

BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

KIMBERLY GILLESPIE
dba Gillespie, Kimberly Family Child Care
5339 Streamview Drive
San Diego, CA 92105

and

MILTON EDMONDSON
5339 Streamview Drive
San Diego, CA 92105

Respondents.

Case No. CDSS No. 7703330001

Case No. CDSS No. 7700330001B

OAH No. L2004020425

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PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on May 5, 2004.

Kelly J. Paur, Senior Staff Attorney, represented complainant Dave Dodds, Deputy Director, Community Care Licensing Division, State of California, Department of Social Services.

Respondent Kimberly Gillespie was present and represented herself. There was no appearance by or on behalf of Respondent Milton Edmondson.

The matter was submitted on May 5, 2004.

FACTUAL FINDINGS

1. Dave Dodds (complainant) filed Accusation, CDSS Numbers 7703330001 and 7703330001B, dated January 23, 2004, against Kimberly Gillespie (respondent Gillespie) and Milton Edmondson (respondent Edmondson) in his official capacity as Deputy Director, Community Care Licensing Division, State of California, Department of Social Services (Department).

Respondent Gillespie filed a Notice of Defense, dated January 31, 2004, requesting a hearing in this matter.

Respondent Edmondson did not file a Notice of Defense and thereby waived his right to hearing.

Pursuant to Government Code section 11520, effective April 25, 2004, the Department issued a Decision and Order excluding respondent Edmondson from licensed facilities.

2. Respondent Gillespie is licensed by the Department to operate a family child care home at 5339 Streamview Drive, San Diego, California. The facility was initially licensed on September 5, 2003. Prior to that time, the Department issued a license to respondent Gillespie to operate a family child care home at another location since August 9, 2001.

3. By virtue of his marriage to respondent Gillespie and his residence in the facility, respondent Milton Edmondson is associated with the clients of the facility.

4. By virtue of licensure, respondent Gillespie must operate in accordance with statutes and regulations governing the licensing and operation of family child care homes.

By virtue of employment, prospective employment, presence in or contact with clients of a family child care home, respondent Edmondson is subject to the jurisdictional provisions of Health and Safety Code sections 1596.871 and 596.8897.

5. Prior to the hearing, respondent Gillespie stipulated that the factual allegations in the Accusation are true and correct, to wit:

- During the period of licensure, respondent Edmondson has engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state. Such conduct, including but not limited to the following acts, has caused respondent Gillespie to be unable to assure that children in care will receive safe, healthful and comfortable accommodations.
- On November 3, 2003, respondent Edmondson committed the following acts at the facility:
 - Respondent Edmondson threatened to “kill,” “blow [her] head off” and “cut” respondent Gillespie;
 - Respondent Edmondson yelled to respondent Gillespie’s adult daughter (Amber) words to the effect of “I hate you, get the fuck out of my house;”

- Respondent Edmondson shoved respondent Gillespie's daughter (Andrea)¹ into the wall, hitting her head on the wall;
- Respondent Edmondson hit Respondent Gillespie's daughter (Andrea) with the front door;
- Respondent Edmondson pulled a knife from his pocket and sliced respondent Gillespie's adult daughter (Amber) in the hand;
- Respondent Edmondson kicked a man who was in the facility.

6. There was no evidence that there were children in care at the time that respondent Edmondson engaged in the misconduct described in Finding 5.

7. By way of aggravation, complainant established that respondent Edmondson has been convicted of violation of Penal Code section 245(a)(1), Assault with a Deadly Weapon Not a Firearm, a felony. He remains on criminal probation until December 21, 2006.

8. Respondent Edmondson provided evidence of mitigation and efforts toward rehabilitation.

At the time of his conviction, he was a 54-year-old Vietnam veteran, diagnosed with Post-Traumatic Stress Disorder (PTSD) in April 2002. Prior to that time he had difficulty sleeping because of nightmares. He has taken Prozac twice daily for two years. According to respondent Edmondson, with the exception of the night of the incident in November 2003, he has taken the medication in compliance with the prescription. On and prior to the November 2003 incident, he drank alcohol more frequently than he does now.

As a result of the diagnosis of PTSD, he retired from the Department of Defense after 20 years and has not been employed since that time.

By November 3, 2003, respondent Edmondson and respondent Gillespie had been married two years and had lived together for five years. They have a four-year-old daughter. She has two older daughters, ages 18 and 17, from a prior marriage.

On the evening of November 3, 2003, respondent Edmondson explained that he wanted to talk to her about moving out of their home. According to respondent Gillespie, he became impatient and angry when she asked him to wait a few minutes while she completed paperwork. An altercation ensued between the two of them.

When respondent Edmondson learned that the police had been called and were looking for him, he turned himself into the police. He is remorseful for his criminal conduct, as evidenced by his willingness to admit his wrongdoing at an early stage of the criminal

¹ Andrea was 17 years old on the date of the hearing. Therefore she was not an adult on November 3, 2003.

proceeding. With the exception of the incident that resulted in his arrest and conviction, there is no evidence that respondent Edmondson has a prior criminal history or that he has engaged in any violent conduct. Since his release from custody, he has attended group counseling twice monthly.

Following the conviction set forth in Finding 7, he has complied with the terms and conditions of the criminal probation, including completing the 13 court ordered anger management classes.

