

APPELLATE CASE LAW UPDATE

**Summaries of Appellate Court Decisions in Juvenile
Court Cases**

July 2012 to July 2013

**Prepared and presented by Michael Livingston
August 11, 2013**

DEPENDENCY

Jurisdictional Proceedings

1. Dept. Human Services v. A.B., 256 Or App 854, --- P3d --- (2013)
(reversing the juvenile court's judgment continuing wardship in the case)
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2. Dept. Human Services v. M.H., 256 Or App 306, 300 P3d 1262 (2013)
(affirming the juvenile court's finding that the child is within the court's jurisdiction based on proof of certain allegations in the petition, but remanding for entry of a new judgment omitting findings that DHS had proved that the parents' living conditions, unemployment, or lifestyle created a current risk of harm to the child)..... page 2

3. Dept. of Human Services v. L.F., 256 Or App 114, 299 P3d 599 (2013)
(affirming the juvenile court's judgment finding jurisdiction based on the mother's inability, or unwillingness, to meet or understand the child's medical and developmental needs)..... page 4

4. Dept. of Human Services v. S.M., 256 Or App 15, 300 P3d 1254 (2013)
(affirming the juvenile court's review hearing judgment granting DHS's request for an order authorizing the immunization of the children over the parents' objection
..... page 4

5. Dept. of Human Services v. J.D.F., 255 Or App 742, 298 P3d 653 (2013)
(reversing the juvenile court's dispositional judgment because the juvenile court erred in concluding that DHS's efforts to reunify the child with the father were reasonable)..... page 5

6. Dept. of Human Services v. M.E., 255 Or App 381, 298 P3d 1227 (2013)
(reversing the juvenile court's judgment finding jurisdiction under ORS 419B.100(1)(c) based on the state's concession that the evidence was insufficient to support the court's conclusion that the children's welfare is presently endangered and vacating the amended jurisdictional judgment entered by the juvenile court while the appeal from the original judgment was pending).... page 5

7. *Dept. of Human Services v. M.E., 255 Or App 296, 297 P3d 17 (2013)*
(setting out apparently contradictory standards for jurisdiction under ORS 419B.100(1)(c) and reversing judgment finding jurisdiction because the totality of the circumstances failed to establish a current threat of harm to the child -- *i.e.*, the stepfather's sexual abuse of the child was a one-time incident that occurred four years ago, the results of a psychosexual risk assessment of the stepfather indicated that he did not pose a risk of sexual harm to any children, and the mother had agreed to protective measures)..... page 6

8. *Dept. of Human Services v. N.P., 255 Or App 51, 296 P3d 606 (2013)*
(reversing judgment continuing dependency jurisdiction under ORS 419B.100(1)(c) because the evidence was insufficient to establish that the father's condition -- *i.e.*, his "anger and frustration" "viewed in the light of the risk that is represented by his use of controlled substances" -- exposed the child to a current threat of "serious loss or injury")..... page 8

9. *Dept. of Human Services v. G.J.R., 254 Or App 436, 295 P3d 672 (2013)*
(reversing the jurisdiction judgment as to father because the evidence that he had not completed sex-offender treatment was not sufficient to establish a current threat of harm to the child and leaving unresolved the questions about the correct legal standard for jurisdiction under ORS 419B.100(1)(c) raised by the Court of Appeals opinion in *Dept. of Human Services v. A. F., 243 Or App 379, 386, 259 P3d 957 (2011)* (threat of "serious loss or injury"), which appears to state a legal standard that is inconsistent with the standard established by the Oregon Supreme Court in *State ex rel Juv. Dept, v. Smith, 316 Or 646, 853 P2d 282 (1993)* ("reasonable likelihood of harm to the welfare of the child"))..... page 9

