IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

CASE NUMBER 2006-CA-0766

FOSTER CHILDREN SUSAN C., et al.,

Plaintiffs/Petitioners,

vs.

DEPARTMENT OF CHILDREN AND FAMILIES, et. al.,

Defendants/Respondents
_____/

WRIT OF MANDAMUS

This cause having come before the Court on the Petition for Writ of Mandamus, and the Court having considered the Petition, the Department of Children and Families' response, and the Petitioner's reply, and being otherwise fully advised in the premises, finds as follows:

Petitioners here are foster children in the legal custody of the Department of Children and Families. Their Petition is only part of a case that involved not only the Department as a Defendant, but that alleged various causes of action against the Department's private provider of services to dependent children, Big Bend

Community Based Care, Inc. Following the filing of the Complaint and Petition, this Court entered a temporary Order prohibiting the housing of foster children at any office facility; the Department and Big Bend did not object to the Order, and later informed the Court that they had acquired a licensed facility to house foster children on an emergency basis. Recently, Big Bend settled with the Plaintiffs/Petitioners, but the Department did not. The Department alleges that the issues raised by the Plaintiffs/Petitioners are now moot, since it voluntarily secured access to a licensed facility for emergency placements of dependent children, and since the Department Secretary specifically directed that children should not be kept overnight in office facilities. See *State Defendant's Response to the Alternative Writ of Mandamus, at para. 1.*

The Department, its Secretary, and the District 2 Administrator, currently the only remaining defendants, therefore claim not only that the Petition is moot, but that placement of dependent children is a discretionary function of the Department, that the Plaintiffs have an adequate remedy at law, and that the dependency courts of this circuit are the proper courts to enforce issues related to the emergency housing of children removed from their homes. The Petitioners disagree, pointing to several Florida statutes dealing with the placement of children removed from their homes and with the manner in which contracted services to such children may be provided.

Petitioners reassert their contention that they have a clear legal right to reside only in licensed placements, which would preclude the housing of children in office facilities, even temporarily.

It should be noted that the Petition for Writ of Mandamus was filed separately from the Complaint, but resides within the same file. The Court therefore issued an Order to Show Cause on the Petition, but required a separate response to the Complaint. Further, although the State's agent, Big Bend Community Based Care, has settled all claims against it, the State declines to do so, citing its "voluntary" compliance with the conditions of the Court's temporary order. The Court raised the issue of the legal effect of Big Bend's settlement on the State's continued opposition to relief, but the Petitioners have not specifically addressed that inquiry. Despite these rather unusual circumstances, then, the Court will proceed to resolve the Petition, leaving the Complaint's causes of action for another time.

The essential issue is whether the Petitioners have a clear legal right to "placement" in only licensed child caring facilities. The State suggests that "placement" is a term of art, and that housing children on an emergency basis in office buildings is not a "placement." It is nonetheless clear, and not disputed, that children removed from their homes are in the State's custody. Furthermore, the Department may release children awaiting a shelter hearing to a parent, legal

custodian, or responsible adult, or "...may place the child in ***licensed shelter care***...". Section 39.401(3), Fla. Stat. (2005)[emphasis supplied]. Petitioners also note that Rule 65C-30.001(100), Fla. Admin. Code, defines a placement very broadly: the Rule states that a "placement" means "...the supervised placement of a child in a setting outside the child's own home." When a neglected or abused is child is removed by the Department from his or her home, then, that child is not only in the State's custody, but is also in a "placement." The Court acknowledges that the Department also uses this term to identify custody determinations that are of a more permanent nature; that particular use of the term, however, does not preclude its application to an emergency or temporary situation. In addition, the statutes governing dependent children provide, in pertinent part, that

> The community-based agency must comply with statutory requirements and agency rules in the provision of contractual services. Each foster home, therapeutic foster home, emergency shelter, or other placement facility operated by the community-based agency must be licensed by the Department of Children and Families under chapter 402 or this chapter.

