COURT OF APPEALS
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The Court of Appeals issued these opinions:

John Ray Jones v. Board of Parole and Post-Prison Supervision
(A154701 - Board of Parole and Post-Prison Supervision)
Nationstar Mortgage, LLC v. Richard Niday
(A160373 - Clackamas County Circuit Court)
Big River Construction, Inc. v. City of Tillamook
(A152131 - Tillamook County Circuit Court)
State of Oregon v. Nathan Howard Stuart
(A155765 - Douglas County Circuit Court)
Warren D. Duffour v. Portland Community College
(A155284 - Workers' Compensation Board)
Robert Haden King v. Board of Parole and Post-Prison Supervision
(A156864 - Board of Parole and Post-Prison Supervision)
Khrizma Kuhn v. Department of Human Services
(A157445 - Office of Administrative Hearings)
Department of Human Services v. S. E. K. H.
(A162731 - Yamhill County Circuit Court)
Larry D. Bell v. Board of Parole and Post-Prison Supervision
(A156320 - Board of Parole and Post-Prison Supervision)

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

State of Oregon v. Andrew Michael Winkelman
(A157591 - Washington County Circuit Court)
State of Oregon v. Roy Lawrence Phelps
(A158068 - Douglas County Circuit Court)
State of Oregon v. Norman Daniel Hoag
(A158906 - Columbia County Circuit Court)

State of Oregon v. Storm Anthony Brockway
(A159629 - Washington County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. Christian Israel Leon-Remigo
(A159744 - Marion County Circuit Court)
Brian Lee Morgan v. Carla A. Sammons
(A160163 - Multnomah County Circuit Court)
State of Oregon v. David Michael Garrett
(A160613 - Jackson County Circuit Court)
Senadija Hercenberger and Robert Hercenberger
(A161196 - Washington County Circuit Court)
John Berman v. Mark Oto
(A161231 - Multnomah County Circuit Court)

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John Ray Jones v. Board of Parole and Post-Prison Supervision
(Ortega, P. J.)

The Board of Parole and Post-Prison Supervision (the board) postponed petitioner's parole release date based on a finding that he had a present severe emotional disturbance (PSED) that constituted a threat to the health or safety of the community. That finding was based on a psychological evaluation of petitioner conducted prior to his release date. The board later reopened the case for administrative review. As part of the review process, and after petitioner's release date had passed, the board ordered petitioner to undergo a second psychological evaluation and exit interview. The board ultimately affirmed its earlier decision to postpone petitioner's release based primarily on the second evaluation. Petitioner seeks judicial review arguing that the record--which he contends should only encompass the first psychological evaluation--does not support a finding that he had a PSED and, as such, the board's decision to postpone release is not supported by substantial evidence and substantial reason. Further, petitioner argues that the board was not allowed to rely on the second evaluation and exit interview to justify its earlier decision to defer his release date. Held: Because the board determined that the first psychological evaluation alone was insufficient to support a finding that petitioner had a PSED, the dispositive issue was whether the board was allowed to consider the second psychological evaluation and to supplement its reasoning for postponing petitioner's release date. On that issue, the Court of Appeals concluded that the board erred in relying on the second psychological evaluation to support its finding that petitioner had a PSED. Reversed and remanded.

Nationstar Mortgage, LLC v. Richard Niday
(Ortega, P. J.)

Defendants appeal a general judgment of foreclosure, asserting that the trial court erroneously granted summary judgment. Defendants also filed a motion for review and relief from a trial court order that set the amount of the supersedeas undertaking to stay the judgment pending appeal at $2,500 per month. Held: The trial court properly entered summary judgment because the summary judgment record contained undisputed evidence that, at the time of the foreclosure action, plaintiff was in possession of the promissory note indorsed in blank and defendants were in default of their obligations under the promissory note and deed of trust. As for the supersedeas undertaking, on de novo review under ORS 19.360, the trial court's order

setting the supersedeas undertaking at $2,500 per month is affirmed. Motion for review of order on supersedeas undertaking granted; judgment of foreclosure and order on supersedeas undertaking affirmed.

Big River Construction, Inc. v. City of Tillamook
(Sercombe, J.)

Plaintiff and third-party defendant petition for reconsideration of the decision in Big River Construction, Inc. v. City of Tillamook, 281 Or App 787, 386 P3d 19 (2016). They seek correction of the disposition to affirm the portions of the general judgment that were not reversed on appeal. Plaintiff and third-party defendant also argue that the disposition should be modified to affirm the supplemental judgment because the supplemental judgment did not relate to the portion of the general judgment that was reversed and it should, therefore, not be reversed under ORS 20.220(3)(a). Held: Reconsideration is allowed to correct the prior disposition and affirm the portions of the general judgment that were not specifically reversed on appeal. In addition, the prior disposition and prior opinion are modified to affirm the supplemental judgment. Reconsideration allowed; former disposition withdrawn; former opinion modified and adhered to as modified. On appeal, general judgment on plaintiff's breach of contract claim reversed and remanded for retrial of damages; otherwise affirmed. Supplemental judgment affirmed. On cross-appeal, affirmed.

State of Oregon v. Nathan Howard Stuart
(Egan, J.)

