
Juvenile Law Reader

Youth, Rights & Justice
ATTORNEYS AT LAW

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"...repeated or extreme exposure to aversive details of traumatic events can result in posttraumatic stress disorder. . ."

Also in this issue: **FREE 3 hour CLE on the Indian Child Welfare Act** presented by national experts Kate Fort and Matt Newman and YRJ's own Addie Smith on December 14, 2016 at the new offices of YRJ, 1785 NE Sandy Suite 300. **Space limited.** Please RSVP to Natalie O'Neil Natalie.O@youthrightsjustice.org. For more information see Page 7.

Vicarious Trauma Primer for the Juvenile Court Practitioner

By Kyra M. Hazilla, JD, MSW,
OAAP Attorney Counselor

It is news to absolutely no juvenile court practitioner that the children and families involved with child welfare and the juvenile court system have experienced trauma. Even when the facts precipitating the filing of a dependency petition are run-of-the-mill or fairly benign as these cases go, the historical information is often replete with terrifying stories. If the file is not already full of nightmare narratives, gathering information

from clients usually results in even more traumatic material. While a few exceptions exist, families living peaceful lives—full of kindness and unscarred by horrific threats to the life and safety of family members—rarely come to the attention of the Department of Human Services.

What Is Trauma?

Trauma is defined as actual or threatened severe injury, sexual violence, or death to oneself or to significant others. These traumas exist in startling percentages in juvenile court cases. According to a recent ABA article on vicarious trauma in juvenile court cases, 90% of caregivers in child protection cases have a trauma history.

Practitioners often see the effects

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of “little t” traumas in dependency cases as well, where neglect, removal from parents, and exposure to the child welfare system also affect families’ functioning in similar ways to “big T” traumatic events. When an individual’s functioning is affected by the severe injury or death trauma, they might qualify for a diagnosis of posttraumatic stress disorder. If the person’s functioning is affected by a “little t” trauma, the person might be diagnosed with adjustment disorder.

What Is Vicarious Trauma?

Lawyers for children and parents are exposed to a great deal of this traumatic material. Lawyers are rarely directly exposed to the traumatic events that child welfare involved families face, but research has shown that repeated or extreme exposure to aversive details of traumatic events can result in posttraumatic stress disorder as well. Just hearing about the trauma can be so traumatizing that professionals develop PTSD! That is a huge price to pay for lawyers and judges doing this important work. Even lawyers who do not experience significant interference in their functioning—such that they would qualify for a

diagnosis—are affected by the constant exposure to traumatized people and traumatizing material. This phenomenon of being affected by hearing about traumatic events in a professional setting has a number of names. This author prefers vicarious trauma, but compassion fatigue, secondary traumatic stress, countertransference, and burnout are all accepted terms for this experience. Vicarious trauma is often described as “the cost of doing business,” and it is so prevalent among helping professionals that researchers call it “inevitable.”

Our capacity for empathy is what creates this distress when we hear about or see other people’s traumas.



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Our brains are hardwired to understand other people’s emotional experiences by feeling the sensation of their emotion inside our own bodies. The mechanism for this phenomenon—mirror neurons—was discovered in the context of physical actions: when we see someone lift a glass and take a sip of water, a subset of our glass-lifting-water-sipping neurons lights up. The same process takes place when we observe someone in physical or emotional pain. Researchers believe around 10% to 20% of our sensory neurons are mirror neurons. We are wired for empathy, but that means

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we actually experience the sensation of someone else's pain.

This mirror neuron system is also triggered by hearing about or reading descriptions of other people's life events.

Who Is Affected?

While the idea that lawyers and judges are affected by the stories they hear is relatively new, some research supports this theory. In a 2003 study of secondary traumatic stress among criminal and family court attorneys, lawyers were more affected by secondary

traumatic stress than mental health professionals.¹ In a 2011 study of public defenders, 34% met the criteria for secondary traumatic stress, and 75% met the criteria for functional impairment (the extent to which exposure to traumatic material negatively impacts functioning in work, recreation, and home life).

How can a practitioner determine whether she or he is affected by vicarious trauma? Both juvenile-specific professional challenges and personal factors influence our trauma exposure and the effect the trauma has on us. The risks are higher for lawyers and judges in juvenile court than for other practice areas because human beings are more traumatized by exposure to children's trauma. Other challenges specific to this practice area are: high caseloads, resource scarcity, and repeated interactions with other vicariously traumatized professionals. In the 2011 study of public defenders, three other factors contributed to vicarious trauma (which are also issues facing juvenile attorneys): lack of respect from the public and other lawyers for their work, lack of control in work life, and lack of enough time to process issues and give or get

support. Attorneys with a personal trauma history are more likely to be negatively affected by vicarious trauma. If a trauma history has not been adequately integrated into someone's sense of self, exposure to other people's trauma is going to be triggering. In addition, personality characteristics such as perfectionism and a high level of empathy without self-compassion put lawyers at even greater risk for vicarious trauma. If a person's reserves are low because of personal traumatic stressors, such as divorce, a sick child or parent, financial stress, or chronic illness, the lawyer will be more susceptible to exposure to traumatic material.

