

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000239-MR

FAITH CENTER MISSIONARY BAPTIST CHURCH, INC.
D/B/A FAITH CENTER DAY SCHOOL

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 02-CI-00157

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH SERVICES,
DIVISION OF LICENSED CHILD CARE

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BARBER, JUDGE: Faith Center Missionary Baptist Church, Inc.
d/b/a Faith Center Day School (FCDS) appeals from an order of
the Franklin Circuit Court that upheld the Commonwealth's denial
of relicensure for its day care program. We affirm.

FCDS was a licensed day care facility operating in
Lexington, Kentucky. On April 6, 1999, June 24, 1999, July 6,

1999, and August 6, 1999, it was inspected and various violations of regulatory requirements were found to exist. The last inspection on August 6, 1999, noted some new violations and some violations that continued to be uncorrected from the prior inspections. On September 22, 1999, the Commonwealth of Kentucky, Cabinet for Health Services, Division of Licensed Child Care (the Cabinet) notified FCDS that it was denying relicensure of the facility.

FCDS requested review of the decision and a hearing officer assigned to the case recommended that the decision to deny licensure be upheld. FCDS did not file exceptions to the hearing officer's recommendation. On December 26, 2001 the Cabinet issued a final order denying relicensure and adopting the hearing officer's recommendation in full as its own order.

FCDS filed an appeal from the Cabinet's order and the Franklin Circuit Court affirmed on the basis that substantial evidence of record existed to support the Cabinet's determination. We now affirm the court's ruling but for different reasons. O'Neal v. O'Neal, 122 S.W.3d 588, 589 (Ky.App. 2002); CR 60.03.

The failure of FCDS to file exceptions to the recommended order of the hearing officer, while not precluding judicial review, does limit the scope of review to any findings and conclusions in the Cabinet's final order that differ from

the hearing officer's recommended order. Rapier v. Philpot, 130 S.W.3d 560, 564 (Ky. 2004).

In the present case the Cabinet adopted the hearing officer's recommendation in full and did not expand upon that recommendation with any other findings or conclusions. Therefore, in order for FCDS to preserve its position it was necessary for it to file exceptions to the recommended order. Because it failed to do so, the issues it presents are not preserved for review.

For the foregoing reasons the decision of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William E. Peale, Jr.
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Johann Herklotz
Frankfort, Kentucky