Defendant appeals a judgment of conviction for manslaughter in the second degree, ORS 163.125. He assigns error to the trial court's denial of his motion for judgment of acquittal, contending that the evidence was insufficient to prove that he acted recklessly. Held: Based on the facts adduced at trial and the reasonable inferences that can be drawn from those facts, there was sufficient evidence that defendant was aware of and consciously disregarded a substantial and unjustifiable risk that his conduct would cause the death of another human being. Therefore, the evidence was sufficient to prove that defendant acted recklessly, and the trial court did not err in denying defendant's motion for judgment of acquittal. Affirmed.

Warren D. Duffour v. Portland Community College
(Lagesen, J.)

Claimant petitions for review of a final order of the Workers' Compensation Board; employer cross-petitions for review of the same order. ORS 656.298(1), (4). Claimant assigns error to the board's denial of his requests for penalties and attorney fees in connection with employer's premature closure of his workers' compensation claim, which the board concluded were procedurally barred. Employer assigns error to the board's award of some of the penalties and fees that the board determined were not procedurally barred. Held: The board erred to the extent that it concluded that claimant had not properly raised his requests for penalties and fees. Reversed and remanded on the petition; affirmed on the cross-petition.

Robert Haden King v. Board of Parole and Post-Prison Supervision
(Lagesen, J.)

Petitioner seeks review of a final order of the Board of Parole and Post-Prison Supervision. The board found that petitioner had not persuaded it that he is likely to be rehabilitated within a reasonable period of time and declined to convert petitioner's life sentence without possibility of parole to life with possibility of parole. Petitioner contends that a number of the subsidiary factual findings on which the board relied in reaching that conclusion are not supported by substantial evidence in the record and that the order is not supported by substantial reason. Held: Three of the factual findings underlying the board's conclusion that petitioner did

not prove that he was likely to be rehabilitated within a reasonable period of time were not supported by substantial evidence in the record. Reversed and remanded.

Khrizma Kuhn v. Department of Human Services
(Lagesen, J.)

Petitioner is a developmentally disabled person who receives benefits from the Department of Human Services (DHS) on account of her disability. She seeks review of a final order of DHS that upheld the reduction of transportation service benefits under former OAR 411-330-0110(6)(a)(B) (Dec 28, 2013). The order, issued by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings, concluded that certain trips were not reimbursable because they were not "social benefits," defined by rule to mean a service "solely intended" to assist a disabled individual to function in society. The ALJ ruled that trips do not qualify as a social benefit if they benefit someone in addition to the disabled individual. Held: The ALJ's interpretation of "social benefit," which DHS neither advocated nor ratified, is not entitled to deference. Based on the text of the rule, a social benefit may confer an incidental benefit to another person so long as it is solely intended to assist the disabled individual. The ALJ should determine in the first instance whether, under the correct definition of "social benefit," DHS was justified in reducing petitioner's transportation mileage benefit. Reversed and remanded.

Department of Human Services v. S. E. K. H.
(Lagesen, J.)

This consolidated juvenile dependency appeal arises from a jurisdictional and dispositional judgment over parents' two children. ORS 419A.200. In that judgment, the juvenile court took dependency jurisdiction over the children under ORS 419B.100(1)(c) on the ground that their conditions and circumstances endangered them and placed them in the legal custody of the Department of Human Services (DHS). In so doing, the court denied children's request to order DHS to place them with their paternal great-grandmother, who intervened in the case under ORS 419B.116, concluding that it lacked the authority to direct DHS to make a specific placement. Father, mother, and children appeal. Father and mother assign error to the juvenile court's jurisdictional determination, claiming that the evidence is insufficient to support the finding that the children were endangered. Mother and children additionally assign error to the juvenile court's dispositional determination that it lacked authority to order DHS to place the children with great-grandmother. Held: There was legally sufficient evidence in the record to permit a finding that the children were endangered, therefore the juvenile court did not err when it found that jurisdiction over the children was warranted. Additionally, the court did not err when it concluded that it lacked the authority to order DHS to place the children with great-grandmother. Affirmed.

Larry D. Bell v. Board of Parole and Post-Prison Supervision
(Garrett, J.)

Petitioner seeks judicial review of a final order delaying parole consideration for 24 months. Petitioner was sentenced as a "dangerous offender" pursuant to ORS 161.725 (1985). On review, petitioner assigns error to the board's finding that, for purposes of ORS 144.228(1)(b) (1985), "the condition which made [petitioner] dangerous" was not "absent or in remission" at the time of his parole-consideration hearing in 2013. Petitioner argues that the board's finding was not supported by substantial evidence become some of the "clinical impressions" presented to the sentencing court in 1986 no longer existed in 2013. Held: The board's order was supported by substantial evidence. The board was not required to find that the same "clinical impressions" documented at sentencing persisted in order to find that "the condition which made [petitioner] dangerous" was not "absent or in remission." Instead, the relevant question was whether, at the time of the parole-consideration hearing, petitioner "suffer[ed] from a severe personality disorder indicating a propensity

toward criminal activity" within the meaning of ORS 161.725(1) (1985). Here, the record supported a finding that petitioner suffered from such a disorder at the time of the hearing. Affirmed.

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