10. *Dept. of Human Services v. M.Q., 253 Or App 776, 292 P3d 616 (2012)*
(reversing judgment of jurisdiction because the evidence failed to establish a current threat harm to the child, but leaving unresolved questions about the correct legal standard for jurisdiction under ORS 419B.100(1)(c) raised by the Court of Appeals opinion in *Dept. of Human Services v. A. F., 243 Or App 379, 386, 259 P3d 957 (2011)* (threat of "serious loss or injury"), which appears to state a legal standard that is inconsistent with the standard established by the Oregon Supreme Court in *State ex rel Juv. Dept, v. Smith, 316 Or 646, 853 P2d 282 (1993)* ("reasonable likelihood of harm to the welfare of the child"))..... page 11

11. Dept. of Human Services v. J.C.G., 253 Or App 588, 291 P3d 787 (2012)
(affirming order denying dismissal of wardship) page 13

12. Dept. of Human Services v. C.C., 253 Or App 271, 290 P3d 900 (2012)
(affirming judgment of jurisdiction, despite the juvenile court’s “plain error” in
failing to include findings required by ORS 419B.340(2))..... page 13

13. Dept. of Human Services v. S.C.S., 253 Or App 319, 290 P3d 903 (2012),
rev den 353 Or 428 (2013) (affirming judgment of jurisdiction and determining
that the juvenile court had authority under the UCCJEA to adjudicate the petition)
..... page 14

14. Dept. of Human Services v. L.G., 252 Or App 626, 290 P3d 19 (2012)
(the state’s evidence failed to prove that the child is within the juvenile court’s
jurisdiction under ORS 419B.100(1)(c) because the evidence did not establish a
current risk of harm to the child) page 15

15. Dept. of Human Services v. R.V., 252 Or App 567, 287 P3d 1281 (2012)
(reversing judgment finding child within the within the juvenile court’s
jurisdiction under ORS 419B.100(1)(c) based on the state’s concession that the
evidence failed to prove a current risk of harm to the child) page 15

DEPENDENCY Permanency Proceedings

16. Dept. Human Services v. A.R.S., 256 Or App 653, --- P3d --- (2013)
(reversing a permanency judgment changing the case plan from reunification to
adoption and denying the mother’s motion to dismiss wardship because, in
making both determinations, the juvenile court had considered facts extrinsic to
the bases of jurisdiction) page 16

17. *Dept. Human Services v. A.J.M.*, 256 Or App 547, --- P3d --- (2013)
(affirming the juvenile court's "corrected" permanency judgment and holding that the juvenile court did have authority to issue the corrected judgment pursuant to ORS 419B.923(1) for the purpose of including in the judgment a brief description of the reunification services that DHS had provided to mother, as required by ORS 419B.476(5)(a), which the juvenile court had omitted from the original permanency judgment)..... page 17
18. *Dept. Human Services v. J. R. L.*, 256 Or App 437, 300 P3d 291 (2013)
(reversing a permanency judgment changing the case plan from reunification to adoption and denying the mother's motion to dismiss wardship because, in making both determinations, the juvenile court had considered facts extrinsic to the bases of jurisdiction) page 17
19. *Dept. Human Services v. K.H.*, 256 Or App 242, 301 P3d 427 (2013)
(affirming the juvenile's court's order establishing a guardianship under ORS 419B.366 and rejecting the mother's argument that the juvenile court violated her right to due process by limiting her submission of evidence to an offer of proof, and then deciding -- based on that evidence -- that further evidentiary hearings were unnecessary) page 18
20. *Dept. Human Services v. A.D.*, 255 Or App 567, 300 P3d 185 (2013)
(affirming the juvenile court's permanency judgment changing the plan for the child from reunification to adoption)..... page 19
21. *Dept. of Human Services v. T.H.*, 254 Or App 394, 294 P3d 531 (2012)
(reversing permanency judgment continuing the APPLA plan that was in effect when the hearing began because the judgment did not include a brief description of the DHS efforts to implement the APPLA plan, as required by ORS 419B.476(5)(a), and also did not include the "predicate" findings for an APPLA plan required by ORS 419B.476(5)(f))..... page 21
22. *Dept. of Human Services v. C.L.*, 254 Or App 203, 295 P3d 72 (2012), *rev den 353 Or 445 (2013)* *(affirming a permanency judgment changing the current permanency plan from APPLA to adoption and explaining that, when the case plan in effect at the time a permanency hearing begins is a plan other than reunification and the parent requests that it be changed to reunification, the juvenile court is not required to assess DHS's reunification efforts and the sufficiency of a parent's progress toward reunification under ORS 419B.476(2)(a) and may consider evidence outside the scope of the bases for jurisdiction in determining whether the child can be placed with the parent)* page 24

