

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the License of Dawn
Braseth, 800 8th Street NE, Dilworth, MN,
56529-1500, to Provide Family Child Care

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above matter came on for hearing before Administrative Law Judge George A. Beck commencing at 9:00 a.m. on June 8, 2004 at the Family Service Center, 715 North 11th Street, Moorhead, MN 56560. The OAH record closed on June 8, 2004 upon the conclusion of the hearing.

Michelle Caduff Winkis, Assistant Clay County Attorney, 807 North 11th Street, P.O. Box 280, Moorhead, MN 56561-0280 appeared representing Clay County and the Minnesota Department of Human Services. Dawn Braseth, 800 8th Street NE, Dilworth, MN 56529-1500 appeared with her husband, Derek Braseth. They were not represented by counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.^[1] Parties should contact the office of Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, 651-296-2701 to find out how to file exceptions. Since the Commissioner must issue his final order within 10 working days from receipt of the Administrative Law Judge's recommended decision,^[2] the parties are requested to file any exceptions as soon as possible.

STATEMENT OF ISSUE

Whether there is reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in the care of Dawn Braseth so as to require the temporary immediate suspension of her family child care license.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Dawn Braseth, age 32, is licensed to conduct a family child care facility at her residence at 800 8th Street NE in Dilworth, MN.

2. On January 9, 2004, Ms. Braseth was traveling west on County Road 18 at its intersection with U.S. Highway No. 75 at approximately 11:23 a.m. The traffic on County Road 18 is controlled by stop signs at U.S. Highway 75. U.S. Highway 75, a north-south thoroughfare, has no traffic control devices.^[3]

3. Ms. Braseth was driving a 1992 red Dodge Caravan with six children as passengers. Two of the passengers were day care children and four of the passengers were Ms. Braseth's own children.

4. The weather conditions at the time of the accident were cloudy with moderate wind. The roadway was dry blacktop. Visibility was good. The terrain in the area of the intersection is flat and there were no obstructions to vision at the intersection.

5. Ms. Braseth stopped at the stop sign at the intersection and then proceeded into the intersection.^[4] She failed to yield to a vehicle headed north on U.S. Highway 75. The vehicle headed north was a 2004 green Dodge Stratus driven by Anthony Mastin. As he approached the intersection Mr. Mastin looked down to adjust his cruise control and when he looked up again Ms. Braseth was entering the intersection and Mr. Mastin was unable to avoid a collision with the left side of the Dodge Caravan. Mr. Mastin entered the intersection traveling at approximately 60 miles per hour.^[5] Ms. Braseth was traveling under 20 miles per hour at the time of the collision.^[6]

6. After the impact the van left the roadway and ended up in the ditch northwest of the intersection. Two of the children seated in the rear or third seat of the van were thrown from the vehicle as a result of the collision. The left side of the van was crushed inward at least two feet.^[7]

7. Tanner Braseth, age five, was seated in the right front seat of the van and was restrained by the van's seatbelt and escaped serious injury.

8. Two children were seated in the middle or second seat of the van. Chase Braseth, age 14 months, was seated on the left side of the middle seat in a five point built-in harness integrated child seat. The impact separated the restraint system from its base.^[8] Chase ended up lying on his right side on the back seat floor with the front of his face pushed against the back side of the middle row seat. He was pinned between the middle and the back seat and had to be extracted by officers at the scene.^[9] Chase was taken to the hospital and died there.

9. Kylie Vining who was approximately four months old was seated on the right side of the middle seat in an infant seat. Kylie escaped serious injury.

10. Katie Moran, three years old, was seated on the left side of the rear or third seat in a child restraint system held in place by a lap/shoulder belt combination. Katie

remained in her child restraint system in the van and was alert and responsive after the accident. She was taken to the hospital.

11. William Sharp, age 6, was seated in the middle of the third seat. He was wearing a lap seat belt. William was thrown from the vehicle and came to rest on the front passenger side of the van. After the collision he got up and started walking in a dazed fashion.^[10] He was then taken to the hospital by ambulance. He escaped serious injury.

12. Bria Braseth, age 3, was seated on the right side of the third or rear seat of the van. She was seated in a child restraint seat held by a lap/shoulder belt. She was ejected from the van as a result of the accident, was given CPR at the scene, but died as a result of her injuries.

13. Sergeant Andrew Schmidt of the Minnesota State Patrol made observations of the Dodge Caravan on January 12, 2004. He did not talk to the passengers or know the extent of their injuries. Based upon his observations he arrived at the following: "highest probable conclusions" based upon the information available:

The driver's seat belt was not in use at the time of the collision.

The right front seat belt was in use.

The harness of the integrated child seat at the left side second row seat was in use but the retainer clip appeared not to have been used. The lap/shoulder belt was not in use, however.

The second row right side lap/shoulder belt was in use at the time of the collision with the child seat possibly used correctly.

The back row seat left side lap/shoulder appears to have been in use at the time of the collision.

The back row center lap belt may have been in use at the time of the collision.

