

# Oregon Juvenile Appellate Case Law Outline

Cases reported beginning in July 2013

Oregon Judicial Department

Juvenile Court Improvement Program

Megan E. Hassen  
Juvenile and Family Court Programs Division  
Oregon Judicial Department  
1133 Chemeketa St. NE  
Salem, OR 97301

Last updated: 4/6/21

## *Table of Contents*

Juvenile Delinquency .....	6
Amendment of Petition .....	6
Appealability .....	6
Appointment of Counsel .....	6
Assault.....	6
Burglary.....	7
Coercion .....	8
Commitment to Oregon Youth Authority.....	8
Conditions of Probation .....	8
Criminally Negligent Homicide.....	9
Dismissal of Petition .....	9
Double Jeopardy.....	9
Expunction .....	10
Forfeiture.....	10
Former Jeopardy.....	10
Inadequate Assistance of Counsel.....	11
Initiating a False Report .....	11
Life Sentence.....	11
Menacing.....	11
Merger .....	12
Modification of Order or Judgment .....	12
Motion for Judgment of Acquittal.....	12
Motion to Set Aside Order.....	13

Motion to Suppress.....	13
Out-of-Home Placement Findings.....	15
Possession of Methamphetamine .....	15
Preservation.....	16
Restitution .....	16
Sex Offender Reporting .....	17
Waiver .....	17
Juvenile Dependency .....	18
Appealability .....	18
Claim and Issue Preclusion .....	19
Continuance.....	19
Discovery .....	20
Disposition .....	20
Placement.....	20
Psychological Evaluation .....	20
Reasonable efforts finding.....	23
Urinalysis requirement (DHS).....	23
Disposition of Child Abuse Assessment (Judicial Review).....	23
Evidence .....	24
Foster Home Certification.....	27
Guardianship .....	27
Immunizations .....	29
Inadequate Assistance of Counsel.....	29
Incarcerated Parents .....	31

Interstate Compact for the Placement of Children ..... 34

Indian Child Welfare Act (ICWA)..... 34

Judicial Notice..... 35

Jurisdiction/Conditions and Circumstances ..... 36

    Anger control..... 36

    Child abuse ..... 36

    Contact with a sex offender..... 36

    Domestic violence ..... 37

    Drug trafficking ..... 40

    Failure to protect..... 41

    ICPC ..... 41

    Inappropriate discipline ..... 42

    Lack of contact with parent ..... 42

    Lack of custody order ..... 42

    Medical abuse ..... 43

    Mental health ..... 43

    Parenting skills ..... 45

    Parents delegate care to a third party..... 45

    Parents live out of the country ..... 48

    Residential instability ..... 48

    Sex abuse ..... 49

    Substance abuse ..... 49

    Unable to Care for Child’s Special Needs..... 52

    Unexplained Injury/Abuse..... 52

Jurisdiction/Other .....	54
Admissions .....	54
Age of child .....	55
Amended allegations .....	55
Failure to appear .....	56
ICWA.....	57
Multiple Allegations .....	57
Multiple Petitions .....	57
Reasonable Efforts.....	58
Telephone Testimony .....	58
Timing (including 60 day deadline for hearing) .....	58
UCCJEA Issues .....	59
Motion to Dismiss .....	60
Motion to Set Aside Judgment or Order .....	65
No Contact Orders.....	67
Paternity.....	67
Permanency Hearings.....	67
Compelling Reason and ORS 419B.498(2) Determinations .....	68
Judgment Document .....	71
Motion to Dismiss .....	72
Notice of Hearing .....	73
Reasonable Efforts.....	73
Reasonable Time .....	79
Right to Participate .....	80

Sufficient Progress.....	80
Preservation.....	84
Reviewability .....	85
Review Hearings .....	87
Service .....	87
Standard of Review .....	88
Temporary Custody.....	89
Termination of Parental Rights.....	89
Default Judgment .....	89
Guardian ad Litem.....	91
ICWA .....	92
Neglect (ORS 419B.506) .....	93
Parental Fitness, Reasonable Time and Best Interest Findings.....	93
Permanency Hearing Findings .....	99
Reversal of Jurisdictional Judgment .....	99

## ***Juvenile Delinquency***

### ***Amendment of Petition***

- ▶ ***State v. L.M.W., [275 Or App 731 \(2015\)](#)***

The court held ORS 419C.261(1) explicitly allows the court to amend the petition before adjudicating it. In addition, subsection (2) allows the court to grant pre- and post-adjudication dismissals. Finally, the juvenile court may amend or dismiss a petition alleging an offense subject to sex-offender registration requirements as long as the court makes written findings stating its reasons for amending or dismissing the petition. The court further explained that the legislature contemplated the juvenile court may dismiss a petition for conduct that would otherwise subject a youth to sex-offender registration requirements, thus effectively granting the youth relief from those requirements.

### ***Appealability***

- ▶ ***State v. J.G.G., [278 Or App 184 \(2016\)](#)***

An appealable judgment includes a final order *adversely affecting* the rights or duties of a party and made in a proceeding after judgment. ORS 419A.205(1)(d). The court rejected the state's argument that the juvenile court's order did not adversely affect youth because it did not impose any sanction or extend the term of youth's probation. Instead, the court found that having a probation violation on youth's record could adversely affect any future dispositions by the juvenile court, because the court is required to consider the youth offender's juvenile court record and respond to the requirements and conditions imposed by previous juvenile court orders when determining a disposition in a juvenile case. ORS 419C.411(3)(e).

### ***Appointment of Counsel***

- ▶ ***State v. J. T.-B., [307 Or App 414 \(2020\)](#)***

The trial court erred in denying youth's motion for appointment of counsel. A motion to set aside under ORS 419C.615 is a stage of the juvenile court proceeding and under ORS 419C.200, youth was entitled to have his request for counsel granted at that stage. The deficiencies in youth's motion (that it did not cite authority or set forth grounds for relief under ORS 419C.615), did not justify the juvenile court's denial. Reversed and remanded.

### ***Assault***

- ▶ ***State v. D.C.F., [299 Or App 210 \(2019\)](#)***

Youth was found under the juvenile court’s delinquency jurisdiction for conduct that, if committed by an adult, would constitute fourth-degree assault, ORS 163.160, and harassment, ORS 166.065. On appeal, the court reversed the judgment for fourth-degree assault, accepting the state’s concession that there was insufficient evidence to support a finding that youth’s act of biting his sister caused “physical injury” to her within the meaning of ORS 163.160 and ORS 161.015(7).

► *State v. M.M.A.*, [288 Or App 407 \(2017\)](#)

To prove criminal liability for third degree assault as a principal under ORS 163.165(1)(e), the state is required to prove that the defendant caused physical injury to the victim. Under *State v. Pine*, the state is required to prove that the defendant either directly inflicted physical injury or that the defendant engaged in conduct so extensively intertwined with infliction of the injury that such conduct can be found to have produced the injury. In this case, the court found that based on evidence in the record and reasonable inferences, a rational factfinder could find that physical injury to the victim occurred after youth returned to make contact with the victim, and that youth's actions were so extensively intertwined with the infliction of physical injury to the victim that her conduct could be found to have produced the injury.

► *State v. M.S.T. –L.*, [280 Or App 167 \(2016\)](#)

A person commits fourth-degree assault under ORS 163.160 by acting with the requisite culpable mental state to cause physical injury to another person. ORS 161.015(7) defines “physical injury” for purposes of the criminal code as “impairment of physical condition or substantial pain.” For an injury to constitute an impairment of physical condition, it must reduce the victim’s ability to use the body or a bodily organ. To constitute substantial pain, the pain must be ample and more than fleeting.

### *Burglary*

► *State v. J.M.M.*, [268 Or App 699 \(2015\)](#)

Evidence that a youth was only present or acquiesced in others’ conduct is not enough to establish liability. The court cannot infer that because youth was present during the planning of the burglary, that he was a participant. Youth had no legal duty to refrain from being at the scene, or to discourage the others from burglarizing the church.

► *State v. J.N.S.*, [258 Or App 310 \(2013\)](#).

Second-degree burglary may be committed in two alternative ways: (1) entering a building unlawfully with the intent to commit a crime therein; or (2) entering a building lawfully, but then

remaining unlawfully – viz., failing to leave after authorization to be present expires or is revoked – with the intent to commit a crime therein. The focus of the question is on youth’s intent at the initiation of the trespass. In this case, the only evidence of the youth’s intent to commit a crime when he entered the premises unlawfully was youth’s possession of a key that was found after he entered the premises. The Court of Appeals found the juvenile court erred in adjudicating the youth delinquent for burglary in the second degree because intent to commit a crime had not formed upon unlawful entry, but found the court’s factual findings were sufficient to support an adjudication for criminal trespass in the second degree under ORS 164.245.

### ***Coercion***

► ***State v. R.Y.*, [291 Or App 246 \(2018\)](#)**

The court found that evidence in the record of the recording of the victim's CARES interview, which took place nine days after the incident, was sufficient to prove coercion under ORS 163.275. In response to a question about whether someone told her not to tell, the victim responded, "Yes, he threatened me and he said, 'Dude, I'll kill your mother and you and your brother' --\*\*\*\* (Inaudible) kill my family."

### ***Commitment to Oregon Youth Authority***

► ***State v. J.R.C.*, [289 Or App 848 \(2018\)](#)**

Youth appealed a delinquency judgment that continued his placement with the Oregon Youth Authority for a period not to exceed five years. Youth challenged the juvenile court's failure to include written findings as to why it is in the best interests of the youth offender to be placed in OYA as required by ORS 419C.478(1). The Court of Appeals found the trial court erred by failing to make the written findings and vacated and remanded the case for the court to make the required written findings under ORS 419C.478(1).

### ***Conditions of Probation***

► ***State v. B. H. C.*, [288 Or App 120 \(2017\)](#)**

The text, context, and legislative history of ORS 419C.453 all indicate that the legislature intended to authorize the use of detention to punish a youth for a probation violation only in the manner provided for by that statute. Condition 26 does not comply with that statute because it authorizes someone other than the juvenile court to decide whether detention should be used to punish a probation violation, and because it authorizes that decision to be made without a hearing before the court.

► ***State v. C.M.C.*, [259 Or App 789 \(2013\)](#)**

Ordering the youth to pay for his own psychological evaluation was outside the court's dispositional authority under ORS 419C.446(2).

### ***Criminally Negligent Homicide***

- ▶ ***State v. S.N.R.*, [260 Or App 728 \(2014\)](#).**

The court held that to find a defendant guilty of criminally negligent homicide (or other crime) based upon falling asleep requires some evidence that the defendant had, or should have been aware of, a sufficient prior warning of the likelihood of sleep so that the defendant had the opportunity to reduce the substantial risk of injury.

### ***Dismissal of Petition***

- ▶ ***State v. T.Q.N.*, [275 Or App 969 \(2015\)](#)**

A petition was filed alleging youth had committed one count of sexual abuse in the first degree and one count of attempted sexual abuse in the first degree. Youth filed a motion for conditional postponement under Washington County's conditional postponement program, and argued that the court had authority to grant his motion under ORS 419C.261. Oregon appellate courts have interpreted ORS 419C.261 to grant broad discretion to juvenile courts to dismiss petitions. The court held the legislature's grant of authority to juvenile courts to dismiss petitions "in furtherance of justice after considering the circumstances of the youth and the interests of the state in the adjudication of the petition" is broad enough to encompass the Washington County conditional postponement program.

- ▶ ***State v. L.M.W.*, [275 Or App 731 \(2015\)](#)**

The court held ORS 419C.261(2) allows the court to grant pre- and post-adjudication dismissals. The juvenile court may amend or dismiss a petition alleging an offense subject to sex-offender registration requirements as long as the court makes written findings stating its reasons for amending or dismissing the petition.

### ***Double Jeopardy***

- ▶ ***State v. C. C. W.*, [294 Or App 701 \(2018\)](#)**

In this case, the court concluded that the original judgment finding youth within the court's jurisdiction was final because the juvenile court committed it to writing and duly entered it as a judgment. The initial judgment does mention a future hearing regarding disposition and motion, but it is unequivocal in finding youth within the court's jurisdiction for acts that would constitute third-degree criminal mischief. The signed judgment taking jurisdiction – not the statements from the judge, the state or youth – governs the court's determination of what was decided. The court's judgment had the legal effect of acquitting youth of the greater offense, precluding

further adjudication of it. Amendment of the initial judgment violated youth's right against double jeopardy under the Fifth Amendment and Article I, section 12.

### ***Expunction***

► ***State v. P.T.*, [295 Or App 205 \(2018\)](#)**

In 2016, youth applied for expunction of his juvenile record under ORS 419A.262(8), which authorizes the juvenile court to order expunction of "all or any part of the person's record if it finds that to do so would be in the best interests of the person and the public." The juvenile court denied the request, concluding ORS 419A.260(1)(d)(J) precludes expunction when the underlying offense is first degree sodomy. On appeal, the court rejected youth's argument that he was not a person "found" to be within the court's jurisdiction for purposes of ORS 419A.260(1)(d)(J) because the judgment was set aside in 2013 and affirmed the juvenile court's decision.

### ***Forfeiture***

► ***State v. N.S.B.*, [290 Or App 576 \(2018\)](#)**

Youth appealed a judgment finding him within the jurisdiction of the juvenile court as a result of his unlawful possession of a firearm. The juvenile court imposed special probation conditions, including forfeiture of two handguns and a rifle that had been seized from youth's home. The court required that the rifle would be forfeited if it was not sold within 30 days. Youth argued that the rifle, which was given to him by his mother, was not subject to forfeiture because it was not and could not be "possessed, used or available for use to facilitate the offense of unlawful possession of a firearm." The state conceded and the Court of Appeals agreed that the court should reverse and remand the juvenile court's judgment with instructions for the court to delete the portion of the judgment requiring the youth forfeit the rifle.

### ***Former Jeopardy***

► ***State v. M.B.*, [293 Or App 122 \(2018\)](#)**

Based on *State v. S.-Q.K.*, 292 Or App 836 (2018), where a juvenile court has adjudicated a youth to be within its jurisdiction based on particular conduct, ORS 419A.190 bars subsequent probation violation proceedings against the youth based on the same conduct.

► ***State v. S.-Q.K.*, [292 Or App 836 \(2018\)](#)**

A juvenile court probation violation proceeding is the type of juvenile court "adjudicatory hearing," within the meaning of ORS 419A.190, that bars subsequent proceedings arising out of allegations based on the same conduct. The probation violation proceeding in this case barred

the state from subsequently adjudicating youth for a riot because the same conduct was the alleged basis for the probation violation proceeding.

### ***Inadequate Assistance of Counsel***

- ▶ *State v. J.J.-M.*, [282 Or App 459 \(2016\)](#)

In order to prevail on his claim regarding inadequacy of counsel, youth had to prove that his counsel failed to exercise reasonable professional skill and judgment and that youth suffered prejudice as a result. The reasonableness of counsel's performance is evaluated from counsel's perspective at the time of the alleged error and in light of all of the circumstances. Prejudice is established by showing that counsel's advice, acts or omissions had a tendency to affect the result of the prosecution. In this case, the juvenile court did not err in denying youth's amended petition because youth's attorney's actions in representing youth were individually either constitutionally adequate or not prejudicial to youth's defense.

### ***Initiating a False Report***

- ▶ *State v. J.L.S.*, [268 Or App 829 \(2015\)](#)

The court affirmed the juvenile court's judgment finding youth within the jurisdiction of the court for violating ORS 162.375 by lawfully and knowingly initiating a false report which was transmitted to a law enforcement agency. The court found that youth's repeated statements to a detective that he had been kidnapped, after repeated warnings that she would call the Major Crime Team was sufficient to find him within the court's jurisdiction, even though it was the detective who ultimately transmitted the report to the Major Crime Team.

### ***Life Sentence***

- ▶ *State v. Link*, [297 Or App 126 \(2019\)](#)

For sentencing purposes, a court cannot impose the state's most severe penalties on a juvenile offender without individualized considerations of the unique qualities of youth that might make imposition of that sentence inappropriate. In this case, the trial court imposed a mandatory sentence of life in prison pursuant to ORS 163.105--one of the state's most severe sentences--on a juvenile offender without an individualized consideration of his unique qualities of youth. The Court of Appeals concluded that the application of ORS 163.105 as written, to a juvenile defendant, violated the Eighth Amendment.

### ***Menacing***

- ▶ *State v. C.S.*, [275 Or App 126 \(2015\)](#)

The evidence was legally insufficient to establish that youth’s words and conduct caused fear of “imminent serious physical injury” in an objectively reasonable person to constitute menacing under ORS 163.190. Youth repeatedly told three of his classmates in social studies class and in school hallways that he would kill them and would draw his finger across his throat and say “die”. He told one classmate he would kill her in three days.

### ***Merger***

- ▶ ***State v. K.R.S., [298 Or App 318 \(2019\)](#)***

The court determined that ORS 161.067(3) applies to delinquency adjudications in the same way that it does to determinations of guilt in criminal cases. In this case, the entire episode occurred in a confined space without interruption by a significant event or a sufficient pause to separate the conduct that formed the basis for each of the sex abuse adjudications. Citing *State v. Nelson*, 282 Or App 427 (2016), the court also explained that merger is not defeated simply because each count is based on touching a different body part.

### ***Modification of Order or Judgment***

- ▶ ***State v. E.C.-P., [289 Or App 569 \(2017\)](#)***

Regarding the issue of whether the court could order youth to provide a DNA sample post termination of jurisdiction, youth argued that ORS 419C.610 does not allow the state to impose additional requirements after the youth has fully served his disposition and jurisdiction has been terminated. The court rejected youth's argument, finding the trial court corrected an unlawful order, which itself implied that the conditions would remain deferred only if youth completed all conditions of probation. The court found ORS 419C.610 gives the juvenile court broad discretion to determine the procedures it will follow when considering a modification under ORS 419C.610 and does not expressly limit when or in what manner a court may modify its orders.

### ***Motion for Judgment of Acquittal***

- ▶ ***State v. B.B.S., [276 Or App 602 \(2016\)](#)***

Judgment finding youth under the jurisdiction of the juvenile court for unauthorized use of a vehicle and possession of a stolen vehicle reversed when nothing in the facts established that youth knew the use of the vehicle was without the owner’s consent.

- ▶ ***State v. J.C.L., [261 Or App 692 \(2014\)](#)***

Trial court did not err in denying youth’s motion for acquittal when there was evidence in the record establishing that youth knowingly possessed child pornography with intent to duplicate or display the images.

## ***Motion to Set Aside Order***

▶ ***State v. J.S.W.*, [295 Or App 420 \(2018\)](#)**

Juvenile court's denial of youth's motion to set aside delinquency adjudication for conduct that, if committed by an adult, would constitute sexual abuse in the first degree and sodomy in the second degree affirmed. The juvenile court was not required to inform youth of potential statutory defenses to obtain a valid waiver of counsel and voluntary plea. The plea agreement informed youth of the charges against him, his right to an attorney, and the maximum possible punishment that he faced by admitting to the charges. Even under the Sixth Amendment, a court would not be obligated to advise youth that waiving the right to an attorney entails the risk that a viable defense will be overlooked.

## ***Motion to Suppress***

▶ ***State of Oregon v. T. T.*, [308 Or App 408 \(2021\)](#)**

Juvenile court's denial of youth's motion to suppress evidence of large bags of marijuana in a trunk affirmed when there were facts to support the officer's reasonable suspicion of drug trafficking. The trooper had probable cause to search the car under the automobile exception to the warrant requirement.

▶ ***State of Oregon v. H. K. D. S.*, [305 Or App 86 \(2020\)](#)**

The juvenile court erred in denying youth's motion to suppress the DNA evidence obtained by the buccal swab, and that error was not harmless. Youth merely acquiesced in the search and did not consent to it for purposes of Article I, section 9. Furthermore, under Article I, section 9, parental consent alone does not permit law enforcement to search the person of a child suspected of a crime for DNA. Reversed and remanded.

▶ ***State of Oregon v. A.S.*, [296 Or App 722 \(2019\)](#)**

The juvenile court's determination that grandmother gave officers valid consent to search youth's room was supported by the evidence in the record. Grandmother's assertion of her authority to access items in youth's room and to go in without youth's permission, coupled with grandmother's status as family elder and homeowner, led the Court of Appeals to conclude that the juvenile court did not err when it determined that grandmother had actual authority to consent to a search of the items in youth's room.

▶ ***State v. J.D.H.*, [294 Or App 364 \(2018\)](#)**

The trial court's determination that youth's mother gave officers consent to search youth's room "for evidence that might be relevant to a planned school shooting," including a search for and of

youth's journal was supported by evidence in the record when: (1) mother consented to the search without expressing any limitation after she was told about the school shooting plan investigation; (2) mother actively assisted officers in their search for the notebook by providing the notebook to an officer after she was informed the officers were looking for a notebook or journal; and (3) mother failed to object or express any limitation on the officers' search after she was made aware that officers were looking for a notebook in the youth's room. In addition, based on the particular parent-child relationship in this case, as well as mother's access to and control over youth's room, mother had actual authority to consent to the search of his room, his guitar case, and his journal.

► *State v. M.S.S.K.*, [289 Or App 450 \(2017\)](#)

The court reversed the trial court's denial of a motion to suppress youth's statements to her probation officer after the officer failed to read her a *Miranda* warning. The court declined to consider the state's proffered alternative basis for affirmance, finding youth could have created a different record had the state raised the issue below.

► *State v. K.A.M.*, [279 Or App 191 \(2016\)](#), *reversed*, [361 Or 805 \(2017\)](#)

The court considered whether a reasonable person, regardless of age, would have felt free to leave. The court explained that a police officer's request for identification is, in and of itself, not a sufficient show of authority to constitute a stop, however, when the content of the questions, the manner of asking them, or other actions and circumstances would convey to a reasonable person that the police are exercising their authority to coercively detain the citizen, then the encounter rises to the level of a seizure. The inquiry is fact specific and requires an examination of the totality of circumstances. In this case, the court found the detective's entry into the bedroom without any explanation for his presence coupled with his accusation that the young woman was using methamphetamine was enough to show a reasonable person would perceive the detective was exercising his authority to detain the youth and the young woman.

► *State v. D.C.*, [269 Or App 869 \(2015\)](#)

Court did not err in denying youth's motion to suppress when youth fit victim's description, was in the proximity of the crime, and made furtive gestures when he saw police. The state established facts that were objectively reasonable based on the evidence that was not excluded, giving the officer probable cause to arrest youth and conduct a search incident to the arrest.

► *State v. J.C.L.*, [261 Or App 692 \(2014\)](#).

It's the state's burden to show exigency by establishing both that the destruction of evidence was imminent and that a warrant could not have otherwise been expeditiously obtained. The Court of Appeals found the record supported the juvenile court's conclusion that the police detective

reasonably believed Dutton was about to erase youth's hard drive and that, if he left youth's computer within Dutton's control to obtain a warrant, the destruction of evidence was imminent.

► *State v. A.J.C.*, [355 Or 552 \(2014\)](#).

The court found the requirements of the school-safety exception to the warrant requirement were met when the school official was notified of youth's verbal threats to shoot other students, and officials did not know whether youth had a gun on his person or elsewhere.

► *State v. D.P.*, [259 Or App 252 \(2013\)](#).

Court found the 12 year old youth's statements should have been suppressed when police interviewed him without giving him Miranda warnings. In determining whether the circumstances were compelling, the court considered whether a reasonable person in the child's position (considering age, knowledge, experience and similar environment) would have felt required to stay and answer all of the detective's questions.

### *Out-of-Home Placement Findings*

► *State v. D.J.*, [281 Or App 730 \(2016\)](#).

At a review hearing, the trial court's findings satisfied the specificity requirement of ORS 419C.626(3)(a). The trial court found that placing youth in an at-home placement would be a risk to community safety, that youth would not be appropriate for community supervision through the local probation department, and that youth would not be able to access the sex offender treatment that he was required to complete in his proposed community placement. Those findings demonstrated that the trial court met its obligation under ORS 419C.626(3)(a) to state "why" it ordered that youth continue in the out-of-home placement and that the placement was "necessary."

### *Possession of Methamphetamine*

► *State v. F. R.-S.*, [294 Or App 656 \(2018\)](#)

The trial court erred in finding youth within the jurisdiction of the court for possession of methamphetamine because the state did not present sufficient evidence from which a reasonable trier of fact could find that the substance in the pipe was methamphetamine. The Supreme Court has recognized that methamphetamine is not self-identifying as some other substances might be because something that appears to be a white substance could also be cocaine, heroin or some other harmless substance. Youth did not admit to having used the pipe to smoke methamphetamine, nor did he give any other indication that the substance inside of the pipe was methamphetamine. In addition, the police officers offered statements such as the substance "appeared" to be methamphetamine. ORS 475.894 requires identification of a specific drug.

## ***Preservation***

▶ ***State v. R.W.G.*, [288 Or App 238 \(2017\)](#)**

The first sentence in youth's closing argument, in which he asserted that "it's our position that this did not happen," was not sufficient to preserve his claim of error. To preserve an "insufficiency of the evidence" claim for appeal through a closing argument, a party must present an argument that seeks to convince the trial court that the evidence is *legally* insufficient to support a verdict for the other party. In this case, youth did not include any contention that the evidence was legally insufficient to support a finding that he was within the juvenile court's jurisdiction. He did not assert the court could not find that he had committed the alleged acts, nor did he argue that the record did not include any evidence that would support such a finding.

## ***Restitution***

▶ ***State v. L. G. S.-S.*, [307 Or App 208 \(2020\)](#)**

The court erred in awarding restitution to Safeco Insurance, because the state did not meet the timing requirement in the juvenile restitution statute, ORS 419C.450, which requires the state to present restitution evidence "prior to or at the time of adjudication." The court applied the holding from *State v. M.A.S.*, [302 Or App 687 \(2020\)](#), that the state was required by ORS 419C.450 to present its restitution evidence before the court concluded the adjudicatory hearing. In this case, at the time the youth was adjudicated (when the court accepted youth's plea and found him within its jurisdiction) the state did not present evidence to the court of injury, loss or damage to Safeco Insurance, nor had the state even identified Safeco Insurance as a victim. If the court finds from that evidence that the victim suffered an injury, loss or damage, then the court is required to include in the judgment of jurisdiction that the youth pay restitution to the victim. The court did not address whether the fact that Safeco had subrogation rights to a named victim has any bearing on the timeliness of the restitution request, because the state also did not timely request restitution for Safeco.

▶ ***State v. M.A.S.*, [302 Or App 687 \(2020\)](#)**

Youth's challenges that the juvenile court lacked the legal authority to amend the petition without making written findings and that his procedural due process rights were violated are rejected. The state's presentation of restitution evidence at the dispositional hearing occurred after the adjudication of youth and was therefore untimely. Restitution award reversed; remanded for new dispositional judgment; otherwise affirmed.

▶ ***State v. J.M.E.*, [299 Or App 483 \(2019\)](#)**

Payment of medical bills in accordance with the statutory and regulatory scheme governing the CVCP does not, in the absence of other evidence, support the determination that those bills are

reasonable. Because, in this case, the state produced no other evidence as to the reasonableness of the medical bill in question, the trial court erred in including that portion of the victim's medical expenses in the supplemental judgment.

