

WHAT OREGON JUVENILE COURT JUDGES NEED TO KNOW AND WHY

UMPIRE OR INQUIRING MAGISTRATE?

UMPIRE OR INQUIRING MAGISTRATE?



A child found to be within the court's jurisdiction is a “ward” of the court.

UMPIRE OR INQUIRING MAGISTRATE?

A juvenile court judge is responsible for:

- (1) ensuring that the case proceeds in compliance with statutory timelines;**
- (2) continually assessing the adequacy of the “case plan”;**
- (3) making the findings required by statute for each hearing; and**
- (4) ensuring that the court’s judgments are legally sufficient.**

UMPIRE OR INQUIRING MAGISTRATE?



In the discharge of these responsibilities, a juvenile court judge is not entitled to rely on the diligence of counsel, the CASA or DHS.

WHAT OREGON JUVENILE COURT JUDGES NEED TO KNOW AND WHY

BASIC PRINCIPLES

Dependency Jurisdiction

The juvenile court has **exclusive original jurisdiction** in any case involving a child whose condition and/or circumstances are described in ORS 419B.100(1). For example:

A child “[w]hose conditions and circumstances are such as to endanger the [child’s] welfare.” ORS 419B.100(1)(c)

A child “[w]hose parents * * * have * * *[s]ubjected the [child] to cruelty, depravity or unexplained physical injury[,] or * * * [f]ailed to provide the [child] with the care, guidance and protection necessary for the [child’s] physical, mental or emotional well-being.” ORS 419B.100(1)(e)

The Indian Child Welfare Act

A child who is a member of an Indian tribe, or is eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe, is an “Indian child.” 25 USC § 1903(4)

When an “Indian child” is the subject of a dependency petition, special jurisdictional, standard-of-proof and placement requirements apply.

25 USC § 1901 *et seq*



Dependency Hearings

SHELTER – Can the child be made safe in the home until the petition is resolved?

JURISDICTION – Is the child within the court's jurisdiction?

DISPOSITION – What assistance do the parent(s) and child require to address the bases for jurisdiction?

REVIEW – How are the child and the parent(s) progressing, should the case plan be modified, is the concurrent planning appropriate, and should wardship continue?

PERMANENCY – When and where will the child be in a safe, permanent home?

TERMINATION-OF-PARENTAL-RIGHTS – Are the statutory grounds for termination satisfied, and is termination in the child's best interest?

