'s daughter, who is very bright, disclosed sexual touching by "Mr. B.," which is the name the child called Petitioner's husband, Richie Brownlee. Thereafter, the child consistently recounted these allegations in a forensic interview. (Testimony of Dr. D [REDACTED], Inv. Nancy Clark; Exs. R-5, R-6.)

3.

When DECAL learned of the child's outcry, a DECAL investigator, Tasha McDonald, visited Petitioner's home. She observed Mr. Brownlee outside alone with three children, while Petitioner was inside in the kitchen. Ms. McDonald tried to interview the three children, but they were very young and not verbal. She spoke to Petitioner and her husband about the child's allegations, which they both denied. They stated that Mr. Brownlee is "never" left alone in the house with the children, and that Petitioner is "always" with the children unless she is cooking in the kitchen.¹ A detective, who accompanied Ms. McDonald, asked Petitioner and Mr. Brownlee about whether Mr. Brownlee had ever been accused of inappropriate sexual conduct toward a child in the past, and Mr. Brownlee denied it. Later, as Ms. McDonald was leaving, Petitioner asked to speak with her. Petitioner wanted to tell her that while the family was living in Detroit some years ago, Petitioner's daughter's boyfriend made allegations of sexual misconduct against

¹ Investigator Nancy Clark testified at the hearing that Petitioner initially told her that her husband is never alone with the children, but when Investigator Clark told her that she had observed Mr. Brownlee alone with the children outside when she arrived at their home, Petitioner stated that since Mr. Brownlee is now retired, "he may as well help with the children." In her testimony at the hearing, Petitioner admitted that Mr. Brownlee would "keep them busy" while she cooked, but she testified that she alone changed the children's diapers. Although Petitioner testified that Mr. Brownlee mostly took the children outside to play while she was in the kitchen, she testified that her house has a playroom down the hall, which is not within sight of the kitchen. (Testimony of Inv. Clark, Petitioner.)

Mr. Brownlee. She told Ms. McDonald that she did not know why Mr. Brownlee denied the past allegations, but suggested that he may have forgotten.² (Testimony of Ms. McDonald.)

4.

On or about October 26, 2022, the Richmond County Sheriff's Office arrested Richie Brownlee and charged him with child molestation. DECAL issued an emergency closure order of the facility due to the seriousness of the charges. Investigator Clark testified that she spoke with Petitioner after Mr. Brownlee's arrest, and Petitioner was very upset. Petitioner stated that the child was making up the story. On or about November 13, 2022, DECAL issued a letter notifying Petitioner that Mr. Brownlee had a pending unsatisfactory criminal records check, and was not permitted to reside in the home or be present on the premises of the facility while children are present for care until a satisfactory determination letter is issued by DECAL at a later date. In addition, DECAL notified Petitioner that if Mr. Brownlee is found to be present on the premises in the presence of children, Petitioner's license to operate the facility would be revoked. (Testimony of Carrie Sprangler, Zara Handsford, Inv. Clark; Exs. R-1, R-7.)

5.

On December 5, 2022, DECAL issued a Notice of Revocation to Petitioner. The letter stated that DECAL had found that Petitioner had violated DECAL's rules and that the violations constituted non-correctable deficiencies in the operation and management of the facility. In particular, DECAL cited to the following rules that were violated:

Rule 290-2-3-.11(3)(a): Physical and sexual abuse of a child is prohibited.

Rule 290-2-3-.07(27): No criminal act shall be committed in the presence of a child, and the provider and employees must comply with all applicable laws and regulations.

Rule 290-2-3-.21(1)(e): No actual or potential employee with an unsatisfactory

² Mr. Brownlee later acknowledged to the police that he had been accused of molesting Petitioner's daughter, then age 12, while they were living in Detroit. (Testimony of Inv. Clark.)

criminal record check shall be present or reside in the facility when any child is present for care.

Petitioner immediately appealed the Notice of Revocation, and “[d]ue to health problems and the inability to drive,” she asked for the hearing to be held at an alternate location. (Ex. R-8; OSAH Form 1.)

6.