► *State v. N.R.L.*, [354 Or 222 \(2013\)](#).

A restitution determination pursuant to ORS 419C.450 is not civil in nature. Article 1, section 17, does not confer the right to a jury trial for a restitution determination in a juvenile delinquency matter.

### ***Sex Offender Reporting***

► *State v. A. L. M.*, [305 Or App 389 \(2020\)](#)

The juvenile court acknowledged youth's successful completion of probation and sex-offender treatment, but found that youth had repeatedly sodomized his very young and vulnerable victims, that youth had taken advantage of his age and their ages, and that youth had taken advantage of the position of authority or trust he had been given over the children. The court also found that youth uses drugs "in connection with things that aren't necessarily healthy," noting the evidence that he offered marijuana to his victims in conjunction with abusing them. Based on that, the court was concerned by youth's repeated use of marijuana while on probation. Finally, the court observed that it could have "no idea" how youth would do once he was "off supervision" given that – up to the point of the hearing – youth had "been monitored fairly closely" since the abuse occurred. A reasonable juvenile court could conclude, on this record, that the evidence did not demonstrate clearly and convincingly that youth was rehabilitated and did not pose a public-safety threat.

### ***Waiver***

► *State v. J.C.N.-V.*, [268 Or App 505 \(2015\)](#), *reversed and remanded*, [359 Or 559 \(2016\)](#)

ORS 419C.349(3) requires a juvenile court to find that the youth possesses sufficient adult-like intellectual, social and emotional capabilities to have an adult-like understanding of the significance of his or her conduct, including its wrongfulness and its consequences for the youth, victim and others in order for a juvenile court to authorize waiver of a youth who is otherwise eligible for waiver under ORS 419C.349 or ORS 419C.352. The court found the legislature did not intend to impose a requirement that a youth have every one of the capabilities of a typical adult. Instead, the legislature intended that the juvenile court take measure of a youth, and reach an overall determination as to whether the youth's capacities are sufficiently adult-like to justify a conclusion that the youth was capable of appreciating, on an intellectual and emotional level, the significance and consequences of his conduct.

# ***Juvenile Dependency***

## ***Appealability***

▶ ***Dept of Human Services v. C. M. H., [301 Or App 487 \(2019\)](#)***

The Court of Appeals has jurisdiction to hear the appeal from a judgment of parentage or nonparentage. ORS 419A.205(1) does not limit the type of juvenile court judgments that may be appealed under ORS 419A.200(1).

▶ ***Dept. of Human Services v. A.M.G., [289 Or App 437 \(2017\)](#)***

Mother appealed the juvenile court's determinations in judgments regarding her three children that DHS had made active efforts to reunify the family as required by the Indian Child Welfare Act. Relying on *Dept. of Human Services v. A.B.B.*, 285 Or App 409, *rev allowed*, 361 Or 885 (2017), the Court of Appeals held the judgments were not appealable under ORS 419A.200(1) because they did not alter the status quo of the dependency cases, deny any affirmative relief sought by mother, or otherwise adjust the rights and duties of the parties. The court declined to overrule *A.B.B.* and related previous cases since the Supreme Court has allowed review in *A.B.B.*

▶ ***Dept. of Human Services v. L.S.H., [286 Or App 477 \(2017\)](#)***

The court determined that ORS 19.245(2) (prohibiting a party from appealing a judgment when a party consents to the entry of judgment) did not bar the appeal under the circumstance of this case because: (1) mother was never asked whether she consented to entry of the judgment, and (2) there were no other indications that mother consented to the entry of judgment. Instead, the court found the juvenile court entered judgment because it determined on its own that mother's admission demonstrated that jurisdiction was warranted.

▶ ***Dept. of Human Services v. A. B. B., [285 Or App 409 \(2017\)](#), *rev. allowed 9/14/17.****

A review judgment or an order issued under ORS 419B.449 is appealable if the rights or duties of the appealing party are adversely affected. ORS 419B.449(7); 419A.200(1). In this case, the court found the juvenile court's determination that DHS made active efforts to reunify the family did not adversely affect the rights or duties of the children.

▶ ***Dept. of Human Services v. A.D.D.B., [278 Or App 503 \(2016\)](#)***

The Court of Appeals found the review judgments were not appealable when the juvenile court continued the child's placement and reasonable efforts finding from the hearing held a month earlier. To be appealable, among other requirements, a judgment must affect the rights or duties of a party. In this case, mother did not cite any new information or changed circumstances since the last hearing, and consequently, the court did not deny any request for affirmative relief that mother raised for the first time or renewed with support of new information.

► *Dept. of Human Services v. B. P.*, [277 Or App 23 \(2016\)](#).

The Court of Appeals found that a judgment resolving jurisdictional issues that was labeled as a jurisdictional judgment was reviewable on appeal. A jurisdictional judgment in juvenile court proceedings, for purposes of appeal, includes a judgment finding a child within the jurisdiction of the court. ORS 419A.205(1)(a). The court recognized in *State ex rel Juv Dept v J.W.*, 345 Or 292 (2008), a judgment under the juvenile appeals statutes (ORS 419A.200 and ORS 419A.205(1)(a)) must also comply with the statutes in ORS chapter 18 that govern judgments generally. In interpreting ORS 18.005, the Oregon Supreme Court has explained that a judgment consists of two distinct parts: (1) substantively, the trial court must make a concluding decision on one or more requests for relief; and (2) formally, the trial court must ensure that the concluding decision is reflected in the judgment document.

### ***Claim and Issue Preclusion***

► *Dept. of Human Services v. T. G. H.*, [305 Or App 783 \(2020\)](#)

*When there are new jurisdictional allegations or similar allegations that are based on “new substantial material facts” (i.e., facts that were either not available or not presented and that likely would have been material to the juvenile court’s determination), then the welfare of the child must prevail over the policy underpinnings of claim and issue preclusion that would otherwise bar re-litigation.* In this case, the Lincoln County juvenile court based its jurisdictional determination on evidence regarding the effects of father’s discipline on the child’s psychological and emotional welfare that had not been presented to or considered by the Douglas County juvenile court. The Douglas County juvenile court determination has no preclusive effect on the consideration of any evidence relevant to the allegations considered by the Lincoln County juvenile court that are based on those new substantial material facts.

### ***Continuance***

► *Dept. of Human Services v. N.J.V./D.L.O.*, [290 Or App 646 \(2018\)](#)

The court found there was no record that permitted meaningful review of the juvenile court's exercise of discretion in denying the continuance. There was nothing to suggest that the court considered the reasons set further in mother's motion and supporting declaration, weighed those against competing considerations, and concluded that those outweighed mother's interest in having the court consider an updated assessment of her mental health status and related substance abuse needs. The court concluded the juvenile court abused its discretion when it denied mother's request for a continuance without expressing any reason. Further, the court found the error was not harmless because the issues mother sought to address with an updated

assessment were the issues that the juvenile court considered most significant when deciding whether to appoint A and J's foster parent as their guardian.

### ***Discovery***

- ▶ *Dept. of Human Services v. R.A.B.*, [293 Or App 582 \(2018\)](#), *reversed and remanded*, [299 Or App 642](#)

Discovery violations in juvenile proceedings are governed by ORS 419B.881. While the juvenile court has authority to supervise and manage discovery, and can restrict discovery obligations, the court does not have the authority to unilaterally create new discovery obligations beyond those mandated by ORS 419B.881(1). The plain text of ORS 419B.881(1)(c) requires that any reports or statements of experts who will be called as witnesses be disclosed to the other party or parties. Further, the court's authority to impose a discovery violation derives from ORS 419B.881(10), which is tied to the discovery obligations created by ORS 419B.881(1). The statute does not authorize the imposition of a sanction for violation of a discovery obligation beyond those set forth in the statute. Thus, Poppleton could not be excluded as a witness as a discovery sanction for failure to create a report, when creation of such a report is not required by the discovery statute. The failure to produce a nonexistent report was not itself a discovery violation, and the trial court erred in concluding otherwise.

### ***Disposition***

#### **Placement**

- ▶ *Dept. of Human Services v. S.E.K.H./J.K.H.*, [283 Or App 703 \(2017\)](#)

ORS 419B.337(2) allows the court to make orders about the type of care that a ward should receive, but assigns DHS the responsibility to make the decision regarding the actual care provided to the ward. The court read this to suggest that the legislature intended DHS, not the juvenile court, to make decisions regarding a ward's actual placement. ORS 419B.337(5) reinforces this by prohibiting a juvenile court from directly placing a ward committed to DHS custody in a residential facility, requiring the court to deliver the ward to DHS instead. Finally, ORS 419B.349 provides the juvenile court authority to review DHS's placement decisions, while providing that the actual planning and placement of the child is the responsibility of DHS. In addition, ORS 419B.349 prohibits the court from directing a specific placement for a ward in DHS custody, absent a legal requirement that the court do so.

#### **Psychological Evaluation**

- ▶ *Dept. of Human Services v. F.T.R.*, [306 Or App 697 \(2020\)](#)

The juvenile court ordered mother to participate in a psychological evaluation following testimony at a review hearing that mother was failing to make progress and her children were having behavioral problems following visits. She did not directly ask the juvenile court to condition her participation on a grant of use immunity. On appeal, mother did not establish that the ordered evaluation was so clearly incriminating in violation of her Fifth Amendment rights that it was impermissible in the absence of a blanket grant of immunity. The court stated in a footnote that their opinion does not foreclose mother from invoking her rights against self-incrimination on a question-by-question basis while being interviewed by the evaluator.

► *Dept. of Human Services v. P.W.*, [302 Or App 355 \(2020\)](#)

The question on appeal is whether the court had authority to order the biological mother to submit to a psychological evaluation after the case plan was changed to adoption and after her parental rights had been terminated. ORS 419B.387 authorizes the court to order a psychological evaluation, but only after considering evidence at an evidentiary hearing regarding the need for treatment or training to correct the circumstances that resulted in wardship or to prepare the parent to resume care of the ward. However, since mother's parental rights had already been terminated in this case and she was not preparing to resume care of the child, the court held ORS 419B.387 does not provide authority for the court's order in this case.

► *Dept. of Human Services v. L.J.W.*, [302 Or App 126 \(2020\)](#)

The juvenile court did not plainly err in ordering the examination. Although, under ORS 419B.387, DHS must establish at an evidentiary hearing the need for the psychological evaluation as part of "treatment or training," that statute is not the only basis for the juvenile court's authority. Under ORS 419B.337(2), the court may also order a psychological evaluation when rationally related to a basis of the juvenile court's jurisdiction. Given the record, the jurisdictional bases, and two potential sources of authority for a psychological evaluation, any asserted error is not plain.

► *Dept. of Human Services v. T.L.H.*, [300 Or App 606 \(2019\)](#)

In this case, the court found the juvenile court did not exceed its authority under ORS 419B.387 in ordering father to submit to a psychological evaluation. The record contains evidence to support the conclusion that the evaluation was a component of additional treatment or training that father needed to resume care of his child. The evaluation would assist DHS in understanding what services would facilitate a successful reunification where the child had high needs, and father had a history of PTSD, child abuse and methamphetamine use.

► *Dept. of Human Services v. D.R.D.*, [298 Or App 788 \(2019\)](#)

ORS 419B.387 authorizes the juvenile court to order a parent to participate in treatment or training, but requires the court to find it is needed to correct the circumstances that resulted in

wardship or to prepare the parent to care for the ward, following an evidentiary hearing. In this case, the juvenile court heard testimony that father continued to use methamphetamine after jurisdiction was established, failed to engage in services, and that a psychological evaluation could help provide insight into why father was not engaging in substance abuse treatment. The Court of Appeals found the juvenile court was within its statutory authority under ORS 419B.387 when it ordered father to participate in a psychological evaluation, after considering the evidence presented at the hearing.

► *Dept of Human Services v. K.J.*, [295 Or App 544 \(2019\)](#)

Juvenile court judgment ordering father to undergo a psychological evaluation reversed when there was no evidence that father’s misrepresentation of his medical conditions was contributing to the jurisdictional basis or was a barrier to reunification.

► *Dept. of Human Services v. A.F.*, [295 Or App 69 \(2018\)](#)

The provision of psychological services to parents is not limited to cases in which a parent’s mental health condition is a basis for jurisdiction. If evidence in the record rationally leads the juvenile court to believe that a parent’s mental health might be contributing to an established jurisdictional basis, it is permissible for the court to order an evaluation of the parent to determine whether a mental health issue exists. In this case, the court found the low threshold for a rational relationship was met. The juvenile court could rationally conclude from the evidence that something more than drug addiction might be at play with respect to mother’s substantial neglect of D and slow engagement in services, specifically a possible mental health issue that might prevent mother from successfully ameliorating the jurisdictional bases unless identified and addressed.

► *Dept. of Human Services v. D.W.W.*, [278 Or App 821 \(2016\)](#).

A psychological evaluation may be ordered even when the jurisdictional findings do not include a finding that the parent has a mental health problem. In this case, the court had no authority to order an evaluation because there was no rational relationship between the requirement to undergo a psychological evaluation and the basis the court found for taking jurisdiction when the court explicitly found the evaluation was not necessary to help father ameliorate his substance abuse.

► *Dept. of Human Services v. A.E.F.*, [261 Or App 384 \(2014\)](#).

The juvenile statutes authorize a court to order a parent to participate in a psychological evaluation if the evaluation “bears a rational relationship to the bases the court found for taking jurisdiction.” See ORS 419B.337(2) and 419B.343(1)(a). The juvenile court erred in construing its authority to order a psychological evaluation was limited to cases when: (1) a “psychological

condition” was one of the jurisdictional bases; or (2) the parent has not benefitted from services for unexplained reasons. The case was remanded for the trial court to determine if there is a rational relationship between the findings that brought the child within the court’s jurisdiction (injuries/excessive discipline/anger management) and the proposed psychological evaluation.

#### **Reasonable efforts finding**

- ▶ *Dept. of Human Services v. R. W.*, [277 Or App 37 \(2016\)](#).

Juvenile court’s finding that DHS made reasonable efforts reversed when only one offer to refer to services was made between the shelter and dispositional hearings over a period of five and a half months. The court will consider the particular circumstances of a case, including a parent's participation or lack of cooperation, in determining whether DHS's reunification efforts were reasonable. However, the inquiry is primarily directed at DHS's conduct and not the parent's. A parent's failure to sign releases is not one of the circumstances that legally excuses DHS from making reasonable efforts as to that parent.

#### **Urinalysis requirement (DHS)**

- ▶ *Dept. of Human Services v. A.M.B.*, [299 Or App 361 \(2019\)](#).

Court of Appeals affirmed the juvenile court’s denial of mother’s motion for an order permitting unobserved urinalysis. Mother argued that DHS’s requirement to participate in observed urinalysis violated her right to be free from unreasonable searches under Article I, section 9, of the Oregon Constitution, and the Fourth Amendment to the United States Constitution. She also argued that her right to privacy and bodily integrity under the Fourteenth Amendment to the U.S. Constitution was violated. The Court found mother failed to provide evidence to substantiate her constitutional claims.

#### ***Disposition of Child Abuse Assessment (Judicial Review)***

- ▶ *Bruce Querbach v. Dept. of Human Services*, [308 Or App 131 \(2020\)](#)

The standard for founded dispositions of abuse is “reasonable cause to believe”, which has been interpreted by the court as akin to the “reasonable suspicion” standard in criminal law. DHS evaluates whether there is reasonable cause to believe the child is at risk of harm from abuse or neglect by a particular individual. The role of the circuit court in reviewing the DHS determination is to determine whether a reasonable person could reach the same determination that DHS made. The circuit court erred in applying a probable cause standard. On appeal, the question is whether the record allows for the determination that it was reasonable for DHS to believe under the circumstances before it that petitioner caused his children to suffer mental injury, physically abused his son, and threatened harm to his daughter. The evidence in the record about what was known to DHS supports an objectively reasonable belief that petitioner committed the abuse identified by DHS, or so a reasonable person could conclude, regardless of

contrary evidence presented by petitioner. The circuit court correctly sustained DHS's founded dispositions of mental injury to both children, but erred when it set aside DHS's founded disposition that petitioner caused physical abuse. The founded disposition of threat of harm to petitioner's daughter is not supported by substantial evidence, and the circuit court correctly set aside that founded disposition.

► ***Dept. of Human Services v. P.A.*, [281 Or App 476 \(2016\)](#)**

The disposition of a child abuse assessment and the process for foster home certifications are administrative actions subject to review under Oregon's Administrative Procedures Act (APA). When the APA provides for review of an agency action, the APA is the exclusive means of reviewing the validity of that action. Because neither foster parents nor any other party sought review of DHS's administrative actions under the APA, it follows that, in a separate juvenile dependency proceeding, those administrative decisions were not before the juvenile court, and the court erred by ordering DHS to undo those actions in a permanency judgment.

### ***Evidence***

► ***Dept. of Human Services v. T. G. H.*, [305 Or App 783 \(2020\)](#)**

The trial court did not err in denying father's motion *in limine* to exclude evidence that had been considered previously by the Douglas County court, because, in determining whether DHS had met its burden to establish the new allegations by clear and convincing evidence, the Lincoln County juvenile court was required to evaluate the totality of the circumstances, including the present effects of past events on the children's condition.

► ***Dept. of Human Services v. M.T.J.*, [304 Or App 148 \(2020\)](#)**

Juvenile court's decision granting mother's motion *in limine* to restrict father's presentation of evidence to the confines of the petition reversed. The court explained that the line of appellate cases starting with *Dept. of Human Services v. G.E.*, 243 Or App 471, *adh'd to as modified on recons*, 246 Or App 136 (2011) restrict the use of "extrinsic facts" as a basis for establishing or continuing dependency jurisdiction or for changing a child's permanency plan away from reunification. However, that line of cases does not prescribe the evidence that can be admitted in a jurisdictional hearing to prove the facts alleged in a petition. In other words, the case law does not categorically preclude the admission of evidence of facts not pleaded as a bases for asserting jurisdiction. The court went on to explain that previous cases have recognized the possibility that evidence of extrinsic facts may come in during a dependency proceeding even though, absent an amendment to the underlying petition, those facts may not be used to establish or maintain jurisdiction, or to change the permanency plan away from reunification.

► *Dept. of Human Services v. R.A.B.*, [299 Or App 642 \(2019\)](#)

The juvenile court had excluded the testimony of one of mother's expert witnesses as a discovery sanction for failing to produce a report. On the first appeal, the Court of Appeals determined the juvenile court erred, but that it was harmless because the testimony was tantamount to providing the expert's view on whether the child witnesses were likely telling the truth in their interviews (impermissible vouching). However, when considering the case again on remand, in light of *Black*, testimony as to interview methods could potentially be admissible. Because the juvenile court had excluded the testimony for discovery reasons, neither the litigants nor the juvenile court proceeded to a point where they considered the evidentiary admissibility of the expert's proposed testimony. Mother could argue that at least some of the expert's testimony is admissible, and the juvenile court could potentially conclude that the Oregon Evidence Code does not prohibit admission.

► *Dept. of Human Services v. G.C.P.*, [297 Or App 455 \(2019\)](#)

When a party objects to testimony as improper vouching, the court must determine whether the testimony provides an opinion on truthfulness, or instead, provides a tool that the factfinder could use in assessing credibility. In this case, Hedlund's testimony, "Based on [child] saying 'Daddy did it,' I trust a child when they say something like that" was impermissible vouching. Although DHS conceded that both of Hedlund's statements were vouching, the court stated that Hedlund's second statement – regarding a child answering "without thinking about it" because "the child's being honest and telling you is the perception" – arguably could be a tool that the factfinder could have used in assessing credibility.

► *Dept. of Human Services v. J.R.D.*, [286 Or App 55 \(2017\)](#)

The court found the text and context of ORS 419A.150 do not support the conclusion that a litigant who fails to appear before a referee is barred from presenting evidence at a subsequent rehearing. The court found that ORS 419A.150(3) plainly grants litigants permission to offer additional evidence at a rehearing. Accordingly, the court found the juvenile court erred in denying mother the opportunity to present additional evidence.

► *Dept. of Human Services v. C. P.*, [285 Or App 371 \(2017\)](#)

As a general matter, when a parent opposes termination on the ground that it is not in a child's best interest because severing the parent's legal connection to the child will be detrimental to the child, evidence of an alternative to termination that will preserve that legal connection is relevant to whether termination is in the child's best interests. In this case, the court found that in light of father's argument that he and his children were bonded and that termination would sever that relationship to the children's detriment, the evidence regarding grandfather's ability to care for the children was relevant to the issue of whether termination was in the best interest of the children. The juvenile court's exclusion of the evidence was legal error.

- ▶ *Dept. of Human Services v. K.A.H.*, [278 Or App 284 \(2016\)](#) (**Caution:** ORS 45.400 was amended following this decision.)

Allowing testimony by telephone over the parent's objection was legal error when the testimony was the only evidence that definitively linked A's injuries to a theory of abuse, and any significant hindrance in effectively cross-examining him amounted to a substantial prejudice.

The court examined the provisions of ORS 45.400 relevant to this case: the court may order testimony by telephone for good cause shown (subsection 1); and (except as provided in subsection (4) for jury trials) shall allow telephone testimony for good cause shown (subsection 3), but may not allow the use of telephone testimony if: (a) the ability to evaluate the credibility and demeanor of a witness or party in person is critical to the outcome of the proceeding; (b) the issues to which a witness will testify are outcome determinative; or (f) if failure of a witness or party to appear personally will result in substantial prejudice to a party in the proceeding.

Reviewing the trial court's decision for legal error, the court found that Dr. Valvano's testimony was the only evidence that definitively linked A's injuries to a theory of abuse, and that any significant hindrance in effectively cross-examining him amounted to a substantial prejudice under these circumstances. In addition, his testimony was outcome determinative, and as such, the court held ORS 45.400(3)(b) requires that the parent have the opportunity to cross examine the witness in person.

- ▶ *Dept. of Human Services v. J.V.-G.*, [277 Or App 201 \(2016\)](#)

It was error for the juvenile court to consider the DIF report in denying father's motion to dismiss. The report was offered and admitted to prove the truth of the statements contained in the report; thus it was inadmissible hearsay under OEC 802.

- ▶ *Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).

The court may only rely upon evidence that is relevant, material and admissible under the Oregon Evidence Code in ruling on a party's motion to terminate a child's wardship. In addition, the ORS 419B.325(2)(governing evidence admissible for the purpose of determining proper disposition) exception to competent evidence applies to permanency hearings pursuant to ORS 419B.476(1), allowing the court to receive the exhibits at issue for purposes of considering reasonable efforts to effect reunification, and whether the parent made sufficient progress to allow the child's safe return home.

- ▶ *Dept. of Human Services v. J.G.*, [258 Or App 118 \(2013\)](#).

With respect to the medical care hearsay exception, a declarant's out-of-court statement is admissible under OEC 803(4) if it (a) is made for purposes of medical diagnosis or treatment; (b)

describes or relates medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof; and (c) is reasonably pertinent to diagnosis or treatment. In this case, the record supported the juvenile court's conclusion that the statements were made for the purpose of medical diagnosis or treatment where the medical examiner testified that she explained to each child the examination and interview is for purposes of the medical diagnosis and treatment of any medical problems that are found and the physical examination and interviews took place at the same time in the same medical facility.

### ***Foster Home Certification***

- ▶ ***Dept. of Human Services v. P.A.*, [281 Or App 476 \(2016\)](#)**

The disposition of a child abuse assessment and the process for foster home certifications are administrative actions subject to review under Oregon's Administrative Procedures Act (APA). When the APA provides for review of an agency action, the APA is the exclusive means of reviewing the validity of that action. Because neither foster parents nor any other party sought review of DHS's administrative actions under the APA, it follows that, in a separate juvenile dependency proceeding, those administrative decisions were not before the juvenile court, and the court erred by ordering DHS to undo those actions in a permanency judgment.

### ***Guardianship***

- ▶ ***Dept. of Human Services v. K.S.W.*, [299 Or App 668 \(2019\)](#)**

Under *Dept. of Human Services v. J. G.*, 260 Or App 500, 317 P3d 936 (2017), the juvenile court was not required to make a new "active efforts" finding when it actually ordered the guardianships, because the court had made that finding at a prior permanency hearing where it approved the placements.

- ▶ ***In re S.H.*, [289 Or App 88 \(2017\)](#)**

Once the underlying permanency judgments changing the plan to guardianship were reversed, there was no validly approved plan of guardianship to support the orders and judgments establishing the guardianship. Under those circumstances, the court had no discretion to deny mother's motions to set aside the guardianship judgments under ORS 419B.923.

- ▶ ***Dept. of Human Services v. J.C.*, [289 Or App 19 \(2017\)](#), *affirmed*, [365 Or 223 \(2019\)](#)**

A court's wardship of a child continues until, among other things, the court dismisses the petition concerning the ward or enters an order terminating the wardship. The court is required to terminate wardship over a child if the bases for juvenile court jurisdiction cease to exist. *Dept. of Human Services v. T.L.*, 279 Or App 673 (2016) When the permanency plan for a child is no longer reunification, a parent making a motion to dismiss based on lack of jurisdiction has the burden of proof if requested by the proponents of jurisdiction.

The Court of Appeals rejected Fuller's argument that ORS 419B.368(3) requires the court to find not only that the jurisdictional bases have been ameliorated, but also that it is in the child's best interest to vacate the guardianship and the parent is presently able and willing to adequately care for the ward. Instead, the court found that for purposes of evaluating mother's *motion to terminate wardship*, the court was required to conduct the two part inquiry in *T.L.*:

- (1) Do the original bases for jurisdiction continue to pose a current threat of serious loss or injury?
- (2) If so, is the risk likely to be realized?

The Oregon Supreme Court affirmed the Court of Appeals decision.

► ***Dept. of Human Services v. B.M.C.*, [272 Or App 255 \(2015\)](#)**

DHS had no standing to file a motion to set aside a guardianship judgment after the court entered an order appointing grandparents as guardians, terminated DHS custody and dismissed DHS as a legal party. Consequently, the juvenile court had no jurisdiction to set aside the judgment.

ORS 419B.875(1)(a)(G) provides that DHS becomes a party when the agency has temporary custody of the child. The court rejected DHS's argument that due process requires it be allowed to file a motion under ORS 419B.923(1)(c) to set aside the order dismissing it as a party, finding that the state has no entitlement to due process or standing to challenge the application of a state statute to it on constitutional grounds.

► ***Dept. of Human Services v. K.H.*, [256 Or App 242 \(2013\)](#), *opinion adhered to as modified*, [258 Or App 532 \(2013\)](#).**

The hearing required by ORS 419B.366 is "independent from a permanency hearing and requires different determinations." ORS 419B.366 doesn't require any specific type of hearing, but the party requesting the hearing must be given an opportunity to be heard at a "meaningful time and in a meaningful manner." The initial Court of Appeals opinion found a sufficient hearing was provided under ORS 419B.366 (durable guardianship) where the trial court had made a "reasonable time" determination four months earlier at the permanency hearing, and mother was allowed to submit an offer of proof for the trial court's consideration in determining whether a full evidentiary hearing would be necessary. On reconsideration, the Court of Appeals clarified the trial court did not take judicial notice of the permanency hearing record, but rather considered it in light of mother's offer of proof to determine whether mother's circumstances had changed warranting a full evidentiary hearing.