The symptoms of vicarious traumatization mirror the symptoms of direct trauma exposure. People cope differently, but symptoms can include: cynicism or change in worldview; irritability; difficulty

¹ As a dually trained lawyer and mental health professional, this makes perfect sense because mental health practitioners have been talking about vicarious trauma, by any of its many names, for years. Legal professionals are expected to be emotionless, logical pinnacles of reason. Having feelings in response to our cases was seen not as a sign of our common humanity but rather as a sign of some particular susceptibility or weakness.

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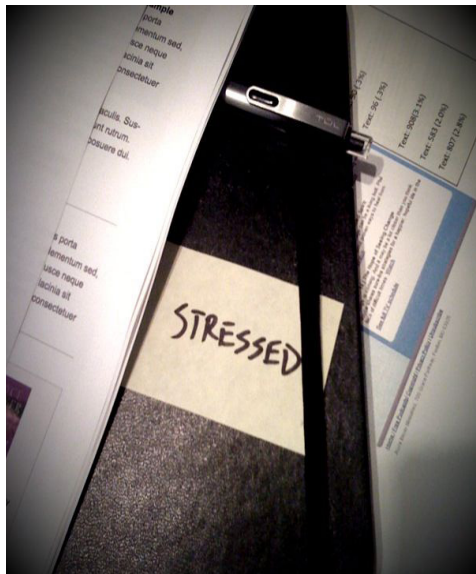


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concentrating; mood swings; feeling isolated or estranged from others; avoidance of thoughts, clients, work, or personal activities; memory changes; hypervigilance and overactive startle response; anxiety; intrusive thoughts or images; nightmares; anger; physical symptoms like stomachaches and headaches; sleep disturbances; and burnout. Practitioners often notice that one or more of these experiences sounds familiar. For a more in-depth exploration, see the Professional Quality of Life Scale: http://www.proqol.org/uploads/ProQOL_5_English_Self-Score_3-2012.pdf

How Can We Mitigate Vicarious Trauma?

What can attorneys do to mitigate some of the deleterious effects of vicarious trauma? Remember the ABC's:

Awareness: understanding the risks and mechanisms for secondary trauma exposure is protective. When we recognize it is not a particular vulnerability or shortcoming that causes us to be affected by the stories we hear, but



PHOTO BY LUZZITOS CC BY 2.0

rather a function of our humanity, we can attend to our experience with equanimity. Know your limits, triggers, and particular sensitivities to particular kinds of cases, clients, or facts.

Balance: striving to set realistic goals and prioritize self-care can help to reallocate a lawyer's emotional and physical energy. Learning how to set appropriate boundaries with clients, colleagues, friends, and family helps to maintain a healthy separation between work, home, and social responsibilities.

Choosing a self-care regimen that you view as necessary to your well-being and your ability to continue to do this challenging work makes a huge difference. Take breaks, take lunch, take a vacation.

Connection: debriefing with supportive colleagues is one of the most protective actions lawyers can take. It involves talking to coworkers or other practitioners one on one or in a group about the emotional responses we have to our cases and the work. Some practitioners are forming groups

for this purpose. Debriefing is different from the typical case consultation, strategic planning, or venting about the frustrations of practice. Developing and maintaining relationships with people who understand your work and buoy your spirits uses the social engagement system of your brain to soothe the trauma response. Feeling connected to the meaning of the work or something larger in the community can help to combat many of the symptoms of vicarious trauma. Connection can also be reaching out to professional supports like a mentor, a therapist, or an attorney counselor at the Oregon Attorney Assistance Program.

Attorneys often ask if there is anything that they can do to help to minimize the trauma that child or parent clients experience as a result of participation in the child welfare system. Creating an atmosphere of safety can go a long way in building rapport with clients and helping traumatized people to participate in their case. These strategies include the added benefit of helping mitigate the attorney's trauma

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response. Keeping an eye toward trauma triggers can turn down the threat detection system and allow your client to work with you and also soothe your activated threat-perceiving system. In the physical space of your office, meeting rooms, or court (as much as possible), allow the traumatized person to choose where she or he wants to sit and attend to chair placement so the traumatized person has access to and can face an exit. If feasible, the lawyer can act as a physical buffer for clients if a client feels unsafe with other parties. Attention placed on your own body language and body regulation is helpful for you and clients. Using open body language, gentle eye contact, and staying out of a client's physical space without permission calms everyone's body down. When your body is calm and your breathing is deep and slow, that influences the people around you. Mirror neurons can vicariously calm us. Try to offer clear explanations of what to expect and choices, take many breaks, and engage the traumatized person in identifying what is and can be helpful to her or him.

If you are practicing juvenile law

and you have a typically functioning brain, you are being exposed to trauma and are thus at risk for vicarious trauma. If you notice that exposure to traumatized people and hard stories is getting to you, great job! There are many things you can do to take care of yourself, and you are welcome to reach out to the OAAP for free and confidential support. If you feel that a debriefing and burnout prevention group would be helpful, please get in touch for some ideas about how to create this in your community. The OAAP provides free and confidential assistance to lawyers and judges.

NOTE: Kyra Hazilla is an attorney counselor with the Oregon Attorney Assistance Program. She can be reached at (503) 226-1057, ext. 13, or at kyrah@oaap.org.