On December 9, 2022, Richie Brownlee appeared before the Superior Court of Richmond County for a bond hearing. Dr. D [REDACTED] and her husband were present and testified in opposition to bond, and Petitioner was present and testified in favor of her husband’s release. In support of Mr. Brownlee’s request for bond, his attorney stated that Petitioner, who is a cancer survivor and has had a lung removed, relies on Mr. Brownlee in the home for assistance and for transportation. Petitioner testified that her husband is a good man and that he has never done anything wrong, including the allegations in Detroit, which she testified were investigated and found to be false. She further testified that her reason for appealing the revocation of her license was not to reopen the facility, but to “close myself down until all of this is over with.” The Superior Court denied bond, and Mr. Brownlee remains in jail. (Testimony of Dr. D [REDACTED], Petitioner; Ex. R9.)

7.

At the administrative hearing, DECAL argued that the revocation was the proper sanction for the violations. First, DECAL cited the very young age of the children cared for by Petitioner, and their inability to protect themselves or report if something inappropriate occurs at the facility. In addition, DECAL took into consideration Petitioner’s misrepresentations during the course of the investigation about Mr. Brownlee’s access to the children, her insistence that he did not do anything wrong and was not a danger to the children, and her dependence on him in supervising and running the facility. DECAL is concerned that she lacks “protective capacity” to

safeguard vulnerable young children or provide for their safety. (Testimony of Ms. Handsford.)

8.

Petitioner testified that if she were allowed to reopen her facility, she has two assistants who have helped her with the children in the past and could help in the future.³ Moreover, she is willing to install cameras in the home, although she has not done so. (Testimony of Petitioner.)

CONCLUSIONS OF LAW

1.

DECAL bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

2.

Georgia law authorizes DECAL to regulate early care and education programs. O.C.G.A. §§ 20-1A-4(5), 20-1A-10. Licensees that violate the laws or rules pertaining to early care and education programs, including family childcare learning homes, are subject to disciplinary action by DECAL, including revocation of a license, suspension of a license for a definite or indefinite period, imposition of a fine, or a public reprimand. O.C.G.A. § 20-1A-12(c).

3.

The preponderance of the admitted evidence in the record proved that Petitioner's husband was an "employee" of the facility, as that term is defined in DECAL's rules, and the Court concludes that DECAL met its burden to prove that it was more likely than not that Mr. Brownlee engaged in sexually overt conduct in the presence of a child in violation of applicable laws and rules. See Ga. Comp. R. & Regs. r. 290-2-3-.03(i); 290-2-3-.11(3)(a), 290-2-3-.07(27).

³ DECAL contends that the agency does not have criminal background checks for these two individuals, and their past work with the children would have been a violation of their rules. See O.C.G.A. § 20-1A-39(f) (no person can be present as an employee at a child care center "unless there is on file in the [center] . . . a satisfactory fingerprint records check determination").

As such, the facility’s license is subject to disciplinary action by DECAL. However, the Court concludes that DECAL did not prove a violation of the rule regarding criminal record checks. Ga. Comp. R. & Regs. Rule 290-2-3-.21(1)(e). In fact, DECAL did not allege a violation of such rule in the Notice of Revocation. Rather, the Notice of Revocation only alleged that DECAL “anticipated” that upon Mr. Brownlee’s release on bond, Mr. Brownlee would be present at the facility, which would be a violation of this rule, if he did. DECAL did not assert in the Notice of Revocation that Mr. Brownlee did not have a satisfactory criminal background check on file prior to his arrest,⁴ and the evidence proved that he has been denied bond and has not been released from jail or returned to the facility.

4.

Although DECAL is not authorized to take action against a licensee for an “anticipatory” violation of its rules, the Court may take into consideration evidence regarding Petitioner’s ability and commitment to provide protective oversight of very young children entrusted to her care when determining the appropriate disciplinary action for the two violations DECAL has proved – namely, the violations of the rules prohibiting sexual overt conduct and violation of applicable laws and rules. The Court has also taken into consideration that Petitioner misrepresented Mr. Brownlee’s involvement in providing care and supervision of the children during the investigation, and that she disregarded the criminal background check rules as they relate to other adult employees in the facility. The Court concludes, after weighing all the admitted evidence in the record, that DECAL’s concern regarding Petitioner’s ability to provide proper care for children in her home is well-founded, and that revocation of her license is the appropriate sanction.

⁴ DECAL also did not allege in the Notice of Revocation that Petitioner’s two “assistants” did not have satisfactory criminal record checks on file.

DECISION

For the foregoing reasons, DECAL's decision to revoke Petitioner's license to operate a family childcare learning home is hereby **AFFIRMED**.

SO ORDERED this 4th day of March, 2023.

Kimberly W. Schroer

**Kimberly W. Schroer
Administrative Law Judge**