► ***Dept. of Human Services v. J.G.*, [260 Or App 500 \(2014\)](#).**

Allegation of an ICWA violation may be raised for the first time on appeal even though Oregon rule requires preservation of error. A proceeding to establish a durable guardianship under ORS 419B.366 is a “foster care placement” under ICWA, however, the court was not required under ICWA to make an “active efforts” finding in the guardianship judgment where it had made that finding in the permanency judgment changing the case plan to guardianship.

► *Dept. of Human Services v. R. S.*, [261 Or App 815 \(2014\)](#).

A review of the record shows that mother did not move to terminate the wardship, or otherwise properly place the continuing jurisdiction of the court at issue. Instead, mother used the guardianship hearing to attack the court’s initial jurisdictional determination. Once the initial jurisdiction of the court is established, the issue in later proceedings is only whether jurisdiction continues.

### ***Immunizations***

► *Dept. of Human Services v. S.M.*, [355 Or 241 \(2014\)](#).

Under ORS 419B.372 and ORS 419B.376, DHS had statutory authority as the children’s legal guardian to approve their immunization. The power of DHS as guardian to “make other decisions concerning the ward of substantial legal significance” under ORS 419B.376(5) includes the power to immunize the wards in its care against common childhood diseases.

### ***Inadequate Assistance of Counsel***

► *Department of Human Services v. C. M. W.*, [300 Or App 561 \(2019\)](#)

Juvenile court judgment terminating mother’s rights vacated and remanded when the record did not establish that the juvenile court plainly erred because it does not reflect whether or not appellant received the required notice of the time and place of trial. The court found appellant presents a colorable argument that she might have received ineffective assistance of counsel because of a lack of notice, and a hearing on that claim is therefore required.

► *Dept. of Human Services v. M.E.*, [297 Or App 233 \(2019\)](#)

The court declined to review whether the juvenile court erred when it continued the appointment of mother’s guardian ad litem from the dependency proceeding to the termination proceeding without holding a hearing, finding mother had opportunities to object to the continuing appointment before the judgment terminating mother’s rights was entered. The court found the record on appeal was inadequate to review mother’s claim of inadequate assistance of counsel when she failed to raise the issue below and the record was insufficiently developed for the court to review mother’s claim that counsel provided inadequate assistance by failing to request the removal of the GAL at the TPR proceeding.

► *Dept. of Human Services v. P. W.*, [296 Or App 548 \(2019\)](#)

Mother failed to appear for a termination trial. The court orally granted the termination petition after presentation of a prima facie case. Mother filed a motion to set aside the judgment under ORS 419B.923, and subsequently failed to appear for that hearing. The court denied her motion, noting the attorney's declaration did not comply with ORS 419B.923(2) (requiring the motion to be accompanied by an affidavit that states the facts and legal basis for the motion) and found no excusable neglect. Mother appealed, arguing that her trial counsel provided inadequate legal assistance by (1) failing to adequately plead the excusable neglect theory; (2) failing to advance a well-settled theory that notice is required under ORS 419B.820 before the court can enter a default; and (3) abandoning his prosecution of the set-aside motion at the hearing because he could not find mother. The Court of Appeals found that the record was insufficiently developed for resolution of mother's inadequate-assistance claim and remanded the case for an evidentiary hearing under the terms stated in *Dept. of Human Services v. M.U.L.*, 281 Or App 120 (2016).

- ▶ *Dept. of Human Services v. M.L.B.*, [282 Or App 203 \(2016\)](#), *adhered to as corrected and clarified*, [283 Or App 911 \(2017\)](#).

Mother failed to appear at a termination trial and appealed from the judgment terminating her rights, arguing that her attorney failed to mount a defense on her behalf, which rendered his assistance inadequate. On appeal, the court held that because mother did not appear at the trial, ORS 419B.815(8) prohibited her attorney from participating in the trial on her behalf. Because he was statutorily prohibited from presenting a defense at the trial, he was not inadequate for failing to do so. The court noted that if mother had a reasonable excuse for failing to appear and her attorney failed to request a continuance, that would present a different question. On request for reconsideration, the court corrected the statutory reference to ORS 419B.819(8).

- ▶ *Dept. of Human Services v. M.U.L.*, [281 Or App 120 \(2016\)](#)

The Court of Appeals agreed with mother's statutory analysis that if mother's attorney had made the request to remove the GAL, the juvenile court would have been required to remove the GAL because the court lacks discretion under ORS 419B.237(2)(a) to continue the GAL appointment if the parent no longer lacks substantial capacity. The court reasoned that if mother's attorney should have, in the reasonable exercise of professional skill and judgment, requested removal of the GAL, and if the failure to do so led to the continuation of the GAL against mother's wishes, then that failure has implications for the fundamental fairness of the termination proceeding. It could have impaired mother's ability to meaningfully defend against the termination petition. The Court of Appeals held mother raised a colorable claim that her counsel was inadequate, but the existing record did not contain sufficient information for the Court of Appeals to resolve the merits of the claim. The case was remanded to the juvenile court for an evidentiary hearing pursuant to ORS 419B.923.

- ▶ *Dept of Human Services v. T.L.*, [269 Or App 454 \(2015\)](#), *reversed*, [358 Or 679 \(2016\)](#).

A parent may raise a claim of inadequate assistance of appointed trial counsel for the first time on appeal when the juvenile court has changed the permanent plan from reunification to guardianship or Another Planned Permanent Living Arrangement (APPLA) after a permanency hearing.

### ***Incarcerated Parents***

▶ ***Department of Human Services v. C. S. C., [303 Or App 399 \(2020\)](#)***

In this case, the court found the efforts DHS was providing to father were extensive prior to his incarceration for serious crimes. After that, DHS's efforts dropped off as to father for a seven-month period. DHS had arranged for phone visitation, had paid money towards father's prison account to facilitate video calls, and had made efforts towards having father transferred to a prison closer to A to make in-person visits possible. The issue on appeal is whether the juvenile court erred in finding DHS made reasonable efforts given the lack of efforts over the seven-month period. The court distinguished this case from other recent cases where the court found efforts were insufficient in that *father was not asking to be a physical caretaker or a decision maker about the child's care, custody and control*. The court acknowledged that the law requires reasonable efforts be made for each parent but noted father's lack of availability as a placement resource helps place the services that DHS provided to father in perspective. The court also noted that while DHS had provided extensive services to father up to the time of the first permanency hearing, there was no indication that father had ameliorated the bases of jurisdiction over that period. The court suggested there was little evidence that father would have benefited from additional services.

▶ ***Department of Human Services v. M. C. C., [303 Or App 372 \(2020\)](#)***

Father's incarceration and the fact that his care resource for his child is located in another state might make providing reasonable efforts more challenging and time-consuming, but that does not excuse DHS from making reasonable efforts for reunification before obtaining a change in the child's plan to adoption. Here, DHS did not demonstrate that it had made those reasonable efforts by the time of the permanency hearing. Reversed and remanded.

▶ ***Dept. of Human Services v. M.T.P., [294 Or App 208 \(2018\)](#)***

The court concluded there was sufficient evidence from which the juvenile court could conclude there was no compelling reason that a termination petition was not in C's best interests. By the time of the permanency hearing, C had been a ward of the court for four years. Mother was not available and father's earliest release date was in 2022. Father proffered KG as a guardian, however, DHS provided information that KG had not followed the child's safety plan, and despite reminders, resisted the plan's directions. The juvenile court elicited colloquy with both KG and the grandmother, and was able to assess their demeanor. The court had evidence that the grandmother employed discipline inappropriate to C's vulnerability and that the proposed

guardian failed to appreciate that problem and resisted the safety plan. On this record, the juvenile court could conclude that the form of guardianship that father sought was contrary to the evidence that C needed to form a lasting bond with a long-term caregiver.

- ▶ *Dept. of Human Services v. L.L.S.*, [290 Or App 132 \(2018\)](#) *vacated and remanded*, [292 Or App 212](#)

The court found that when DHS failed to speak to father for the first nine months of the dependency case and failed to establish contact between father and Z for the first seven months, DHS efforts were not reasonable. Although father's 30 year sentence for sex offenses meant that he would be physically unavailable to be a resource for the child, the court found the concept of reunifying a child with a parent within the dependency statutes is not limited to physical reunification. In examining the policy underlying the dependency code and a parent's Fourteenth Amendment rights, the court concluded that reunification means restoration of the parent's right to make decisions about the child's care, custody and control without state supervision, even if the child will not be returned to the parent's physical custody. A parent's incarceration in itself does not relieve DHS of the obligation to make reasonable efforts. In this case, the court found that, at a minimum, the caseworker could have discussed the conditions of return with father to see if father had any ideas about how to satisfy the conditions from prison with assistance from DHS.

- ▶ *Dept. of Human Services v. S.M.H.*, [283 Or App 295 \(2017\)](#)

When assessing DHS's efforts, a juvenile court properly considers the length and circumstances of a parent's incarceration and evidence specifically tied to a parent's willingness and ability to participate in services, however the focus is on DHS conduct and a parent's resistance to DHS's efforts does not categorically excuse DHS from making meaningful efforts toward that parent. The court distinguished this case from *Dept. of Human Services v. S.W.*, 267 Or App 277 (2014), in which the juvenile court's reasonable efforts determination was affirmed despite an extended period of minimal efforts from DHS with respect to an incarcerated parent, noting that in this case, mother maintained regular contact with her children throughout the life of the case.

- ▶ *Dept. of Human Services v. C.L.H.*, [283 Or App 313 \(2017\)](#)

When the juvenile court assesses the benefit portion of the required cost-benefit analysis, the juvenile court must consider the importance of the service that was not provided to the case plan and the extent to which that service was capable of ameliorating the jurisdictional bases. When available, the juvenile court properly considers evidence tied to a parent's willingness and ability to participate in and benefit from the service that was not provided. While the court may consider the length and circumstances of a parent's incarceration in assessing DHS's efforts, the reasonable efforts inquiry focuses on whether DHS provided the parent with an opportunity to demonstrate improvement regarding the jurisdictional bases. DHS may not withhold a

potentially beneficial service to a parent simply because reunification with the child is ultimately unlikely even if the parent successfully engages in the services and programs that DHS provides. DHS must make reasonable efforts so that the juvenile court is in a position to evaluate the parent's progress toward the goal of reunification. The circumstances and duration of a parent's incarceration may then be considered when the court determines whether the parent has made sufficient progress.

► *Dept. of Human Services v. S.S.*, [278 Or App 725 \(2016\)](#).

Given that the children's lack of relationship with mother was among the adjudicated circumstances that endangered them, four months of efforts to rebuild the relationship was not enough to compensate for six months of failure to allow contact or even prepare the children for contact with their mother.

► *Dept. of Human Services v. T.E.B.*, [279 Or App 126 \(2016\)](#)

Father filed a *pro se* petition requesting that custody be changed to father's mother or fiancée, and also admitted he was incarcerated and unavailable as a custody resource. The court distinguished this case from previous cases finding no risk of harm because the child was placed with a grandparent. In this case, father admitted that his circumstances presented a danger to the welfare of his child. Since father also waived his right to require DHS to present evidence and to present his own evidence, there was no evidence in the record to the contrary of father's admission that his incarceration presents a danger to the child.

► *Dept. of Human Services v. S.W.*, [267 Or App 277 \(2014\)](#).

Under the totality of the circumstances, the record supported the juvenile court's conclusion that DHS made reasonable efforts. The court can consider father's conduct in response to DHS efforts in evaluating the reasonableness of DHS efforts over the life of the case. The length and circumstances of a parent's incarceration are factors that the juvenile court may consider in relationship to the child's stage of development and particular needs, in determining whether DHS efforts were reasonable. The agency's decision not to provide visits was reasonable in light of the long drive (six hours round trip), the stress of the prison environment in light of A's physical, behavioral and emotional problems; the lack of a relationship with father; and a psychological evaluation which questioned whether father was a viable visitation resource.

► *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#).

Juvenile court's decision that DHS made reasonable efforts was reversed when court did not consider totality of the circumstances by engaging in a cost-benefit analysis to determine if DHS was required to provide father with a psychosexual evaluation, a service identified as "key" to reunification.

- ▶ *Dept. of Human Services v. D.A.N.*, [258 Or App 64 \(2013\)](#).

The Court of Appeals considered the issue of whether the juvenile court was required to find, before it changed the case plan to adoption, that the child could not be returned within a reasonable time. The court declined to reach that issue, because it concluded that the juvenile court's findings "implicitly included" that determination.

- ▶ *Dept. of Human Services v. D.J.*, [259 Or App 638 \(2013\)](#).

The Court of Appeals found the right to "participate in hearings" in ORS 419B.875(2)(c) includes the right to testify on the party's own behalf. The court reversed the juvenile court's judgment changing the permanency plan from reunification when an incarcerated parent who wanted to participate was not able to be connected by telephone.

### ***Interstate Compact for the Placement of Children***

- ▶ *Dept. of Human Services v. A. B.*, [286 Or App 578 \(2017\)](#)

California declined to approve the child's placement with grandfather under the Interstate Compact on the Placement of Children (ICPC). The Court of Appeals found the juvenile court's permanency and guardianship judgments violated the ICPC because they had the effect of causing the child to be placed in California without the approval of California officials.

- ▶ *Dept. of Human Services v. Z.E.W.*, [281 Or App 394 \(2016\)](#)

Lack of ICPC approval does not, in itself, provide a basis for asserting jurisdiction over the children. The court cited to ORS 419B.334 that allows the court to place the *ward* in protective supervision out of state, if there is an interstate compact or agreement or an informal arrangement with another state permitting the ward to reside in another state.

### ***Indian Child Welfare Act (ICWA)***

- ▶ *Dept. of Human Services v. J.L.R.*, [296 Or App 356 \(2019\)](#)

In involuntary child custody proceedings, ICWA requires the party seeking the foster care placement to notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of the right to intervention. 25 U.S.C. §1912(a). The Court of Appeals reversed the juvenile court's judgment because DHS failed to provide the required notice.

- ▶ *Dept. of Human Services v. J.C.S.*, [282 Or App 624 \(2016\)](#)

After the court has established jurisdiction over a child, a subsequent jurisdictional proceeding does not constitute a "foster care placement" within the meaning of ICWA, that would

necessitate expert testimony that continued custody by the parent is likely to result in serious emotional or physical damage to the child.

► *Dept. of Human Services v. S.R.H.*, [278 Or App 427 \(2016\)](#)

ORS 419B.878 requires the court to inquire whether a child is an Indian child subject to ICWA when a court conducts a hearing relating to involuntary child custody. If the court knows or has reason to know the child is an Indian child, the court is to enter an order requiring DHS to notify the tribe of the pending proceeding and of the tribe's right to intervene. The case is to be treated as an ICWA case until such time as the court determines the case is not subject to ICWA. In addition, under the 1979 version of the Bureau of Indian Affairs Guidelines for State Courts (in effect at the time of this proceeding), if a public child-protective agency has discovered information which suggests that a child is an Indian child, *that knowledge is constructively imputed to the juvenile court*. If the case is subject to ICWA, a child, parent or tribe may petition the court to invalidate an action taken in violation of ICWA.

► *Dept. of Human Services v. M.D.*, [266 Or App 789 \(2014\)](#)

Court found DHS made active efforts even though psychological evaluation not provided until five months after removal when the record supported the inference that an earlier evaluation would not have ameliorated mother's condition to a degree sufficient to enable the child's return.

► *Dept. of Human Services v. J.M.*, [266 Or App 453 \(2014\)](#)

The court held ORS 419B.352(2) applies to cases governed by ICWA, and found the exhibits at issue were admissible under that provision. In addition, a change in permanency plan from reunification to adoption does not constitute a "foster care placement" pursuant to ICWA that would require the juvenile court to find mother's custody was likely to result in serious emotional or physical damage.

► *Dept. of Human Services v. J.G.*, [260 Or App 500 \(2014\)](#).

Allegation of ICWA violation may be raised for the first time on appeal even though Oregon rule requires preservation of error. The court was not required under ICWA to make an "active efforts" finding in the guardianship judgment where it had made the finding in the permanency judgment.

### ***Judicial Notice***

► *Dept of Human Services v. A.A.*, [276 Or App 223 \(2016\)](#)

The court did not comply with ORS 419A.253 because it failed to take judicial notice of the documents and statements made on the record at the permanency hearing and failed to give the

parties an opportunity to object. The court could not permissibly rely on the information in the reports and the statements in determining whether DHS made active efforts or whether father made sufficient progress.

## ***Jurisdiction/Conditions and Circumstances***

### **Anger control**

▶ ***Dept. of Human Services v. L.E.F., [307 Or App 254 \(2020\)](#)***

The record was legally sufficient to support the court's jurisdiction over father's children. At the jurisdictional trial, father's testimony of his alcohol use was inconsistent with D's, which the juvenile court found more credible. D described in detail the effects of father's drinking, including that he had red and puffy eyes and would stumble and fall over. D's testimony was consistent with what she told DHS. The court also noted that father had not been honest during this drug and alcohol assessment. The evaluator testified that father's abstention from alcohol for the two months prior to the trial was not significant, and that anyone can hold it together for two months. The court found the juvenile court's inference concerning the likelihood and imminence of father's further alcohol abuse during his parenting time was supported by the record. The court also found there is evidence in the record from which the juvenile court could reasonably find that each child experienced substantial pain when dragged and slapped by father, and that such force used in the course of "discipline" was not reasonable. Finally, the court found the trial court's finding regarding father's anger issues was supported by evidence in the record when there was testimony from a psychologist that father may do something inappropriate or ineffective when things are pushed too far, and testimony from the children that they were afraid of their father because he drank and was mean most days they spent with him.

### **Child abuse**

▶ ***Department of Human Services v. D. L., [303 Or App 286 \(2020\)](#)***

The juvenile court did not err in concluding that mother's assaultive conduct of throwing a stool at her 13-year old daughter (and her minimization of it) was sufficient to support its determination that it had dependency jurisdiction over A.

### **Contact with a sex offender**

▶ ***Dept. of Human Services v. C.T., [288 Or App 593 \(2017\)](#) rev den 362 Or. 482 (2018).***

The Court of Appeals found there was sufficient evidence in the record to support the court's finding that grandfather posed a risk of harm to C. The juvenile court finding that S was abused by grandfather and Steinhauer's testimony established a nexus between grandfather's sexual abuse of his daughters, which went untreated and unpunished, and the risk he posed to C.

▶ ***Dept. of Human Services v. N.B., [261 Or App 466 \(2014\)](#).***

The evidence in the record was legally sufficient to support the juvenile court's findings and those findings support the bases for jurisdiction. The evidence included a history of mother medically abusing her older children, mother continuing to see a convicted sex offender who had physically abused two of her children, a recent incident of medical child abuse, and expert medical testimony that mother's progress in dealing with her mental health was fragile and the children remain at risk of significant harm and potentially death in her care.

► *Dept. of Human Services v. D.H.*, [269 Or App 863 \(2015\)](#)

The juvenile court established jurisdiction over J based on mother's mental health, and her unwillingness to protect the child from her husband, a convicted, untreated sex offender. On appeal, the court found the evidence was legally insufficient to permit the conclusion that J's conditions and circumstances presented a current risk of harm to J when mother's attempted suicide occurred after the child was placed in foster care, and mother's husband's previous sex offense involved a victim of another class than J, contact was allowed with J before removal, J was happy and healthy, and no evidence was presented at trial of the specific risk husband posed to J.

**Domestic violence**

► *Dept. of Human Services v. A. J. G.*, [304 Or App 221 \(2020\)](#)

The court found there was evidence in the record to support the juvenile court's finding that the children were present during the incidents of domestic violence, and the court did not disturb the juvenile court's credibility determination regarding father's statements that the children were not present during the domestic violence incidents. In addition, the court found DHS established a nexus between the exposure to domestic violence and a current threat of harm through the caseworker's testimony that children exposed to domestic violence can be physically harmed, and emotionally and mentally affected by those situations that can affect their developmental status. In this case, the court found the child was particularly vulnerable to domestic violence exposure given his need for structure and developmental disability services, and his low IQ. Finally, mother testified that she was living with father and would remain living with him, creating a current risk of harm. The trial court did not err by asserting jurisdiction over child based on the two allegations relating to domestic violence.

► *Dept of Human Services v. T. J.* , [302 Or App 531 \(2020\)](#)

The court concluded the record was sufficient for the juvenile court to assert jurisdiction based on a nonspeculative and current risk of harm to T from father's domestic violence. A child need not be physically harmed by or even aware of the domestic violence surrounding the child to be at risk. Although T was asleep in another room, had the altercation escalated and spilled into his area of the small apartment, he would have had no ability to protect himself, nor would either

parent have been in the right state of mind to consider his safety. Given father's continued denials and opposition to being ordered into treatment for domestic violence, the risk of harm to T was current at the time of the hearing.

► *Dept. of Human Services v. D.W.M.*, [296 Or App 109 \(2019\)](#)

Evidence that a child is exposed to an intoxicated parent or to domestic violence is not, in itself, a basis for juvenile court jurisdiction. The state must establish both that the child is at risk of a certain severity of harm and that there is a reasonable likelihood that the risk will occur. Although the child testified that her parents pushed and shoved each other, the record does not establish how she was put at physical risk. There is no evidence that father injured or assaulted child during her parents' fights. Testimony regarding the spanking and the squeezing of her hand is not sufficient to establish a risk of injury to support jurisdiction. The court rejected DHS's argument that the child is at risk of psychological harm because she suffers from depression and anxiety and was harming herself, finding insufficient evidence regarding the type, degree and duration of the emotional harm.

► *Dept. of Human Services v. J.H.*, [292 Or App 733 \(2018\)](#)

Regarding the domestic violence, the court noted the frequency and intensity of the arguments over a prolonged time period, and the evidence that the arguments did have an emotional impact on K made it a close case. However, there was no evidence that K was at risk of physical injury, either directly or indirectly as a result of the arguments. The alleged risk of harm was emotional or psychological. In cases where there is no physical violence, exposure to frequent and severe verbal altercations between parents or other adults in the child's home may, in some circumstances, give rise to a threat of serious loss of injury in the form of serious emotional or psychological harm to the child. In order to establish such a circumstance, DHS must offer evidence showing the alleged risk of harm to the child, and not just argument or conclusory statements. In this case, the court found DHS failed as a matter of law to establish that mother and W's arguments exposed K to a current threat of serious loss or injury that was likely to be realized.

► *Dept. of Human Services v. J.J.B.*, [291 Or App 226 \(2018\)](#)

The ultimate inquiry is whether violence or aggressive behavior by an adult in the home endangers the child's welfare. In this case, the court found there was insufficient evidence to establish jurisdiction over J based on domestic violence. There was no evidence that father hit or threatened mother. There was evidence the parents argued in front of J, but not recently or to a degree that would expose her to a non-speculative current threat of serious loss or injury that is likely to be realized. The court found there was no evidence in the record to support the court's statement that domestic violence can have a profound impact on a child's brain development and

ability to form attachments. DHS offered no evidence regarding the harm to children associated with exposure to the "power and control" or "yelling" in this case.

► *Dept. of Human Services v. S. A. B. O.*, [291 Or App 88 \(2018\)](#)

The court found the record included no evidence that any of mother's relationships had resulted in her exposing the children to unsafe people or situations: the juvenile court found specifically that DHS had not proved that grandmother was unsafe, nor was there evidence that the children were present during any of the documented incidents of physical abuse between mother and her partners. Nor was there evidence that domestic violence was so prevalent in mother's relationships that it created the kind of chaotic and physically threatening environment that can be harmful to children.

► *Dept. of Human Services v. C.T.*, [288 Or App 593 \(2017\)](#)

The court found sufficient evidence in the record to support the juvenile court's determination that the children were at current risk of serious loss or injury from exposure to domestic violence between the parents. Although the parents had not spoken since the February 2016 altercation, they remained married at the time of the jurisdictional hearing, and the record contains no indication that dissolution proceedings had been initiated. Moreover, the court found that mother's residential instability contributed to the likelihood that parents would reunite and that father retained a romantic interest in mother.

► *Dept. of Human Services v. C.M.*, [284 Or App 521 \(2017\)](#)

The court rejected father's argument that since D was asleep when the physical altercation took place, he was not exposed to domestic violence and therefore, there was no current risk of harm to D. The court found DHS presented sufficient evidence from which the juvenile court could find that D was exposed to domestic violence and that the exposure endangered him, and that those findings supported the court's ultimate determination that there was a current risk of harm to D. In addition, the court rejected father's argument that the juvenile court could not find a current threat of harm based on a single episode of domestic violence.

► *Dept. of Human Services v. K.C.F.*, [282 Or App 12 \(2016\)](#)

Domestic violence between parents poses a threat to children when it creates a harmful environment for the children and the offending parent has not participated in remedial services or changed his or her threatening behavior. In this case, the court found the evidence in the record was insufficient to support the court's finding of a risk of serious harm to the children. Although there was evidence that father was emotionally abusive to mother and that the parents' conflict affected the children, there was no evidence of a present risk of serious harm that was likely to occur.

► *Dept. of Human Services v. K.V.*, [276 Or App 782 \(2016\)](#).

The court implicitly found that father's alcohol abuse was likely to lead him to engage in future domestic violence. Father's failure to complete batterer's education support the court's finding that father would likely behave violently in the future if he did not receive additional treatment. Finally, the juvenile courts finding there was a nexus between father's alcohol use and domestic violence and a current risk of harm to A was supported by expert testimony that domestic violence between spouses is a risk factor for child abuse. In this case, the domestic violence was directed toward mother and A, and mother would not be able to protect A from father's violence.

► *Dept. of Human Services v. A.W.*, [276 Or App 276 \(2016\)](#)

There was insufficient evidence in the record to establish jurisdiction when there was no evidence that mother was caring for A while doing methamphetamine, or that drugs had an effect on her parenting; there was no evidence that the child had been directly exposed to the parents' verbal arguments; and no evidence that the chaotic living environment and father's lack of emotional and behavioral regulation put A at risk of serious harm or injury.

► *Dept. of Human Services v. C.F.*, [258 Or App 50 \(2013\)](#).

Considering the following evidence in the record: (1) mother expressed fear of father; (2) in December 2011 (six months prior to jurisdiction), mother obtained a protective order against father based on the allegations of domestic violence and sought help from the Women's Crisis Center; (3) mother told a DHS investigator that she was not able to leave the house on a frequent basis, and was not able to go to the library, her parenting classes, or WIC appointments; and (4) mother's behavior demonstrated a pattern that is common in domestic violence, which presents a risk to the children; the court found the evidence was legally sufficient to permit the trial court's ruling there was a current threat of serious injury to the children, despite the fact that no physical confrontation had occurred between the parents for at least 18 months prior to jurisdiction.