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FINAL REPORT

Governor's Task Force on Representation in Child Dependency Issues

By Mark McKechnie, YRJ Executive Director

In the last issue of the Juvenile Law Reader, Addie Smith, the Administrator of the Governor's Task Force on Dependency Representation, established in 2015 by SB 222, provided a description of the membership and work plan of the group, as well as an update on the progress of the task force and the issues to be addressed in its report. The Task Force members voted to approve the final report in July 2016.

The Task Force was chaired by Oregon Supreme Court Justice David Brewer, who provided an introduction to the report, including the following commentary:

"More than 15 years ago, as the federal laws that govern child welfare policy grew more complicated and child welfare practices grew

more sophisticated, the notion that dependency court was somehow of lesser stature—or a "kiddie court"—could no longer stand. The importance of high quality legal representation in dependency cases became increasingly clear. In that changing environment, questions arose concerning the adequacy of the models that fund, train, and regulate representation for the children, parents, state actors, and CASAs in dependency cases in Oregon. Since then, stakeholders have made numerous attempts to tackle this complicated array of issues, some of which have resulted in small changes and modest improvements, but none have produced the depth or breadth of necessary systemic changes that are recommended in this report. The recommendations of this task force, if implemented, will produce the changes to Oregon's models of dependency representation necessary to allow dependency practitioners and the child welfare system to properly perform their expected roles in this new era of child welfare."
(p. 3)

While there were several issues addressed by the Task Force,

including practice standards for attorneys and quality assurance, much of the work focused on evaluating and recommending models for legal representation for parents, children and the state agency, the Department of Human Services, who are the parties in each child dependency case in juvenile court.

SB 222 originally arose from concerns expressed by various juvenile court judges that DHS case workers too often appeared in court without counsel from the Department of Justice, nor did they appear to have regular access to legal advice and consultation outside of court. The method of payment—hourly fees for services charged to DHS by the DOJ—was identified as a barrier to legal representation and consultation for DHS employees.

The Task Force grappled with difficult issues related to the structure and payment for representation of the state agency and ultimately recommended that the state change the model of payment to a block grant or flat fee agreement between DHS and the DOJ to provide "comprehensive agency representation in dependency cases." The Task

Force also recommended that the representation begin at the petition stage and conclude when permanency is achieved and DHS custody terminates.

For parents and children, the Task Force recommended and endorsed the expansion of the Parent/Child Representation Model (PCRP) that is currently used in three Oregon pilot counties: Columbia, Linn and

Yamhill. The PCRP was modeled after a parent representation model used in Washington State. It started in two Washington counties in 2000 and has since expanded to 31 out of 39 Washington Counties.

Like the Washington program, the PCRP in Oregon would require increased funding from the Legislature to provide "reasonable compensation for attorneys, reduced caseloads, access to independent social worker staff, expert and investigative resources, periodic attorney trainings, and oversight of attorneys' performance." ([State of Washington, Office of Public Defense, "History of Parents Representation Program"](#))

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The subcommittee considering the various models of representation considered these among the most important for attorneys representing parents and children: availability, consistency, manageable caseloads and outcome-oriented practice. Other attributes which led the subcommittee and, ultimately, the Task Force, to endorse the PCRPP model included: continuity, cost effectiveness/cost efficiency, local community connection, multidisciplinary representation, and the duration of representation (including pre-petition appointments and representation from shelter through TPR or post-TPR).

In evaluating models for representation of the state child welfare agency, the subcommittee and Task Force considered similar priorities, including four considered the most important: availability, consistency, cost effective/efficient, and outcome-oriented. Additional attributes desired in the model chosen included: comprehensiveness, continuity, local community connection, manageable caseloads and objectivity.

In addition to the recommendations regarding representation of parents,



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children and DHS, the Task Force also recommended that the State of Oregon fund four statewide CASA Program Attorneys so that CASA volunteers, who are also a party to the child welfare cases on which they are appointed, *“have timely access to legal consultation and representation.”* (p. 30)

Some of the Task Force recommendations are currently being incorporated in draft legislation to be considered during the 2017 Legislative Session. A group of volunteers, most of whom were Task Force or subcommittee members, is working on the draft legislation and discussing other strategies for implementing the Task Force report.

The Public Defense Services Commission has voted to include full funding for the PCRPP model in a Policy Option Package (POP), as part of its 2017-19 budget, in the amount of \$36 million over two years. The Task Force report noted that other states have found that similar representation models have produced improved outcomes by reducing the length of stay in foster care, which also produces savings to the state. Experience in two states included annual savings of \$7.5 million to \$9 million in foster care costs avoided.

The full report is available here: https://www.oregon.gov/gov/policy/Documents/LRCD/Oregon_Dependency_

[Representation_TaskForce_Final_Report_072516.pdf](#)

An executive summary and other materials are also available on the [home page](#) for the Task Force on the Governor’s website at: <https://www.oregon.gov/gov/policy/Pages/LRCD.aspx>.

FREE CLE on the Indian Child Welfare Act

Join us at the new [YRJ offices](#) on December 14th from 9 a.m.-noon for an ICWA Update. [Kate Fort](#), Director of the Indian Law Clinic and ICWA Appellate Clinic at Michigan State School of Law, and [Matt Newman](#) from the Native American Rights Fund, along with Staff Attorney Addie Smith, will present information on the new ICWA regulations which go into effect on December 12, provide an update on the high profile ICWA cases happening around the country, and discuss best practices when working with tribes on ICWA cases.