23. Dept. of Human Services v. W.H.F., 254 Or App 298, 295 P3d 78 (2012), rev den 353 Or 428 (2013) (*affirming a permanency judgment continuing in effect the permanency plan of adoption and explaining that, in a permanency hearing, "the requirement for active efforts under the ICWA [and ORS 419B.476(2)(a)] applies only when the case plan [in effect] at the time of the hearing is to reunify the family"*) page 25

24. Dept. of Human Services v. I.J.R., 253 Or App 603, 292 P3d 566 (2012) (*reversing juvenile court's permanency judgment appointing the child's grandparents as guardians because the juvenile court failed to follow the procedures required by ORS 419B.366(1) through (4), failed to issue letters of guardianship, and erred in failing to provide for visitation with the child's half-sibling*)..... page 26

25. Dept. of Human Services v. J.N., 253 Or App 494, 291 P3d 765 (2012) (*reversing permanency judgment changing the permanency plan for the child from reunification to guardianship because the evidence in the record did not support the juvenile court's finding that the child's "placement with father within a reasonable period of time would likely cause [her] 'severe mental and emotional harm'"*) page 27

26. Dept. of Human Services v. M.M.B., 253 Or App 431, 290 P3d 891 (2012), rev den 353 Or 280 (2013) (*affirming permanency judgment changing the permanent plan from reunification to guardianship and rejecting mother's argument that the juvenile court erred in denying her motion to dismiss wardship*) page 29

27. Dept. of Human Services v. H.P., 252 Or App 346, 287 P3d 1175 (2012) (*reversing a permanency judgment changing the permanent plan for three children from reunification to adoption because the juvenile court's judgment failed to include "at least one of the required statutory determinations under ORS 419B.476(5)"*) page 30

28. Dept. of Human Services v. D.L.H., 251 Or App 787, 284 P3d 1233, disposition on appeal modified on reconsideration 253 Or App 600, 292 P3d 565 (2012), rev den 353 Or 445 (2013) (*affirming in part and reversing in part the "disposition/permanency" judgment changing the permanent plan for the two children from reunification to adoption because DHS failed to make the "active" reunification efforts required in ICWA cases*)..... page 33

DEPENDENCY

Termination-of-Parental-Rights Proceedings

29. Dept. of Human Services v. F.L.B., 255 Or App 709, 298 P3d 626 (2013) (*affirming* the juvenile court's judgment terminating the father's and mother's parental rights and discussing in detail the "reasonable time" considerations for the children) page 34

30. Dept. of Human Services v. K.L.W., 253 Or App 219, 288 P3d 1030 (2012), rev allowed 353 Or 208 (2013) (construing and applying for the first time the statutes governing the appointment of guardians *ad litem* in dependency proceedings and *affirming* a TPR judgment to which the father's guardian *ad litem* had stipulated)..... page 35

DELINQUENCY Proceedings

31. State of Oregon v. A. J. C., 254 Or App 717, 295 P3d 1157 (2013) (*affirming* judgment of jurisdiction and concluding that the juvenile court correctly denied the youth's motion to suppress) page 36

32. State of Oregon v. D.M.T., 254 Or App 631, 295 P3d 175 (2013) (*reversing* the jurisdictional judgment because the juvenile court erred in concluding that it lacked authority to amend the allegations of the delinquency petition after entry of an order accepting the youth's admissions) page 37