

Dependency Cases 101



TERMINATION OF PARENTAL RIGHTS

Oregon Mini Child Abuse and Neglect Institute
January 28-29, 2020

Filing the TPR Petition



REQUIREMENTS

Requirements for Filing TPR



- **The plan must be adoption**
 - The court must hold a permanency hearing and enter a permanency judgment changing the case plan to adoption. A TPR petition may be filed only for the purpose of freeing the child for adoption. ORS 419B.498(3).
- **Appeal of permanency judgment**
 - Does NOT preclude court from proceeding with adjudication of the TPR petition. ORS 419A.200(7)(b).
- **Who may file**
 - Only the state or the child may file a TPR petition.
- **Clear and convincing evidence required**
 - The facts must be established by clear and convincing evidence. ORS 419B.521(1). If ICWA applies, the standard is beyond a reasonable doubt. ORS 419B.521(4).

The TPR Trial



PARTICIPANTS
TIMING
STANDARDS
REQUIREMENTS

Parties and Participants



- Determine who should be present.
- Parties must be served summons. ORS 419B.819.
- Parties have a right to notice of the proceedings. ORS 419B.875.
- Other participants:
 - Foster parents
 - Grandparents

Timely Resolution of the TPR Petition



- **The hearing to adjudicate the petition:**
 - May not be held any earlier than 10 days after service or final publication of the summons, and
 - Must be held within six months from the date on which the summons is served (except for good cause shown). ORS 419B.521(1) and (2).

Continuances



- Ensure the TPR hearing is held *no earlier than 10 days* and *no later than 6 months* after service of or final publication of the summons, unless the court finds good cause exists to allow a continuance and makes appropriate written findings. ORS 419B.521(1) & (2).
- When determining whether “good cause” exists to grant a continuance, the judge should consider the child’s age and potential adverse effects of delay. ORS 419B.521(2).

Evidentiary Standards and Requirements



- **Rules of Evidence Apply**

- *See State ex rel. Juvenile Dept. of Lincoln County v. Ashley*, 312 Or. 169 (1991).
- The court should not rely on exhibits admitted in the prior dependency case. Those exhibits were admitted for a different purpose and, except at adjudication, were admitted without application of the OEC. *See* ORS 419B.185(1)(g); 419B.325(2); 419B.449(2) and 419B.476(1).
- The court can take judicial notice of particular facts in the record but only of facts “not reasonably in dispute.” ORS 40.060 – 40.085.

- **Burden of Proof**

- In *non-ICWA* cases, unless admitted, facts must be established by *clear and convincing evidence*. ORS 419B.521(1). However, burden is *beyond a reasonable doubt* for allegations of criminal conduct.
- *If ICWA* applies, facts not admitted must be supported by evidence *beyond a reasonable doubt*, and include testimony of a qualified expert witness, that continued custody is likely to result in serious emotional or physical harm to the child. ORS 419B.521(4).

- **Children as witnesses**

- If it is determined to be in the child’s best interest, the court may permit children appearing as witnesses to give testimony outside the presence of their parents and others (except the parties’ attorneys). ORS 419B.521(3).

- **Recording**

- The hearing must be recorded in compliance with ORS 8.304. ORS 419B.521(1).

Required Findings to Grant TPR



- The court must determine that TPR is in the **“best interest” of the child**. ORS 419B.500.
- The court must determine that the state has met the applicable **burden of proof** with respect to the statutory grounds set forth in the TPR petition.
- Generally, **grounds for TPR** include findings of:
 - Extreme parental conduct. ORS 419B.502.
 - Conduct or conditions resulting in parental unfitness. ORS 419B.504.
 - Neglect. ORS 419B.506.
 - Abandonment. ORS 419B.508.
 - Circumstances in which rape led to conception of the child. ORS 419B.510.

Grounds for TPR



Extreme Conduct

Unfitness

Neglect

Abandonment

Child conceived as a result of rape

Extreme Conduct Toward Any Child



- Court must find the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward **any** child.
- The statute provides a non-exclusive list of circumstances for the court to consider:
 - Rape, sodomy, or sex abuse of any child by the parent.
 - Intentional starvation or torture of any child by the parent.
 - Abuse or neglect of any child by the parent, which results in death or serious physical injury.
 - Parental conduct that aids or abets another person who has caused the death of a child due to abuse or neglect.
 - Parental conduct attempting, soliciting, or conspiring to cause the death of a child.
 - Previous involuntary termination of parental rights to another child *if* conditions giving rise to such termination are not ameliorated.
 - Knowingly exposing a child of the parent to the storage or production of methamphetamines from precursors.