Please RSVP to Natalie O’Neil at Natalie.O@youthrightsjustice.org.

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JLRC Contact Information

Natalie O'Neil at Natalie.o@youthrightsjustice.org is the contact person for trainings and other JLRC services.

To receive a call-back within two business days from a JLRC attorney for advice, email JLRCWorkgroup@youthrightsjustice.org and please include your name, telephone number, county and brief description of your legal question.



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The Special Immigrant Juvenile Status Visa

By Jennifer Stoller, YRJ Attorney

Undocumented minors who have been subject to abuse, neglect or abandonment may qualify for a Special Immigrant Juvenile Status (SIJS) visa and lawful permanent residency in the United States. In order to qualify to apply for an SIJS visa, the minor must obtain a state court ruling that holds: (1) the minor has been declared dependent on a juvenile court, or the court has placed the child in the custody of a state department or agency, or other person because of abuse, neglect, abandonment or something similar under state law, (2) the minor is under 21 and unmarried at the time of the findings, (3) reunification

with one or both parents is not viable due to the abuse, neglect or abandonment, and (4) it is not in the minor's best interest to return to his or her country of origin. These findings can be obtained in state court cases including juvenile delinquency, juvenile dependency, probate guardianship and custody cases. The minor then uses the findings to petition the United States Customs and Immigration Services (USCIS) for an SIJS visa.

YRJ has represented more than 50 undocumented children in filing their own dependency petitions in juvenile court. These cases can arise in multiple contexts. For example, undocumented youth who were not apprehended at the border or who were released to a sponsor in the United States may approach private attorneys for assistance in initiating custody, guardianship or dependency proceedings. In the context of a delinquency or dependency proceeding, an attorney may discover that a youth is

undocumented and has been abused or neglected. YRJ also often works with youth held in federal custody in Multnomah County facilities. YRJ has also trained juvenile and immigration practitioners. We are available for additional trainings and for consultation on individual cases.

The Oregon Court of Appeals recently issued the first opinion involving an SIJS case. In [**State v. L. P. L. O., 280 Or App 292 \(2016\)**](#) the Court reversed the dismissal of 17-year old L.P.L.O.'s (hereafter youth) petition for juvenile court jurisdiction.

At the time of filing, youth was in federal custody in Oregon. He was born in El Salvador, his mother was deceased, his father was physically abusive, youth's life was threatened by criminal gangs, and, in 2013 youth fled his home country.

After entering the US in 2013, youth was apprehended and placed in the

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custody of the Office of Refugee Resettlement and was allowed to live with his siblings in Massachusetts until April 2015 when he was transferred to Oregon.

Youth filed a jurisdictional petition in August 2015 when he was 17 years old for the purpose of qualification for SIJS. At the preliminary hearing, the juvenile court determined that the court had temporary emergency jurisdiction under the UCCJEA because “the child is present in Oregon with no parents available to provide safe care of the child” and set a jurisdictional hearing date.

At the jurisdictional hearing, the state argued the juvenile court did not have jurisdiction under the UCCJEA and that youth had not met his burden to provide a risk of harm. The juvenile court dismissed the petition due to insufficient evidence, but first concluded that the court did have temporary jurisdiction under the UCCJEA and found several of the allegations in

the petition—mother is deceased, father physically abused youth, youth ran away from home, gangs have threatened physical harm if youth returns, and that youth has no legal guardian in the US—to be true.

Before youth appealed he turned 18 years old. On appeal, the state argued mootness because youth is 18 and the juvenile court can only take jurisdiction over a child under 18 according to ORS 419B.100. The Court disagreed—holding that the youth’s age for the purpose of the juvenile court’s exclusive jurisdiction is measured at the point the proceedings are initiated and nothing in 419B.100(1) suggests the juvenile court lost its authority to enter a jurisdictional judgment in youth’s case that was properly initiated when he was 17.

Next, the state argued lack of subject matter jurisdiction under the UCCJEA because the youth was not abandoned and youth was in federal custody (no emergency present) and therefore did not meet the criteria for temporary

emergency jurisdiction required by ORS 109.751(1). The Court, in interpreting the temporary emergency jurisdiction provision of the UCCJEA, held that the proper focus for courts is whether the child will be at immediate risk of harm upon return to the parent. In this case, it is unknown when youth may return to his abusive father, but it could happen at any time. Therefore, the juvenile court properly exercised temporary emergency jurisdiction.

Last, the Court reviewed the juvenile court’s findings, the underlying evidence, and permissible inferences drawn from the evidence and concluded that jurisdiction was required.

The court erred when it did not take jurisdiction of youth after finding that youth had proven allegations that put youth within the court’s jurisdiction as a matter of law.

Comments: This case is the first time that the Court has interpreted temporary emergency jurisdiction under the UCCJEA, ORS 109.751.

The full analysis and the court’s rule are worth reading, see *State v. L. P. L. O.*, 280 Or App 292 at 304.

In this case, the Court indicates that the youth’s purpose for seeking juvenile court jurisdiction (SIJS) is not relevant to the jurisdictional determination. “At the jurisdictional stage of the proceedings, the juvenile court’s only task is to determine if the child is within the jurisdiction of the court as provided in ORS 419B.100 and, if the child is within that jurisdiction, to make the child a ward of the court.”