Section 409.175(4)(a), Fla. Stat. (2005).

The Department is still ultimately responsible for ensuring that its private providers comply with the law in the delivery of dependency services. See Sec. 409.1671(2)(a), Fla. Stat. (2005). The State seemingly seeks to avoid this mandate by claiming that the office buildings of its provider are not placement facilities operated by the State

or by Big Bend. That assertion leads to an inescapably circular argument: if the State and Big Bend do not claim office facilities as placements, then why are children even temporarily "placed" there?

The Petitioners' point from the beginning has been that children removed from their homes have a right to be held only in licensed facilities, which, by virtue of their licensure, are presumably safe and appropriate places in which to house children. By quickly acquiring such a facility after the filing of this lawsuit, the State and its provider at least tacitly conceded that such facilities exist, and that they are indeed appropriate facilities for the temporary, or emergency, housing of children removed from their homes. The Department has made pointed references the fact that the facility was acquired at great expense to the State, and perhaps that was the reason why conference rooms in office buildings appeared to be a viable alternative to a licensed facility. It should go without saying that the cost of such a facility is irrelevant, especially when the Legislature has required that dependant children be held only in places that the State of Florida has approved through licensure. Otherwise, it would put the most vulnerable children–that is, those who have just been removed from their families–in the greatest jeopardy by allowing their "temporary placement" just about anywhere.

The State also argues that our dependency courts are in the best position to monitor such temporary placements, and that this litigation is therefore an inappropriate means by which dependent children can require that the Legislature's mandates are followed. It is difficult to envision how the Court should interpret this argument, other than to conclude that dependent children have given up their civil and constitutional rights, including the right to sue to enforce them. The dependency proceedings in this State are highly specific proceedings, heavily circumscribed by state and federal statutes and rules. While services needed by dependent children and their families are always an issue, dependency courts are rarely informed of where children have been housed before a shelter hearing, or even where they spent the night before a court proceeding. Although Part V of Chapter 39 (see Section 39.395 et. seq.), which describes the process for taking a child into custody, sheltering the child, and shelter proceedings in court, is set forth in excruciating detail, nothing in those sections requires that the Department inform the court of where the child was placed prior to the shelter hearing. As is noted above, what the statutes do require is that "[w]hile awaiting the shelter hearing, the authorized agent of the department may place the child in ***licensed shelter care*** or may release the child to a parent or legal custodian or responsible adult relative who shall be given priority consideration over ***a licensed placement.***" Section 39.401(3), Fla. Stat. (2005)[emphasis supplied].

Those responsibilities are assigned to the Department and its providers, not the court. The focus of the shelter hearing, as provided in these statutes, is to ensure that due process is provided to parents, and that the statutory provisions permitting the removal and shelter of children are met. Perhaps this litigation will encourage all of us to make specific inquiry regarding each child's whereabouts from the time of the child's removal from his or her home, and to refrain from assuming that the State or its provider has made a legally appropriate decision regarding where those children will temporarily sleep. Until that time, this Court cannot agree that enforcement of a dependent child's right to safe and secure housing is available only in a dependency court.

Based on the foregoing, it is therefore

ORDERED AND ADJUDGED that the Petition for Writ of Mandamus is GRANTED. The Writ of Mandamus is issued to the Department of Children and Families to continue, through its private providers, access to a licensed facility for the emergency placement of children removed from their homes. The Court specifically finds that dependent children have a clear legal right, established by the Legislature of the State of Florida, to both emergency and permanent placement in licensed facilities, and that holding children in office conference rooms, or other unlicenced facilities, violates that mandate.

DONE AND ORDERED on November 6, 2006, at Tallahassee, Leon County, Florida.

JANET E FERRIS
Circuit Judge

Copies to:

Paolo G. Annino, Esquire
Michael Dale, Esquire
Assistant Attorney General Cecilia Bradley