Extreme Conduct Toward Any Child



- **Reasonable efforts NOT required.**
 - A finding of extreme conduct requires “no efforts... be made by the available social agencies... to make it possible for the child or ward to safely return home within a reasonable amount of time.” ORS 419B.502.
 - *See also* ORS 419B.340(5) for circumstances in which the court may relieve DHS from the requirement to make reasonable efforts to make it possible for the ward to safely return home.

Unfitness



- **The court must find:**
 - The parent has engaged in some conduct or is characterized by some conditions; and
 - The conduct or condition is “**seriously detrimental**” to the child.
 - If the parent has met the foregoing criteria, the court must find that the integration of the child into the home is improbable within a **reasonable time** due to conduct or conditions not likely to change.
- *See State ex rel SOSCF v. Stillman*, [333 Or 135, 146 \(2001\)](#).

Unfitness



- **Fitness** is assessed by the parent's conduct conditions as they exist at the time of the TPR trial.
 - *Dept. of Human Services v. H.L.R.*, [244 Or App 651 \(2011\)](#).
- For conduct or condition to be deemed “**seriously detrimental**,” petitioner must show its effect on the child, looking at the child's specific needs.
 - *Dept. of Human Services v. K.M.M.*, [260 Or App 34, 45 \(2013\)](#).
- “**Reasonable time**” is a period of time that is reasonable given a child's age, developmental needs, and ability to form lasting attachments. ORS 419A.004(23)
 - The inquiry is “child-specific” and the state must show how a delay in permanency would affect the child's emotional and developmental needs or the ability to form lasting attachments. *Dept. of Human Services v. F.J.S.*, [259 Or App 565, 580 \(2013\)](#).

Unfitness



- **Examples of conduct or conditions that may qualify as **unfitness**:**
 - Emotional or mental illness rendering the parent incapable of providing proper care for the child over an extended time.
 - Conduct that is abusive, cruel, or sexual toward any child.
 - Abuse of alcohol or controlled substances to that extent that parental ability is impaired.
 - Physical neglect of the child.
 - Parent's lack of effort, or failure to effect a lasting effort, after reasonable efforts by available social agencies to adjust circumstances to make it possible for the child to return home within reasonable time. (see above or ORS 419A.004(23) defining "reasonable time")
 - Criminal conduct impairing the parent's ability to adequately care for the child.

Unfitness



- **Oregon cases:**

- Father's pattern of reacting in an inappropriately aggressive manner when considered in the context of his **psychological deficits** and his **historical pattern of behavior** constituted a condition that was seriously detrimental to the child, despite the fact that father had completed services. The child could not be reintegrated into father's home within a reasonable time after father had almost three years to address his anger problem and the child was at risk for attachment issues. *Dept. of Human Services v. F.J.S.*, [259 Or App 565, 580 \(2013\)](#).
- Record demonstrated by clear and convincing evidence that mother's **untreated schizophrenia** is harmful to the child and mother is unable to provide the child with proper care, and that because she continues to **refuse to take medication**, her condition is unlikely to change so as to allow the child to be integrated into her home within a reasonable time. The court further concluded termination was in the child's best interest due to her need for permanency and stability, and her preference to live permanently with her adoptive parents. *Dept. of Human Services v. K.M.M.*, [260 Or App 34 \(2013\)](#).

Neglect



- The court must find that the parent failed or neglected *without reasonable and lawful cause* to provide the child's **basic physical and psychological needs** for ***six months*** prior to the filing of a petition.
- A non-exclusive list of factors is listed in the statute:
 - Failure to care or make reasonable payments for substitute care if child is in custody of others.
 - Failure to maintain regular visitation or other contact with the child that was designed and implemented to reunite the child with the parent.
 - Failure to contact or communicate with the child or the child's custodian.
- Additional considerations:
 - The court shall disregard any incidental or minimal expressions of concern or support. ORS 419B.506.

Abandonment



- **Court must find:**
 - The parent(s) have abandoned the child or the child was left under circumstances such that the identity of the parent(s) was unknown and could not be ascertained, despite diligent searching, and
 - The parent(s) have not come forward to claim the child within three months following the finding of the child.

