# APPELLATE CASE LAW UPDATE

August 10, 2009

Presented by the Honorable Michael C. Livingston

## **Table of Contents**

### SECTION I -- ORS 419A.253 – "Social File" Information and the Record on Appeal......1

#### SECTION II – Appellate Court Decisions (July 2008 to July 2009)

DEPENDENCY CASES......2-23

1. <u>State ex rel Department of Human Services v. E. K.</u>, Or App , P3d (July 29, 2009) (affirming permanency judgments changing case plans for four of the mother's six children where, notwithstanding reasonable efforts by DHS and the mother's access to community resources, the mother's deficiencies continue to prevent her from being able to adequately supervise her children or meet their psychological and emotional needs)

2. <u>State ex rel Juv. Dept. v. C. D. J., 229 Or App 160, P3d 2009</u> (the juvenile court erred in changing plan to adoption where, under the circumstances, putative father's acknowledgment of paternity and cooperation with paternity testing constituted sufficient progress)

3. <u>State ex rel Department of Human Services v. N. S., 229 Or App 151,</u> <u>P3d (2009)</u> (reversing permanency judgment changing plan to guardianship)

4. <u>State ex rel Juv. Dept. v. M. U., 229 Or App 35, 210 P3d 254 (2009)</u> (denying motion for leave to file "late appeal")

5. <u>State ex rel Juv. Dept. v. K.D., 228 Or App 506, 209 P3d 810 (2009)</u> (finding "compelling reason" not to file termination petition and reversing permanency judgment changing plan to adoption)

6. <u>State ex rel Dept. of Human Services v. C.B., 228 Or App 85, 206 P3d</u> <u>1139 (2009)</u> (challenge to DHS rule defining "relative")

7. <u>State ex rel Dept. of Human Services v. M.A., 227 Or App 172, 205</u> <u>P3d 36 (2009)</u> (reversing permanency hearing judgment because the juvenile court did not make findings required by ORS 419B.476(5)(a))

8. <u>State ex rel Dept. of Human Services v. M.B., 226 Or App 215, 215</u> <u>P3d 258 (2009)</u> (affirming judgment establishing guardianship under ORS 419B.366) 9. <u>State ex rel DHS v. W. P., 345 Or 657, 202 P3d 167 (2009)</u> (holding that the "exclusionary rule" does not apply in juvenile court dependency proceedings)

10. <u>State ex rel Juv. Dept. v. G. A. K. and A. M. F., 225 Or App 477, 201 P3d</u> <u>930 (2009)</u> (the juvenile court abused its discretion in dismissing petitions as a sanction for discovery violations)

11. <u>State ex rel DHS v. J. N., 225 Or App 139, 200 P3d 615 (2009)</u> (although the juvenile court's failure to make written findings required for permanency judgment was "plain error," Court of Appeals declined to exercise its discretion to review that unpreserved claim)

12. <u>State ex rel Juv. Dept. v. J. S. W. and T. L. W., 223 Or App 177, 195 P3d</u> 408 (2008) (mootness of appeal)

13. <u>State ex rel Juv. Dept. v. K. L., 223 Or App 35, 194 P3d 845 (2008)</u> (the juvenile court erred in denying DHS's request for a 90-day continuance of return-to-parent case plan, even though granting the request would continue the child's out-of-home placement beyond the 15-out-of-22-months time line under ORS 419B.498(1)(a))

14. <u>State ex rel Juv. Dept. v. G. L., 220 Or App 216, 185 P3d 483 (2008)</u> (the juvenile court's authority to order psychological evaluations)

15. <u>G.A.C. v. State ex rel Juv. Dept., 219 Or App 1, 182 P3d 223 (2008)</u> (reversing judgments dismissing petitions alleging physical abuse)

DELINQUENCY CASES......23-33

16. <u>State ex rel Juv. Dept. v. K. S., 229 Or App 50, 209 P3d 845 (2009)</u> (admission of hearsay in delinquency proceeding over Sixth Amendment objection; leaving open the question whether Article I, section 11, of the Oregon Constitution apply in delinquency proceedings)

17. <u>State ex rel Juv. Dept. v. J.J., 228 Or App 746, 208 P3d 1054 (2009)</u> (remanding case for findings required for OYA commitment under ORS 419C.478(1))

