

Appellate Update 2015

NEW DEVELOPMENTS RELATING TO
JURISDICTION AND REASONABLE
EFFORTS

MEGAN E. HASSEN, JUVENILE COURT
IMPROVEMENT PROGRAM

Jurisdiction: The Basics

- **Petition**
- **Service**
- **Admit/Deny**
- **Trial on petition allegations**
- **Jurisdictional Judgment**
- **Disposition within 60 days from when petition is filed**
- **Services**

Oregon Juvenile Dependency Appeals

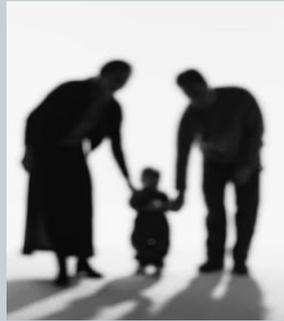


Oregon Juvenile Dependency Appeals



Jurisdiction: New Developments

- *Dept. of Human Services v. W.A.C.*, [263 Or App 382](#) (2014).
 - *When parent served, appears and contests allegations, court must resolve allegations before entering jurisdictional judgment.*
 - ✦ *Court may not proceed on one parent's admissions in these circumstances.*



Jurisdiction: New Developments

- *Dept. of Human Services v. A.F.*, [268 Or App 340](#) (2014).
 - *Admitted allegations must continue to exist at the time jurisdiction judgment is entered.*



Jurisdiction: New Developments

- **Cases that fall outside of *W.A.C.*:**
 - Parent can't be identified. ORS 419B.914
 - Agency must show diligent efforts to locate.
 - Parent has been served but does not appear. ORS 419B.815(7)
- *In these situations, the court has statutory authority to resolve the allegations of the non-appearing parent, take the admissions or hold a trial as to the appearing parent, and enter a jurisdictional judgment.*

Jurisdiction post *W.A.C.*



CRB Review of Cases with No Jurisdiction

- **Finding #1:** Active/reasonable efforts to prevent/eliminate need for placement.
- **Finding #2:** Diligent efforts to place the child with a relative or person with a caregiver relationship.
- **Finding #3:** DHS has ensured that appropriate services are in place to safeguard the child's safety, health and well being.



CRB Review of Cases with No Jurisdiction

- **Finding # 4:** Reasonable efforts
 - Required from the time of initial contact
 - Should be based on identified safety threats
 - Should include:
 - ✦ Ongoing safety plan with conditions of return: clear description of specific actions to be taken by parents
 - ✦ Visitation plan, Action Agreement
 - ✦ Case plan; monitor, review, revise, involve parents
 - ✦ Face to face contact with parents, child, safety service provider
 - ✦ Offer of services to address items in petition - circumstances that continue to cause the child's separation from the family.

CRB Review of Cases with No Jurisdiction

- **Finding # 6: Sufficient Progress**
 - Must be judged according to the basis of jurisdiction
 - Should be discussed and documented, but no finding



CRB Review of Cases with No Jurisdiction

- **Finding #7: Concurrent planning**
- **Finding #8: Compliance with case plan and court orders**



CRB Review of Cases with No Jurisdiction

- **Finding #9: Appropriateness of the permanency plan.**
 - Court can not change the plan until jurisdiction has been established, DHS has made reasonable efforts to reunify and the parents have made insufficient progress for the child to safely return home within a reasonable time.
 - There is no basis to change the plan until the parents have had a chance to work toward reunification.

CRB Review of Cases with No Jurisdiction

- **Finding #10: Continuing need for placement.**
 - Have the conditions of return been met?
 - Can the child go home today? If not, why not?
 - Can any remaining safety threats be managed with an in-home plan?



CRB Review of Cases with No Jurisdiction

- **Recommendations to court regarding jurisdiction:**
 - Is there a jurisdictional hearing scheduled? *If so, stop here.*
 - *If not*, what is the reason for the delay?
 - If delay due to a parent who can not be identified, or a parent who was served and did not appear, can a recommendation be made to hold a jurisdictional hearing?

What about ASFA?

- **General rule:** DHS must file a petition to terminate parental rights when the child has been in care 15 of the most recent 22 months. The court must change the permanency plan to adoption first.
 - Exceptions we would expect the court to use when jurisdiction is delayed:
 - ✦ The parent is successfully participating in services that will make it possible for the child to safely return home within a reasonable time.
 - ✦ DHS has not provided services DHS deems necessary for the child to safely return home.

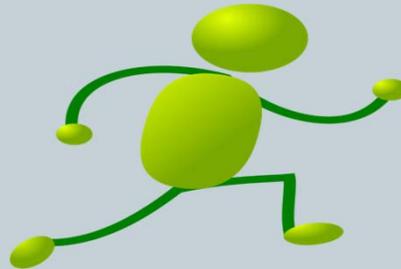
Changing the permanency plan when jurisdiction delayed

- A parent's progress is evaluated by reference to the facts that formed the bases for juvenile court jurisdiction. *Dept. of Human Services v. C.L.*, [254 Or App 203 \(2012\)](#).
- Parents are entitled to notice – *and an opportunity to address* – the condition identified in the jurisdictional judgment. *Dept. of Human Services v. A.R.S.*, [256 Or App 653 \(2013\)](#).