Findings in Orders & Judgments

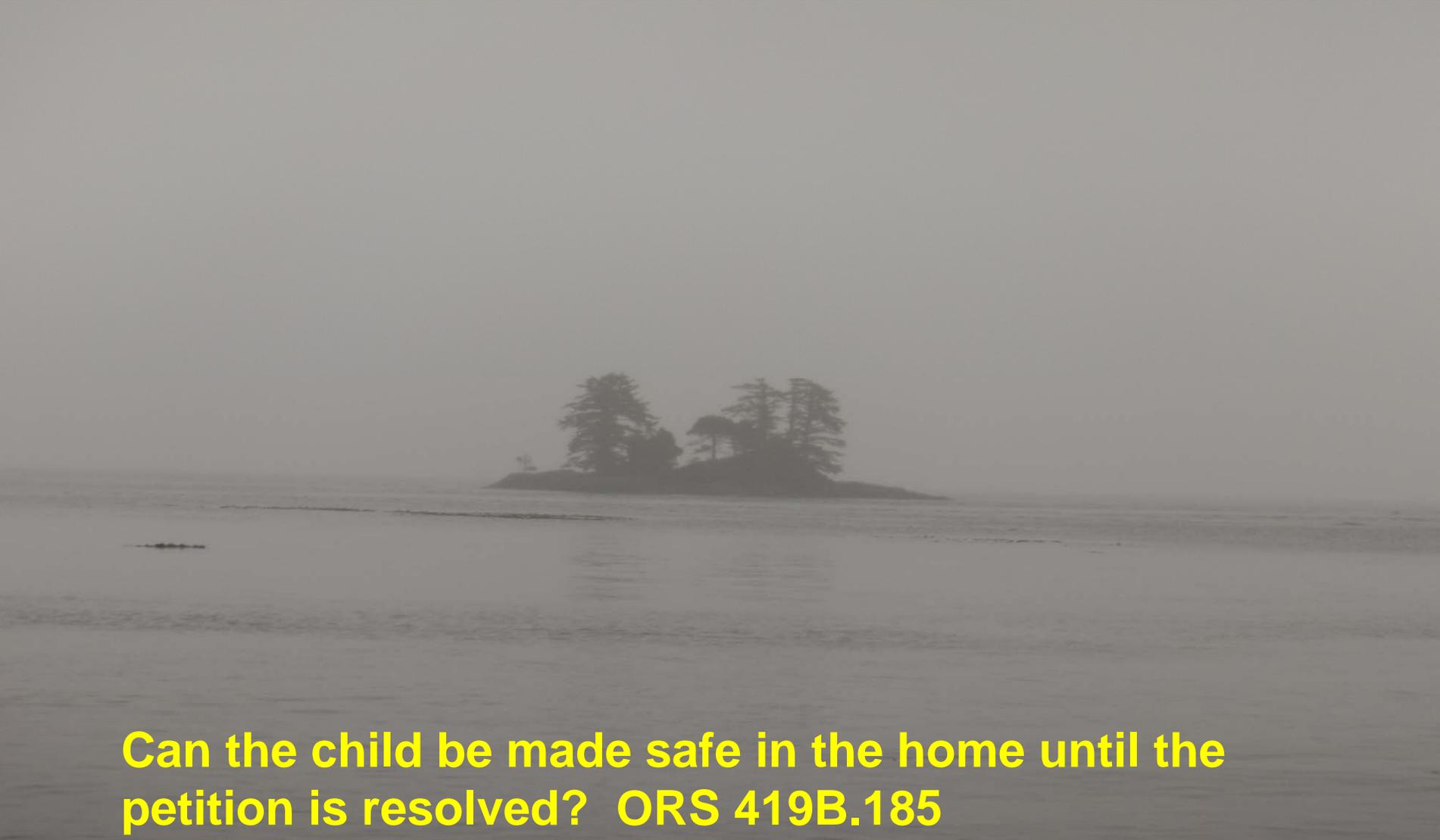
THE COURT'S ORDERS & JUDGMENTS IN ALL OF THESE DEPENDENCY PROCEEDINGS MUST BE BASED ON THE EVIDENTIARY RECORD

Evidence and any other information relied on by the court in these proceedings is not part of the record and cannot be a basis for the court's findings, UNLESS it is presented in sworn testimony, admitted as an exhibit, the parties stipulate to it, or the court takes judicial notice of it. *See State ex rel Juv. Dept. v. Lewis, 193 Or App 264, 89 P3d 1219 (2004). See also State ex rel Juv. Dept. v. K. L., 223 Or App 35, 38 n2, 194 P3d 845 (2008).*

WHAT OREGON JUVENILE COURT JUDGES NEED TO KNOW AND WHY

THE HEARINGS & ESSENTIAL INQUIRIES

The Shelter Hearing



Can the child be made safe in the home until the petition is resolved? ORS 419B.185

The Shelter Hearing



**WHY CAN'T THE
CHILD GO HOME
TODAY?**

The Shelter Hearing

“To aid the court in making the written findings required by [ORS 419B.185]” DHS “shall present written documentation to the court outlining:

“(a) The efforts made to prevent taking the child or ward into protective custody and to provide services to make it possible for the child or ward to safely return home;

“(b) The efforts the department made pursuant to ORS 419B.192; and

“(c) Why protective custody is in the best interests of the child or ward.” **ORS 419B.185(1)**

The Shelter Hearing



At the hearing, the parent(s) and the child must have an opportunity “to present evidence to the court * * * that the child * * * **can** be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication.” **ORS 419B.185(1)**

