

Appellate Update

Through the Eyes
of a Child

Presented by:
Hon. Darleen Ortega, Oregon Court
of Appeals
Hon. Norm Hill, Presiding Judge,
Polk County Circuit Court






Court of Appeals Update

- Overview by Judge Ortega
- Nonprecedential Memorandum Opinions
- Remote Appearances





Dept. of Human Services v. R.W.C. Sr., 324 Or App 598 (2023)

- Holding: Whether court-ordered treatment or training is needed by a parent for one of the purposes stated in the statute is a question to be answered based on the circumstances of the individual case and is not answered solely by reference to the child's current permanency plan.
 - Under ORS 419B.387, a court may order a psychological evaluation, even if the plan is changed away from reunification.
 - Of note, the parties agreed that F.J.M., decided by the supreme court, was the controlling case for analysis because this case arose solely under ORS 419B.387.
-

Dept. of Human Services
v. F.J.M., 370 Or 434
(2022)

- New Test for psychological evaluations? ORS 419B.387 authorizes the juvenile court to order a psychological evaluations as "treatment" if it is "needed" by the parent.
- Juvenile court must engage in a fact specific inquiry to determine if a psychological evaluation is needed to ameliorate the circumstances that resulted in wardship and would prepare the parent to resume care.
- The findings that a particular treatment is needed (e.g. a psychological evaluation) must be connected more than tenuously to the jurisdictional bases/issues it is being ordered to correct.

The Current State of the law pertaining to Psychological Evaluations

What does F.J.M. mean for
the four-part test from
W.C.T.?

What test should be
used under F.J.M.?

Under R.C.W. Sr., would a court be
permitted to order a psychological
evaluation after a Termination
petition had been filed?

Hypotheticals?

Dept of Human Services v. H.K., 321 Or App 733 (2022)

- Psychological Evaluation: Juvenile court did not make factual findings required under the four-part standard laid out in W.C.T. so the order for a psychological evaluation vacated and remanded (ODHS conceded).
- Reasonable Efforts: Under ORS 419B.476(2)(a), even if services are extensive and therapeutically appropriate, a parent must be afforded a reasonable opportunity to demonstrate they are capable of becoming a minimally adequate parent.
- In this case, almost all service providers recommended therapeutic visitation and/or in person family therapy with a neutral provider. Institutional barriers aside, it did not occur, and this didn't allow the mother sufficient time.
- Reversed and remanded.

Reasonable Efforts

How does H.K. change the reasonable efforts analysis in a case?

What does the change practically mean for families?
ODHS? Attorneys?
Treatment/Service options?

Does H.K. fall into line with similar analyses for incarcerated parents?

Hypotheticals?

Dept. of Human Services
v. L.M.B., 321 Or App 50
(2022)

- If the record supports a parent's unfitness as the basis for termination of parental rights, the determination must still be case specific as to a particular child's best interests to sever the legal relationship.
- “Ultimately,...we must be able to determine with confidence that the benefits to the child of ending the child’s legal relationship with a parent outweigh the risk of harm posed to the child by severing that legal relationship.”
- Reversed and remanded.

Best Interests in a Termination Case

How does this case inform attorneys about how to present a case to the court?

Does this change the standard for a termination case or simply highlight the need to examine a child's best interests fully?

Hypotheticals?

Dept. of Human Services v. T.B., 326 Or App 192 (2023)

- Father appealed a juvenile court judgment requiring him to transfer child's dog (an emotional support animal) to the child.
 - The use of an emotional support animal may be considered a form of counseling under ORS 419B.385.
 - ORS 419B.090 supports such rulings through the policies of the State of Oregon.
-

Analysis

Does this have implications
in other areas of law? ADA
for example?

How might the court use this analysis
of ORS 419B.090 in other cases?

Dept. of Human Services v. J.E.D.V., 320 Or App 149 (2023)

- Mistrial: Motions for mistrial based on improper ex parte contact between the Judge and the mother were untimely, but still reviewed for abuse of discretion. Held: Conversation between the Judge and the mother did not involve information relevant to a question of law or fact before the court, so it did not constitute ex parte contact.
 - Parental Fitness: Though Mother had mental health diagnoses that made her care of the children less than optimal, record did not support contention that mother could not provide legally adequate care of her children for an extended period of time. Mother's conditions did not present a risk of seriously detrimental harm requiring termination.
 - Dismissal with Prejudice: While dismissal of a TPR with prejudice prohibits the refiling of the petition in question, question remains unclear as to how dismissal with prejudice will prohibit future petitions. The dependency case is undisturbed and the agency still had to abide by the statutory timelines.
 - Motion for Remote Testimony: Record did not support that denial of a motion for remote testimony of the first day of trial was prejudicial.
-

Judicial Ethics and Parental Fitness

What is ex parte/ personal
knowledge ?

How often are children joining
appeals? And what does that mean?

Dismissal of a TPR –
with or without
prejudice?

State v. A.R.H., 371 Or 82 (2023)

- Appeal of an order requiring a youth to report as a sex offender. Affirmed.
- Factual inquiry as to whether it is highly probable that a youth proves they are rehabilitated and not a threat to public safety.
- ORS 163A.030(7)(b) requires equal weight for all factors a court is required to consider when determining risk to re-offend.
- Standard of review requires court to accept the trial court's findings unless the record requires otherwise.
- ORS 163A.030 not unconstitutionally vague.
- Of note, the court shared some concerns in footnote 10, relating to the proof requirements. Additionally, the court seemed to suggest the youth could still challenge his registration requirement in footnote 11.

How to Apply

How do we think about this
in practical terms?

Will more challenges make
their way to the Supreme
Court?

Get in Touch

Contact us



darleen.ortega@ojd.state.or.us



norm.r.hill@ojd.state.or.us



jordan.f.bates@ojd.state.or.us