18. <u>State ex rel Juv. Dept. v. M.A.-J., 228 Or App 580, 209 P3d</u> <u>381\_(2009)</u> (the juvenile court erred in denying motion to suppress)

19. <u>State ex rel Juv. Dept. v. S.L.M., 227 Or App 408, 206 P3d 283 (2009)</u> (the juvenile court erred in denying motion to suppress evidence found by the youth's mother)

20. <u>Patterson v. Foote, 226 Or App 104, 204 P3d 97 (2009)</u> (construing "rehabilitate," as that term is used in ORS 181.820, which establishes a procedure for seeking relief from the duty to report as a sex offender)

21. <u>State ex rel Juv. Dept. v. M.A.D., 226 Or App 21, 202 P3d 249 (2009)</u> (holding that Article I, section 9, of the Oregon Constitution applies to the search of a student by a school official when the evidence found is used in a juvenile delinquency proceeding)

22. <u>State ex rel Juv. Dept. v. J. H.-O., 223 Or App 412, 196 P3d 36 (2008)</u> (in delinquency proceedings, the judgment finding jurisdiction and the judgment providing for the disposition in the case are separate appealable judgments)

23. <u>State ex rel Juv. Dept. v. S.R.R., 223 Or App 253, 195 P3d 411 (2008)</u> (*per curiam*) (reversing supplemental judgment ordering restitution)

24. <u>State ex rel Juv. Dept. v. R.A.,</u> 221 Or App 509, 191 P3d 702 (2008) (proof of criminal mischief in the second degree)

#### 

25. <u>State ex rel Department of Human Services v. R. J. T., Or App</u> <u>P3d</u> (July 15, 2009) (mother's suicidal ideation and suicide attempts, together with her underlying depression, constituted grounds for termination of her parental rights under ORS 419B.504)

26. <u>State ex rel Dept. of Human Services v. A.L.S., 228 Or App 700, 209</u> <u>P3d 817 (2009)</u> (termination of parental rights warranted where, among other things, the mother remains addicted to alcohol, the child has multiple special needs and requires a stable placement immediately, and a disruption of the child's bond with the foster family would result in a regression in her development)

27. <u>State ex rel Dept. of Human Services v. R.T., 228 Or App 645, 209 P3d</u> <u>390 (2009)</u> (reversing judgment terminating parental rights)

28. <u>State ex rel Dept. of Human Services, K.D., 228 Or App 403, 209 P3d</u> <u>328 (2009)</u> (affirming judgment denying termination of parental rights because the state had not failed to prove that it is highly probable that the mother's child cannot be returned to her custody within a reasonable time)

29. <u>State ex rel Dept. of Human Services v. K.C.J., 228 Or App 70, 207</u> <u>P3d 423 (2009)</u> (holding that, in an ICWA case, each finding required to support termination of a parent's rights must be proved beyond a reasonable doubt, and construing "active efforts")

30. <u>State ex rel Dept. of Human Services v. K.C., 227 Or App 216, 205 P3d</u> <u>28 (2009)</u> (affirming termination judgment under ORS 419B.502 and holding that the juvenile court did not abuse its discretion in denying the mother's motion for a continuance) 31. <u>State ex rel Juv. Dept. V. T.N., 226 Or App 121, 203 P3d 262 (2009)</u> (affirming judgment terminating parental rights under ORS 419B.504 and finding that DHS made both active and reasonable efforts)

32. <u>State ex rel DHS v. D. F. W. and S. N. D., 225 Or App 220, 201 P3d 226</u> (2009) (discussing *Simmons* and reversing judgments terminating parental rights of mother and father)

33. <u>State ex rel DHS v. J. S. and B. A. S., 225 Or App 115, 200 P3d 567, rev</u> <u>den 346 Or 157 (2009)</u> (holding that, under ORA 419B.504, the state presented clear and convincing evidence that both parents were unfit at the time of trial and rejecting father's challenge to termination judgment based on trial court's failure to hold a permanency hearing)

34. <u>State ex rel DHS v. G. R., 224 Or App 133, 197 P3d 61 (2008)</u> (the juvenile court erred in denying father's motion to set aside termination judgment on ground of excusable neglect under ORS 419B.923)

35. <u>State ex rel DHS v. A.T., 223 Or App 574, 196 P3d 73 (2008), rev den</u> <u>345 Or 690 (2009)</u> (reversing judgment denying petition to terminate father's rights; discussing proof of present unfitness and serious detriment to child)