### **Drug trafficking**

► *Dept. of Human Services v. V.G.-C.*, [307 Or App 571 \(2020\)](#)

The trial court did not err because, given the facts, there was a "reasonable likelihood" of harm to the welfare of the children. The court found the following facts supported the court's determination. In conducting an investigation of mother for drug trafficking, police located over \$100,000.00 in grandmother's dishwasher. Second, grandmother paid bail for mother's boyfriend with over \$25,000 in cash and denied knowing the boyfriend to law enforcement. The juvenile court was within its discretion to find grandmother's denials not credible. There was evidence that, as a result of a family-run drug enterprise, the children had been directly exposed to drugs and drug manufacturing, including smelling the odor of drugs being made in their home, and that grandmother had been, and would continue to be, involved in that enterprise to some

degree. The court distinguished this case from *Dept. of Human Services v. A. L.*, 268 Or App 391, 342 P3d 174 (2015), where DHS could not identify any harm to the children caused by living with the grandparents.

### **Failure to protect**

► *Dept. of Human Services v. C. A. M.*, [294 Or App 605 \(2018\)](#)

The court found the record contained evidence to support the juvenile court's finding that mother knew or should have known that father posed a risk of physical danger to the twins and that mother failed to protect them from that risk. The court pointed to multiple items in the record that indicated mother was reluctant to acknowledge that father posed a risk of abuse to the children. In addition, mother continued to have contact with father and lacked a clear intention to separate from him. The evidence supported the implicit finding by the juvenile court that mother would likely fail to protect M from father in the future. The court held the evidence in the record was legally sufficient to permit the court to determine that a nonspeculative risk of harm to M existed under mother's care.

► *Dept. of Human Services v. T.L.H.S.*, [292 Or App 708 \(2018\)](#)

In this case, the court understood that DHS sought to prove that, absent dependency jurisdiction, J would be exposed to ongoing risk of abuse from which mother would fail to protect her, in part due to mother's mental health issues. However, at the time of the jurisdiction hearing six months after mother failed to report the sexual abuse of J, J's circumstances had substantially changed. J had been removed from father's home. Father was subject to a no-contact order and facing criminal charges with the prospect of a lengthy prison term. Mother was planning to request a custody change even if father was not convicted. Mother had stopped drinking and voluntarily completed alcohol treatment, which caused DHS to dismiss substance abuse as an alleged basis for jurisdiction. Mother had been working with a counselor and was taking her medications for anxiety, depression and attention deficit disorder. Mother had believed J's disclosures of abuse, expressed remorse for failing to report it to police, and testified she would immediately call police or DHS in the future in a similar situation. Complete resolution of mental health issues is not a prerequisite to parenting a child without DHS supervision. The evidence was not legally sufficient to permit the trial court to determine that ORS 419B.100(1)(c) was satisfied.

### **ICPC**

► *Dept. of Human Services v. Z.E.W.*, [281 Or App 394 \(2016\)](#)

Lack of ICPC approval does not, in itself, provide a basis for asserting jurisdiction over the children. The court cited to ORS 419B.334 that allows the court to place the *ward* in protective

supervision out of state, if there is an interstate compact or agreement or an informal arrangement with another state permitting the ward to reside in another state.

### **Inappropriate discipline**

▶ *Dept. of Human Services v. L.E.F.*, [307 Or App 254 \(2020\)](#)

The record was legally sufficient to support the court’s jurisdiction over father’s children. At the jurisdictional trial, father’s testimony of his alcohol use was inconsistent with D’s, which the juvenile court found more credible. D described in detail the effects of father’s drinking, including that he had red and puffy eyes and would stumble and fall over. D’s testimony was consistent with what she told DHS. The court also noted that father had not been honest during this drug and alcohol assessment. The evaluator testified that father’s abstention from alcohol for the two months prior to the trial was not significant, and that anyone can hold it together for two months. The court found the juvenile court’s inference concerning the likelihood and imminence of father’s further alcohol abuse during his parenting time was supported by the record. The court also found there is evidence in the record from which the juvenile court could reasonably find that each child experienced substantial pain when dragged and slapped by father, and that such force used in the course of “discipline” was not reasonable. Finally, the court found the trial court’s finding regarding father’s anger issues was supported by evidence in the record when there was testimony from a psychologist that father may do something inappropriate or ineffective when things are pushed too far, and testimony from the children that they were afraid of their father because he drank and was mean most days they spent with him.

### **Lack of contact with parent**

▶ *Dept. of Human Services v. S.D.I.*, [259 Or App 116 \(2013\)](#).

Evidence of risk of serious loss or injury was insufficient to support jurisdiction when no testimony was presented establishing how, to what extent, or for how long A would be “psychologically damaged” by immediately moving into mother’s home whom she had not had contact with for several years.

### **Lack of custody order**

▶ *Dept. of Human Services v. M.F.*, [294 Or App 688 \(2018\)](#)

The record included no evidence that mother is *currently* in a position to insist that father deliver child to her, that she is likely to make such a demand, or that father would be unable to resist it.

▶ *Dept. of Human Services v. I.S.*, [261 Or App 731 \(2014\)](#).

In cases in which the allegation of harm involves the lack of a custody order, jurisdiction is not proper if the lack a custody order would not expose the child to a reasonable likelihood of

harm. In this case, mother did not have legal custody of the children, and there was no evidence that mother had ever tried to physically prevent father from taking physical custody of the children, or attempted to remove the children from father's care.

- ▶ *Dept. of Human Services v. R.L.F., Jr.*, [260 Or App 166 \(2013\)](#).

Without evidence that father is unable to protect the child, or that the child will suffer some actual harm because father lacks sole legal custody, lack of a custody order alone is not sufficient for jurisdiction pursuant to ORS 419B.100. In this case, the state failed to establish there was a current, nonspeculative threat of serious loss or injury to the child at the time of the jurisdictional hearing, when there was no current evidence of drug or alcohol use, father had obtained and enforced a restraining order against mother, and he had moved out of the family residence.

#### **Medical abuse**

- ▶ *Dept. of Human Services v. N.B.*, [261 Or App 466 \(2014\)](#).

The evidence in the record was legally sufficient to support the juvenile court's findings and those findings support the bases for jurisdiction. The evidence included a history of mother medically abusing her older children, mother continuing to see a convicted sex offender who had physically abused two of her children, a recent incident of medical child abuse, and expert medical testimony that mother's progress in dealing with her mental health was fragile and the children remain at risk of significant harm and potentially death in her care.

#### **Mental health**

- ▶ *Dept. of Human Services v. C. W.*, [305 Or App 75 \(2020\)](#)

Because the circumstances leading to removal of children were dangerous and parents had made insufficient progress to address their mental-health and substance abuse issues, the juvenile court did not err in its determination that children's circumstances presented a current risk of serious loss or injury to children that was likely to be realized if they were in parents' care. The circumstances were dangerous: (1) the home was unsanitary and unsafe; (2) the children's routine school absences and lateness were detrimental to their education; (3) the children were regularly hungry; (4) mother has substance abuse disorders and a bipolar disorder; and (5) father has PTSD, which leads to threatening and aggressive encounters with authority figures, causing frequent incarceration. Those conditions, and parents' deficits, caused children anxiety, tiredness, inability to focus, and interfered with their ability to learn.

- ▶ *Dept. of Human Services v. A. J. G.*, [304 Or App 221 \(2020\)](#)

The court found DHS did not prove there was a current threat of harm to the child at the time of the jurisdictional trial from father's failure to take his medication. Father had resumed taking his medication after the domestic violence incidents and DHS did not present any evidence that his

prior three-week episode of missing his medications and appointments was indicative of a pattern of behavior.

▶ ***Dept. of Human Services v. C.L.R.*, [295 Or App 749 \(2019\)](#)**

Juvenile court jurisdictional judgment reversed when mother was seeking treatment and there was nothing in the record to support a finding that it was reasonably likely mother would experience another mental breakdown in the future. There was also no evidence that mother would stop taking her medications or engage in a pattern of behavior that would lead to a similar incident.

▶ ***Dept. of Human Services v. S. A. B. O.*, [291 Or App 88 \(2018\)](#)**

The court found the record included no evidence that any of mother's relationships had resulted in her exposing the children to unsafe people or situations: the juvenile court found specifically that DHS had not proved that grandmother was unsafe, nor was there evidence that the children were present during any of the documented incidents of physical abuse between mother and her partners. Nor was there evidence that domestic violence was so prevalent in mother's relationships that it created the kind of chaotic and physically threatening environment that can be harmful to children. Referring back to the original basis for jurisdiction in this case did not add any information as to how mother's mental health conditions presented a current threat of serious harm to the children because the record contained no information regarding the nature of the safety risk to which mother admitted.

▶ ***Dept. of Human Services v. S.M.S.*, [279 Or App 364 \(2016\)](#)**

Although mother's mental health was being appropriately managed at the time of the jurisdictional hearing, there was legally sufficient evidence from which the juvenile court could conclude that L was at risk of serious loss or injury when mother had an extensive history of mental illness with a demonstrated pattern of interrupted treatment and decompensation.

▶ ***Dept. of Human Services v. M.M.*, [277 Or App 120 \(2016\)](#)**

In this case, the appeals court found the circumstances on which the juvenile court relied had existed approximately a year before the trial and entry of judgment, and had changed substantially. By the time the jurisdictional judgment was entered, parents had been separated for almost a year, and mother was in a relationship with someone else. No evidence regarding father's mental health was presented for the period between June 2014 and February 2015. Since father's circumstances had changed substantially since his suicide attempt in February, 2014, the court found the suicide attempt did not allow for an inference that father's mental health presented a current threat of serious loss or injury. The risks involving drug sharing and co-dependency identified by the juvenile court were no longer current by the time of trial.

In addition, father's mental health issue - post-traumatic stress disorder - was not tied to any risk of harm to B. There was evidence in the record that three months after father's suicide attempt, father's PTSD was being treated. There was no evidence presented as to how the PTSD posed a risk of harm to the child. Father's symptoms of nightmares, thrashing in his sleep and verbal aggressiveness over the phone with a caseworker in February, 2014 were insufficient to show a risk of harm to the child.

► *Dept. of Human Services v. D.H.*, [269 Or App 863 \(2015\)](#)

The juvenile court established jurisdiction over J based on mother's mental health, and her unwillingness to protect the child from her husband, a convicted, untreated sex offender. On appeal, the court found the evidence was legally insufficient to permit the conclusion that J's conditions and circumstances presented a current risk of harm to J when mother's attempted suicide occurred after the child was placed in foster care, and mother's husband's previous sex offense involved a victim of another class than J, contact was allowed with J before removal, J was happy and healthy, and no evidence was presented at trial of the specific risk husband posed to J.

► *Dept. of Human Services v. M.A.H.*, [272 Or App 75 \(2015\)](#).

Evidence of mother's behaviors four months prior to jurisdictional hearing was insufficient to establish mother's mental health posed a current threat of serious loss or injury when the only mental health professionals that testified indicated at the time of the hearing, mother's mental health issues were being adequately managed through counseling and medication.

#### **Parenting skills**

► *Dept. of Human Services v. W. M.*, [303 Or App 384 \(2020\)](#)

The court found that the evidence DHS presented about father's parenting skills did not address how A (two years old) had been affected by father's purported deficits or how those deficits exposed A to a current nonspeculative risk of serious loss or injury. The evidence included that father failed to immediately remove scissors from the child's hand that were left out in a DHS visit room; that he physically was unable to quickly follow the child to a nearby visit room where the child's mother was waiting; that the apartment where he lived had a steep set of stairs that may be difficult for the child to navigate without help (and father's back injury may prevent him from providing help); that his apartment has a raised board that could be a tripping hazard; and that he did not have knowledge about whether A was potty trained or her clothing size.

#### **Parents delegate care to a third party**

► *Dept. of Human Services v. C. W.*, [305 Or App 75 \(2020\)](#)

Because the circumstances leading to removal of children were dangerous and parents had made insufficient progress to address their mental-health and substance abuse issues, the juvenile court did not err in its determination that children's circumstances presented a current risk of serious loss or injury to children that was likely to be realized if they were in parents' care. The court also distinguished this case from other cases where the parents entrusted care of the children to a third party. Here, parents did not actually cede custody or entrust the primary care of children to the paternal grandmother. Also, any assistance grandmother had provided in the past was not enough to prevent the chronic hunger, unsafe living conditions, and chronic absenteeism of children while they were in parents' care.

► *Dept of Human Services v. M. E.*, [302 Or App 571 \(2020\)](#)

The fact that a parent has not established a third-party caregiving arrangement before DHS involvement does not preclude a juvenile court from taking that arrangement into account in assessing whether a child faces the type of current risk of injury or harm that allows for dependency jurisdiction. In this case, evidence of the caregiving arrangement would permit, but not compel, the conclusion that the children were not at risk from mother's alcohol problem at the time of the jurisdictional hearing. Although the juvenile court did not exclude evidence of the arrangement, its statements on the record demonstrate that it erroneously determined that it was not required to consider the arrangement in determining whether the criteria for jurisdiction was met.

► *Dept. of Human Services v. F.Y.D., Jr.*, [302 Or App 9 \(2020\)](#)

Because father entrusted child to his sister for only the few months that he would be in prison, the juvenile court did not err in taking jurisdiction based on its finding that it was likely that father would assume his parental responsibilities when released and that that posed a risk of harm to child given father's poor judgment and decision making.

► *Dept. of Human Services v. J.G.K.*, [298 Or App 398 \(2019\)](#)

The legal questions presented at an initial jurisdictional hearing are the same as those presented on any subsequent motion to dismiss dependency jurisdiction: Do the alleged (in the case of an initial jurisdictional hearing) or the established (in the case of a motion to dismiss jurisdiction) jurisdictional bases pose a "current threat of serious loss or injury" to the child, and if so, is there a "reasonable likelihood that the threat will be realized"? In either instance, evidence that a parent has the assistance of friends and family members is relevant to the jurisdictional inquiry, because it is probative of how likely it is that the threat of harm or injury presented by the alleged or established jurisdictional bases will be realized. The juvenile court should have permitted father to develop the evidence regarding aunt's ability to assist him in caring for B.

► *Dept. of Human Services v. K.C.*, [282 Or App 448 \(2016\)](#)

Although evidence was presented about mother's mental health issues and father's substance abuse, there was insufficient evidence in the record to indicate the extent to which those problems posed a risk to K at the time of the jurisdictional hearing. In addition, DHS did not present evidence about how the parents' deficits would pose a risk to K under K's circumstances, in the grandfather's home. DHS's concern that grandfather would not put in place necessary limitations on the parents was not supported by any evidence in the record. There was also no evidence to support DHS's concern that grandfather did not understand the severity of mother's illness or that he was likely to leave K with mother unattended. Finally, there was no evidence to infer that the parents were reasonably likely to remove K from grandfather's care.

► ***Dept. of Human Services v. T.E.B.*, [279 Or App 126 \(2016\)](#)**

Father filed a *pro se* petition requesting that custody be changed to father's mother or fiancée, and also admitted he was incarcerated and unavailable as a custody resource. The court distinguished this case from previous cases finding no risk of harm because the child was placed with a grandparent. In this case, father admitted that his circumstances presented a danger to the welfare of his child. Since father also waived his right to require DHS to present evidence and to present his own evidence, there was no evidence in the record to the contrary of father's admission that his incarceration presents a danger to the child.

► ***Dept. of Human Services v. A.H.*, [275 Or App 788 \(2015\)](#)**

The court found the record contained insufficient evidence of a current threat of harm to A. At the time of the jurisdictional judgment, A was living with her grandparents and no evidence was presented that grandparents were unsafe. Although DHS effected A's placement with grandparents, the placement would continue without juvenile court jurisdiction or continued involvement of DHS.

► ***Dept. of Human Services v. A.B.*, [271 Or App 354 \(2015\)](#)**

A parent's decision to turn over his or her child to another person does not in itself support a determination that there is a current risk of harm to the child. The relevant inquiry under ORS 419B.100(1)(c) is whether the evidence in the record, as a whole, establishes that the totality of the child's circumstances or conditions exposed the child to a current risk of serious loss or injury that was likely to be realized. In this case, DHS had the burden of alleging and proving that parents' conduct posed a risk of serious loss or injury to N despite the fact that grandmother was caring for her. The court's findings did not identify or hint at any specific way in which the parents' risk-causing conduct might have affected N. With DHS's failure to identify such a nexus, the court's decision was based on the speculative belief that as long as parents had legal custody of N, they might remove her from grandmother's care, at which point she would be exposed to parents' bad judgment and substance abuse issues. This is not sufficient to establish a current risk of harm.

► *Dept. of Human Services v. A.L.*, [268 Or App 391 \(2015\)](#)

Juvenile court established jurisdiction pursuant to ORS 419B.100(1)(c) based on parents' substance abuse, lack of necessary parenting skills, leaving the children with unsafe person, and father's impulse control problems. The children were in the primary care of grandparents, and the parents also lived in the home on and off. The Court of Appeals reversed finding (1) grandparent's indictment for drug trafficking; (2) grandfather's 10 year old founded disposition for physical abuse; and (3) one violation of a safety plan, without more specific evidence of harm to the children, was not sufficient to establish jurisdiction.

**Parents live out of the country**

► *State v. G.V.L.*, [291 Or App 53 \(2018\)](#)

Father's abuse and threats of future harm and mother's inability to protect child from father created a long-term and ongoing danger to child's welfare. Child was the victim of physical abuse by father, was exposed to father's physical abuse of others, and was at risk of further physical harm from father. The harm that child experienced, from which mother had not been able to protect him and which he feared would continue in the future, directly led to child leaving home, which itself created the reasonable likelihood of harm to the child's welfare. Physical abuse of a child endangers the child's welfare and, thus, furnishes a basis for the exercise of dependency jurisdiction. The fact that parents do not have physical custody of a child at the time of the jurisdictional hearing does not defeat jurisdiction, nor does the child's physical distance from parents, or the child's age and ability to travel on his own.

► *State v. L.P.L.O.*, [280 Or App 292 \(2016\)](#)

The juvenile court found petitioner had proven the following allegations: the child's mother is deceased; the child's father repeatedly physically abused the child until he fled; the child ran away from father's home; the child has been threatened with physical harm by criminal gangs in El Salvador and is at risk of harm if he returns to El Salvador; the child has no legal guardian in the U.S.; the child is in the physical custody of ORR which has been unable to identify any relatives with whom the child could live. The court held the findings made by the juvenile court, as well as the underlying evidence and permissible inferences drawn from that evidence, required the juvenile court to take dependency jurisdiction over petitioner.

**Residential instability**

► *Dept. of Human Services v. J.C.H.*, [299 Or App 212 \(2019\)](#)

The juvenile court found jurisdiction over A based on mother's substance abuse, mental health problems and residential instability. Although it was clear from the record that mother had experienced residential instability much of A's life, the Court of Appeals found there was

insufficient evidence to show that A was harmed by the instability. The court reversed and remanded for entry of a jurisdictional judgment omitting allegation 2(C) regarding mother's residential instability.

### **Sex abuse**

► ***Dept. of Human Services v. D.W.M.*, [296 Or App 109 \(2019\)](#)**

The court found that child faces a present risk of harm from sexual abuse by father. DHS proved by a preponderance of evidence that father sexually abused child and child's sister. The court found there was evidence that father sexually abused child four times and there is no evidence that he engaged in treatment or acknowledged the harm to child. Father continued to say sexually inappropriate things to child and to regard her in a sexual way. Also, father sexually abused child's sister when she was the same age as child is now, supporting a concern that child continues to be in the class of father's victims.

### **Substance abuse**

► ***Dept. of Human Services v. L.E.F.*, [307 Or App 254 \(2020\)](#)**

The record was legally sufficient to support the court's jurisdiction over father's children. At the jurisdictional trial, father's testimony of his alcohol use was inconsistent with D's, which the juvenile court found more credible. D described in detail the effects of father's drinking, including that he had red and puffy eyes and would stumble and fall over. D's testimony was consistent with what she told DHS. The court also noted that father had not been honest during this drug and alcohol assessment. The evaluator testified that father's abstention from alcohol for the two months prior to the trial was not significant, and that anyone can hold it together for two months. The court found the juvenile court's inference concerning the likelihood and imminence of father's further alcohol abuse during his parenting time was supported by the record. The court also found there is evidence in the record from which the juvenile court could reasonably find that each child experienced substantial pain when dragged and slapped by father, and that such force used in the course of "discipline" was not reasonable. Finally, the court found the trial court's finding regarding father's anger issues was supported by evidence in the record when there was testimony from a psychologist that father may do something inappropriate or ineffective when things are pushed too far, and testimony from the children that they were afraid of their father because he drank and was mean most days they spent with him.

► ***Dept. of Human Services v. C. W.*, [305 Or App 75 \(2020\)](#)**

Because the circumstances leading to removal of children were dangerous and parents had made insufficient progress to address their mental-health and substance abuse issues, the juvenile court did not err in its determination that children's circumstances presented a current risk of serious loss or injury to children that was likely to be realized if they were in parents' care. The circumstances were dangerous: (1) the home was unsanitary and unsafe; (2) the children's routine school absences and lateness were detrimental to their education; (3) the children were

regularly hungry; (4) mother has substance abuse disorders and a bipolar disorder; and (5) father has PTSD, which leads to threatening and aggressive encounters with authority figures, causing frequent incarceration. Those conditions, and parents' deficits, caused children anxiety, tiredness, inability to focus, and interfered with their ability to learn.

► *Dept. of Human Services v. W. M.*, [303 Or App 384 \(2020\)](#)

The court found there was no evidence that father's history of substance abuse posed a risk of harm to A. Father had tested positive for methamphetamine five months before the hearing, had missed non-court ordered UAs and treatment after his back surgery, and had voluntarily tested negative two weeks before the hearing. Finally, the court found there was no evidence that father's alleged substance abuse contributed to the overall risk that father would be inattentive to A's needs.

► *Dept. of Human Services v. J.H.*, [292 Or App 733 \(2018\)](#)

Mother argued that there was no evidence she was using drugs at the time of the jurisdictional hearing, nor was there evidence that she used drugs in K's presence. The state argued the juvenile court found mother's testimony wasn't credible, and noted that mother did not respond to a caseworker's messages about voluntary drug testing. K also believed certain aspects of mother's behavior might be due to drug use. The appellate court found the evidence at the jurisdictional hearing was not legally sufficient to permit the juvenile court to assert jurisdiction. A parent's substance abuse alone is not sufficient to assert jurisdiction, even when a child is aware of it. DHS acknowledged there was no evidence that mother failed to provide adequate care to K due to her drug use.

► *Dept. of Human Services v. J.J.B.*, [291 Or App 226 \(2018\)](#)

The court has recognized that a parent's substance abuse alone does not create a risk of harm to a child. The same is true of a child seeing a parent under the influence of intoxicants. Rather, DHS must prove that the parent is abusing drugs or alcohol, or exposing a child to drugs or alcohol in a way that puts the child at risk of serious harm. The court has rejected the proposition that any specific condition or circumstance per se does, or does not, establish the juvenile court's jurisdiction. In this case, the parents were found to be in possession of methamphetamine in a motel room where they were staying with the child. Mother admitted that they had relapsed. However, DHS offered no evidence that parents used methamphetamine in J's presence, exposed J to dangerous situations involving methamphetamine, or failed to supervise J due to methamphetamine use. The court can not rely on generalizations and assumptions about people who use drugs in calculating the risk to the child.

► *Dept. of Human Services v. P.R.H.*, [282 Or App 201 \(2016\)](#)

The juvenile court concluded that DHS failed to prove an allegation against mother related to a serious nonaccidental injury while in father's care, but took jurisdiction based on evidence of parents' past involvement in the production or manufacture of byproducts of marijuana. On appeal, DHS conceded the record was insufficient to prove that, at the time of the hearing, parents' past involvement in the production or manufacture of byproducts of marijuana created a current risk of harm to the child's welfare. The Court of Appeals agreed and reversed the jurisdictional judgment.

► *Dept. of Human Services v. K.V.*, [276 Or App 782 \(2016\)](#).

There was sufficient evidence from which the court could conclude that father's substance abuse and domestic violence in the presence of A would create a current risk of harm to A if she were to be placed in father's care since father had not taken the necessary steps in order to address the underlying causes of that behavior. There was minimal evidence in the record that father had completed a substance abuse assessment, and there was uncontroverted testimony from a caseworker that she had received "community reports" that father still had problems with alcohol.

► *Dept. of Human Services v. A.W.*, [276 Or App 276 \(2016\)](#)

There was insufficient evidence in the record to establish jurisdiction when there was no evidence that mother was caring for A while doing methamphetamine, or that drugs had an effect on her parenting; there was no evidence that the child had been directly exposed to the parents' verbal arguments; and no evidence that the chaotic living environment and father's lack of emotional and behavioral regulation put A at risk of serious harm or injury.

► *Dept. of Human Services v. J.R.*, [274 Or App 601 \(2015\)](#)

The juvenile court established jurisdiction over father's two children based on his substance abuse. The appeals court found father's extensive history of alcoholism, combined with his failure to participate in treatment, his admission that he drinks to self-medicate, his failure to articulate how much alcohol he consumes or how often, permitted the juvenile court to infer that father was likely drinking to the point of intoxication. The court found it permissible for the juvenile court to find that father's substance abuse subjected the children to a current, nonspeculative risk of harm when there wasn't anyone else in the home to look after the children when father was intoxicated.

► *Dept. of Human Services v. E.M.*, [264 Or App 76 \(2014\)](#).

There was insufficient evidence in the record to support a finding that mother was using illegal drugs at the time of the jurisdictional hearing when her last positive UA was four months prior to

the hearing, and no additional evidence established drug use, or that her drug use interfered with her ability to parent.

- ▶ *Dept. of Human Services v. A.B.*, [264 Or. App 410 \(2014\)](#).

The Court of Appeals found the petition allegation of substance abuse was not established when mother tested positive for methamphetamine shortly after removal of the children from her care, but every urinalysis after that date was negative up to the time of the juvenile court’s jurisdictional hearing four months later.

- ▶ *Dept. of Human Services v. N.P.*, [257 Or App 633 \(2013\)](#).

Juvenile court’s judgment establishing jurisdiction based on father’s “ongoing mental health and/or anger and frustration problems” reversed. Court found father’s mental health did not impair his ability to parent, and trial court impermissibly relied on father’s past substance abuse and risk of relapse when no evidence of current use was presented.

- ▶ *Dept. of Human Services v. C.J.T.*, [258 Or App 57 \(2013\)](#).

Juvenile court jurisdiction is appropriate under ORS 419B.100(1)(c) when a child’s condition or circumstances endanger the welfare of the child. To “endanger” the welfare of a child means to expose the child to conditions or circumstances that present a current threat of serious loss or injury. In this case, the record lacked legally sufficient evidence to establish a nexus between mother’s marijuana use and a current threat of harm, when there was no evidence presented that mother used marijuana for the three months prior to the date of jurisdiction.