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The following article is printed by permission of the Family Defense Center, www.familydefensecenter.org. The Family Defense Center, based in Chicago, is a nonprofit organization whose mission is to advocate justice for families in the child welfare system.

2016 Safety Plan Settlements

Family Defense Center with its Pro Bono Partners Win Huge Policy Victories in Three Federal Court Civil Rights Case Settlements Addressing DCFS

Settlements also give compensation to three families injured by unlawful removals of their children

June ended with a bang for the Family Defense Center. The Center, together with its pro bono partners, settled three major federal civil rights cases, each of which challenged the illegal removal of children from their parents. DCFS removed the children without regard to the constitutional requirements governing the taking of “protective custody” without parental consent and without a court order. Each of the cases also challenged the imposition of involuntary so-called “safety plans,” under which the children were sent to live with relatives and contact with their parents was restricted, all without any court review. DCFS claimed that the safety plans were voluntary agreements, but the facts of each case showed the plans were highly coercive and denied the families due process of law.

While each case focused on DCFS removals and safety plan policies, each had a very different context: the L.W. case involved discrimination based on a false claim that the

mother had an alleged mental illness; the A.B. case involved violations of the rights of a domestic violence victim who was fleeing her abuser; and the W.M. case challenged the DCFS practices and abuses of power in the process of hospital discharges of injured children when the children are cleared to go home but DCFS’s Hotline had been called.

L.W. v. Simpson was filed in November of 2013 with attorneys Rob Betman, Steven Schulte, Christopher Wilson, Ethan McComb, and Brett Walker from Winston and Strawn LLP as lead counsel. In this first-ever federal civil rights case, alleging discrimination in violation of the Americans with Disabilities Act, mother Bridgett J. and her 18-month-old daughter, L.W., were separated from each other, with DCFS taking protective custody of L.W. without any court review, because Hotline callers claimed Bridgett was a “paranoid schizophrenic” who was not taking her medication. This claim

was absolutely false: Bridgett had never been diagnosed with this mental health condition and she had no prescription that she was disregarding. That did not stop DCFS from demanding that Bridgett admit herself into a hospital for a psychiatric assessment while her daughter was separated from her.

The DCFS supervisor later admitted that DCFS had absolutely no basis to make this demand. However, after making these demands the DCFS investigator insisted that the only way Bridgett could reside with L.W. was if she signed a “safety plan” that limited her access to her daughter to contact that was supervised by the family members who had called the Hotline and made the accusations in the first place. Then, DCFS labeled Bridgett neglectful under the “environment injurious” allegation, which the Illinois Supreme Court had declared void in March of 2013. Bridgett and L.W.’s rights were

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restricted under the coerced safety plan, never reviewed by any court of law, for eight months. The plan was lifted only after Bridgett sought legal assistance from the Center. The Center also fought successfully to have her neglect allegation unfounded. A certified teacher and a social worker with an M.S.W. degree, Bridgett could not work in her profession during the time the neglect finding was registered against her. With the Center's help, Bridgett sued for violating her constitutional

rights, which were established under the Center's landmark case, *Dupuy v. Samuels*, which protects persons who work with children from unfair abuse and neglect findings. In addition, the complaint challenged the unlawful separation of L.W. from her mother on substantive and procedural due process grounds under the 14th Amendment and as an unlawful seizure of L.W. under the 4th Amendment. The complaint also included both claims under the Americans with Disabilities Act and the Rehabilitation Act, due to the

discrimination against Bridgett based on the misperception of her alleged psychiatric disability.

After this case was filed, the DCFS defendants moved to dismiss it. The federal court denied that request as to the claims regarding the unconstitutional removal of the child from her mother and the safety plan that ensued after the removal, but granted the motion to dismiss the disability discrimination complaints and the claims against the DCFS Director and DCFS itself. After Bridgett asked the court to reconsider these rulings, the federal court issued an opinion reinstating the disability discrimination claims. This marked an important milestone for the Center, making this case the Center's first successful disability discrimination suit against child protection investigators.

After months of discovery, settlement talks began in earnest. Magistrate Maria Valdez was especially instrumental in forging a

fair and comprehensive settlement. In addition to compensation for L.W. and Bridgett, the final settlement called for revising and clarifying standards for the removal of children and the imposition of safety plans. The settlement also called for DCFS to initiate a comprehensive new mental health policy and procedure, and to end the use of alleged mental illness as a "risk" category on its safety assessment tool (known as CERAP). This case established a precedent for future discriminatory removals of children from parents with alleged but unsubstantiated claims of mental health conditions.

A.B. et al v. Holliman et al was filed in October of 2014 with attorneys Cary Perlman, Margrethe Kearney, Jonathan Fazzola, Kevin Jakopchek, and Sophia Cinel from Latham & Watkins LLP as lead counsel. Rochelle V. fled domestic violence, taking her twin toddlers with her to stay with a relative.