The Shelter Hearing

If the court orders shelter care, the court must:

(1) Determine whether DHS has made **reasonable efforts**, or, if the ICWA applies, **active efforts** to prevent, or eliminate the need for, the child's removal from home and to make it possible for the child to safely return home and include in those findings a brief description of the agency's preventive and reunification efforts, and, if ICWA applies, determine whether the placement complies with ICWA preferences. **ORS 419B.185(1) and 25 USC § 1915**

(2) Determine whether the agency has made **diligent efforts** to place the child with a "relative." **ORS 419B.185(2) and 419B.192**

The Shelter Hearing



**IF DHS HAS NOT
MADE THE
REQUIRED EFFORTS,
WHAT DO YOU DO?**

The Shelter Hearing



“At any time after a petition is filed, the court may make an order providing for temporary custody of the child[.]” **ORS 419B.809(5):**

The Shelter Hearing



APPOINTMENT OF COUNSEL

The Shelter Hearing



Model Judgment Forms JF2 and JF2i

The Jurisdictional Hearing

Is the child within the court's jurisdiction under ORS 419B.100(1)?



The Jurisdictional Hearing

STANDARD OF PROOF

In a non-ICWA case, “unless admitted,” the facts alleging jurisdiction “must be established by a preponderance of competent evidence.” ORS 419B.310(3)

In an ICWA case, the facts alleging jurisdiction must be established by clear and convincing evidence, which includes qualified expert testimony, and must show that “*the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.*”

25 USC § 1912(e)

The Jurisdictional Hearing

In order to establish jurisdiction under ORS 419B.100(1)(c), the state must prove “that there is a current risk of harm and not simply that the child's welfare was endangered at some point in the past.”

[State v. S. T. S., 236 Or App 646, 654, 238 P3d 53 \(2010\)](#)

The Jurisdictional Hearing

CURRENT RISK OF HARM

Dept. of Human Services v. M.E., 255 Or App 296, 297 P3d 17 (2013) (setting out apparently contradictory standards for jurisdiction under ORS 419B.100(1)(c) and reversing judgment finding jurisdiction because the totality of the circumstances failed to establish a current threat of harm to the child -- *i.e.*, the stepfather's sexual abuse of the child was a one-time incident that occurred four years ago, the results of a psychosexual risk assessment of the stepfather indicated that he did not pose a risk of sexual harm to any children, and the mother had agreed to protective measures)

The Jurisdictional Hearing

CURRENT RISK OF HARM

Dept. of Human Services v. G.J.R., 254 Or App 436, 295 P3d 672 (2013)

(reversing the jurisdiction judgment as to father because the evidence that he had not completed sex-offender treatment was not sufficient to establish a current threat of harm to the child and leaving unresolved the questions about the correct legal standard for jurisdiction under ORS 419B.100(1)(c) raised by the Court of Appeals opinion in *Dept. of Human Services v. A. F., 243 Or App 379, 386, 259 P3d 957 (2011)* (threat of "serious loss or injury"), which appears to state a legal standard that is inconsistent with the standard established by the Oregon Supreme Court in *State ex rel Juv. Dept, v. Smith, 316 Or 646, 853 P2d 282 (1993)* ("reasonable likelihood of harm to the welfare of the child"))

The Jurisdictional Hearing



TIMELY RESOLUTION OF THE PETITION

ORS 419B.305(2) requires that “all parties comply with [the discovery provisions of] ORS 419B.881” within 30 days of the filing of the petition.

ORS 419B.305(1) requires that, absent a finding of “good cause,” the court must hold a hearing on the petition and enter a dispositional order “no later than 60 days” after the filing of the petition.