### **Unable to Care for Child’s Special Needs**

- ▶ *Dept. of Human Services v. M.F.*, [294 Or App 688 \(2018\)](#)

Although the court found the record supported the determination that there is a reasonable likelihood that child will suffer serious loss or injury if her caregiver is not closely attentive, the record did not support a determination that the threat of that harm currently exists and is reasonably likely to be realized. The juvenile court’s reliance on events that happened two years prior to the jurisdictional hearing were insufficient to support a determination that the child currently would be at risk if returned to father’s care. In addition, the juvenile court’s reliance on father’s lack of communication with mother and with DHS does not equate with proof that it is reasonably likely that child will suffer harm if returned to his care.

### **Unexplained Injury/Abuse**

- ▶ *Dept. of Human Services v. N. L. B.*, [306 Or App 93 \(2020\)](#)

The allegations regarding father's criminal charges are insufficient to establish jurisdiction. The fact that father was indicted is only an accusation--it provides no new facts about any risk the children are exposed to. DHS has failed to meet its burden of providing any nexus between the indictment and any harm to the children whether the indictment is viewed alone or in connection with the established bases for jurisdiction.

► ***Dept. of Human Services v. C. A. M.*, [294 Or App 605 \(2018\)](#)**

The court found the record contained evidence to support the juvenile court's finding that mother knew or should have known that father posed a risk of physical danger to the twins and that mother failed to protect them from that risk. The court pointed to multiple items in the record that indicated mother was reluctant to acknowledge that father posed a risk of abuse to the children. In addition, mother continued to have contact with father and lacked a clear intention to separate from him. The evidence supported the implicit finding by the juvenile court that mother would likely fail to protect M from father in the future. The court held the evidence in the record was legally sufficient to permit the court to determine that a nonspeculative risk of harm to M existed under mother's care.

► ***Dept. of Human Services v. K.V.*, [276 Or App 782 \(2016\)](#)**

In this case, there was evidence in the record that father had failed to protect S from mother while S was in parent's care. He took no action to protect S from mother after seeing bruises, which supports the court's finding that there was a risk that father would fail to protect A. There was also evidence that father did not believe there were any issues with mother's parenting that would have led to the injury to S. Despite the fact that the parents had separated, there was evidence in the record that father's failure to protect S indicated he would fail to protect A, and there was nothing to prove that father was prepared to take action to prevent mother from harming A.

► ***Dept. of Human Services v. H.H.*, [266 Or App 196 \(2014\)](#)**

The court applied the following standard for determining whether a child is endangered to warrant the juvenile court's exercise of jurisdiction under ORS 419B.100(1)(c): *whether under the totality of the circumstances, there is a reasonable likelihood of harm to the welfare of the child*. The court found the juvenile court's findings that the injuries were caused by father's abuse were supported by evidence in the record, including testimony from a number of medical professionals that H's injuries resulted from nonaccidental trauma. That evidence, combined with the following circumstances: (1) mother did not believe that father played a role in harming H and (2) she did not perceive the need to take steps to protect her children from father, created a "reasonable likelihood of harm" to S and H.

► ***Dept. of Human Services v. T.A.H.*, [257 Or App 526 \(2013\)](#)**

Juvenile court's exercise of jurisdiction based on the child's conditions and circumstances affirmed based on evidence of injuries to child, mother's conduct in response, and evidence that mother failed to provide adequate supervision.

### ***Jurisdiction/Other***

#### **Admissions**

▶ ***Dept. of Human Services v. K.W.*, [307 Or App 17 \(2020\)](#)**

The court's subject matter jurisdiction attaches with the commencement of dependency proceedings, not with the jurisdiction determination as mother contends. The court overruled its decision in *Dept. of Human Services v. D. D.*, 238 Or App 134, 138, 241 P3d 1177 (2010), *rev den*, 349 Or 602 (2011) that under ORS 419B.100, dependency jurisdiction and subject matter jurisdiction are functionally equivalent and that dependency jurisdiction can be challenged regardless of whether it was raised by the parties below. Because mother failed to object to the court's jurisdictional determination that was based on mother's fact admissions, or invited the error, the court affirmed the jurisdictional judgment.

▶ ***Dept. of Human Services v. T.S.J.*, [300 Or App 36 \(2019\)](#)**

Juvenile court did not err in establishing jurisdiction when mother and father admitted to petition allegations that would permit the introduction of evidence of danger to the child's welfare. Those allegations included that mother's mental health problems present a current, nonspeculative risk of harm to her children because those problems interfere with mother's ability to parent. Also, father admitted that he is unable to protect the children from the mother's neglectful behavior.

▶ ***Dept. of Human Services v. L.S.H.*, [286 Or App 477 \(2017\)](#)**

ORS 19.245(2) did not bar mother's appeal because mother was never asked if she consented to the judgment and there were no other indications that she consented to the judgment. In cases where a parent admits to a jurisdictional allegation and waives the right to offer evidence, the court liberally construes the allegation and reviews to determine whether DHS would have been allowed to offer evidence that would establish jurisdiction. If an allegation is ambiguous and susceptible to multiple interpretations, at least one of which would permit DHS to offer evidence sufficient to establish jurisdiction, then a juvenile court does not err by finding a child to be within the court's jurisdiction. In this case, the court found the allegation to which mother admitted would have permitted DHS to introduce sufficient evidence to establish jurisdiction had mother not admitted to it and waived her right to a hearing.

▶ ***Dept. of Human Services v. T.E.B.*, [279 Or App 126 \(2016\)](#)**

The court's finding that father made a knowing and voluntary admission was supported by the evidence when the trial court advised and questioned father extensively, confirmed father had the opportunity to look at the petition, explained father's rights if he were to go to trial, and explained the legal consequences of the admission.

#### **Age of child**

- ▶ *State v. L.P.L.O.*, [280 Or App 292 \(2016\)](#)

A juvenile court's exclusive jurisdiction over a dependency case involving a person who is under 18 years of age attaches at the initiation of proceedings and is not lost merely because the child turns 18 before wardship is established.

#### **Amended allegations**

- ▶ *Dept. of Human Services v. S. S.*, [307 Or App 37 \(2020\)](#)

At the jurisdictional trial, the court received a request to amend the petition for B, under ORS 419B.809(6), to include an allegation that mother "has subjected [B] to ongoing verbal, psychological, emotional, and physical abuse and this creates the conditions and circumstances such as to endanger the welfare of [B]." The court made a finding in the jurisdictional judgments that this allegation was found as an amended allegation. None of the parties objected. The Court of Appeals affirmed. The court, on its own motion, may at any time direct that the petition be amended under ORS 419B.809(4). The court is required to grant a continuance as the interests of justice may require if the amendment results in a substantial departure from the alleged facts in the petition. ORS 419B.809(4). Mother's argument that the court must direct DHS to amend the petition and then grant a continuance is not obvious such that it qualifies for correction on plain error review. The juvenile court did not commit plain error, because it is not obvious and beyond reasonable dispute that the court could not amend the petition using the procedure it did. Nor does ORS 419B.809(6) require a continuance after the amendment where the amended allegation was based on the same evidence presented to prove the other allegations.

- ▶ *Dept. of Human Services v. C.L.M.*, [300 Or App 603 \(2019\)](#)

The court noted that the Supreme Court recently stated that the juvenile court may be able to assert jurisdiction based on a new circumstances that endanger a ward's safety, when the original factual bases for jurisdiction no longer exist. The Court of Appeals interpreted that statement to reflect that the court may continue jurisdiction where it has adjudicated additional jurisdictional facts based on new allegations that have been added to an amended petition, but not that a court may continue jurisdiction and hold a case open to allow an amended petition to be filed at a later date when the original factual basis ceased to exist.

- ▶ *Dept. of Human Services v. S.R.C.*, [263 Or App 506 \(2014\)](#).

The fact that the child is currently receiving protection because of the court's jurisdiction cannot be used by mother to argue that the asserted additional jurisdictional bases do not present a current risk of harm to H. When reviewing a challenge to jurisdiction based on an additional allegation in an amended petition, the court examines whether there is sufficient evidence from which a reasonable factfinder could conclude by a preponderance of the evidence that a current risk of harm exists from the additional allegation standing alone, or that the additional allegation contributes to or enhances the risk associated with the existing bases of jurisdiction.

### **Failure to appear**

▶ *Dept. of Human Services v. J.R.D.*, [286 Or App 55 \(2017\)](#)

The court found the text and context of ORS 419A.150 do not support the conclusion that a litigant who fails to appear before a referee is barred from presenting evidence at a subsequent rehearing. The court found that ORS 419A.150(3) plainly grants litigants permission to offer additional evidence at a rehearing. Accordingly, the court found the juvenile court erred in denying mother the opportunity to present additional evidence.

▶ *Dept. of Human Services v. C.M.R.*, [281 Or App 886 \(2016\)](#)

The juvenile court entered a jurisdictional judgment following a hearing at which mother was not present and had not been served with the petition and summons. On appeal, mother asserted that the juvenile court erred in proceeding with the hearing in her absence under ORS 419B.914, which allows the court to proceed with the case without service if diligent efforts have failed to reveal the identity or whereabouts of the person. DHS conceded that it failed to satisfy the requirements of ORS 419B.914, and therefore, the court erred. The Court of Appeals agreed and reversed the jurisdictional judgment.

▶ *Dept. of Human Services v. S.C.T.*, [281 Or App 246 \(2016\)](#)

The court concluded that after a parent has initially answered the petition and summons, and the court has ordered the parent to appear at subsequent proceedings, a parent who later violates the court's order to appear personally may be found to be in "default" under the provisions of ORS 419B.815(7). When a parent is ordered by the court to appear in person, ORS 419B.815(8) does not permit a parent to appear through counsel. The court went on to explain that although a parent's attorney may appear when the parent is absent, the attorney may not make evidentiary objections. The court noted, however, that an attorney may appear to explain a parent's reason for not being present, and may make a motion to continue the hearing. In addition, ORS 419B.923 provides a parent the right to move to set aside a judgment on grounds such as excusable neglect.

- ▶ *Dept. of Human Services v. R.N.*, [274 Or App 182 \(2015\)](#).

Although ORS 419B.815(7) allows the court to establish jurisdiction after a parent has been summoned and fails to appear personally, ORS 419B.918(1) permits the court to allow a parent to appear by telephone upon timely written motion and for good cause. In this case, DHS asserted on appeal, and the Court of Appeals agreed, that once the court permitted mother to appear by telephone, the court erred by not allowing her to testify and then establishing jurisdiction in mother's "absence."

### ICWA

- ▶ *Dept of Human Services v. T. J.*, [302 Or App 531 \(2020\)](#)

Although jurisdiction was warranted in this case, the juvenile court erred in ordering an out of home placement for T because DHS failed to prove by clear and convincing evidence that returning T to mother was likely to result in serious emotional or physical damage.

- ▶ *Dept. of Human Services v. J.L.R.*, [296 Or App 356 \(2019\)](#)

In involuntary child custody proceedings, ICWA requires the party seeking the foster care placement to notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of the right to intervention. 25 U.S.C. §1912(a). The Court of Appeals reversed the juvenile court's judgment because DHS failed to provide the required notice.

### Multiple Allegations

- ▶ *Dept. of Human Services v. J.E.F.*, [290 Or App 164 \(2018\)](#)

Allegations in the petition are viewed together and in connection to one another to determine whether they are collectively sufficient, if proven, to establish jurisdiction. In this case, the court found allegation D, alleging father is the biological father of the child, viewed together with allegations F (anger and impulse control), G (domestic violence), and H (does not understand needs of child), were sufficient when considered together, to establish jurisdiction.

### Multiple Petitions

- ▶ *Dept. of Human Services v. N. L. B.*, [306 Or App 93 \(2020\)](#)

The allegations regarding father's criminal charges are insufficient to establish jurisdiction. The fact that father was indicted is only an accusation--it provides no new facts about any risk the children are exposed to. DHS has failed to meet its burden of providing any nexus between the indictment and any harm to the children whether the indictment is viewed alone or in connection with the established bases for jurisdiction.

► *Dept of Human Services v. B.P.*, [281 Or App 218 \(2016\)](#)

The reversal of the 2014 judgment did not render the 2015 judgment invalid as a matter of law, and the juvenile court did not err in asserting jurisdiction over M based on the 2015 petition. The court found the issues that were adjudicated in the 2015 petition were distinct from those adjudicated in 2014. The court rejected father's argument that the juvenile court committed plain error by failing to consider mother's fitness to parent in making the 2015 jurisdictional determination. At the time of the 2015 jurisdictional hearing, the 2014 jurisdictional judgment was still valid. The juvenile court took judicial notice of the 2014 case file, which included admissions by mother of her inability to parent M. Father did not object to consideration of the 2014 file, acknowledged it contained mother's admission, and presented no evidence to challenge mother's admission. The court found the record did not plainly demonstrate that the juvenile court did not consider mother's previous admission when it asserted jurisdiction over M.

**Reasonable Efforts**

► *Department of Human Services v. D. L.*, [303 Or App 286 \(2020\)](#)

The Court of Appeals did not spell out what reunification efforts were provided in this case. The juvenile court noted that A did not want to return to mother and that mother was potentially facing criminal charges for hitting A with a stool. The Court of Appeals said these circumstances do not allow the court to lessen the standard for reasonable efforts. DHS is required to make reasonable efforts until excused by the juvenile court of that requirement under ORS 419B.340(5).

**Telephone Testimony**

► *Dept. of Human Services v. K.A.H.*, [278 Or App 284 \(2016\)](#)

Allowing testimony by telephone over the parent's objection was legal error when the testimony was the only evidence that definitively linked A's injuries to a theory of abuse, and any significant hindrance in effectively cross-examining him amounted to a substantial prejudice.

**Timing (including 60 day deadline for hearing)**

► *Dept. of Human Services v. L.E.F.*, [307 Or App 254 \(2020\)](#)

The court did not err by finding good cause to reschedule the jurisdictional trial beyond the 60-day deadline, given that the court was in the middle of a different trial and that rescheduling the witnesses to testify would require time and notice. Also, the trial was rescheduled to a date only several judicial days later.

► *Dept. of Human Services v. W.A.C.*, [263 Or App 382 \(2014\)](#).

A juvenile court cannot assert jurisdiction over a child based on the admissions of one parent when the other parent has been served and summoned, appears, and contests the allegations in

the petition. In such a case, the juvenile court can only assume jurisdiction over the child after a contested hearing on the allegations denied by the other parent.

▶ ***Dept. of Human Services v. A.F.*, [268 Or App 340 \(2014\)](#)**

The court found it permissible for the juvenile court to make findings about one parent and then make findings about the other parent at a different time before taking jurisdiction based on the totality of the evidence. However, the conditions and circumstances that give rise to jurisdiction *must exist at the time of the hearing*. In this case, evidence was presented that the conditions and circumstances in mother's stipulations did not exist at the time of the jurisdictional hearing.

**UCCJEA Issues**

▶ ***Department of Human Services v. J. S.*, [303 Or App 324 \(2020\)](#), *rev allowed*, [367 Or 257 \(2020\)](#)**

The juvenile court did not err in denying parents' motions to dismiss for lack of subject matter jurisdiction. Under the UCCJEA, the juvenile court has authority to make custody determinations for the children, including in dependency proceedings, while exercising temporary emergency jurisdiction. Because there were no prior custody determinations from another state and no custody proceedings had been commenced in another state, the juvenile court's orders were subject to ORS 109.751(2), which did not limit the juvenile court to entering shelter orders.

▶ ***Dept. of Human Services v. M.R.*, [298 Or App 59 \(2019\)](#)**

The juvenile court erred when it ruled that it had "temporary emergency jurisdiction" under the UCCJEA because the record contained no basis for a finding that the child would be "at immediate risk of harm" if returned to mother's care.

▶ ***Dept. of Human Services v. S.S.*, [294 Or App 786 \(2018\)](#).**

The evidence was undisputed that mother resided in Missouri, and the child and father moved to Oregon the same month that the juvenile court entered the jurisdictional judgment. On appeal, DHS conceded that the record demonstrated Oregon was not the child's home state under the Uniform Child Custody Jurisdiction and Enforcement Act, since the child had not lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of the child custody proceeding. ORS 109.704(7) DHS further conceded the record did not contain any evidence that would support a determination that the juvenile court had subject matter jurisdiction under the UCCJEA, and that the juvenile court was not authorized to enter the jurisdictional judgment. The court agreed and reversed.

▶ ***Dept. of Human Services v. T.F.*, [292 Or App 356 \(2018\)](#)**

On appeal, mother argued the juvenile court lacked subject matter jurisdiction under the UCCJEA. Under ORS 109.741, the juvenile court has jurisdiction to make an initial child custody determination if Oregon is the child's "home state" - the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. ORS 109.704(7). DHS conceded that, at the time the dependency petition was filed, Oregon was not M's home state. However, DHS asserted that the juvenile court had subject matter jurisdiction under ORS 109.751(1), which provides temporary emergency jurisdiction "if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." There was nothing in the record to indicate the parties asked the court to take temporary emergency jurisdiction, nor was there any indication that the juvenile court concluded it had subject matter jurisdiction. Since no party presented the juvenile court with any legal or factual issue as to whether temporary emergency jurisdiction was appropriate, the court declined to remand the case to the juvenile court to determine whether temporary emergency jurisdiction was appropriate. Instead, the court concluded the juvenile court erred by denying mother's motion to dismiss.

► *Dept. of Human Services v. R.M.S.*, [280 Or App 807 \(2016\)](#)

The juvenile court failed to apply the UCCJEA criteria in resolving mother's jurisdictional challenge and, instead, applied the analysis applicable to determining venue. The UCCJEA sets forth the rules for determining jurisdiction in custody cases involving multiple jurisdictions, and applies to dependency proceedings in Oregon. ORS 419B.803(2).

► *State v. L.P.L.O.*, [280 Or App 292 \(2016\)](#)

The juvenile court properly exercised its temporary emergency jurisdiction because it was undisputed that petitioner was at risk of abuse if he were returned to his father in El Salvador, and that return could happen at any time.

### ***Motion to Dismiss***

► *Dept. of Human Services v. D.L.*, [308 Or App 295 \(2020\)](#)

The record supported the court's determination that the adjudicated bases for jurisdiction continued to pose a serious risk of harm to A, and that the harm was likely to be realized. The incident at the church, considered in the context of mother's demonstrated anger and impulse control issues, logically leads to the conclusion that the risks associated with the initial assault have not been ameliorated. Mother's lack of insight is related to the ongoing risk of harm. The court was entitled to rely on mother's courtroom conduct in its assessment of her credibility and

on her continued minimization of the original assault and the new incident in determining the current likelihood that A will suffer serious loss or harm if wardship is terminated. Affirmed.

► ***Dept. of Human Services v. N. L. B.*, [306 Or App 93 \(2020\)](#)**

The record supports the trial court's continuance of jurisdiction on the bases asserted in 2018. Although there was testimony that the caseworker believed that mother is able to meet the children's basic needs, little more than a year ago E suffered life-threatening injuries which doctors concluded were "consistent with abusive head trauma" and having been "shaken aggressively." When asked about the injuries, mother and father could not, and still cannot, provide an explanation consistent with the physical evidence. Without parents' understanding as to how the injury occurred to an infant in their sole custody and care, and the lack of any participation in services specifically tailored toward preventing the injury from happening again, the bases for jurisdiction have not been addressed or ameliorated. During the entirety of the time since the injuries to E were discovered, the family has been under a DHS safety plan which alone could explain the fact that the child have not suffered additional injuries.

► ***Department of Human Services v. T. N.*, [303 Or App 183 \(2020\)](#)**

The juvenile court erred in denying mother's motion to dismiss dependency jurisdiction. With respect to the mental health allegation, mother had been diagnosed with depression, anxiety, insomnia and a psychotic disorder in the months before jurisdiction was established. At the time of the motion to dismiss, a psychologist found none of those problems were present, and instead, diagnosed mother with dependent and antisocial personality features. The court assumed for purposes of the opinion that a parent may have mental health issues later that are different than those that were apparent at the time of jurisdiction. In this case, there was insufficient evidence of a risk to J that mother's codependency would lead her to put her needs in front of J's when mother had abstained from such relationships for three years. There was no other evidence of current or recent abusive relationships, and no testimony explaining how likely it was that mother's dependent features posed a risk to J. In addition, there was no evidence that mother's antisocial personality features posed a risk to J. The psychologist's general testimony that the features have to do with a pattern of irresponsibility, not fulfilling obligations, and endangering other's lives, doesn't establish a nexus between mother's mental health and a serious risk of loss or harm to J that is likely to be realized. Finally, although there was sufficient evidence of mother's poor parenting skills and lack of understanding of her child's basic needs, resulting in J being scared, upset, confused and emotional, that is not the type of significant psychological harm that justifies juvenile court jurisdiction.

► ***Dept. of Human Services v. T.D.G.*, [301 Or App 465 \(2019\)](#)**

The Court of Appeals reversed the juvenile court's denial of father's motion to dismiss because there was inadequate evidence in the record to show that a current threat of serious loss or injury persisted. DHS presented no evidence regarding father's current driving behavior or marijuana use, nor any evidence that father continued to use physical discipline or is likely to do so in the

future. The court explained that father's refusal to admit to past acts of physical abuse or discipline can only be a basis for continued jurisdiction if there is also evidence that the parent's failure to do so makes it likely that the parent will engage in the conduct again. The court also explained that father's hostility toward DHS, his blaming of N's grandparents for poor parenting, his failure to obtain DHS approval for services he received, and his failure to sign releases of information to DHS do not allow the court to continue jurisdiction without additional evidence that the circumstances or conditions that gave rise to jurisdiction continue to pose a serious risk of injury or loss to N that is reasonably likely to be realized.

► ***Dept. of Human Services v. L.S.*, [300 Or App 594 \(2019\)](#)**

The court found the evidence supported the juvenile court's findings that father's plan did not ameliorate the threat of harm to Z posed by the jurisdictional bases. Father continues to deny his crimes, does not recognize a connection between his crimes and his parenting skills, denies that he has any parenting deficits, and was focused throughout his testimony on his own circumstances. The court also found that father's plan would prevent Z from having his health and safety needs met, which include his heightened need for security, permanency and secure attachment. Finally, the court noted that this is not a case in which a parent was working cooperatively with a caregiver to obtain stability and permanency for his or her child outside of the dependency process. Rather, father had not discussed his plan with grandmother, who opposed the plan and believed it would harm Z's welfare.

► ***Dept. of Human Services v. C.L.M.*, [300 Or App 603 \(2019\)](#)**

If the bases for the juvenile court's jurisdiction cease to exist, then the juvenile court must terminate the wardship and dismiss the case. In this case, there was no evidence that mother would again engage in inappropriate discipline of the child or that the jurisdictional basis exposed the child to a current risk of serious loss or injury that was reasonably likely to occur.

► ***Dept. of Human Services v. J.C.*, [289 Or App 19 \(2017\)](#)**

A court's wardship of a child continues until, among other things, the court dismisses the petition concerning the ward or enters an order terminating the wardship. The court is required to terminate wardship over a child if the bases for juvenile court jurisdiction cease to exist. *Dept. of Human Services v. T.L.*, 279 Or App 673 (2016) When the permanency plan for a child is no longer reunification, a parent making a motion to dismiss based on lack of jurisdiction has the burden of proof if requested by the proponents of jurisdiction.

The court rejected Fuller's argument that ORS 419B.368(3) requires the court to find not only that the jurisdictional bases have been ameliorated, but also that it is in the child's best interest to vacate the guardianship and the parent is presently able and willing to adequately care for the ward. Instead, the court found that for purposes of evaluating mother's *motion to terminate wardship*, the court was required to conduct the two part inquiry in *T.L.*:

- (1) Do the original bases for jurisdiction continue to pose a current threat of serious loss or injury?
- (2) If so, is the risk likely to be realized?

► *Dept. of Human Services v. C.P.*, [281 Or App 10 \(2016\)](#)

After the change in permanency plan, father moved to dismiss jurisdiction based on grandfather's ability to care for children. The parties litigated the motion to dismiss under their understanding of the law at the time of the hearing (prior to the decision in *T.L.*) that DHS had the burden of proving by a preponderance of the evidence that the factual bases for jurisdiction persisted and continued to pose a risk of harm that was likely to be realized. Although the burden of proof was not appropriately applied, the Court of Appeals found no error because the burden of proof was more favorable to father. Viewing the evidence in the light most favorable to the court's decision to deny father's motions to dismiss jurisdiction and terminate the wardships, the court found the record was legally sufficient to support the court's determination. The court found evidence that grandfather had difficulty setting or maintaining boundaries with the parents was particularly important given that parents' inability to safely parent the children was undisputed.

► *Dept of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)

On a motion to dismiss dependency jurisdiction, a juvenile court must determine: (a) whether the jurisdictional bases pose a current threat of serious loss or injury to the ward, and if so, (b) whether that threat is reasonably likely to be realized. Evidence that another person is able to assist in caring for a child in a way that would mitigate the risk posed by the jurisdictional bases is probative of the second element of that inquiry, and a juvenile court errs when it excludes that evidence or otherwise fails to take it into account in assessing whether dependency jurisdiction continues. If the permanency plan for a child is something other than reunification, there is a presumption that the child cannot safely return home. DHS may invoke this presumption, requiring a parent seeking dismissal of dependency jurisdiction to prove the jurisdictional bases no longer endanger the child.

► *Dept. of Human Services v. J.V.-G.*, [277 Or App 201 \(2016\)](#)

It was error for the juvenile court to consider the DIF report in denying father's motion to dismiss. The report was offered and admitted to prove the truth of the statements contained in the report; thus it was inadmissible hearsay under OEC 802.

► *L.D. v. T.J.T.*, [274 Or App 430 \(2015\)](#)

Juvenile court's denial of 19 year old ward's motion to dismiss reversed because there was insufficient evidence that mother or her ex-partner had physically abused the ward, ward was no longer living with them, and there was insufficient evidence as to ward's special educational, medical and counseling needs at the time of the hearing.

► *Dept. of Human Services v. J.R.*, [274 Or App 107 \(2015\)](#)

DHS has the burden to prove, by a preponderance of the evidence, that the facts on which jurisdiction is based persist to the degree that they pose a current threat of serious loss or injury that is reasonably likely to be realized. Without evidence that one parent is unable to protect the child from the other parent, or that the child will suffer some risk of actual harm because one parent lacks sole legal custody, lack of a custody order alone is an insufficient basis for jurisdiction. In this case, where father testified he would seek sole custody and call police if mother tried to have contact with the children, there was insufficient evidence in the record to support a finding that father would be unable to protect the children from mother.

► *Dept. of Human Services v. J.M.*, [275 Or App 429 \(2015\)](#).

