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Adopted son of gay Key West man gets state subsidy

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CARL JUSTE/MIAMI HERALD STAFF

Wayne Larue Smith, left, and his partner Daniel Skahen, right, help their adopted son with his homework.

Florida's embattled ban on adoption by gay people suffered another setback Tuesday, when state child welfare administrators agreed to provide health insurance, college tuition and other benefits to the adopted son of a gay Key West man.

For more than a year, the Department of Children & Families had refused to provide the adoption subsidy to the adoptive son of Wayne LaRue Smith, a Key West lawyer whose request to adopt a boy he was raising in foster care was approved by a Monroe County judge in the fall of 2008.

On Tuesday, DCF lawyers did an about-face, agreeing in writing to provide the boy with subsidized college tuition, health insurance under the state's Medicaid program, and other benefits typically provided to other children who are adopted from state care.

"It means, finally, after 10 years, he gets what every other child in the same circumstance gets just by asking," Smith said of his now-teenage son, who has not been identified by The Miami Herald to protect his privacy.

"In a symbolic sense, for whatever reason, the department has decided to take the better path, one they should have taken in the first instance," Smith added. "I will probably wonder forever why

it is that we had to go through years and years of litigation, and hundreds of thousands in expenses, just to get what other children get automatically."

In Florida, gay men and lesbians can be licensed as foster parents, but a 1977 law forbids them from adopting.

Smith, who has been in a stable relationship since 1988, was licensed as a foster parent in 1999. Two years later, DCF placed a 5-year-old boy in his home. The boy, who has learning disabilities and other special needs, has remained with Smith ever since.

At the urging of a Monroe County judge, Smith was named permanent guardian over the boy in 2006, ensuring the boy could remain with Smith and achieve permanency -- a requirement of both state and federal law for all abused or neglected children taken into care by the state.

But the guardianship became a double-edged sword: In August 2008, when Monroe Circuit Judge David J. Audlin approved Smith's adoption of the boy -- declaring Florida's adoption law unconstitutional in the process -- the guardianship was cited by DCF as its reason for denying the subsidies.

State law allows such subsidies only for children in state care. With Smith's son already in a guardianship, DCF lawyers argued, the boy no longer met the criteria.

In signing Tuesday's agreement, DCF insisted it was not admitting it did anything wrong.

"It is understood and agreed that this settlement is a compromise of a disputed claim or claims, and the agreement made is not and does not have the effect of any admission of eligibility for adoption assistance by the department," the agreement states.

In comments to The Miami Herald on Tuesday, the agency continued to maintain that the settlement does not detract from DCF's position that a child outside state care is not entitled to a subsidy.

"The focus of this settlement was on whether the state can legally provide an adoption subsidy for a special-needs child who was not in the department's custody when he or she was adopted," said DCF spokesman Joe Follick. "The child in this case was not under our direct care or responsibility at the time of the adoption.

"The case was closed in 2008 with the child achieving permanency when the caregiver was awarded plenary guardianship by the dependency court. This settlement does not address the ongoing legal consideration of the state's gay adoption laws which, as an executive agency, we are still bound to follow," Follick added.

Miami lawyer Alan Mishael, who represents the adoptive parents in two of three South Florida cases involving a gay person, said the department's decision to stop fighting the subsidy sends an important message.

"You have to think: the Department of Children & Families is agreeing to help defray the expenses of a gay man who adopted a foster child," he said.

In a separate case, Mishael is representing Vanessa Alenier, a Hollywood woman who adopted an infant relative in Miami-Dade last month. In that case, both the adoption and the department subsidy will become final in one week if DCF does not appeal. DCF presented neither evidence nor testimony during the adoption trial.

"I hope this is an indication of better things to come," Mishael said.

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