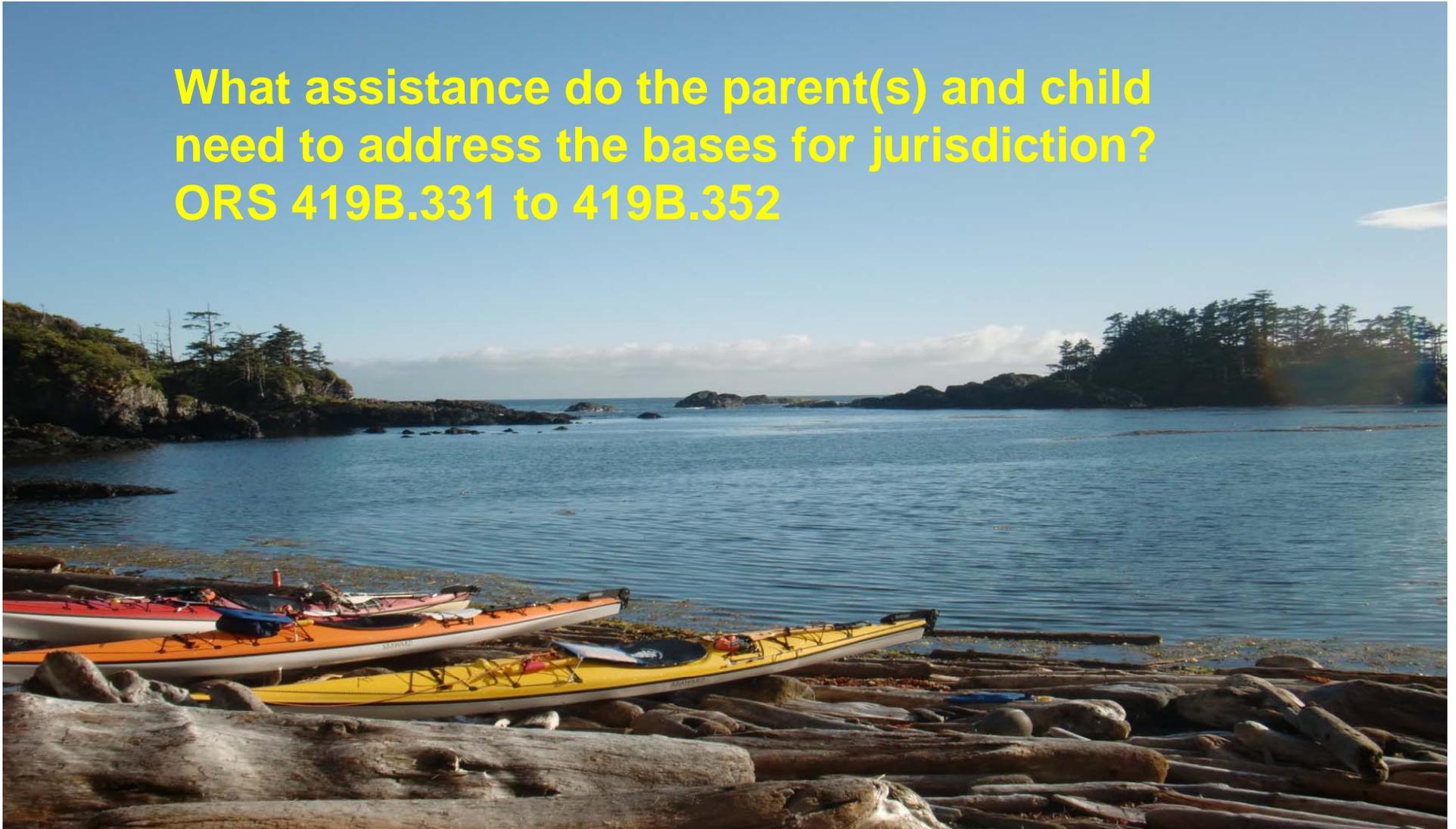
The Jurisdictional Hearing



Model Judgment Forms JF3 and JF4B

The Dispositional Hearing

What assistance do the parent(s) and child need to address the bases for jurisdiction?
ORS 419B.331 to 419B.352



The Dispositional Hearing



MATTERS TO BE RESOLVED

- (1) The child's needs, placement and legal custody.
- (2) What the parents will be required to do.
- (3) If the child is committed to DHS, what the agency will be required to do and what the concurrent plan will be.
- (4) Visitation with the parent(s), sibling(s), and others.