Child Conceived as a Result of Rape



- Parent's rights may be terminated if the court finds the child was conceived as the result of an act that led to the parent's conviction for rape under ORS 163.365 or 163.375 or other comparable law of another jurisdiction.
- Termination of parental rights under this section does not relieve parent of the obligation to pay child support. ORS 419B.510(2).

Default Trial With Out Parent



**FAILURE TO APPEAR
EXCUSABLE NEGLECT**

Failure to Appear



- **Default judgment** must be entered when parent is absent.
 - In *Dept. of Human Services v. A.D.G.*, [260 Or App 525 \(2014\)](#), the Court of Appeals reversed the juvenile court's entry of a judgment terminating mother's rights when she failed to appear at the initial scheduled appearance, the court entered an Order of Default, but then **mother appeared at a subsequent prima facie hearing** at which the juvenile court entered a judgment terminating her parental rights. The court held the parent must be absent at the hearing when the court actually terminates the parents rights.

Excusable Neglect



- **Court may set aside or modify** any order or judgment based on **clerical mistakes** in judgments, orders or other parts of the record, **excusable neglect** and for **newly discovered evidence** that by due diligence could not have been discovered in time to present it to the court at the hearing. ORS 419B.923.
 - A parent's reasonable, good faith mistake in failing to appear for a pretrial hearing in a TPR proceeding may constitute excusable neglect as a matter of law, which under the totality of the circumstances may require a juvenile court to grant the parent's subsequent motion to set aside the judgment.
 - *Dept. of Human Services v. K.M.P.*, [251 Or App 268 \(2012\)](#).

Settlement



**RELEASE AND SURRENDER
STIPULATED JUDGMENT**

Release and Surrender



- **Parent may voluntarily relinquish parental rights under ORS 418.270 at any time.**
 - Parent signs release and surrender documents prepared by the AAG.
 - Does not need to be on the record unless judge acting as notary.
 - The relinquishment is revocable until the child is physically placed in the adoptive placement. ORS 418.270(4).
- **Encourage mediation through the DHS mediation program.**
 - The mediator is paid through DHS and works with the adoptive resource and birth parents on continuing contact issues. ORS 419B.517(2).

Stipulated Judgment



- Anytime before trial the parent may agree to enter into a Stipulated Judgment Terminating Parental Rights.
 - Standard form provide by the AAG.
 - Court reviews every section after the judge's signature line with the parent on the record.
- Encourage mediation through the DHS mediation program.

After the Trial



JUDGMENT
APPEAL
CONTINUE WARDSHIP

Judgment Terminating Parental Rights



- **Legal custody and guardianship**
 - The court may place the ward in the legal custody and guardianship of a public or private institution or agency (e.g., DHS) authorized to consent in loco parentis to the adoption of children, or make any order directing disposition of the ward that it is empowered to make under ORS Chapter 419B. ORS 419B.527(1).
- **Rights of one parent**
 - The rights of one parent may be terminated without affecting the rights of the other parent (ORS 419B.500), however, the authority to consent to the adoption of the ward is only effective with respect to the parent whose rights have been terminated. ORS 419B.527(2).
- **Parents have no standing to appear in subsequent proceedings unless an appeal has been filed. ORS 419B.524.**

Appeal



- **Stay of order or judgment**
 - On its own motion or on the motion of a party, the court may stay the effect of the order or judgment pending appeal as provided in ORS 19.335, 19.340 and 19.350 or other provision of law. ORS 419B.926.
- **Consolidation**
 - The appeal of any TPR judgment must be consolidated with any pending appeal of a disposition order, review hearing judgment or a permanency judgment. ORS 419A.200(7)(c).

Continued Wardship



- **Wardship continues until a judgment of adoption is entered**
 - ORS 419B.328(2)(d). After parental rights have been terminated, the court continues to monitor the case to ensure for the safety and welfare of the ward, and timely completion of adoption proceedings.
- **Permanency hearings**
 - **When child not placed for adoption**
 - ✦ When DHS submits the six month court report required by ORS 419B.440(2)(b), if the child has not been physically placed for adoption or if DHS has not initiated adoption proceedings within six months from the surrender of parental rights or entry of the order terminating parental rights, the court shall conduct a permanency hearing within 30 days of receiving the DHS court report. ORS 419B.470(4). Subsequent permanency hearings shall be held every six months until the child is placed for adoption or adoption proceedings have been initiated. ORS 419B.470(7).
 - **Annual**
 - ✦ Annual permanency hearings are required until the child leaves substitute care. ORS 419B.470(6).