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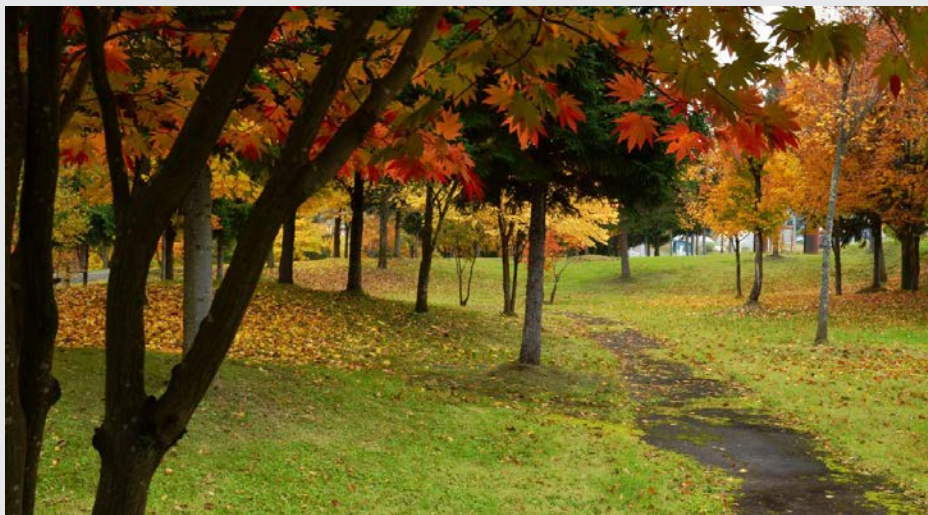


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When her abuser's family member called the Hotline against her, DCFS demanded that she leave the home where she was staying and relocate to a domestic violence shelter due to a false allegation that there was mold in the basement. As soon as a domestic violence shelter admitted her, however, DCFS changed its demands and insisted that the children had to stay with the abuser's family members or they would be taken into foster care. Terrified for her children, Rochelle acquiesced, crying as she signed the "safety plan" form.

Rochelle and the twins were separated for seven weeks. What contact Rochelle was allowed with her children was supervised by the abuser's family, while the abuser had unlimited contact with the children. At the end of the safety plan, moreover, DCFS and the assigned child welfare agency, Children's Home and Aid of Illinois ("CHAID") refused to assist

Rochelle in getting the children back. Then, a new Hotline call, initiated by the abuser's family again, led to an impasse for several days when Rochelle did not even know where her children were. The entire ordeal, including all the demands and restrictions put on Rochelle, were not accompanied by any due process whatsoever.

Rochelle sought the Center's help several weeks after she had already been separated from her children. After extensive advocacy by the Center and after Rochelle filed a petition for relief in domestic relations court to establish that the abuser had no right to keep the children, the children were finally returned to Rochelle and she has maintained full custody ever since.

Two weeks after the children were returned home, the Center assisted Rochelle and the twins with filing a federal civil rights complaint alleging that the coerced safety plan violated

the children's 4th Amendment rights and violated Rochelle's and the twins' 14th amendment due process rights. Both DCFS investigative staff and CHAID were sued for monetary damages and declaratory remedies to amend the safety plan policies under which Rochelle and the children were separated.

The attorneys conducted extensive discovery and just at the point when the team was preparing to ask the Court for a judgment in Rochelle's and the twins' favor, DCFS indicated an interest in settling all three federal suits that raised claims about unlawful safety plans. Eight months of settlement negotiations ensued, over which Magistrate Judge Sidney Shenkier presided in this case.

Because this litigation also raised claims that focused on safety plans, including their enforcement and use by private agencies such as CHAID, the safety plan policy remedies that were common to all three cases were

spelled out in the most detail in the settlement of this case.

(See the Calendar of Settlement Provisions and Deliverables below). Specifically, DCFS's duty to revise the Safety Plan Rights and Responsibilities forms used by staff was detailed in the A.B. settlement, with the new form attached to federal court settlement itself. Other agreements in principle, however, remain to be discussed more fully under the plan the settlement establishes.

W.M. et al v. Giscombe et al was filed in January of 2015 with attorneys Julie Bauer, Joanna Wade, and Reid Smith from Winston and Strawn LLP as lead counsel. In December of 2013, W.M., a four-month-old infant, had a serious cough. His mother took him to his pediatrician's office where he was diagnosed with croup. Thanks to medication he was prescribed, W.M. *Continued on next page »*

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was feeling much better by the time of his follow up appointment the next day. But while waiting in the examination room, W.M. lurched out of his mother's arms and fell to the floor, suffering a serious head injury.

W.M. was admitted to the hospital and remained overnight for observation. When the parents asked about taking him home the next day, the M.'s were told they could not leave the hospital with their son due to a "hospital hold" placed on the child by DCFS. The M.'s were held in limbo at the hospital with their son for several days, when DCFS finally came to the hospital to interview them. The parents were told by DCFS that in order to leave the hospital with their son, they had to abide by a safety plan under which their son would stay at the home of a relative. Even though Erica was breastfeeding W.M. at the time, Erica and Mark were forbidden from staying overnight with W.M. The safety plan continued for

nearly three months, during which time very little investigation of the underlying claim of abuse was conducted. After doctors who were on contract with DCFS said that the evidence they found was



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inconclusive, DCFS took protective custody of W.M. anyway. Contrary to the constitutional requirements established in the Center's landmark case *Hernandez v. Foster* (in which Julie Bauer was also lead counsel and Joanna Wade was co-counsel), W.M. was taken without either probable

cause or exigent circumstances, as the federal complaint later alleged.