9. Respondent Gillespie reported the incident described in Finding 5 to the Department and to Child Protective Services.

10. Immediately following the November 3 incident, respondent Gillespie acted to exclude respondent Edmondson from the facility. Among other things:

- On November 24, 2003, based on respondent Gillespie's petition, an Order for Removal from Residence was issued by the Superior Court, removing respondent Edmondson from their home;
- Effective November 30, 2003, respondent Edmondson was removed from the residential lease of the home in which the facility is located;
- Following a hearing on respondent Gillespie's petition, the Superior Court issued an Order protecting respondent Gillespie, Ashlyn Edmondson, Amber Gillespie and Andrea Gillespie and prohibiting him from being within 100 yards of the foregoing named individuals.

Given the foregoing acts, in the opinion of Amber Gillespie, respondent Gillespie has done everything that she can to remove respondent Edmondson from the facility and to ensure the safety of her siblings and herself. She is comfortable residing in respondent Gillespie's home.

11. Respondent Gillespie and respondent Edmondson lived together in an apartment located at 1335 Woodman Street in San Diego between September 1998 and May 2003. At that time, they moved to the Streamview address, where they lived together until the November 3, 2003 incident. In May 2003, Amber Gillespie continued to reside at the Woodman Street address until the November incident. At that time, she moved to the Streamview address with her mother and siblings. Respondent Edmondson returned to reside at the Woodman Street apartment, where he currently resides and plans to continue living. He is considering relocating to the Stockton area.

12. The testimony regarding whether the parties intend to divorce is inconsistent. On the evening of November 3, 2003, respondent Edmondson initiated the conversation regarding divorce. However, at the hearing, he testified that he is no longer interested in a divorce or a legal separation from respondent Gillespie, that he and respondent Gillespie discuss the care of their daughter, that he sees their daughter on a regular basis, that normally one of the older daughters brings the child to the apartment and that he has visited with

respondent Gillespie socially. Normally Amber or Andrea Gillespie takes Ashlyn to respondent Edmondson's brother-in-law, and he takes the child to respondent Edmondson. Respondent Gillespie testified that she has no plans to divorce because it is not financially feasible at this time, and she wants to give respondent Edmondson time to complete his classes and to get his life together.

13. Respondent Gillespie is well respected as a child care provider in her community. Vanessa Dungey (Dungey), Melissa Morachis (Morachis) and Shannel Tone (Tone), parents from three different families, testified as witnesses in this case. Dungey has known respondent Gillespie her entire life, over 40 years. In the opinion of these women, respondent Gillespie provides excellent care for their children. Respondent Gillespie informed them about the November 3, 2003 incident (Finding 5) immediately thereafter. Each understands that respondent Edmondson no longer resides at the facility. Dungey and Morachis testified that they have not seen him at the facility since the incident. Tone did not testify regarding this issue. With the knowledge of the incident, none of the women is concerned about the safety of their children in the facility.

14. The Department seeks to revoke respondent Gillespie's license based on the violent acts of respondent Edmondson.

The Department has an obligation to protect children in care and does not believe that this can be done if respondent Gillespie retains her license. The facility is located in her home. Respondents are married. It is not uncommon for married individuals to reconcile, even following a violent altercation. It is not the Department's intention to interfere with or discourage the marital relationship, particularly since they have a four-year-old child together. Given the foregoing, despite the lack of misconduct by respondent Gillespie and her significant efforts to exclude him from the facility, it is impossible for the Department to monitor the facility to assure compliance and the safety of children in care.

Respondent Gillespie contends that revocation would be unfair because she has not engaged or participated in the misconduct that constitutes the basis upon which the Department seeks revocation of her license; in addition, she established that she has taken every step possible to assure that respondent Edmondson is no longer in or about the facility, and there is no evidence that he has been in the facility since the incident.

Respondent Edmondson engaged in particularly violent conduct in the facility. As a result, the Department filed legal action to revoke her license and exclude him from the facility. Respondent Edmondson did not request a hearing and therefore has been excluded by the Department from licensed facilities. Since the incident, respondent Gillespie has taken significant steps to remove him from the home and all involvement therein. Nevertheless, they are married and have a daughter; both are very involved in the life of their child. There is conflicting evidence regarding the parties' intention to reconcile and about their social relationship. In addition, though he has acted to rehabilitate himself, insufficient time has passed to assure that he will not engage in violent conduct in the future. Given the foregoing, the Department cannot assure the safety of children in care if respondent Gillespie is allowed to retain her license.

LEGAL CONCLUSIONS

1. Pursuant to Health and Safety Code section 1596.885, cause exists to discipline the license of respondent Gillespie in that respondent Gillespie is unable to provide a safe environment for children in care as required by Title 22, California Code of Regulations, section 102423(a)(2), by reason of Finding 5.

2. Pursuant to Health and Safety Code section 1596.885, cause exists to revoke respondent Gillespie's license because respondent Edmondson engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state, by reason of Finding 5.

3. The revocation of respondent Gillespie's family child care license is solely due to her husband's violent conduct and because his presence at the facility would create a potential risk of harm to the safety and welfare of children in care at her licensed family child care home.

4. Having considered the evidence (Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14), it would be contrary to the public interest to allow respondent Gillespie to maintain the license to operate the family child care home at this time.

5. Pursuant to Health and Safety Code section 1596.8898, given the basis for revocation of the license to operate a family child care home, cause does not exist to exclude respondent Gillespie from a licensed facility.

ORDER

1. License number 376615142 issued to respondent Kimberly Gillespie, dba Gillespie, Kimberly Family Child Care, by the Department of Social Services to operate a family child care home is revoked.

2. Respondent Kimberly Gillespie is not excluded from facilities licensed by the Department of Social Services.