The Dispositional Hearing

ADMISSIBLE EVIDENCE AND THE RECORD

(1) The provisions of the Oregon Evidence Code apply, except that: “testimony, reports or other material relating to the ward’s mental, physical and social history and prognosis may be received by the court without regard to their competency or relevancy under the rules of evidence.” **ORS 419B.325(2).**

(2) And, all evidence/information considered by the court must be made part of the evidentiary record, or it can not be a basis for the court’s dispositional findings and orders. **See ORS 419A.253**

NOTE: The same standards apply to REVIEW and PERMANENCY hearings.

The Dispositional Hearing

The DHS case plan must be rationally related to the bases for jurisdiction and include:

(1) **a reunification plan** with “[a]ppropriate services to allow the parent the opportunity to adjust the parent’s circumstances, or conditions to make it possible for the ward to safely return home **within a reasonable time;**” AND

(2) **a concurrent permanent plan** to be implemented if the parent is unable or unwilling to adjust the parent’s circumstances, conduct or conditions in such a way as to make it possible for the ward to safely return home **within a reasonable time.** **ORS 419B.343**

The Dispositional Hearing

“Reasonable time’ means a period of time that is reasonable given a child or ward’s emotional and developmental needs and ability to form and maintain lasting attachments.” ORS 419A.004(20)

“[The within-a-reasonable-time] inquiry is child-specific. It calls for testimony in psychological and developmental terms regarding the particular child's requirements.” *State ex rel SOSCF v. Stillman*, 333 Or 135, 146, 35 P3d 490 (2001).

The Dispositional Hearing

DHS also must

Identify in writing and communicate to the parent (and the court) the “**conditions for return,**” which means “the **specific behaviors, conditions, or circumstances** that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.”

The Dispositional Hearing

VISITATION

The Dispositional Hearing

VISITATION

ORS 419B.337 (3): “The court may make an order regarding visitation by the ward’s parents or siblings. The Department of Human Services is responsible for developing and implementing a visitation plan consistent with the court’s order.”

*Is a DHS visitation plan subject to “reasonable efforts” review by the court? **YES***

The Dispositional Hearing

OAR 413-070-0830(1): “The child * * *, a parent or legal guardian, and each sibling have the right to visit each other while the child * * * is in substitute care * * * [and] a right to visit as often as reasonably necessary to develop and enhance their attachment to each other.”

OAR 413-070-0830(3): “When Department resources alone cannot meet the family contact and visitation needs of the child * * *, the caseworker must solicit help from family and community resources.”

The Dispositional Hearing

“VISITATION PLAN: Once a week, supervised at the DHS office.”

INQUIRIES: (1) Why once a week?

(2) Why supervised?

(3) Why at the DHS office?

The Dispositional Hearing

If the court commits the child to DHS for placement in substitute care, the court must:

(1) Determine whether DHS has made **reasonable efforts**, or, if the ICWA applies, **active efforts** to prevent, or eliminate the need for, the child's removal from home and to make it possible for the child to safely return home and include in those findings a brief description of the agency's preventive and reunification efforts, and, if ICWA applies, determine whether the placement complies with ICWA preferences.

ORS 419B.340 and 25 USC § 1915

(2) Determine whether the agency has made **diligent efforts** to place the child with a "relative." ORS 419B.192

The Dispositional Hearing



Other options: ORS 419B.331

The Dispositional Hearing



Model Judgment Forms JF4 and JF4B

The Review Hearing



How are the child and the parent(s) progressing, should the case plan be modified, is the concurrent planning appropriate, and should wardship continue? ORS 419B.449

The Review Hearing

- (1) Should **jurisdiction and wardship** continue?
- (2) Has the parent has made **sufficient progress** to permit the child's safe return home?
- (3) Is the case plan still "**appropriate**"?
- (4) What are the **specific "services"** in which the parent is to engage during the next few months and what **specific progress** must the parent make?
- (5) What is this child's "**reasonable time**"?

