



# COURT OF APPEALS

## Media Release

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**CONTACT:**

Julie Smith  
(503) 986-5634

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The Court of Appeals issued these opinions:

State of Oregon v. Joseph Richard Ventris  
(A163907 - Columbia County Circuit Court)  
Providence Health Plan v. Joe Lewis Allen  
(A160124 - Washington County Circuit Court)  
Jack R. Yarbrough v. Viewcrest Investments, LLC  
(A166103 - Linn County Circuit Court)  
State of Oregon v. Tisha Nichelle White  
(A164878 - Washington County Circuit Court)  
State of Oregon v. Cecil L. Schmitz  
(A164644 - Wheeler County Circuit Court)  
State of Oregon v. Kenneth Charles Salkoski  
(A166743 - Washington County Circuit Court)  
B. LaVelle Underhill v. Steven A. Prock  
(A164671 - Sherman County Circuit Court)

The Court of Appeals issued these *per curiam* opinions:

State of Oregon v. Frederick Percy Stills  
(A166183 - Deschutes County Circuit Court)  
State of Oregon v. Jason Craig Butler  
(A166413 - Marion County Circuit Court)  
State of Oregon v. Michael Allen Williams, II  
(A167655 - Douglas County Circuit Court)  
State of Oregon v. D. C. F.  
(A168233 - Baker County Circuit Court)  
State of Oregon v. C. F. P., Jr.  
(A168861 - Multnomah County Circuit Court)

State of Oregon v. R. E. F.  
(A168881 - Coos County Circuit Court)  
State of Oregon v. S. M. P.  
(A169211 - Lane County Circuit Court)  
Department of Human Services v. J. C. H.  
(A169900 - Umatilla County Circuit Court)  
State of Oregon v. G. W.  
(A170034 - Multnomah County Circuit Court)  
Department of Human Services v. R. A. H., Jr.  
(A170200 - Washington County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. Marilyn A. Van Santen  
(A165233 - Polk County Circuit Court)  
State of Oregon v. Lafayette Toney  
(A166053 - Jackson County Circuit Court)  
State of Oregon v. Richard James Dompier  
(A166633 - Lane County Circuit Court)  
State of Oregon v. Jacob Wavel Hunt  
(A166753 - Umatilla County Circuit Court)  
State of Oregon v. Johnathan Cody Larsen  
(A166802 - Lane County Circuit Court)  
State of Oregon v. Jason James Lipps  
(A166851 - Clackamas County Circuit Court)  
State of Oregon v. Timothy Zebulon Ziegler  
(A166991 - Tillamook County Circuit Court)  
State of Oregon v. Alin Sorin Bisnu  
(A167117 - Washington County Circuit Court)  
State of Oregon v. Todd Mikal Stafney  
(A167123 - Washington County Circuit Court)  
State of Oregon v. Robert Edward Menke  
(A167143 - Marion County Circuit Court)  
State of Oregon v. Jeffrey Scott Heilbronn  
(A167149 - Coos County Circuit Court)  
State of Oregon v. Demencio Sifuentes, Jr.  
(A167325 - Marion County Circuit Court)  
Jon Quintin Johnston v. Board of Parole and Post-Prison Supervision  
(A167809 - Board of Parole and Post-Prison Supervision)  
Teresa Martin-Berrada and Mark M. Berrada  
(A169112 - Deschutes County Circuit Court)  
Anthony V. DeLisle, Sr. v. Oregon Health Authority  
(A169832 - Office of Administrative Hearings)  
Brent Steven Sherman, Sr. v. Mitzy Lynn Maple  
(A170125 - Lake County Circuit Court)

Department of Human Services v. S. A. W.  
(A170131 - Multnomah County Circuit Court)

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**State of Oregon v. Joseph Richard Ventris**  
(Egan, C. J.)

The state appeals a corrected judgment and sentencing order that deleted defendant's original sentence of life imprisonment following his conviction for felony murder. The trial court "corrected" the original judgment because it determined that it contained an "erroneous term," namely, the life imprisonment term, pursuant to former ORS 138.083 (2015), repealed by Or Laws 2017, ch 529, § 26. Defendant argues that the trial court correctly concluded that the term was "erroneous" because it was unconstitutional, among other reasons. Held: Based on its decisions in *State v. Hubbard*, 290 Or App 640, 417 P3d 498, rev den, 363 Or 283 (2018), and *State v. Haynes*, 168 Or App 565, 7 P3d 623, rev den, 331 Or 283 (2000), the Court of Appeals held that the trial court erred in correcting the judgment and reversed and remanded for the trial court to reinstate the judgment. Reversed and remanded.