When the case came before the juvenile court, as is required after a child is formally taken into state

custody, the parents were ably represented by parent attorneys Sherri Williams and Kent Dean. The juvenile court determined that there was no probable cause to support the finding that W.M. was neglected and W.M. was finally returned home. After the court's decision, DCFS

continued to threaten Erica with an "indicated" finding for abusive head injury, which would have serious consequences on her career as a high school teacher and her ability to support her family. Fortunately, Sherri Williams was able to prevail upon DCFS not to indicate Erica as a child abuser in the face of the juvenile court's ruling of "no probable cause."

As in the *A.B.* case, discovery was complete and the team was preparing to ask for summary judgment when DCFS indicated that they believed the case could be settled. Magistrate Geraldine Soat Brown presided over the settlement negotiations. The parties agreed that DCFS can no longer utilize the "rule out" policy, where DCFS takes protective custody of children when it cannot rule out abuse; instead, DCFS must have specific evidence giving rise to probable cause to believe that the child was abused by his parents or guardians before they

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take protective custody. Additionally, the parties agreed to do away with the “hospital hold” policy, where DCFS tells hospitals that parents may not leave with their children until further notice from DCFS. This is a coercive practice that effectively takes custodial control from parents and sets the stage for unlawful safety plan demands that the parents cannot refuse, in violation of the fundamental rights as a family.

What’s Wrong with DCFS Safety Plans and What the Settlements Accomplish in Limiting Their Use As Instruments of Coercive Family Separations Without Due Process

In preparing for the settlement of these cases, the Center and Latham & Watkins LLP prepared an itemized list of the legal problems with so-called safety plans. This list

now appears in the [Responding to Investigations Manual](#) that the Center issued in April, see Manual at p. 86 (Appendix B). That list of issues helped to form the framework for the settlement negotiations. (See the Calendar of Settlement Provisions and Deliverables below listing the commitments in each suit).

Not all of the problems with safety plans will be solved through litigation, but DCFS and the Center, with its pro bono counsel, have reached major agreements that (a) safety plans are not to be threatened and used unless DCFS first determines that it has grounds to take protective custody of a child and communicates the grounds to the parent who is under investigation; this is instead of making a threat and demanding family separations without ever assessing whether there is probable cause or an immediate threat of harm to a child; (b) families are

given clearer choices about who will provide care under safety plans, assuming grounds do exist; and (c) DCFS has a clear duty to end safety plans promptly whenever probable cause and imminent risk no longer exists, and to assist parents in restoring custody to the status quo before DCFS intervened.

Improvements in safety plan practices have been a long-term agenda of the Center, including through legislative advocacy. In 2014, S.B. 2909, which was enacted into law in P.A. 98-830, the Family Protection Act, which the Center drafted and negotiated, created the first legal obligation for DCFS to inform parents and caregivers of their rights under safety plans. These settlements take that legislation to the next level, by specifying the limited circumstances under which safety plans can be used by DCFS and more clearly delineating the rights of parents when safety plans are being used to separate families

and restrict parental rights during investigations.

Calendar of Settlement Provisions and Deliverables

From August 2016 through September 2017, DCFS must implement a series of reforms to its removal policies, safety plan policies, and domestic violence and mental health policies as a result of the settlements in the L.W., W.M., and A.B. suits. The commitments that were made are listed in the [Calendar of Settlement Provisions and Deliverables](#).

On August 25, 2016, Director George Sheldon issued revised safety plan rights and responsibilities in their updated policy guide per our settlements agreement.



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CASE SUMMARIES

By Amy S. Miller, Deputy General Counsel, Office of Public Defense Services

Dept. of Human Services v. A.S., 278 Or App 493 (2016)

On May 25, 2016, the Court of Appeals issued an opinion in [Dept. of Human Services v. A.S., 278 Or App 493 \(2016\)](#), in which the Court affirmed the juvenile court's permanency hearing judgment which changed the permanency plan for K from reunification to "durable guardianship" with maternal grandparents.

K was two years old when the juvenile court took jurisdiction and was three years old at the June and

July 2015 permanency hearing which is the subject of this appeal. K had been in maternal grandparent's care since his removal in August 2013 and was thriving in that placement but, according to his therapist, was showing signs of emotional problems relating to a need for permanency.

Mother and father had a variety of mental health issues, had been in counseling for four months and completed parenting classes. Mother, in particular, had made progress in services but struggled to acknowledge domestic violence and show empathy for her children. The trial court decided to change the permanency plan because two years had passed without adequate progress by the parents despite extensive services. The trial court appeared to also rely on parents' testimony in making its decision.

The court found parents to be inaccurate reporters, was troubled by



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statements which were inconsistent with jurisdictional stipulations and which showed lack of insight, and that mother's testimony led the court to find she lacked an ability to regulate herself. (see FN 4 for a description of testimony by mother at the permanency hearing).

On appeal, parents argued that they made sufficient progress, it was in K's best interest for the

plan to remain reunification, and mother argued DHS failed to make reasonable efforts. The Court of Appeals disagreed and found that the juvenile court did not err in changing the plan and that, under these circumstances, a TPR and adoption are not in K's best interests and that a durable guardianship is an appropriate permanency plan.

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Dept. of Human Services v. A.D.D.B., 278 Or App 503 (2016)

On May 25, 2016, the Court of Appeals issued an opinion in **Dept. of Human Services v. A.D.D.B., 278 Or App 503 (2016)**, in which the Court dismissed mother's appeal from two review hearing judgments stemming from an August 2015 review hearing in which the juvenile court continued the placement of her two children in substitute care and continued its previous finding that DHS made reasonable efforts. On appeal, DHS argues that the judgments are not appealable; mother responds that the judgments adversely affect her rights and duties because they determine that DHS made reasonable efforts.