The Review Hearing

REQUIRED FINDINGS – CHILD IN SUBSTITUTE CARE

(1) Has DHS made **reasonable efforts**, or, if the ICWA applies, **active efforts** to prevent, or eliminate the need for, the child's removal from home and to make it possible for the child to safely return home? The findings must include a brief description of the agency's preventive and reunification efforts, and, if ICWA applies, a determination whether the placement complies with ICWA preferences.

ORS 419B.449, 419B.340 and 25 USC § 1915

(2) Has DHS made **diligent efforts** to place the child with a “relative”? ORS 419B.192

The Review Hearing

REQUIRED FINDINGS – CHILD TO REMAIN IN SUBSTITUTE CARE

- (a) Why continued care is necessary, what the timetable is for the child's return home and what the parent(s) must do and what progress the parent(s) must make;
- (b) Whether DHS has made the diligent efforts required by ORS 419B.192;
- (c) The number of school changes, placements, visits, and case worker contacts the child has had “and whether the frequency of each of these is in the best interests of the child,” and, if the child is 14 or older, whether the child is progressing toward high school graduation.

The Review Hearing



DHS REPORTS TO THE COURT

“ORS 419B.443 Time and content of reports. (1) An agency described in ORS 419B.440 shall file the reports required by ORS 419B.440 (2) at the end of the initial six-month period and no less frequently than each six months thereafter. The agency shall file reports more frequently if the court so orders. The reports shall include, but not be limited to: * * *.”

The Review Hearing



Model Judgment Form JF6

The Permanency Hearing



**When and where will the child be in a safe, permanent home?
ORS 419B.476**

The Permanency Hearing



THE INITIAL PERMANENCY HEARING

“[W]hen a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care, whichever is the earlier. **ORS 419B.470(2)**

NOTE: Reasonable-time considerations may require a permanency hearing sooner than the 12-month, or 14-month, mark in a particular case.

The Permanency Hearing

IF THE CURRENT CASE PLAN IS REUNIFICATION

Determine whether DHS “has made **reasonable efforts** or, if the Indian Child Welfare Act applies, **active efforts** to make it possible for the [child] to safely return home” and whether “the parent has made **sufficient progress** to make it possible for the ward to safely return home,” and, if not, whether:

(1) **to continue the plan of reunification**, because further efforts by the parent and DHS will permit the safe return of the child “within a reasonable time” OR

(2) **to change the case plan** to the concurrent plan or another permanent plan – *i.e.*, adoption, guardianship, placement with a fit and willing relative, or APPLA. **ORS 419B.476(2)(a), (4)(c) and (5)**



The Permanency Hearing

IF THE CURRENT CASE PLAN IS NOT REUNIFICATION

Determine whether DHS “has made **reasonable efforts** to place the [child] in a timely manner in accordance with the plan,” and “whether [DHS] has considered permanent placement options for the [child].”

Determine whether the current case plan is in the child’s best interests and should continue, or should be changed to another permanent plan, including reunification with a parent.

ORS 419B.476(2)(a), (4)(c) and (5)

The Permanency Hearing



THE JUDGMENT – Findings and Orders

At the conclusion of the permanency hearing, the court must enter a judgment that includes all of the findings and determinations required by ORS 419B.476(5).

The Permanency Hearing



In the last few years, the Court of Appeals has reversed about 20 permanency judgments because they did not include the findings and determinations required by ORS 419B.476(5).

The Permanency Hearing



Model Judgment Form JF5

&

The Permanency Hearing “Roadmap”

Termination of Parental Rights (TPR)



Are the statutory grounds for termination satisfied, and is termination in the child's best interest? ORS 419B.500

Termination of Parental Rights (TPR)



REQUIREMENTS FOR FILING A TPR PETITION

- (1) The court must hold a permanency hearing and enter a permanency judgment changing the case plan to “adoption.”
- (2) Only the state or the child may file a TPR petition.
- (3) A TPR petition may be filed only for the purpose of freeing the child for adoption.