Regarding the motion to dismiss, DHS has the burden to prove, by a preponderance of the evidence, that the facts on which jurisdiction is based persist to the degree that they pose a current threat of serious loss or injury that is reasonably likely to be realized. When a parent has participated in some services, yet there is a concern the parent hasn't internalized better parenting techniques, the dispositive question is what the parent will likely do. In an unexplained injury case, the court looks at more than the presence or absence of expert testimony about the role that parents' admission might play in treatment or reducing risk to the child. Instead, the court examines the totality of the circumstances. In this case, the juvenile court made findings related to the parents' participation in services as related to their mental health conditions, and that neither parent had made an internal change with regard to their parenting skills. The appellate court found ample evidence in the record of what the parents are likely to do - mother is likely to cover up for father if he engages in a violent explosion directed at C and that parents will fail to provide C with the support required for her autism spectrum disorder and other needs. This was sufficient to conclude that C would experience serious loss or injury as a result.

► *Dept. of Human Services v. L.C.*, [267 Or App 731 \(2014\)](#)

At the review hearing seven months after the court took jurisdiction, mother was living in an apartment with the children, the apartment was clean, the children well cared for, and the mother demonstrated strong parenting skills. Mother's counselor reported she had the confidence and knowledge to protect the children. Father was attentive and participating in services, but seemed to minimize his abusive behavior and its effects. He still had a significant amount of treatment to complete. Mother and father wanted to have contact, but were abiding by the no contact order. DHS was concerned about the possibility that father would engage in domestic violence and mother would fail to protect the children, however, no evidence was presented that mother's past endangering conduct would make it likely she will engage in the conduct again. The record did not contain sufficient evidence the factual bases for jurisdiction persisted to the degree that they posed a current threat of serious loss or injury that was reasonably likely to be realized.

- ▶ *Dept. of Human Services v. D.A.S.*, [261 Or App 538 \(2014\)](#).

Without evidence that one parent is unable to protect the child from the other parent, or that the child will suffer some risk of actual harm because one parent lacks sole legal custody, lack of a custody order alone is insufficient to support continued jurisdiction.

- ▶ *Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).

The court may only rely upon evidence that is relevant, material and admissible under the Oregon Evidence Code in ruling on a party's motion to terminate a child's wardship. In addition, the ORS 419B.325(2)(governing evidence admissible for the purpose of determining proper disposition) exception to competent evidence applies to permanency hearings pursuant to ORS 419B.476(1), allowing the court to receive the exhibits at issue for purposes of considering reasonable efforts to effect reunification, and whether the parent made sufficient progress to allow the child's safe return home.

- ▶ *Dept. of Human Services v. J.M.*, [260 Or App 261 \(2013\)](#).

The Court of Appeals found the evidence did not support the inference that father, despite his assertions, would resume the infliction of inappropriate corporal punishment on the child, and for that reason posed a risk of harm. The court found the important inquiry in the case was not what father believes, but what he is likely to do at the time of the hearing. The court found DHS did not satisfy its burden of establishing that father posed a current threat of serious loss or injury that is reasonably likely to be realized, and that the evidence was legally insufficient to support the juvenile court's finding that father had not made sufficient progress to allow the children to be returned home safely.

- ▶ *Dept. of Human Services v. A.R.S.*, [258 Or App 624 \(2013\)](#) (*ARS III*).

Mother had moved from her boyfriend's home upon learning he was unsafe, and found another residence that was deemed safe and appropriate by DHS, but lacked a bed. The Court of Appeals found the record contained insufficient evidence from which a reasonable fact finder could conclude, by a preponderance of the evidence, that those circumstances exposed the child to a current risk of serious loss or injury that was reasonably likely to occur. In the context of a motion to dismiss at a review hearing, the evidence is limited to whether the conditions that were originally found to endanger a child persist. DHS had the burden to prove, by a preponderance of the evidence, that the factual bases for jurisdiction persisted to a degree that they posed a current threat of serious loss or injury that is reasonable likely to be realized.

### ***Motion to Set Aside Judgment or Order***

- ▶ *Dept. of Human Services v. K.H.H.*, [304 Or App 530 \(2020\)](#)

The court discussed the standard for evaluating whether a motion to set aside under ORS 419B.923 is filed within a “reasonable time”. The juvenile court’s determination includes, but is not limited to, the emotional and developmental needs of the child. The court also considers the circumstances surrounding the filing, including the length of the delay and any reasons for it. In this case, the court found the juvenile court did not abuse its discretion when it denied father’s motion to set aside a jurisdictional judgment that was filed 20 months after its entry, and alleged no facts describing the circumstances surrounding his motion.

► *Dept. of Human Services v. M.M.R.*, [296 Or App 48 \(2019\)](#)

Mother’s appeal was moot when adoption was granted while appeal was pending and mother’s basis for setting aside the TPR judgment was intrinsic fraud (acts that pertain to the merits of the case) that could have been contested during the trial.

► *Dept. of Human Services v. P. W.*, [296 Or App 548 \(2019\)](#)

Mother failed to appear for a termination trial. The court orally granted the termination petition after presentation of a prima facie case. Mother filed a motion to set aside the judgment under ORS 419B.923, and subsequently failed to appear for that hearing. The court denied her motion, noting the attorney’s declaration did not comply with ORS 419B.923(2) (requiring the motion to be accompanied by an affidavit that states the facts and legal basis for the motion) and found no excusable neglect. Mother appealed, arguing that her trial counsel provided inadequate legal assistance by (1) failing to adequately plead the excusable neglect theory; (2) failing to advance a well-settled theory that notice is required under ORS 419B.820 before the court can enter a default; and (3) abandoning his prosecution of the set-aside motion at the hearing because he could not find mother. The Court of Appeals found that the record was insufficiently developed for resolution of mother’s inadequate-assistance claim and remanded the case for an evidentiary hearing under the terms stated in *Dept. of Human Services v. M.U.L.*, 281 Or App 120 (2016).

► *Dept. of Human Services v. A.O.*, [296 Or App 746 \(2019\)](#)

Under ORS 419B.923(1), it was not necessary for mother to be personally present at the hearing on the motion for the juvenile court to consider the argument presented by mother’s counsel and rule on the merits of mother’s motion to set aside the judgment.

► *S.H.*, [289 Or App 88 \(2017\)](#)

Once the underlying permanency judgments changing the plan to guardianship were reversed, there was no validly approved plan of guardianship to support the orders and judgments establishing the guardianship. Under those circumstances, the court had no discretion to deny mother’s motions to set aside the guardianship judgments under ORS 419B.923.

- ▶ *Dept. of Human Services v. K.W.*, [273 Or App 611 \(2015\)](#)

ORS 419B.923(1) does not provide the court authority to set aside a judgment terminating parental rights based on a parent's change in circumstances.

- ▶ *Dept. of Human Services v. M.E.M.*, [271 Or App 856 \(2015\)](#).

The juvenile court erred in not setting aside the judgment of jurisdiction based on mother's default when mother appeared by telephone at the hearing, had appeared in person at previous hearings, and had been mistaken about the date of the current hearing.

- ▶ *Dept. of Human Services v A.D.G.*, [260 Or App 525 \(2014\)](#).

ORS 419B.923(1) grants the juvenile court broad discretion to set aside any order or judgment made by it. For that reason, the court's authority is not limited to the enumerated grounds for relief.

### ***No Contact Orders***

- ▶ *Dept. of Human Services v. E.L.G.*, [270 Or App 308 \(2015\)](#)

A no contact order restricting any contact between the parents is overbroad when jurisdiction is based only on parent's sexual relationship posing a risk of harm to the child.

### ***Paternity***

- ▶ *Dept of Human Services v. C. M. H.*, [301 Or App 487 \(2019\)](#)

Because the juvenile court had subject matter jurisdiction when child was taken into protective custody, it had subject matter jurisdiction to adjudicate the parentage dispute before making a determination on whether to assert dependency jurisdiction.

- ▶ *Dept. of Human Services v. A.I.W.*, [283 Or App 89 \(2016\)](#)

The juvenile court found the Voluntary Acknowledgment of Paternity (VAP) was signed due to a material mistake of fact. After giving consideration to the interests of the parties and the child, the court further found setting aside the VAP under ORS 109.070(5)(f) would be inequitable. On the record presented, the juvenile court's explanation was insufficient for the Court of Appeals to determine what factors the court relied on to conclude that it would be "substantially inequitable" to set aside the VAP. When a trial court exercises discretion under ORS 109.070(5)(f), it must describe the reasons for its decision so as to enable meaningful appellate review.

### ***Permanency Hearings***

- ▶ *Dept. of Human Services v. M.J.H.*, [278 Or App 607 \(2016\)](#)

To the extent there are separate, concurrent dependency cases involving the same child, it is error for the juvenile court to set a permanency plan for a child that results in the existence of different plans for the same child at the same time.

### **Compelling Reason and ORS 419B.498(2) Determinations**

► ***Dept. of Human Services v. D.M.*, [310 Or App 171 \(2021\)](#)**

The juvenile court's findings that E could not safely return home without father acknowledging the previous harm to E, that father and stepmother were not engaging with E's counselor and that father had inconsistent engagement in the Batterer's Intervention Program were sufficient to support the juvenile court's legal conclusion that there was no compelling reason that the filing of a petition to terminate parental rights would not be in the best interests of E. That legal conclusion is further supported by father's failure to propose an alternative plan that would better serve E's needs or to demonstrate that keeping E in the same placement with her siblings was a compelling reason not to pursue an adoption under these circumstances

► ***Dept. of Human Services v. A. D. J.*, [300 Or App 427 \(2019\)](#)**

The Court of Appeals found there was evidence in the record supporting the juvenile court's decision to change the permanency plans from reunification to adoption. Mother had missed multiple UAs, which supports the trial court's finding that there was not enough information in the record to determine if she is maintaining sobriety. Also, there was evidence to support the trial court's findings that mother had missed several individual and group sessions, had not engaged with a mentor, and observed visits with the children revealed that mother had not made progress in her parenting skills. Expert testimony indicated both children had a need for permanency, with one of them needing permanency as soon as possible. The trial court found, in part, that a general guardianship does not offer the level of permanency that the children need since a parent may move to vacate it. The trial court's determination that the general guardianship--as distinct from a permanent guardianship--proposed by mother did not best serve the interest of both children is permissible given the evidence in the record.

► ***Dept. of Human Services v. C.M.D.*, [300 Or App 175 \(2019\)](#)**

The court has recognized that a child's permanency plan should not be changed to adoption when there is persuasive evidence that adoption is unlikely to be achieved. In this case, neither DHS nor mother put on any direct evidence regarding the present likelihood of R being able to achieve adoption. Also, the indirect evidence is not so clear as to require a singular inference that adoption is unlikely to be achieved. Although R has a long history of violent and dysregulated behavior, R's foster mother testified that some aspects of R's behavior had improved. The DHS caseworker also testified R was making really good progress academically. Also, mother had recently identified R's uncle as someone willing to be an adoptive resource.

- ▶ *Dept. of Human Services v. S.J.M.*, [283 Or App 367 \(2017\)](#), *reversed*, [364 Or 37 \(2018\)](#).

Once DHS met its burden to show that the requirements in ORS 419B.476 for changing the permanency plans from reunification had been met, it was the parents' burden, as the parties arguing for a compelling reason determination, to show that there was a compelling reason under ORS 419B.498(2) for DHS not to proceed with petitions to terminate parental rights. In these cases, the court found sufficient evidence in the record to support the juvenile court's legal conclusions, including its determination that there was no compelling reason that the filing of TPR petitions would not be in the best interests of the children.

- ▶ *Dept. of Human Services v. M.T.P.*, [294 Or App 208 \(2018\)](#)

The court concluded there was sufficient evidence from which the juvenile court could conclude there was no compelling reason that a termination petition was not in C's best interests. By the time of the permanency hearing, C had been a ward of the court for four years. Mother was not available and father's earliest release date was in 2022. Father proffered KG as a guardian, however, DHS provided information that KG had not followed the child's safety plan, and despite reminders, resisted the plan's directions. The juvenile court elicited colloquy with both KG and the grandmother, and was able to assess their demeanor. The court had evidence that the grandmother employed discipline inappropriate to C's vulnerability and that the proposed guardian failed to appreciate that problem and resisted the safety plan. On this record, the juvenile court could conclude that the form of guardianship that father sought was contrary to the evidence that C needed to form a lasting bond with a long-term caregiver.

- ▶ *Dept. of Human Services v. M.S.W.*, [293 Or App 177 \(2018\)](#)

As explained in *Dept. of Human Services v. J.M.T.M.*, [290 Or App 635 \(2018\)](#), before the court can change a permanency plan to adoption, it must be able to find affirmatively from the evidence that there is not another permanent plan better suited to meet the child's health and safety needs. That necessarily means that the record must contain sufficient evidence to permit a rational inference that none of the other permanency plans contemplated by the permanency statutes would better meet the child's needs under the circumstances. In this case, DHS presented no evidence suggesting that guardianship was not a better plan for J than adoption. Juvenile court judgment changing the permanency plan from reunification to adoption reversed.

- ▶ *Dept. of Human Services v. J.M.T.M.*, [290 Or App 635 \(2018\)](#)

Before changing a permanency plan to adoption, a juvenile court must be able to find affirmatively from the evidence presented that there is not another permanent plan better suited to meet the health and safety needs of the child, including the need to preserve the child's sibling attachments and relationships. The record must contain sufficient evidence to permit a rational

inference that none of the other permanency plans would better meet the child's needs under the circumstances. In this case, there was uncontroverted evidence of the children's sibling bonds, bonds with mother, and bonds with extended family. At the time of the hearing, DHS had not identified an adoptive resource, and presented no evidence tending to prove the guardianship was not a better plan. Although counsel for DHS told the court during argument that there was no guardian resource, DHS did not present evidence to support that statement. The record contains no evidence that would permit a finding that there were no potential guardians for the children, or that would otherwise allow for a rational determination that guardianship is not a better plan for the children than adoption. Reversed and remanded.

► *Dept. of Human Services v. D.I.R.*, [285 Or App 60 \(2017\)](#)

The court found sufficient evidence in the record from which the juvenile court could find, based on K's particular needs for permanency and stability, the parents' history of relapse and domestic violence, and a history of DHS removing children from their care, that K could not safely return home in a reasonable time. The record indicated that both parents would need to engage in services for a considerable amount of time before K could safely return, or even if she could return sooner, there was a high risk that she would be removed again due to parents' history of relapse and discontinuing services.

► *Dept. of Human Services v. M.S.*, [284 Or App 604 \(2017\)](#)

The proponent of a change in permanency plan bears the burden of proving that the statutory elements for a change in plan are present. One of the elements that M needed to prove was that there were no compelling reasons to forego the filing of a petition to terminate mother's parental rights. To make that showing M needed to prove, among other things, that M could not be returned within a reasonable time, given M's particular needs and circumstances and any barriers mother might face.

► *Dept. of Human Services v. S.S.*, [283 Or App 136 \(2016\)](#)

Juvenile court's decision to change the plan to adoption based on a presumption that adoption is in the best interests of the child reversed when juvenile court did not evaluate, in light of M's specific circumstances (including her bonds with mother, grandmother and foster parent), whether the plan of guardianship would better meet her health and safety needs than would the plan of adoption.

► *Dept. of Human Services v. C.M.E.*, [278 Or App 297 \(2016\)](#)

With respect to the ORS 419B.498(2)(b)(B) question of whether the bond between mother and M was a compelling reason for the court to decline to change the plan to adoption, the court

found sufficient evidence for the juvenile court's determination that it was not, including the child's testimony that he wanted to live with the foster parents, additional evidence in the record that M had developed a strong attachment to his foster family, and reports from service providers that mother's role was that of a friend, peer or play partner to M.

► *Dept. of Human Services v. T.M.S.*, [273 Or App 286 \(2015\)](#).

The evidence was legally sufficient to support a determination that the bond between mother and T did not constitute a compelling reason to avoid a change in plan under ORS 419B.498(2)(b). The court found the caseworker's testimony that T "loves her mother very, very much", T's decision to appeal the change of permanency plan at age six, and mother's counsel's statement that mother desired to parent T and be a good parent were inadequate to establish a compelling reason under the statute. Nor was there persuasive evidence that adoption was unlikely to be achieved when relatives in Texas expressed an interest in being an adoptive resource. Finally, failure to complete an updated psychological evaluation did not constitute a reason under ORS 419B.498(2)(c) for not requiring DHS to file a petition to terminate parental rights.

► *Dept. of Human Services v. M.H.*, [258 Or App 83 \(2013\)](#).

The court must enter an order within 20 days of the permanency hearing and must include, “*if the plan is continued as, or changed to, adoption...the court’s determination of whether one of the circumstances in ORS 419B.498(2) is applicable.*” ORS 419B.476(5)(d) (emphasis added). One of the circumstances in ORS 419B.498(2) is whether “there is a compelling reason” not to file a petition to terminate parental rights, ORS 419B.498(2)(b), and one of the “compelling reasons” is that the parent is “successfully participating in services that will make it possible for the child or ward to safely return home within a reasonable time” ORS 419B.498(2)(b)(A). Failure to include the “no compelling reason” determination when the court continued the plan of adoption was reversible error, and the error was not harmless.

► *Dept. of Human Services v. D.A.N.*, [258 Or App 64 \(2013\)](#).

The juvenile court’s findings implicitly include a determination that a minimum of an additional nine months from the date of the permanency hearing was not a “reasonable time”. The Court of Appeals did not decide if the juvenile court is required to make a “reasonable time” determination pursuant to ORS 419B.476 and ORS 419B.498(2)(b)(A) as a prerequisite to changing the plan from reunification to adoption. *But see Dept. of Human Services v. S.J.M.*, [283 Or App 367 \(2017\)](#) (juvenile court must make a compelling reasons determination before changing a plan from reunification to adoption).

### Judgment Document

► *Dept. of Human Services v. R.A.H.*, [299 Or App 215 \(2019\)](#)

The Court of Appeals reversed a juvenile court's permanency judgment because it did not comply with the requirements of ORS 419B.476(5)(a). Specifically, the court found the judgment did not contain a description of the department's efforts with regard to the case plan when it referred to an attached Exhibit 1, but no exhibit was attached. Although the record contained three exhibits labeled "Exhibit 1", it was unclear which exhibit the juvenile court intended to reference.

### **Motion to Dismiss**

▶ ***Dept. of Human Services v. J.V.-G.*, [277 Or App 201 \(2016\)](#)**

It was error for the juvenile court to consider the DIF report in denying father's motion to dismiss. The report was offered and admitted to prove the truth of the statements contained in the report; thus it was inadmissible hearsay under OEC 802.

▶ ***Dept. of Human Services v. J.M.*, [275 Or App 429 \(2015\)](#).**

Regarding the motion to dismiss, DHS has the burden to prove, by a preponderance of the evidence, that the facts on which jurisdiction is based persist to the degree that they pose a current threat of serious loss or injury that is reasonably likely to be realized. When a parent has participated in some services, yet there is a concern the parent hasn't internalized better parenting techniques, the dispositive question is what the parent will likely do. In an unexplained injury case, the court looks at more than the presence or absence of expert testimony about the role that parents' admission might play in treatment or reducing risk to the child. Instead, the court examines the totality of the circumstances. In this case, the juvenile court made findings related to the parents' participation in services as related to their mental health conditions, and that neither parent had made an internal change with regard to their parenting skills. The appellate court found ample evidence in the record of what the parents are likely to do - mother is likely to cover up for father if he engages in a violent explosion directed at C and that parents will fail to provide C with the support required for her autism spectrum disorder and other needs. This was sufficient to conclude that C would experience serious loss or injury as a result.

▶ ***Dept. of Human Services v. D.A.S.*, [261 Or App 538 \(2014\)](#).**

Without evidence that one parent is unable to protect the child from the other parent, or that the child will suffer some risk of actual harm because one parent lacks sole legal custody, lack of a custody order alone is insufficient to support continued jurisdiction.

▶ ***Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).**

The court may only rely upon evidence that is relevant, material and admissible under the Oregon Evidence Code in ruling on a party's motion to terminate a child's wardship. In addition, the ORS 419B.325(2)(governing evidence admissible for the purpose of determining

proper disposition) exception to competent evidence applies to permanency hearings pursuant to ORS 419B.476(1), allowing the court to receive the exhibits at issue for purposes of considering reasonable efforts to effect reunification, and whether the parent made sufficient progress to allow the child's safe return home.

► *Dept. of Human Services v. J.M.*, [260 Or App 261 \(2013\)](#).

The Court of Appeals found the evidence did not support the inference that father, despite his assertions, would resume the infliction of inappropriate corporal punishment on the child, and for that reason posed a risk of harm. The court found the important inquiry in the case was not what father believes, but what he is likely to do at the time of the hearing. The court found DHS did not satisfy its burden of establishing that father posed a current threat of serious loss or injury that is reasonably likely to be realized, and that the evidence was legally insufficient to support the juvenile court's finding that father had not made sufficient progress to allow the children to be returned home safely.

### Notice of Hearing

► *Dept. of Human Services v. G.S.*, [304 Or App 542 \(2020\)](#)

Mother claimed the court erred by holding the permanency hearing without providing her the required notice under ORS 419B.473(2), which requires a court to provide notice of the time and place of the permanency hearing to a parent whose rights haven't been terminated. DHS conceded that the record provided no basis to conclude that mother had received notice of the permanency hearing in some other form or fashion. The court found the juvenile court erred because it did not provide any type of notice of the permanency hearing as it was required to do under ORS 419B.473(2).

### Reasonable Efforts

► *Dept. of Human Services v. L. A. K.*, [306 OR App 706 \(2020\)](#)

The alleged and proven jurisdictional basis delineates the authority of the court. In this case, the sole basis for father was that, "[D]espite prior services offered to the father [by DHS and] other agencies, the father has been unable and/or unwilling to overcome the impediments to his ability to provide safe, adequate care to the child." DHS argues that "impediments," as that term is used in this case is a euphemism for father's addiction and criminal activity. The jurisdictional basis sets the expectation of services provided by DHS. The term "impediments" is not an interchangeable term for addiction or criminal activity. Accordingly, DHS did not meet its burden to establish that it provided father services sufficiently related to the jurisdictional basis so as to constitute "reasonable efforts." Reversed and remanded.

► *Dept. of Human Services v. R. A. C. -R.*, [306 Or App 360 \(2020\)](#)

The record establishes that DHS made substantial efforts to locate services for father and to provide services to father, but that certain services are unavailable in the area where father lives, including domestic violence programs for perpetrators. This case is different from *Dept. of Human Services v. K.G.T.*, 306 Or App 368 (2020) in two respects. First, DHS made much more extensive efforts to try and find services for father in this case than it made in *K.G.T.* Second, DHS has no control over the services available to father in Mexico. When a parent is incarcerated in a state prison in Oregon, like the father in *K.G.T.*, DHS itself may have no control over DOC, but both DHS and DOC are ultimately agencies of the State of Oregon, making it more difficult for “the state” to claim that it has no control over the services available to a person in an Oregon prison. In addition, there was no geographical barrier to providing services in *K.G.T.* The court noted that DHS’s obligation to provide reasonable efforts is not less for parents who live out of the country. When there is no feasible way to provide a service to a parent, DHS cannot be required to provide that services as a condition of proving that it made reasonable efforts, as that would have the effect of leaving the child stuck in limbo, unable to have his or her plan changed from reunification. Under the specific circumstances of this case, the trial court did not err in determining that DHS made reasonable efforts towards reunification. Affirmed.

► ***Dept. of Human Services v. K. G. T.*, [306 Or App 368 \(2020\)](#)**

The juvenile court erred in determining that DHS made reasonable efforts toward reunification as a predicate to changing B’s permanency plan to adoption. The juvenile court focused on the inconvenience to DHS of setting up services for father to receive in prison, without meaningfully considering the actual cost or benefit of doing so. Given the lack of necessary services available through DOC, DHS had to at least consider other options to provide services to father. Having failed to do so, and having failed to provide the necessary information for the court to consider the relative costs and benefits of such services, DHS failed to satisfy its burden of proof to establish that it made reasonable efforts toward reunification.

► ***Department of Human Services v. C. S. C.*, [303 Or App 399 \(2020\)](#)**

In this case, the court found the efforts DHS was providing to father were extensive prior to his incarceration for serious crimes. After that, DHS’s efforts dropped off as to father for a seven-month period. DHS had arranged for phone visitation, had paid money towards father’s prison account to facilitate video calls, and had made efforts towards having father transferred to a prison closer to A to make in-person visits possible. The issue on appeal is whether the juvenile court erred in finding DHS made reasonable efforts given the lack of efforts over the seven-month period. The court distinguished this case from other recent cases where the court found efforts were insufficient in that *father was not asking to be a physical caretaker or a decision maker about the child’s care, custody and control*. The court acknowledged that the law requires reasonable efforts be made for each parent but noted father’s lack of availability as a placement resource helps place the services that DHS provided to father in perspective. The court also noted that while DHS had provided extensive services to father up to the time of the first permanency

hearing, there was no indication that father had ameliorated the bases of jurisdiction over that period. The court suggested there was little evidence that father would have benefited from additional services.

▶ ***Department of Human Services v. M. C. C.*, [303 Or App 372 \(2020\)](#)**

Father's incarceration and the fact that his care resource for his child is located in another state might make providing reasonable efforts more challenging and time-consuming, but that does not excuse DHS from making reasonable efforts for reunification before obtaining a change in the child's plan to adoption. Here, DHS did not demonstrate that it had made those reasonable efforts by the time of the permanency hearing. Reversed and remanded.

▶ ***Dept. of Human Services v. V. A. R.*, [301 Or App 565 \(2019\)](#)**

Juvenile court judgment finding DHS made reasonable efforts reversed. Mother's psychological evaluation indicated in July 2017 that she required hands-on, in-person parent training, where the parent trainer works with mother and the child together. Instead of providing the recommended training, DHS offered parenting training through Skype visits. DHS didn't offer the recommended training until the court ordered it to do so (approximately a year after the evaluation). As a result, mother only received five sessions of the hands-on parenting training before the permanency hearing. The Court of Appeals found this was not sufficient for mother to be able to demonstrate she could be a minimally adequate parent for W.

▶ ***Dept. of Human Services v. D.M.R.*, [301 Or App 436 \(2019\)](#)**

Juvenile court judgment changing child's permanency plan from reunification to adoption reversed when DHS failed to present evidence from which the juvenile court could reasonably infer that the services provided could help father ameliorate the jurisdiction basis. There was no evidence in the record indicating which programs were available to father through Womanspace, or how any programming available "...served to ameliorate father's 'chaotic relationship' or prevented that chaotic relationship from endangering the child."

▶ ***Dept. of Human Services v. D.M.D.*, [301 Or App 148 \(2019\)](#)**

The court rejected father's argument that DHS's efforts were unreasonable because it delayed referring father to batterer's intervention treatment for nearly seven months after the juvenile court ordered DHS to do so. DHS delayed father's referral because (1) father was arrested in the week following the order and (2) a psychologist recommended that father needed to demonstrate at least one year of sobriety before ensuring that batterer's intervention would be effective, which he had not yet done.