The back row right side seat lap/shoulder belt was restraining a child restraint seat in a manner for use with a child between 30 to 80 pounds and 35 to 50 inches in height.^[11]

14. On April 20, 2004, the Clay County Attorney declined to prosecute Ms. Braseth. The Chief Assistant County Attorney noted that "certainly there exists probable cause with which to charge Ms. Braseth with negligence in her driving behavior. However, in light of the loss of two of her own children in this accident, I do not believe that proceeding with criminal charges is in the public's best interest, or in the interest of justice."^[12]

15. On May 10, 2004, Mr. Braseth advised Clay County Social Services that she was now doing child care on a part-time basis for two families. Clay County then wrote to the Commissioner of Human Services asking that Ms. Braseth's child care license be immediately suspended based on the imminent risk to children in her care.^[13]

16. By a letter dated May 14, 2004, Ms. Braseth appealed the Order of Temporary Immediate Suspension.^[14]

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minnesota law.^[15]

2. The Department of Human Services and Clay County gave proper and timely notice of the hearing and have fulfilled all procedural requirements of law and rule. Under Minnesota law, if a "license holder's action or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license."^[16]

3. At a hearing appealing an Order of Temporary Immediate Suspension, the burden of proof on the Department is to demonstrate both that "reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program."^[17] The Department is authorized to demonstrate reasonable cause by submitting statements, reports or affidavits.^[18]

4. The Administrative Law Judge is directed by statute to determine "whether the immediate suspension should remain in effect pending the Commissioner's final order ... regarding a final licensing sanction."^[19]

5. The Department and the County have demonstrated reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Licensee.

6. The Memorandum that follows explains the reasons for these conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Order of Temporary Immediate Suspension suspending the family child care license of Dawn Braseth be AFFIRMED.

Dated this 21st day of June 2004.

/s/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Tape Recorded
(One Tape) No Transcript Prepared.

MEMORANDUM

In a proceeding to temporarily suspend a child care license, the Department is not required to prove that it is more likely than not that the facts it alleges occurred. The Department only has to show that *reasonable cause* exists to believe the Licensee failed to comply with the law. The legislature presumably established a low threshold for this determination to assure that children will be safe until there can be a full hearing on whether or not the child care license should be permanently revoked or otherwise subject to discipline.

A finding of “reasonable cause to believe” in a child care license proceeding has been compared to a finding of “probable cause” in a criminal proceeding.^[20] Probable cause has commonly been defined to mean “a reasonable ground in fact and circumstance for a belief in the existence of certain circumstances.”^[21] In both cases the state is entitled to rely on hearsay evidence. Unless the Licensee presents evidence that makes the alleged violation “inherently incredible,” or “seemingly impossible under the circumstances,” evidence offered by the Licensee will not overcome a probable cause determination.^[22] The Department’s evidence in this case consisted of reports from state troopers as well as witness statements. The statute specifically allows the Department to demonstrate reasonable cause by submitting “statements, reports, or affidavits.”^[23]

The Department asserts that there is reasonable cause to believe that children in Ms. Braseth’s care are at an imminent risk of harm in two respects. First, it points to the negligence on the part of Ms. Braseth that led to the accident. While Ms. Braseth stopped at the stop sign at the intersection in question, she failed to see oncoming traffic and proceeded into the intersection. The facts of the accident are essentially uncontested. Ms. Braseth has no recollection of the events at the present time. The witness statements confirm the facts as set out in the Findings of Fact. The Braseths argued at the hearing that automobile accidents happen and that it should not affect Ms. Braseth’s child care license.

The Department also argues, however, that not all of the children in the van were properly restrained by seatbelts or child restraint devices. This argument is based upon the analysis by Sergeant Andrew Schmidt of the Minnesota State Patrol as set out in Finding of Fact No. 13. He concluded that at least one child was not properly restrained. Sergeant Schmidt was careful to describe his opinions as the “highest probable indication” of what occurred. He did not talk to the passengers or get to see all of the child restraint seats involved in the accident. Ms. Braseth testified that all of the children were properly restrained after they entered the van that day.

Sergeant Schmidt’s report is a sufficiently reliable basis to support a finding of reasonable cause to believe that there is an imminent risk of harm to the children in the child care program sufficient to temporarily suspend the license. It has not been shown to be inherently incredible. Generally, questions of witness credibility are not considered at this stage of the proceeding but are considered at a full evidentiary hearing on a final licensing sanction. A full evidentiary hearing would be a more appropriate way to determine with greater certainty the facts concerning this tragedy. It is therefore recommended that the temporary immediate suspension remain in effect at this point pending further disciplinary action.

Mr. Braseth made two significant comments at the hearing. First, that the van lacked side airbags which would have possibly avoided the deaths. Secondly, that he did not believe that his wife had any instruction in how to effectively place children in restraint systems. The Department may wish to consider what rule changes might be appropriate to address these observations.

G.A.B.

^[1] Minn. Stat. § 245A.07, subd. 2a(b).

^[2] Minn. Stat. § 14.61.

^[3] Ex. 4, pp. 22-23.

^[4] Ex. 4, p. 15.

^[5] Ex. 4, p. 26.

^[6] Ex. 4, p. 26.

^[7] Ex. C; Ex. D.

^[8] Ex. A, B.

^[9] Ex. 4, p. 5.

^[10] Ex. 4, p. 19.

^[11] Ex. 4, p. 8-9.

^[12] Ex. 3.

^[13] Ex. 2.

^[14] Ex. 1.

^[15] Minn. Stat. §§ 245A.01 – 245A.16 and 14.50.

^[16] Minn. Stat. § 245A.07, subd. 2.

^[17] Minn. Stat. § 245A.07, subd. 2a(a).

^[18] Minn. Stat. § 245A.08, subd. 3.

^[19] Minn. Stat. § 245A.07, subd. 2a(c).

^[20] State v. Florence, 239 N.W. 2d 892, 902 (Minn. 1976).

^[21] Merriam Webster Dictionary of Law (1996).

^[22] State v. Florence, 239 N.W. 2d at 903 and 24.

^[23] Minn. Stat. § 245A.08, subd. 3.