ORS 419B.498(3) and 419B.500

Termination of Parental Rights (TPR)

INDEPENDENT STATUTORY GROUNDS FOR TERMINATION

ORS 419B.502 (extreme conduct)

ORS 419B.504 (unfitness)

ORS 419B.506 (neglect)

ORS 419B.508 (abandonment)

ORS 419B.510 (child conceived as a result of rape by the parent)

TPR petitions are most often based on ORS 419B.504 -- i.e., allegations that a parent is ***“unfit by reason of conduct or condition seriously detrimental to the child * * * and integration of the child * * * into the home of the parent * * * is improbable within a reasonable time due to conduct or conditions not likely to change.”***

Termination of Parental Rights (TPR)

Dept. of Human Services v. T.C.A. , 240 Or App 769, 248 P3d 24 (2011) (reversing judgments terminating mother's parental rights)

“Under [ORS 419B.504], we must determine not only whether the parent is unfit, but also whether integration of the child into the parent's home is improbable within a reasonable time due to conduct or conditions not likely to change. * * * A reasonable time is ‘a period of time that is reasonable given a child or ward's emotional and developmental needs and ability to form and maintain lasting attachments.’ ORS 419A.004(20). The inquiry into a reasonable time ‘is child-specific. It calls for testimony in psychological and developmental terms regarding the particular child's requirements.’ * * *

Termination of Parental Rights (TPR)

***“* * * Although the expert witnesses acknowledged the difficulties of predicting when mother will be far enough into her recovery to be able to parent, they testified that she may well be able to resume caring for the children in a period ranging from six to 18 months. DHS did not show that mother would be unlikely to achieve sobriety or otherwise meet its burden to prove that it was improbable that mother would be able to provide a safe home for the children in that timeframe. Ultimately, the problem here is that the record is devoid of evidence regarding how such a delay in achieving permanency would affect the children's emotional and developmental needs or their ability to form and maintain lasting attachments.*”**

“* * * In short, the record does not contain clear and convincing evidence that a six-to-18-month wait to return to mother's home is unreasonable in light of the children's needs.”

Termination of Parental Rights (TPR)

TERMINATION MUST BE IN THE CHILD'S BEST INTEREST

The court is authorized to order termination of a parent's rights to a child only if the petitioner proves:

(a) one, or more, of the independent statutory grounds for termination, and

(b) that termination of the parent's rights and the parent-child relationship is in the child's best interests.

ORS 419B.500

Termination of Parental Rights (TPR)



TIMELY RESOLUTION OF THE PETITION

The hearing to adjudicate the TPR petition “may not” be held “any earlier than 10 days after service or final publication of the summons,” and, “except for good cause shown,” must be held “not later than six months from the date on which summons for the petition * * * is served.”

ORS 419B.521(1) and (2)

Termination of Parental Rights (TPR)



ADJUDICATION – The Merits

“[I]f an Indian child is involved, termination of parental rights must be supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child is likely to result in serious emotional or physical harm to the child.” **ORS 419B.521(4)**

The beyond-a-reasonable-doubt standard applies to “*all the facts that form the basis for termination of parental rights.*” ***State ex rel Dept. of Human Services v. K.C.J., 228 Or App 70, 207 P3d 423 (2009)***

Termination of Parental Rights (TPR)



ADJUDICATION – The Merits

In a non-ICWA case, “[t]he facts on the basis of which the rights of the parents are to be terminated, unless admitted, must be established by a clear and convincing evidence.” **ORS 419B.521(1)**

WHAT OREGON JUVENILE COURT JUDGES NEED TO KNOW AND WHY

TWO STORIES

THE FIRST STORY

Dept. of Human Services v. R.D., 257 Or App 427, — P3d — (2013) (affirming permanency judgment continuing plan of reunification and rejecting the child's argument that, regardless whether DHS's reunification efforts were "reasonable," the mother would never be able to adequately parent the child and the child will not be able to safely return home within a reasonable time)

(1) The jurisdiction judgment was not entered until *11 months* after the child (then one day old) was taken into protective custody and placed in substitute care, and the permanency hearing was not held until *18 months* after jurisdiction was established. ORS 419B.305(1) requires that, absent a judicial finding of "good cause," the juvenile court must hold a hearing on the petition and enter a dispositional order "no later than 60 days" after the filing of the petition, and ORS 419B.470(2) requires that, "when a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care."