▶ ***Dept. of Human Services v. R.A.H.*, [299 Or App 215 \(2019\)](#)**

The Court of Appeals reversed a juvenile court's permanency judgment because it did not comply with the requirements of ORS 419B.476(5)(a). Specifically, the court found the judgment did not contain a description of the department's efforts with regard to the case plan when it referred to an attached Exhibit 1, but no exhibit was attached. Although the record

contained three exhibits labeled “Exhibit 1”, it was unclear which exhibit the juvenile court intended to reference.

► *Dept. of Human Services v. J.E.R.*, [293 Or App 387 \(2018\)](#)

Under the facts of this case, the juvenile court could not assess whether DHS efforts were reasonable through the lens of the jurisdictional basis until after the dispositional judgments required mother to engage in services. Because mother contested the need for services and the dispositional judgments were delayed for nine months, the juvenile court erred in concluding that it could consider the time period *before* the entry of the jurisdictional and dispositional judgments in evaluating reasonable efforts. DHS’s efforts during that time period were not appropriately part of the reasonable efforts analysis under ORS 419B.476(2)(a). In addition, DHS efforts made after the entry of the jurisdiction and disposition judgments were insufficient for the trial court to conclude that DHS made reasonable efforts, given the short time frame that the court had to assess mother’s progress and mother’s limited opportunity to engage in the services offered. Although mother immediately engaged in DBT sessions when they were available after the dispositional judgment, a one-month period of DBT was not sufficient in length to afford a good opportunity to assess parental progress.

► *Dept. of Human Services v. L.L.S.*, [290 Or App 132 \(2018\)](#)

The court found that when DHS failed to speak to father for the first nine months of the dependency case and failed to establish contact between father and Z for the first seven months, DHS efforts were not reasonable. Although father’s 30 year sentence for sex offenses meant that he would be physically unavailable to be a resource for the child, the court found the concept of reunifying a child with a parent within the dependency statutes is not limited to physical reunification. In examining the policy underlying the dependency code and a parent's Fourteenth Amendment rights, the court concluded that reunification means restoration of the parent's right to make decisions about the child's care, custody and control without state supervision, even if the child will not be returned to the parent's physical custody. A parent's incarceration in itself does not relieve DHS of the obligation to make reasonable efforts. In this case, the court found that, at a minimum, the caseworker could have discussed the conditions of return with father to see if father had any ideas about how to satisfy the conditions from prison with assistance from DHS.

► *Dept. of Human Services v. M. K.*, [285 Or App 448 \(2017\)](#)

The juvenile court could properly consider that the children would suffer from forcing them into therapeutic visitation with mother, as well as the children’s refusal to cooperate with visits, in determining whether DHS efforts were reasonable.

► *Dept. of Human Services v. M.A.H.*, [284 Or App 215 \(2017\)](#)

The court found sufficient evidence in the record to support the juvenile court's determination that DHS made reasonable efforts. The record contains evidence that DHS made efforts relating to mother's mental health beginning in March 2015 (referral for psychological evaluation), continuing with multiple referrals for mental health assessments in late 2015 and early 2016 and ongoing contact with her mental health provider up to the time of the TPR trial. The court noted that even though DHS made no efforts for three months after the TPR judgment, mother was engaged in mental health counseling over that time period. The court stated that DHS is not excused from providing a service when a parent undertakes that service on their own, but the juvenile court could consider the fact of the intervening TPR trial as part of the totality of the circumstances in making the reasonable efforts determination.

► *Dept. of Human Services v. S.M.H.*, [283 Or App 295 \(2017\)](#)

When assessing DHS's efforts, a juvenile court properly considers the length and circumstances of a parent's incarceration and evidence specifically tied to a parent's willingness and ability to participate in services, however the focus is on DHS conduct and a parent's resistance to DHS's efforts does not categorically excuse DHS from making meaningful efforts toward that parent. The court distinguished this case from *Dept. of Human Services v. S.W.*, 267 Or App 277 (2014), in which the juvenile court's reasonable efforts determination was affirmed despite an extended period of minimal efforts from DHS with respect to an incarcerated parent, noting that in this case, mother maintained regular contact with her children throughout the life of the case.

► *Dept. of Human Services v. C.L.H.*, [283 Or App 313 \(2017\)](#)

When the juvenile court assesses the benefit portion of the required cost-benefit analysis, the juvenile court must consider the importance of the service that was not provided to the case plan and the extent to which that service was capable of ameliorating the jurisdictional bases. When available, the juvenile court properly considers evidence tied to a parent's willingness and ability to participate in and benefit from the service that was not provided. While the court may consider the length and circumstances of a parent's incarceration in assessing DHS's efforts, the reasonable efforts inquiry focuses on whether DHS provided the parent with an opportunity to demonstrate improvement regarding the jurisdictional bases. DHS may not withhold a potentially beneficial service to a parent simply because reunification with the child is ultimately unlikely even if the parent successfully engages in the services and programs that DHS provides. DHS must make reasonable efforts so that the juvenile court is in a position to evaluate the parent's progress toward the goal of reunification. The circumstances and duration of a parent's incarceration may then be considered when the court determines whether the parent has made sufficient progress.

► *Dept. of Human Services v. S.S.*, [278 Or App 725 \(2016\)](#).

Given that the children's lack of relationship with mother was among the adjudicated circumstances that endangered them, four months of efforts to rebuild the relationship was not enough to compensate for six months of failure to allow contact or even prepare the children for contact with their mother.

► *Dept. of Human Services v. J.M.*, [275 Or App 429 \(2015\)](#).

Although there was a six month delay from the time C was diagnosed with delays and the time parents' received services relating to this, the record supports an interference that providing the information earlier would not have made a difference. The parents made little progress after learning of C's developmental delays and receiving services tailored to those delays. Finally, the juvenile court considered C's health and safety as its paramount concern finding that visitation was causing more stress on the child than strengthening her relationship with parents, and that service providers had opined that C would be emotionally traumatized if she were to leave her foster parents.

► *Dept. of Human Services v. S.W.*, [267 Or App 277 \(2014\)](#).

Under the totality of the circumstances, the record supported the juvenile court's conclusion that DHS made reasonable efforts. The court can consider father's conduct in response to DHS efforts in evaluating the reasonableness of DHS efforts over the life of the case. The length and circumstances of a parent's incarceration are factors that the juvenile court may consider in relationship to the child's stage of development and particular needs, in determining whether DHS efforts were reasonable. The agency's decision not to provide visits was reasonable in light of the long drive (six hours round trip), the stress of the prison environment in light of A's physical, behavioral and emotional problems; the lack of a relationship with father; and a psychological evaluation which questioned whether father was a viable visitation resource.

► *Dept. of Human Services v. T.S.*, [267 Or App 301 \(2014\)](#)

The court rejected father's argument that DHS efforts should be evaluated in terms of the review period (the time between the last review hearing and the permanency hearing), explaining that reasonable efforts are to be evaluated under a "totality of the circumstances", which includes efforts over the life of the case. In this case, DHS worked extensively with mother but made little efforts to reunify T with father. For about half of the time T was in care, DHS "...essentially ignored father based on an apparent rationale that T was more likely to reunify with mother and that father and mother would never reunite." Meanwhile, father repeatedly asked DHS about visits with T, and sought out and participated in services that were available. In this case, the court found DHS did not make reasonable efforts to reunify father with T.

► *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#).

Juvenile court's decision that DHS made reasonable efforts was reversed when court did not consider totality of the circumstances by engaging in a cost-benefit analysis to determine if DHS was required to provide father with a psychosexual evaluation, a service identified as "key" to reunification.

► *Dept. of Human Services v. R.D.*, [257 Or App 427 \(2013\)](#).

Court of Appeals affirmed juvenile court's decision that DHS didn't make reasonable efforts to provide reunification services to mother based on a 16 month delay between the time of jurisdiction and the time a sex offender treatment provider was provided to mother. DHS's failure to make reasonable efforts precludes a change in the permanency plan away from reunification.

► *Dept. of Human Services v. G.N.*, [263 Or App 287 \(2014\)](#).

The record contained sufficient evidence DHS made reasonable efforts when: (1) visits were reduced to one hour a week because the child indicated they weren't going well; (2) the child and parents started attending individual counseling sessions in preparation for family therapy starting in December 2012 (family therapy was court ordered in September 2012), then were provided with one family therapy session in April 2013 and subsequently family counseling was discontinued due to father's behavior; and (3) once DHS learned that father had stopped taking his ADHD medication because of its cost, it made efforts to help him pay for the medication.

### **Reasonable Time**

*See also, "Compelling Reason and ORS 419B.498(2) Determinations" above.*

► *Dept. of Human Services v. A.S.*, [278 Or App 493 \(2016\)](#)

Before the court can change a permanency plan away from reunification, the court is required to determine that DHS has made reasonable efforts to make it possible for the child to safely return home, and that the parent's progress was insufficient for the child to safely return home. In addition, the juvenile court may continue a plan of reunification if it determines that further efforts will make it possible for the ward to safely return home within a reasonable time. In this case, the Court of Appeals found the evidence was legally sufficient to support the juvenile court's determinations. With respect to the reasonable time determination, it was permissible for the juvenile court to infer that it will take mother at least a year to parent when the juvenile court noted mother's inability to regulate her behavior based on her testimony, mother's refusal to admit she had caused harm to father's older children, and there was testimony from a psychologist that mother would not experience sustained improvement with respect to empathy and accountability for her behavior for at least eight to 10 months from the date of the hearing.

## Right to Participate

- ▶ *Dept. of Human Services v. A.E.R.*, [278 Or App 399 \(2016\)](#).

In *Dept. of Human Services v. D.J.*, 259 Or App 638 (2013) the court held a party's statutory right to participate includes the right to testify, and appearance through counsel is not a substitute when a party wishes to offer his or her own testimony. In this case, father obtained a court order directing the sheriff to transport him to court on the day of the hearing. He was not transported and could not be connected by telephone. The Court of Appeals held it was error for the juvenile court to proceed without him when his testimony was critical to the presentation of evidence that the court would have considered in making its determination regarding the change in permanency plan.

- ▶ *Dept. of Human Services v. D.J.*, [259 Or App 638 \(2013\)](#).

The Court of Appeals found the right to “participate in hearings” in ORS 419B.875(2)(c) includes the right to testify on the party’s own behalf. The court reversed the juvenile court’s judgment changing the permanency plan from reunification when an incarcerated parent who wanted to participate was not able to be connected by telephone.

## Sufficient Progress

- ▶ *Dept. of Human Services v. D.M.*, [310 Or App 171 \(2021\)](#).

Regarding whether father made sufficient progress, the juvenile court gives the highest priority to the child’s health and welfare. Even if a parent has completed all required services, evidence that a parent continues to engage in behavior that is harmful to a child supports a determination that the parent has not made sufficient progress for the child to return home. In this case, the record supports the juvenile court’s findings that E suffered harm from father’s and stepmother’s past conduct and that acknowledging that E suffered trauma as a result of that conduct is necessary for E to return safely home. E’s counselor testified that such an acknowledgment was necessary, and that father and stepmother would have to engage in E’s treatment to learn her needs and the tools necessary to parent her. The court could reasonably infer that father had not made sufficient progress based on his minimization of his and stepmother’s past conduct and its effect on E, including his tacit denial that any of stepmother’s past conduct with E constituted abuse, his minimal engagement with E’s counselor, and his inability to articulate what he would do if he again had concerns about stepmother’s conduct with E. The court could also reasonably infer that father’s and stepmother’s relationship continued to be volatile, given their minimization of past conduct, downplaying of current disagreements and father’s admission to “talking with another chick” around the time his son was born. The record also supports the juvenile court’s findings that father and stepmother both continue to demonstrate a lack of insight and ability to apply lessons from services to their life and parenting.

► *Dept. of Human Services v. C.E.*, [288 Or App 649 \(2017\)](#)

In determining whether a parent was on notice that his or her progress would be assessed based upon particular facts, the court looks to the petition, the jurisdictional judgment, and documentation attached to the jurisdictional judgment providing the parent notice as to the conditions for reunification. To determine whether the relied-upon facts were fairly implied by the jurisdictional judgment, the court assesses whether a reasonable parent would have known that he or she needed to address the condition or circumstances exemplified by those facts. When a jurisdictional judgment or attached documentation specifically identifies a potential cause underlying a jurisdictional finding, it can be fairly implied that the identified cause will be a referent for measuring the parent's progress. In this case, the court concluded the scope of the jurisdictional basis concerning father's domestic violence includes the potential causes of domestic violence that are explicitly cited in the case plan attached to the jurisdictional judgment - i.e., father's controlling behavior and his pattern of pursuing unhealthy romantic relationships. Facts indicating that those causes have not been ameliorated - such as those concerning father's alleged participation in his romantic partner's prostitution - are relevant to the sufficient progress determination and are not extrinsic to the basis for jurisdiction.

► *Dept. of Human Services v. T. L.*, [287 Or App 753 \(2017\)](#)

Estrangement was not a circumstance that could be fairly implied by the jurisdictional petition or judgment, and could not be a basis of the juvenile court's permanency determination. Father could not be expected to know that his progress in addressing his substance abuse could be measured by his ability to address any estrangement that might develop between him and M. Father is entitled to constitutionally adequate notice of a deficiency that has been identified as a barrier to the child's return home and of a meaningful opportunity to address the deficiency with the support of services provided by DHS. **When a juvenile court has concerns about an unadjudicated condition or circumstance, the court, on the motion of an interested party or on its own motion, can direct that the petition be amended.** See ORS 419B.809(6).

► *Dept. of Human Services v. M. D. P.*, [285 Or App 707 \(2017\)](#)

The court found there was legally sufficient evidence in the record to support the juvenile court's finding that the parents' had not made sufficient progress for the wards to safely return home. Although mother had been sober for six months, she failed to complete the substance abuse treatment that was deemed essential by her evaluator for her to safely parent her children; father failed to complete domestic violence counseling or treatment; although the parents had housing their frequent moves indicated their housing was not stable; and although the parents were successfully parenting an infant, there was evidence they had difficulty managing all three kids together during visits.

► *Dept. of Human Services v. M. K.*, [285 Or App 448 \(2017\)](#)

In determining whether the parent has made sufficient progress, the juvenile court gives the highest priority to the child's health and welfare. Regardless of mother's completion of required programs, if she was still engaging in behaviors that would be harmful to her children, the court could conclude that her progress was not sufficient for them to safely return home. The court found evidence in the record that the children suffered harm from the domestic violence in their home, and that mother continued to engage in behavior that would create a risk of the same types of harm if the children were returned. This included mother repeatedly allowing father back into the home even after obtaining restraining orders against him, and her continued minimization of the impact of the domestic violence on the children.

► *Dept. of Human Services v. S.J.M.*, [283 Or App 367 \(2017\)](#)

The juvenile court's inference that father lacked the ability to regulate his emotions and temper was permissible based on father's exhibited behavior (which included outbursts in the courthouse). The juvenile court was not required to conclude father had made sufficient progress just because father had completed DHS services. Rather, ORS 419B.476(2)(a) requires the court to focus on the child's health and safety. Father's behavior, combined with evidence that father was hesitant to acknowledge his treatment of L constituted abuse provided a basis for the court to conclude that he had not ameliorated the related bases of jurisdiction. With respect to mother, the juvenile court's finding of insufficient progress was supported by evidence that she remained unable to recognize the danger that father posed to the child.

► *Dept. of Human Services v. C.M.E.*, [278 Or App 297 \(2016\)](#).

The court found the juvenile court's determination that mother had made insufficient progress was supported by evidence in the record. Service providers expressed significant concerns about mother's parenting abilities; her failure to develop a parental role with M; her lack of knowledge about how to meet M's needs; her inability to independently care for herself and M; and continuing lack of insight into the cause of DHS's involvement with the family. In evaluating mother's argument that she is not required to be able to parent the child independently to have M returned home, the court distinguished this case from other cases in which the parent had access to live-in parenting support or permanent, alternative living arrangements. In contrast, the proposed safety plan would only require members of mother's support network to check in twice a day to monitor mother. The juvenile court was permitted to find this was insufficient, especially in light of the fact that a similar safety plan led to the M's removal.

► *Dept. of Human Services v. T.M.S.*, [273 Or App 286 \(2015\)](#).

The evidence was legally sufficient to support the court's determination that mother had not made sufficient progress under ORS 419B.476(2)(a). The juvenile court found any progress made was due to the considerable help of service providers and mother was unable to progress

on her own. The juvenile court also noted mother's repeated relapses and recent discharge from treatment due to noncompliance.

► *Dept. of Human Services v. R.S.*, [270 Or App 522 \(2015\)](#)

In making the determination regarding the permanency plan, in the judgment form, the juvenile court checked the boxes indicating DHS made reasonable efforts, and mother made sufficient progress toward meeting the expectations set forth in the service agreement, letter of expectation and/or case plan, but also checked the box that the child could not safely be returned to mother's care. It is possible for a parent to make progress in meeting DHS goals and still not make sufficient progress for the child to safely return home, making the parent's progress legally insufficient under the statute. The court found the juvenile court's oral and written findings sufficient and consistent under the statutory scheme.

► *Dept. of Human Services v. D.W.C.*, [258 Or App 163 \(2013\)](#).

The record was legally sufficient to permit the juvenile court's finding that father had made insufficient progress in addressing limited contact with his daughter where he had only visited with her twice in her lifetime (both times over the two years since she entered foster care), and did not understand her needs.

► *Dept. of Human Services v. D.A.N.*, [258 Or App 64 \(2013\)](#).

The juvenile court's finding that father had not made sufficient progress was supported by evidence in the record (father was still incarcerated and unable to participate in drug and alcohol services and parenting classes). The juvenile court's findings implicitly include a determination that a minimum of an additional nine months from the date of the permanency hearing was not a "reasonable time".

► *Dept. of Human Services and J.H., a Child v. G.L.H.*, [260 Or App 72 \(2013\)](#).

The court determined that while the trial court did not expressly find that mother had made sufficient progress to make it possible for the child to go home, such finding was implicit in the trial court's decision to terminate wardship and dismiss the case. However, the court found that the implicit finding was not supported by legally sufficient evidence given that the only evidence was the caseworker report, which came to a contrary conclusion.

► *Dept. of Human Services v. J.M.*, [260 Or App 261 \(2013\)](#).

The Court of Appeals found the evidence did not support the inference that father, despite his assertions, would resume the infliction of inappropriate corporal punishment on the child, and for that reason posed a risk of harm. The court found the important inquiry in the case was not what father believes, but what he is likely to do at the time of the hearing. The court found DHS did

not satisfy its burden of establishing that father posed a current threat of serious loss or injury that is reasonably likely to be realized, and that the evidence was legally insufficient to support the juvenile court's finding that father had not made sufficient progress to allow the children to be returned home safely.

▶ *Dept. of Human Services v. L.A.S.*, [259 Or App 125 \(2013\)](#).

The Court of Appeals rejected mother's challenge to the court's finding that she had not made sufficient progress because it was not preserved. Without deciding whether a "reasonable time" finding is required to change the plan, the court found the trial court's determination the children could not be returned home within a reasonable time was supported by the record, including evidence of mother's history of substance abuse combined with her belated and incomplete progress through treatment.

▶ *Dept. of Human Services v. J.M.*, [262 Or App 133 \(2014\)](#).

The assessment of a parent's progress toward addressing an unexplained injury ordinarily requires a determination of the cause of the injury. Because there was never any admission, stipulation, or finding as to the cause of the injury, parents' attempt to introduce evidence that the injury resulted from rickets does not represent a collateral attack on any prior admission, stipulation or finding as to the cause of the injury.

▶ *Dept. of Human Services v. G.N.*, [263 Or App 287 \(2014\)](#).

The record contained sufficient evidence for the juvenile court's finding that father made insufficient progress based on the fact that despite completing therapy for domestic violence, father continued to be emotionally abusive during visits and blamed the children for DHS involvement. Father's counselor also testified father did not express empathy for the children.

▶ *Dept. of Human Services v. R.B.*, [263 Or App 735 \(2014\)](#).

It was permissible for the juvenile court to consider mother's mental health issues when determining sufficient progress even though that issue was not expressly provided in the bases for jurisdiction. In this case, mental health issues are implied by the allegations, there is evidence in the record that mother's mental health issues are not new, and the record doesn't indicate that mother would have been provided with any different services had the jurisdictional judgment more particularly identified her mental health problems.

### *Preservation*

▶ *Dept. of Human Services v. T. M.G.*, [307 Or App 117 \(2020\)](#)

Mother did not preserve her arguments related to the court's order for her to make two of her other children, who were not wards of the court, available for visitation with M. The focus of

mother's arguments was on the challenges that the order would place on her. Although she mentioned the children were not wards of the court, she did not elaborate further that: (1) she was a "fit" parent with regard to them and therefore entitled to the presumption, (2) under the Due Process Clause, the juvenile court had no authority to override her parenting decisions until the presumption had been rebutted, and (3) the evidence was insufficient to overcome the presumption. The parties were not on notice of the potential need to make additional arguments or further develop the evidentiary record, nor did the juvenile court have the opportunity to correct its course of action, if warranted. The Court of Appeals did not consider the merits of mother's arguments, finding they were not preserved. Affirmed.

### ***Reviewability***

▶ ***Department of Human Services v. L. C., [303 Or App 37 \(2020\)](#)***

The court found parents' appeals were moot when: (1) the findings involved in this case would not affect the legal standards for evaluating father's care in future dependency proceedings; (2) the findings that father was unable or unwilling to protect children from mother's unsafe behavior and that he failed to maintain a safe environment for his children because he allowed them to live in an unsafe and unsanitary home do not create a significant risk of stigma; and (3) mother did not assert how people would learn of the juvenile court's findings thereby preventing her from volunteering with the art association or becoming an EMT.

▶ ***Dept. of Human Services v. M.M.R., [296 Or App 48 \(2019\)](#)***

Mother's appeal was moot when adoption was granted while appeal was pending and mother's basis for setting aside the TPR judgment was intrinsic fraud (acts that pertain to the merits of the case) that could have been contested during the trial.

▶ ***Dept. of Human Services v. C. A. M., [294 Or App 605 \(2018\)](#)***

In this case, the court found that mother's concerns that the findings in the jurisdictional judgment will disadvantage her in any future child welfare investigations and proceedings were valid. The court also found that the juvenile court findings permit the inference that mother could have prevented her child's death, which could carry a social stigma. Although DHS and juvenile court records are confidential – a factor that generally reduces stigma – the fact that mother's nurse and safety service providers were present for the jurisdictional trial and are likely aware of the nature of the court's findings weigh against dismissal. The continued existence of the jurisdictional judgment could affect the relationships between mother and those key people in M's life. The court found the appeal was not moot.

▶ ***Dept. of Human Services v. A.B., [362 Or 412 \(2018\)](#)***

In this case, mother contended that the juvenile court's adjudication would: (1) disadvantage her in any future child abuse and neglect proceedings and custody proceedings; (2) limit her options for employment or volunteer work; and (3) stigmatize her with her child's service providers. The court examined a number of circumstances that called into question whether mother would actually suffer collateral consequences, including the juvenile court's findings that the child was extremely attached to mother and that mother quickly took advantage and benefited from the services that were provided, and that the court terminated jurisdiction after finding that mother was a fit parent. In addition, the court found it unlikely that the juvenile court's findings and judgment would disqualify her from work or volunteer opportunities. Finally, since juvenile dependency records are confidential, the court found it unlikely that mother would suffer from social stigma because people are unlikely to learn about the case. In sum, the court found DHS met its burden to persuade the court that the jurisdictional judgment would not have a practical effect on mother's rights.

► *Dept. of Human Services v. S.M.S.*, [281 Or App 720 \(2016\)](#)

Appeal dismissed as moot. An appeal is moot when resolution of the main issue in controversy will no longer have a practical impact on the rights of the parties. A party appealing the jurisdictional judgment must establish the existence of collateral consequences that prevent the controversy from being moot. The asserted consequence must have a significant probability of actually occurring. In this case, the court found that father did not establish a significant probability the judgment would produce adverse collateral consequences primarily because DHS and juvenile court records are confidential and unavailable to the public. Father did not identify any applicable custom, policy, statute, rule, or practice that presented a significant likelihood that the jurisdictional judgment would be disclosed.

► *Dept. of Human Services v. L.E.*, [279 Or App 712 \(2016\)](#)

While mother's appeal from a jurisdictional judgment was pending, the juvenile court dismissed jurisdiction and terminated wardship. The Court of Appeals found no probable adverse consequences and dismissed appeal as moot, when mother already had two founded dispositions by DHS. The court further rejected mother's argument that the social stigma of child physical abuse and erratic behavior in the judgment served as collateral circumstances finding it speculative in light of the confidentiality of DHS and juvenile court records.

► *Dept. of Human Services v. A.H.*, [275 Or App 788 \(2015\)](#).

In this case, the court found the potential collateral consequences were significant enough to have a practical effect and not render the case moot. Those consequences included: (1) the lack of ability of parents to seek review of a founded disposition if a legal proceeding results in a finding consistent with the founded disposition, putting the parents at a disadvantage in any future investigation by DHS; (2) negative effects on mother's employment as a teacher; and (3)

in the small community where parents live, the negative social stigma associated with the court's finding that the parents failed to protect A from a sexual abuser after she disclosed abuse to them.

- ▶ *Dept. of Human Services v. C.W.J.*, [260 Or App 180 \(2013\)](#).

An appeal of the trial court's denial of father's motion to dismiss is moot when the trial court entered a judgment terminating the wardship after the appeal was filed and sufficient collateral practical effects on the parents' rights were not shown.

- ▶ *Dept. of Human Services v. B.A.*, [263 Or App 675 \(2014\)](#).

Appeal was moot and collateral consequences did not exist when basis of jurisdiction was based on drug use (mother) and lack of a custody order (father), and father obtained a custody order while the appeal was pending.

- ▶ *Dept. of Human Services v. A.B.* [264 Or. App 410 \(2014\)](#).

Court of Appeals denied state's motion to dismiss appeal as moot after dismissal of juvenile court's jurisdiction due to the effect of the underlying jurisdictional judgment, which includes findings of substance abuse and neglect against mother, on a pending custody matter between mother and father in which father seeks sole legal custody.

### ***Review Hearings***

- ▶ *Dept. of Human Services v. H.F.E.*, [288 Or App 609 \(2017\)](#)

The court found the juvenile court's lack of findings under ORS 419B.449 was not plain error because it was not obvious the hearing was of the sort that required findings to be made under ORS 419B.449. The hearing was held, in large part, to address issues in child's related juvenile delinquency case. There is nothing in the record that makes it obvious that the relevant hearing was triggered by a request of any party under ORS 419B.449 or the court's receipt of a report under ORS 419B.440.

### ***Service***

- ▶ *Dept. of Human Services v. K.G.A.B.*, [278 Or App 391 \(2016\)](#)

Citing ORS 419B.824(6)(c), the court explained, an order for service by publication must direct that the publication be made in a newspaper of general circulation where the action was commenced, or if there is no such newspaper, in a newspaper designated as most likely to give notice to the person to be served. If DHS knows of a specific location other than the county

where the action is commenced where publication might reasonably result in actual notice, this must be stated in the affidavit and the court may order publication in that location in lieu of, or in addition to, publication in the county where the action is commenced. In this case, the court found the evidence regarding mother's location in Facebook did not establish that mother resided in Florida or that she would be there for any length of time. Under these circumstances, the record supported the trial court's finding that the information DHS possessed was too tenuous for DHS to understand Florida to be a location that might reasonably result in actual notice.