CRB Review of cases when jurisdiction just established

- How long does a parent have before the CRB makes a finding on parental progress?



Jurisdiction: The Basics

- **Conditions and circumstances jurisdiction. ORS 419B.100(1)(c)**
 - State must show:
 - ✦ A current threat of serious loss or injury to the child.
 - ✦ A nexus between the allegedly risk-causing conduct and the harm to the child.
 - ✦ The risk is present at the time of the hearing.

Jurisdiction: New Developments

- ***Dept. of Human Services v. D.H.*, 269 Or App 863 (2015).**
 - Asserted bases:
 - ✦ Mother's husband convicted, untreated sex offender and mother does not believe he poses a risk to the child
 - ✦ Mother unwilling to protect child from contact with husband
 - ✦ Mother's mental health
 - Court of Appeals found evidence insufficient:
 - ✦ Child not within class of victims
 - ✦ No testimony regarding risk
 - ✦ Husband has had contact with child and no evidence of harm
 - ✦ Mother's suicide attempt after child was taken

Jurisdiction: New Developments

- *Dept. of Human Services v. H.H.*, [266 Or App 196](#) (2014).
 - Asserted bases:
 - ✦ Father caused a non-accidental injury to H that amounted to child abuse and resulted in significant adverse consequences to H;
 - ✦ Mother refused to acknowledge father's role in injuring H, and was incapable of protecting the children from father.
 - Court of Appeals found sufficient:
 - ✦ Evidence that child's injuries were caused by father;
 - ✦ Mother did not believe father played a role in harming child; and
 - ✦ Mother didn't perceive need to protect child from father created reasonable likelihood of harm.

Jurisdiction: New Developments

- *Dept. of Human Services v. A.L.*, [268 Or App 391](#) (2015)
 - Asserted bases:
 - ✦ Parents' substance abuse
 - ✦ Lack of necessary parenting skills
 - ✦ Leaving the children with unsafe persons
 - ✦ Father's impulse control
 - Court of Appeals found insufficient:
 - ✦ Indictment against grandparents not enough
 - ✦ No evidence grandfather's founded disposition created risk
 - ✦ One breach of safety plan not enough when children not threatened

Jurisdiction: New Developments

- *Dept. of Human Services v. A.L.*, [268 Or App 391](#) (2015) (continued)
 - “....DHS’s arguments rest on a mistaken assumption that parents cannot give custody of their children who are not DHS-certified. To the contrary, the court must have jurisdiction for DHS to change the placement of children, and for jurisdiction to be warranted, there must be a current threat of harm to the children. ORS 419C.100(1)(c). Because parents have entrusted the primary care of the children to the paternal grandparents, who do not pose a current threat of harm, the court did not have a basis for asserting jurisdiction over the children.”

Jurisdiction: Wrap Up

- **Implications for CRB Review**
 - Severity of cases
 - Finding #1: Reasonable/active efforts to prevent or eliminate the need for removal of the child from the home when parent has a plan for the child.

Reasonable Efforts: The Basics

- Are to be evaluated under a “totality of the circumstances.”
- Services must have a rational relationship to the basis of jurisdiction.
- Efforts must be made as to each parent, even if one is incarcerated or out of state.
- If service is “key” to reunification and DHS has declined to pay for it, the court must weigh the benefits of DHS providing the service and the burden of associated costs when deciding whether DHS made reasonable efforts.

Reasonable Efforts: Parent’s Conduct

- *Dept. of Human Services v. S.W.*, [267 Or App 277](#) (2014).
 - Reasonable efforts to be judged in light of the particular circumstances of the child and the parent.
 - The juvenile court is required to make the child’s health and safety the paramount concern.
 - A parent’s conduct and responses to DHS efforts factor into the analysis.
 - ✦ Evaluation of reasonable efforts requires the court to consider not only the burdens of providing the services, *but also what benefit* might reasonably be expected to flow from them.

Reasonable Efforts: New Developments

- *Dept. of Human Services v. S.W.*, [267 Or App 277](#) (2014) (continued)
 - The length and circumstances of a parent's incarceration are factors the juvenile court may consider in determining reasonable efforts. The prospect for a child's safe return to a parent who is incarcerated depends, among other variables, on the length of time the parent will be incarcerated, juxtaposed against the child's stage of development and particular needs.

Reasonable Efforts: New Developments

- Timeframe for judging reasonable efforts is not the "period under review", but rather, efforts over the life of the case. *Dept. of Human Services v. T.S.*, [267 Or App 301](#) (2014).

Reasonable Efforts: Implications for CRB Review

- **Discussion points.**
 - Factors to consider with parents:
 - ✦ Level of engagement
 - ✦ Length of incarceration
 - ✦ Child's needs and requirements
 - Review period issues:
 - ✦ Board's finding not constrained to last six months
 - Contrast when only one parent involved
 - ✦ Addressing parents and DHS when efforts and progress have dropped off

Active Efforts: New Developments

- *Dept. of Human Services v. M.D.*, [266 Or App 789 \(2014\)](#) (ICWA case)
 - Active efforts requires DHS to do more than create a reunification plan and require the client to execute it independently.
 - DHS must assist the parent through the steps of reunification.
 - In determining whether efforts were active, a court considers whether a parent is likely to benefit from a service in light of the parent's problems.

Appellate Update



Questions?