THE FIRST STORY



(2) The record in this case also showed that, as a result of DHS's "delay in obtaining the services of a provider for mother's sex offender treatment[,] * * * the mother's treatment did not begin until April 2012" -- i.e., *16 months* after the dispositional order was entered and one month before the permanency hearing. ORS 419B.343 requires that a DHS case plan for reunification be rationally related to the bases for jurisdiction and provide "*[a]ppropriate* services to allow the parent the opportunity to adjust the parent's circumstances or condition to make it possible for the ward to safely return home *within a reasonable time.*"

THE FIRST STORY



(3) The juvenile court found that "further efforts can and will make it possible for the child to safely return home *within a reasonable period of time*," "ordered the parents to participate in services and make progress," continued the reunification plan in effect and "scheduled another permanency hearing for *one year later*." But, the Court of Appeals (and, apparently, the juvenile court) effectively ignored the "reasonable time" requirements of ORS 419B.476(4)(c) and (5)(c), and there is no reference in the opinion to what evidence, if any, supported the juvenile court's finding that one year is a "reasonable time" for this child. A juvenile court simply can not make a finding that further efforts will permit the safe return home of a child "within a reasonable time" without knowing/considering what the "reasonable time" is for the specific child.

THE SECOND STORY



ORS 419B.819(7) provides:

(7) If a parent fails to appear for any hearing related to the petition, or fails to file a written answer, as directed by summons or court order under this section or ORS 419B.820, the court, without further notice and *in the parent's absence*, may:

- (a) Terminate the parent's rights or, if the petition seeks to establish a permanent guardianship, grant the guardianship petition either on the date specified in the summons or order or on a future date; and
- (b) Take any other action that is authorized by law.

THE SECOND STORY

Dept. of Human Services v. A.D.G., --- Or App ---, --- P3d --- (January 2, 2014)
(reversing order denying motion to set aside “default” TPR judgment).

(1) DHS filed separate termination-of-parental-rights petitions for each child in two separate cases. Mother failed to appear at two scheduled appearances before trial. After each nonappearance, DHS sought and the juvenile court granted default orders against mother in both children's cases. Thereafter, the juvenile court ordered that the prima facie hearings for termination of mother's parental rights as to both children would be scheduled on the same date. ***On the date of the prima facie hearings, mother appeared without counsel, and the juvenile court told her that, due to the default orders entered against her, she was not entitled to participate in the hearings. DHS proceeded with its prima facie cases, and the juvenile court entered a default judgment terminating mother's parental rights to both children.***

THE SECOND STORY



(2) Mother filed a notice of appeal from that judgment. ***While her appeal was pending, mother filed a motion in the juvenile court to set aside the default judgment, arguing that the juvenile court committed legal error in entering a default judgment under ORS 419B.819(7) at a hearing at which she was present.***

THE SECOND STORY



(3) Held: The juvenile court had broad authority to set aside the default judgment under ORS 419B.923(1) and abused its discretion in denying mother's motion to set aside the default judgment under that provision. A juvenile court can enter a default judgment terminating a parent's rights under ORS 419B.819(7) only if that parent is absent from the hearing or trial on the termination petition. In this case, the juvenile court committed legal error because it entered a default judgment against mother when mother was present and attempted to participate at the prima facie hearing. Because the juvenile court erred in entering the default judgment against mother, it abused its discretion in denying mother's motion to set aside that judgment under ORS 419B.923(1).

WHAT OREGON JUVENILE COURT JUDGES NEED TO KNOW AND WHY

UMPIRE OR INQUIRING MAGISTRATE?