► *Dept. of Human Services v. M.C.-C.*, [275 Or App 121 \(2015\)](#)

The Hague Service Convention requires that the service of civil complaints, including juvenile dependency petitions, be made through the Mexican Central Authority. The method of service used in this case did not comply with the Convention. However, under Oregon law, a party claiming that a court lacks personal jurisdiction because of a defect in service must raise that issue at the earliest possible occasion. If a party appears and requests relief that could only be granted if the court had jurisdiction, and fails to promptly raise any issues about defects in service or lack of personal jurisdiction, then the party waives the ability to raise those issues.

► *Dept. of Human Services v. K.L.*, [272 Or App 216 \(2015\)](#)

DHS was not required to serve parents using one of the service methods in ORS 419B.823 in order for service to be valid. Due process requires that interested parties receive notice reasonably calculated, under all circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections. In this case, where there was evidence parents were visiting their home and were checking e-mail, these methods were sufficient to satisfy due process.

### ***Standard of Review***

► *Dept. of Human Services v. D.W.M.*, [296 Or App 109 \(2019\)](#)

The Court of Appeals exercised its discretion to review the case de novo when: (1) the juvenile court's decision that father does not pose a current risk of sexual abuse to child does not comport with its express factual findings; (2) the juvenile court made express factual findings and those express findings allow the court to infer the juvenile court's implicit findings as to witness credibility; and (3) a juvenile court declines jurisdiction after finding that a parent sexually abused a child, and the court's factual findings related to that determination are ambiguous, *de novo* review may be justified to ensure an expedited resolution to protect the child.

► *Dept. of Human Services v. S.J.M.*, [283 Or App 367 \(2017\)](#), *reversed*, [364 Or 37 \(2018\)](#).

On appeal from a permanency judgment, the court reviews the juvenile court's conclusions for errors of law, and views the evidence in the light most favorable to the court's disposition to determine if it supports the court's legal conclusions. ORS 419B.476(8); ORS 419A.200; ORS 19.415.

- ▶ *Dept. of Human Services v. N.P.*, [257 Or App 633 \(2013\)](#).

The Court of Appeals may decline to review a juvenile court's determination of jurisdiction predicated on ORS 419B.100(1)(c) de novo. Court has discretion to review "non-de novo", allowing the court to view the evidence, as supplemented and buttressed by permissible derivative inferences, in the light most favorable to the trial court's disposition and assess whether the record was legally sufficient to permit that outcome. The opinion sets forth a three part analysis for reviewing the trial court's determination.

### ***Temporary Custody***

- ▶ *Dept. of Human Services v. S.R.R.*, [281 Or App 619 \(2016\)](#)

The child was a ward of the court in this juvenile dependency proceeding, and also was charged with conduct that, if committed by an adult, would constitute third degree assault in a juvenile delinquency proceeding. After finding the child unfit to proceed in the delinquency proceeding, the court entered judgment in both cases placing the ward/youth in the temporary custody of the Oregon Youth Authority. The child appealed, arguing that because she had not been adjudicated as delinquent under ORS 419C.005, the court lacked authority to order her into OYA's custody. DHS conceded that there is no statutory authority that grants OYA authority to take custody over the child in this case. The Court of Appeals agreed and reversed. A related appeal in the delinquency case was dismissed as moot. *State v. S.R.R.*, [281 Or App 621 \(2016\)](#).

## ***Termination of Parental Rights***

### ***Default Judgment***

- ▶ *Dept. of Human Services v. M.C.D.B.*, [301 Or App 52 \(2019\)](#)

In light of the circumstances identified in the juvenile court's order, along with evidence that mother ignored attempts by the Department of Human Services (DHS) to assist her with transportation to the termination hearing, the juvenile court acted well within the bounds of its discretion in denying her motions for a continuance. With regard to mother's arguments that the court erred by proceeding to termination in her absence under ORS 419B.819 without first issuing an order in compliance with ORS 419B.820, the Court of Appeals declined to exercise its discretion to correct those unpreserved claims of error. Mother previously had a colloquy with the juvenile court about the consequences of her failure to appear at the termination hearing, and

mother demonstrated that she understood the gravity of such a failure to appear. Moreover, many of the same reasons justifying the court's denial of mother's motions for a continuance also militated against the exercise of discretion in this case: Her son had been in the state's care for more than three and a half years; she chose to move a month before the termination hearing, knowing both that she was required to appear personally and the consequences if she did not; and she thereafter ignored DHS's efforts to arrange for travel to the termination hearing.

► *Dept. of Human Services v. K.D.S.*, [292 Or App 258 \(2018\)](#)

The juvenile court abused its discretion by failing to consider the interests necessarily at stake when deciding whether to proceed with a *prima facie* trial over mother's objection. To the extent the court may have considered those matters, the court erred by failing to make an adequate record. The appellate court noted the interests at stake: a parent's right to her children, the determination of what is in those children's best interests, mother's right to hear and confront the evidence against her, mother's right to be heard, and mother's right to have the assistance of counsel.

► *Dept. of Human Services v. K.M.J.*, [276 Or App 823 \(2016\)](#).

ORS 419B.819(7) authorizes the juvenile court to terminate a parent's parental rights when a parent fails to appear at a hearing related to the petition after being served with a summons and a true copy of the petition under ORS 419B.819(1) and (2). When a summons requires the parent to file a written answer under ORS 419B.819(2)(c) and the parent files an answer contesting the petition, the court is required to provide an additional oral or written order providing the parent with notice of the items in ORS 419B.820(1) through (5). The court found it was plain error to terminate mother's parental rights in her absence, prior to providing the requisite notice set forth in ORS 419B.820. Even though mother had actual knowledge of the trial date, the appellate court found that the notice provided in the summons more than a year prior to the trial date was insufficient to ensure that mother knew the consequences of her failure to appear.

► *Dept. of Human Services v. T. M. B.*, [276 Or App 641 \(2016\)](#).

ORS 419B.923(1)(b) authorizes a juvenile court to set aside termination judgments in cases of excusable neglect, and requires the court to engage in a two step process: (1) a party must establish that the party's nonappearance was the result of excusable neglect; and (2) if the party makes that predicate showing, the juvenile court retains some range of discretion to determine whether, in the totality of the circumstances, to allow the motion. In accordance with the legislative history, the court has interpreted excusable neglect to encompass a parent's reasonable, good faith mistake as to the time or place of a dependency proceeding, even if it is careless. In this case, the record allows the inference that mother provided contradictory information regarding her nonappearance. Mother's explanation for her failure to appear was

controverted by her own earlier statement that she would be coming to her attorney's office to meet him before trial on March 31.

▶ *Dept. of Human Services v. A.W.*, [274 Or App 493 \(2015\)](#)

The Court of Appeals reversed the trial court's entry of a default judgment against mother when mother failed to appear for two hearings because: (1) her attorney appeared at the first hearing, and the court had not followed the procedure in ORS 419B.820 that would allow for a default (*see also* ORS 419B.819(8)); and (2) mother didn't have actual notice of the second hearing.

▶ *Dept. of Human Services v. K.M.J.*, [272 Or App 506 \(2015\)](#)

Under ORS 419B.923(1)(b), excusable neglect includes "a parent's reasonable, good faith mistake as to the time or place of a dependency proceeding." *State ex rel Dept. of Human Services v. G.R.*, 224 Or App 133 (2008). In this case, the court found mother did not show excusable neglect because: (1) she cut off contact with her attorney, subsequently communicated with DHS, and did not respond to the evidence that she could have obtained a bus pass or a gas voucher; (2) mother did not request the hearing be rescheduled, and (3) had she communicated with her attorney, she would have learned that she could appear by phone.

▶ *Dept. of Human Services v. E.M.*, [268 Or App 332 \(2014\)](#)

Judgment terminating father's rights reversed. Judgment was based on father's nonappearance due to a conflicting court date in Washington a few days after his release from jail. Trial court should have considered the fact that father maintained contact with his attorney, had been cooperative with the judicial process and had previously arranged to appear electronically from jail. In addition, the juvenile court could have postponed the multi-day trial for a few hours or a day, and did not consider the constraints of imprisonment, displacement and indigence.

▶ *Dept. of Human Services v A.D.G.*, [260 Or App 525 \(2014\)](#).

ORS 419B.819(7) does not allow a default when the parent is not "absent" at the hearing in which the default judgment is entered. The court rejected DHS's contention that the statute allows the juvenile court to terminate a parent's rights without further notice and without the parent's participation once the parent fails to appear, regardless of when the hearing occurs and whether the parent appears at a later date. ORS 419B.923(1) grants the juvenile court broad discretion to set aside any order or judgment made by the court.

*Guardian ad Litem*

▶ *Dept. of Human Services v. M.E.*, [297 Or App 233 \(2019\)](#)

The court declined to review whether the juvenile court erred when it continued the appointment of mother's guardian ad litem from the dependency proceeding to the termination proceeding without holding a hearing, finding mother had opportunities to object to the continuing appointment before the judgment terminating mother's rights was entered. The court found the record on appeal was inadequate to review mother's claim of inadequate assistance of counsel when she failed to raise the issue below and the record was insufficiently developed for the court to review mother's claim that counsel provided inadequate assistance by failing to request the removal of the GAL at the TPR proceeding.

► ***Dept. of Human Services v. A.S.-M.*, [270 Or App 728 \(2015\)](#)**

Court found there was insufficient evidence to support the appointment of a GAL for mother. The court found the appointment of the GAL rendered the proceeding fundamentally unfair because it changed the manner in which mother was entitled to direct the course of the proceeding, and the very appointment of the GAL contributed to the evidence against mother in the proceeding.

► ***Dept. of Human Services v. M.U.L.*, [270 Or App 343 \(2015\)](#)**

The court reviewed the provisions of ORS 419B.237(2) (removal of GAL), and determined the juvenile court does not have a *sua sponte* obligation to determine whether the GAL appointment should be terminated. Rather, the court is only required to consider removal of a GAL if a request is made to remove the GAL.

***ICWA***

► ***Department of Human Services v. M. A. N.*, [303 Or App 600 \(2020\)](#)**

In this case subject to ICWA, judgment terminating mother's parental rights reversed when on de novo review, Court of Appeals found DHS failed to prove beyond a reasonable doubt that termination was in J's best interests. The juvenile code requires that the court decide whether termination is in the child's best interests based on the particular needs and circumstances of the child. While evidence was presented that J needed permanency, there was no evidence that mother had sought, or threatened to, interfere with J's or T's (J's sibling) living arrangement (and in T's case, guardianship) with grandmother, nor could mother move to vacate a permanent guardianship under the juvenile code. Since J's older sibling T was already living with grandmother under a guardianship, an adoption would alter J's legal relationship with T, in a way that may not be beneficial to J in the event of unexpected death or disability of mother or grandmother in the future.

► ***Dept. of Human Services v. M.L.M.*, [283 Or App 353 \(2017\)](#)**

A determination as to whether DHS has made "active efforts" under ICWA depends on the particular circumstances of the case, which includes the nature of the parents' problems.

Although an early cessation of services could indicate that DHS has not made "active efforts," timing is not the only relevant consideration to this determination. DHS demonstrated beyond a reasonable doubt that the services that it provided to parents constituted "active efforts."

***Neglect (ORS 419B.506)***

► ***Dept. of Human Services v. H.R.E., [297 Or App 247 \(2019\)](#)***

The Court of Appeals found there was no evidence regarding whether mother had or had not paid any costs of the child's substitute care, nor was there any evidence that mother had ever been ordered or instructed to do so. In the absence of evidence, the court found DHS had not proved by clear and convincing evidence that mother had failed or neglected without reasonable and lawful cause to provide for the needs of the child under ORS 419B.506.

***Parental Fitness, Reasonable Time and Best Interest Findings***

► ***Dept. of Human Services v. M. H., [306 Or App 150 \(2020\)](#)***

If a child's likely adoptive placement informs whether freeing that child for adoption is in the child's best interest due to the child's particular needs and circumstances, then evidence of where, and with whom, that placement may be is a permissible consideration for the court. Further, on de novo review of the record, DHS did not carry its burden to demonstrate by clear and convincing evidence that freeing child for adoption was in his best interest when the evidence in the record showed child was bonded with his current foster parent, and it was likely that DHS would move the child to Alaska with relatives he didn't know well if parental rights were terminated.

► ***Department of Human Services v. M. A. N., [303 Or App 600 \(2020\)](#)***

In this case subject to ICWA, judgment terminating mother's parental rights reversed when on de novo review, Court of Appeals found DHS failed to prove beyond a reasonable doubt that termination was in J's best interests. The juvenile code requires that the court decide whether termination is in the child's best interests based on the particular needs and circumstances of the child. While evidence was presented that J needed permanency, there was no evidence that mother had sought, or threatened to, interfere with J's or T's (J's sibling) living arrangement (and in T's case, guardianship) with grandmother, nor could mother move to vacate a permanent guardianship under the juvenile code. Since J's older sibling T was already living with grandmother under a guardianship, an adoption would alter J's legal relationship with T, in a way that may not be beneficial to J in the event of unexpected death or disability of mother or grandmother in the future.

► ***Dept. of Human Services v. T.M.D., [365 Or 143 \(2019\)](#)***

The Court first determined that, when it is established that a parent is unfit and that returning a child to that parent's care is improbable within a reasonable period of time, there is not a

presumption that termination is in the child's best interest. The Court also determined that there is not a legislative preference for termination in those circumstances. The Court explained that there was nothing in the text of the relevant statutes, the context of the statutory scheme, or the legislative history that demonstrated that the best-interest inquiry is weighted with such a presumption or preference. The Court held that termination of mother's parental rights was not in child's best interest, given child's need to maintain his maternal familial relationships, and that his need for permanency could be satisfied by making his maternal uncle and aunt his permanent guardians.

► *Dept. of Human Services v. M.A.H.*, [297 Or App 725 \(2019\)](#)

On de novo review, the Court of Appeals concluded that the evidence is clear and convincing that, despite the progress that mother made the year before trial, she is nevertheless unfit due to current conditions that remain seriously detrimental to the children. Her failure to recognize her own pattern of relapse and how that may play into the fears of her children undercuts her claims that drug use is no longer of concern; her period of sobriety has occurred while the children were out of her custody, and her failure to reckon with the costs to the children of her history of drug dependence rises to the level of present unfitness even if she is sober. So does her lack of concern about disrupting the child's current attachments. Mother's inability to recognize how her history has contributed to her children's emotional and behavioral challenges, and instead blaming the caregivers who have provided the children with a stable environment, undermines her claim that she is ready to provide them with minimally adequate care. Finally, the court concluded that termination is in the children's best interest.

► *Dept. of Human Services v. H.R.E.*, [297 Or App 247 \(2019\)](#)

On de novo review, the Court of Appeals was not persuaded, by clear and convincing evidence, that mother's conduct or condition at the time of the termination trial was seriously detrimental to child and, accordingly, found it was error to terminate mother's parental rights based on unfitness. Other than the hair follicle test, the court found mother had no other signs of a relapse. She had participated in treatment, was gainfully employed and had made significant efforts to maintain her connection with child over the course of the case. In the absence of evidence that mother's seemingly incidental use of methamphetamine negatively affected her employment, relationships, or other parts of her life in any way, the test results alone did not persuade the court that mother was unfit.

► *Dept. of Human Services v. T. L. M. H.*, [294 Or App 749 \(2018\)](#)

The court was not persuaded that there was clear and convincing evidence in the record to show that termination of mother's parental rights is in B's best interest. First, the court was persuaded by the evidence that B was strongly bonded to his mother and older sister, and that it would be

best for B if those attachments could be maintained. *See* ORS 419B.498(2)(b)(B). Second, the court stated the record offered little evidence about the viability of other potential permanent arrangements for B that would allow for a meaningful evaluation of whether and how B's attachments could be preserved in a manner consistent with his permanency needs. Finally, the court noted the record lacked the evidence to assess meaningfully whether severance of mother's relationship with B might be necessary to ensure mother does not undermine the efforts of B's primary caregivers to provide him the type of stable and permanent home he needs. The court rejected an argument from DHS that no other permanency plan can provide the safety and security of adoption and that other forms of permanency would create uncertainty for B. Rather, the court observed the juvenile code demands a persuasive factual showing that termination of parental rights to a particular child is in that child's best interest, in view of the particular needs and circumstances of the child.

► *Dept. of Human Services v. T.L.B.*, [294 Or App 514 \(2018\)](#)

The court found that mother lacked the parenting and other skills necessary to maintain a safe and stable living situation for K and was unfit under ORS 419B.504. Regarding the question of whether termination is in K's best interest, the court emphasized that this determination is a child-centered inquiry. An undifferentiated assertion that a given child requires permanency as soon as possible provides no child-specific information and will not satisfy DHS's burden. The court contrasted this case with *Dept. of Human Services v. M.P.-P.*, because the evidence of K's bond with mother was substantially more limited than that present in *M.P.-P.* The court relied on testimony from Wichmann that K was securely attached in her foster home, and that she had a less secure attachment with her mother. Further, Wichmann testified that mother had demonstrated an inability to maintain a safe and stable home for K and her siblings and nothing had changed for several years, and there were no indications that things would change.

► *Dept. of Human Services v. T.M.D.*, [292 Or App 119 \(2018\)](#)

The court found the record contained clear and convincing evidence that it is in the child's best interests to terminate mother's parental rights. The court concluded that, given the child's pressing need for permanency and the harm that appears likely if permanency is further delayed, it is in the child's best interests to be freed for adoption, rather than waiting indefinitely to see whether mother can eventually become a safe parent for the child. The court noted the circumstances that brought the child under the jurisdiction of the juvenile court remained essentially unchanged at the time of the termination trial nearly two years later, and mother had made no meaningful progress toward ameliorating the bases for the juvenile court's involvement. The court also found the juvenile court's focus on mother and its desire to see her succeed, rather than focusing on the effects of delaying permanency on the child, was not appropriately child centered.

► *Dept. of Human Services v. C. P.*, [285 Or App 371 \(2017\)](#)

As a general matter, when a parent opposes termination on the ground that it is not in a child's best interest because severing the parent's legal connection to the child will be detrimental to the child, evidence of an alternative to termination that will preserve that legal connection is relevant to whether termination is in the child's best interests. In this case, the court found that in light of father's argument that he and his children were bonded and that termination would sever that relationship to the children's detriment, the evidence regarding grandfather's ability to care for the children was relevant to the issue of whether termination was in the best interest of the children. The juvenile court's exclusion of the evidence was legal error. On de novo review, the court found the evidence presented at trial demonstrated that father's combination of conditions have been detrimental to the children by driving behaviors that have exposed the children to domestic violence and neglect, contributing to their behavioral issues. The court found the children could not be integrated into father's home within a reasonable time based on testimony that it wasn't likely that father would be able to rise to the level of caregiving needed for his children, who have special needs, and who have an immediate need for permanency. Finally, the court determined termination was in the children's best interest. The children had spent most of their lives out of father's care and were not strongly bonded to him.

► *Dept. of Human Services v. B. J. J.*, [282 Or App 488 \(2016\)](#)

In this case, DHS was required to prove the requisite nexus to father's parenting - i.e, that his mental or emotional problems rendered him incapable of providing care for his children for extended periods of time, or have been seriously detrimental to the children - through child specific evidence. In this case, the only incidents of violence in father's past involved other adult males, and there was little evidence of the frequency of the incidents or that father was modeling violent behavior in front of his children. No evidence was presented on how father's behavior affected the children. In addition, there was insufficient evidence of how father's use of physical discipline (spanking) would affect the children any differently than the thousands of children who are being raised in similar circumstances (the mental health experts who testified about the children's needs did not testify about the seriously detrimental effect that physical discipline would have on these children). Although there was mixed evidence presented at trial regarding father's parenting ability, the parenting coaches who testified said they were not concerned about the children's safety. There was insufficient evidence that father was unfit on the basis of physical and emotional neglect when father had been visiting his children and making efforts to work with parenting coaches, and when there were questions about whether the parents had been notified of the children's medical appointments. Regarding father's lack of a viable plan for the children to return home, the court found concerns about barriers to visibility in the home (for the parents to monitor the children's special needs) were not significant enough to show the home

could not be made safe. In addition, although father was unwilling to work with DHS, there was insufficient evidence to indicate father would not rely on agencies like WESD and medical providers, for assistance to meet the children's medical and educational needs.

► *Dept. of Human Services v. L. D. K.*, [282 Or App 510 \(2016\)](#)

In *Dept. of Human Services v. B. J. J.*, [282 Or App 488 \(2016\)](#), the Court of Appeals concluded that DHS failed to prove that the father, BJ, was an unfit parent at the time of the termination trial. In light of that decision, and DHS's lack of clear and convincing evidence to support the other alleged bases for mother's unfitness, the termination judgments with respect to mother were reversed. By the time of trial, mother's substance abuse problems had been treated successfully, and she had been clean for two years. She consistently engaged in visitation, and although she was often late, there is no basis to conclude that she was unfit by reason of physical or emotional neglect at the time of trial. Since DHS failed to prove that father's use of physical discipline or lack of parenting skills were seriously detrimental to his children, there is insufficient evidence to establish mother's dependence on the father was seriously detrimental to the children. Finally, although there was some evidence that the older children were fearful of father, and that mother's parenting skills were less than ideal, there was insufficient evidence that these problems were seriously detrimental to the children to the level that termination of parental rights would be justified.

► *Dept. of Human Services v. E.N.*, [273 Or App 134 \(2015\)](#)

Testimony from A's caseworker and foster parent that A needs a stable, calm, child-focused primary caregiver in order to avoid risk of emotional and behavioral regulation issues, attachment difficulties and mental health issues combined with evidence that mother still had problems with drug use, mental health, failed to have a thought out plan for reunification, had an inability to commit to a long-term adjustment of her circumstances through participation in services, and her stop-and-start treatment behavior, established by clear and convincing evidence that mother's conduct and conditions would be seriously detrimental to A. *The court found potential harm to the child can be sufficient, and the child's wellness at the time of trial does not preclude a determination of serious detriment.* The evidence established the window for A to form a new primary attachment was closing. Although mother had made recent progress in DBT, her 3 1/2 year history of starting and stopping treatment, continued resistance to long term change, and unwillingness to work with DHS to identify and access services made it improbable that A could be integrated into mother's care within a reasonable time.

► *Dept. of Human Services v. M. P.-P.*, [272 Or App 502 \(2015\)](#)

The Court of Appeals found the evidence was not clear and convincing that it was in J's best interests to terminate mother's parental rights. The court noted that the facts establishing

mother's unfitness did not include abuse. In addition, the caseworker testified that he observed a positive and nurturing relationship between mother and J. Finally, according to the psychologist, the risk of not returning the child to mother was that he would continue to mourn the loss in an extended manner which could interfere with his ability to attach to another family.

► *Dept. of Human Services v. R.K.*, [271 Or App 83 \(2015\)](#)

Incarceration is a "condition" that can be considered when determining a parent's fitness under ORS 419B.504. Whether this condition is detrimental to the child is determined at the time of the TPR trial. Placement moves are not the type of serious detriment that provides a basis for terminating parental rights. The court found the generalized testimony by the DHS witness that a lack of permanency could result in emotional distress did not constitute detriment under the statute. Finally, citing *Stillman*, the court found there was no evidence of unfitness based on father's conduct *as a parent*. (In *Stillman*, the court described father's personal relationship with his children as loving, strong and positive and no psychological reports or evaluations of the children's mental health were presented).

► *Dept. of Human Services v. J.A.M.*, [270 Or App 464 \(2015\)](#)

The court found father's use of prescribed opiates, combined with his nondisclosures of multiple prescriptions from different doctors, put him at risk of violating his probation or endangering his treatment plan, both of which could have been seriously detrimental to his ability care for H. Father continued to deny his addiction, and minimized the conditions that led to H's removal from his care, which expert testimony established increased father's risk for relapse. The court found father unfit because he had not successfully treated his substance abuse problem. The court found termination was in H's best interest based on the attachment she had formed with her aunt and uncle, and the evidence that removing her would place her attachment to them at risk, and potentially aggravate her existing mental health problems.

► *Dept. of Human Services v. I.M.K.*, [270 Or App 1 \(2015\)](#)

Juvenile court decision to terminate parental rights affirmed where father, although clean and sober a year prior to trial: (1) completed treatment early, despite his counselor's recommendation that he continue to attend group session, (2) counselor said father had a high risk of relapse, (3) father inconsistently attended batterer's intervention and parenting classes, and pleaded guilty to a charge of Assault IV shortly before trial. Similarly, mother had periods of drug abuse, sobriety and relapse. These circumstances, combined with the psychiatric diagnosis for each parent, was sufficient for the court to find the parents' conduct or condition seriously detrimental to the children.

► *Dept. of Human Services v. J.L.H.*, [258 Or App 92 \(2013\)](#).

On de novo review, the Court of Appeals affirmed the trial court's decision, finding beyond a reasonable doubt that mother's long time emotional and mental condition and her continued inability to engage in healthy relationships or disassociate herself from father and unsafe men made it improbable she would be able to adjust her life circumstances to make her able to safely parent the child within a reasonable time.

- ▶ *Dept. of Human Services v. K.M.M.*, [260 Or App 34 \(2013\)](#).

On de novo review, the Court of Appeals found the 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. F.J.S.*, [259 Or App 565 \(2013\)](#).

On de novo review, the Court of Appeals found there was clear and convincing evidence that father's anger problem constituted a condition that was seriously detrimental to F, and that F could not be reintegrated into father's home within a reasonable time after father had almost three years to address his anger problem, and F was at risk for attachment issues.

#### *Permanency Hearing Findings*

- ▶ *Dept. of Human Services v. M.H.*, [266 Or App 361 \(2014\)](#)

The state may not proceed on a petition to terminate parental rights under ORS 419B.498(3), unless the underlying permanency judgment contains the appropriate findings under ORS 419B.498(2)(whether it is in the child's best interest not to file a petition for termination because the parent is successfully participating in services and the child can be returned home within a reasonable time). This finding has to be made at each annual permanency hearing, including when the plan of adoption is continued.

#### *Reversal of Jurisdictional Judgment*

- ▶ *Dept of Human Services v. B.P.*, [281 Or App 218 \(2016\)](#)

Father argued the juvenile court lacked authority to terminate father's parental rights because the termination petition was predicated on the reversed 2014 jurisdictional judgment and the May 2015, permanency judgment (which was also based on the 2014 jurisdictional judgment). The court found the allegations in the TPR petition were based on both the 2014 and 2015 jurisdictional judgments, the majority of which were related to findings the court made during

the 2015 dependency proceeding. In addition, the May 2015 permanency judgment that changed M's plan to adoption after the 2014 jurisdictional judgment was continued in a separate order after the 2015 jurisdictional judgment. The court held father's argument did not provide a basis for the court to reverse the TPR judgment on appeal.