**Providence Health Plan v. Joe Lewis Allen**  
(Ortega, P. J.)

Plaintiff sought reimbursement from defendant, a participant in one of the Oregon Public Employees Benefits Board's (PEBB's) self-insured health plans, for medical benefits paid on defendant's behalf after defendant was involved in a car accident. Defendant asserted that reimbursement was governed by ORS 742.534 to 742.538 (the reimbursement statutes) rather than by the terms of the plan. The trial court agreed with defendant, finding that PEBB and plaintiff are insurers required to follow the requirements of the reimbursement statutes. On appeal, plaintiff challenges that ruling and the denial of its cross-motion for summary judgment, arguing that PEBB is not an "authorized health insurer" under ORS 742.534, that plaintiff is a third-party administrator rather than an insurer, and that neither PEBB nor plaintiff are subject to the reimbursement statutes. Held: The trial court did not err. Under the terms of the agreement between plaintiff and PEBB, plaintiff was a health care service contractor and required to comply with statutes applicable to health care service contractors, including the reimbursement statutes. Affirmed.

**Jack R. Yarbrough v. Viewcrest Investments, LLC**  
(DeVore, J.)

Defendants to a foreclosure action appeal a corrected limited judgment and a limited judgment, assigning error to the trial court's entry of each judgment. Defendants argue that the court exceeded its authority under ORCP 71 A when it entered a corrected "limited" judgment to change the title of a mislabeled "general" judgment. Defendants further contend that, because the court lacked authority to enter that corrected limited judgment, the original general judgment still controlled, disposing of all claims and precluding subsequent entry of a separate limited judgment. Held: The trial court properly exercised its authority to address a clerical error under ORCP 71 A. The statute on changing a "general" judgment to a "limited" judgment did not limit the authority under ORCP 71 A to correct a clerical error. ORS 18.112. Under the factual circumstances of this case, the judgment's designation qualified as the sort of clerical mistake that the trial court had jurisdiction to correct, regardless of the pending appeal, and the court followed the proper procedure. Consequently, because the court did not err in entering the corrected limited judgment, it was free to enter the limited judgment that followed. Affirmed.

**State of Oregon v. Tischa Nichelle White**  
(Lagesen, P. J.)

Defendant appeals two judgments: a judgment of conviction and a supplemental judgment imposing restitution and a compensatory fine. Her convictions resulted from physical injuries that she caused to her son, a minor child, who was evaluated for those injuries. On appeal, defendant assigns error to the trial court's award of restitution and a compensatory fine to defendant's son's insurer for the amounts it paid for the evaluations. Held: The trial court's award of restitution and a compensatory fine was legally erroneous. Under *State v. Moreno-Hernandez*, 365 Or 175, 442 P3d 1092 (2019), an unemancipated minor who claims only medical expenses as damages as a result of a defendant's conduct does not qualify as a "victim" under ORS 137.103(4)(a). That, in turn, means that defendant's son's insurer is not a "victim" within the meaning of ORS 137.103(4)(d). Supplemental judgment reversed; remanded for resentencing; otherwise affirmed.

**State of Oregon v. Cecil L. Schmitz**  
(Powers, P. J.)

Defendant appeals from a judgment of conviction for possession of methamphetamine. Defendant assigns error to the trial court's denial of his motion to suppress evidence, arguing that the initial stop was not justified by the emergency aid exception to the warrant requirement, and that the extension of the stop was not justified by reasonable suspicion of drug possession. Held: The trial court erred when it denied defendant's motion to suppress. The initial stop was justified by the emergency aid exception to the warrant requirement under Article I, section 9, of the Oregon Constitution, but the extension of the stop after the sheriff determined that there was no medical emergency was not justified by reasonable suspicion of drug possession. Reversed and remanded.

**State of Oregon v. Kenneth Charles Salkoski**  
(Landau, S. J.)

Defendant appeals from a judgment of conviction for unlawful possession of methamphetamine. He assigns error to the trial court's denial of his motion to suppress evidence obtained during an inventory of his backpack. Held: The trial court did not err. The inventory of defendant's backpack was conducted pursuant to an inventory policy authorizing the inventory of items "designed for or likely to contain money or small valuables," which includes a backpack. Affirmed.

**B. LaVelle Underhill v. Steven A. Prock**  
(Sercombe, S. J.)

Petitioner filed a petition in circuit court to establish a statutory way of necessity, and the circuit court dismissed the action for lack of subject matter jurisdiction. The circuit court also denied respondents' request for attorney fees, concluding that attorney fees were not authorized under ORS 376.175(2)(e) because an order dismissing the petition for lack of jurisdiction is not "an order granting or denying the way of necessity" within the meaning of ORS 376.175(1). Respondents appeal. Held: The trial court did not err. The order dismissing the action for lack of subject matter jurisdiction was not entered after a determination of "whether or not a need has been demonstrated for the granting of a way of necessity," ORS 376.175(1), and it did not

grant or deny the way of necessity. Accordingly, the dismissal was not an order within the meaning of ORS 376.175, and an award of attorney fees was not authorized under ORS 376.175(2)(e). Affirmed.

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