In this case, jurisdiction was established in February 2015, the children were returned to mother in May and a re-removal occurred in July 2015. After that removal, the

court entered a "disposition review" judgment that continued the children in foster care and found reasonable efforts. In August 2015 the court held another "disposition review" and, at that hearing both DHS and mother made arguments regarding placement. At that hearing, mother argued that an in-home safety plan should have been developed after removal and failure to do so was a lack of reasonable efforts. Mother did not cite any new information in support of what was, "in essence, a request for reconsideration at the hearing less than a month later."

The court adhered to its July 2015 rulings and continued placement in foster care and continued the reasonable efforts finding.

The Court of Appeals found the judgments not appealable because the judgments merely continue the wardship and placement and continue the reasonable efforts determination made approximately one month before the judgments

on appeal. Mother did not raise any changed circumstances or new information at the trial level in support of her argument that the juvenile court shouldn't continue the reasonable efforts finding.

Dept. of Human Services v. M.J.H., 278 Or App 607 (2016)

On June 2, 2016, the Court of Appeals issued an opinion in **Dept. of Human Services v. M.J.H., 278 Or App 607 (2016)**, in which the Court vacated and remanded the juvenile court's permanency hearing judgments which changed the permanency plans for children M, T and A from reunification to adoption. The issue in this case is whether a ward may have more than one permanency plan at a time as a result of separate dependency cases which had not been consolidated.

In this case, jurisdiction was initially

established as to M, T and A in January 2015 based on allegations of mother's criminal history, substance abuse, and leaving children with inappropriate caregivers and father's lack of parenting skills, substance abuse, leaving children with inappropriate caregivers and domestic violence. In June 2015, DHS initiated a second case and filed new petitions which contained allegations related to mother's mental health and father's lack of progress and jurisdiction was established as to the new petitions in August 2015.

The permanency hearing in the first case was held in September 2015 and the plan for each child was changed to adoption. At that hearing, the juvenile court concluded that because the two dependency cases were separate there could be a different case plan (for the same children) with respect to each case.

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The Court of Appeals disagreed, holding that the “juvenile dependency code does not contemplate that a child, and decisions about that child’s welfare, will be split into separate “cases”; the code contemplates that the court will take jurisdiction of the child and make all decisions about the child based on the totality of all the circumstances of that child.” If 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 in those concurrent cases.

Dept. of Human Services v. S.S., 278 Or App 725 (2016)

On June 8, 2016, the Court of Appeals issued an opinion in **Dept.**



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of Human Services v. S.S., 278 Or App 725 (2016), in which the Court reversed the permanency judgment that changed the permanency plan for children M (age 5) and J (age 3) to adoption because DHS failed to make reasonable efforts. The issues in this case are: 1. whether the court’s determination that reasonable efforts were made for four months of the case is error given that reasonable efforts must

be considered over the life of the case (see *Dept. of Human Services v. S. W.*, 267 Or App 277, 290, (2014)) and 2. whether DHS’ efforts over the life of this case were reasonable.

The relevant facts are as follows: M and J, ages three and two at the time of removal, were removed from mother’s care and placed in stranger foster care in July 2013. DHS

facilitated visitation; Mother’s last visit with the children was August 15, 2013. In September 2013, mother was arrested and held in county jail and in October 2013, jurisdiction was established based on mother’s admission that she was incarcerated and unable to be a custodial resource and father’s failure to appear. When M and J entered foster care they both had “extraordinary behavioral difficulties.” DHS determined that visitation with mother while in county jail was inappropriate and, in consultation with foster parent, elected not to share mother’s letters to the children written from jail with the children even though the letters were appropriate. M’s therapist also recommended against sharing the letters with M due to M’s age.

At the April 2014 review hearing, the referee noted that mother continues to write to the children, the therapist recommends against sharing the letters with the children, it is unclear why the therapist has taken this

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position, and DHS shall ensure M and J re-establish contact with mother as soon as appropriate.

At the June 2014 permanency hearing, the referee found reasonable efforts and indicated that the therapist is recommending against contact with mother and DHS is arranging contact between mother and the therapist. However, this contact was never arranged.

In September 2014, mother was sentenced to 48 months in prison and transferred to Coffee Creek where there are visitation facilities.

In November 2014, mother admitted to the following jurisdictional allegation: “The mother had a prescription drug problem, which led to criminal activity and incarceration, and the mother has not seen [M and J] since August 2013 and she needs the assistance of DHS to reestablish and redevelop the attachment between the children and herself.”

At the December 2014 permanency hearing, the referee deferred the reasonable efforts finding due to concerns about DHS efforts to maintain the parent/child bond and find ways to establish contact.

DHS was ordered to find a family therapist to assist in building mother’s relationship with the children but failed to do so. Instead, M’s therapist attempted to discuss mother during M’s therapy sessions; each time the discussion resulted in an negative or avoidance response from M that M’s therapist report is indicative of emotional pain to M.

In March 2015, the court held a permanency hearing to consider a change in plan to adoption. DHS reported mother was actively engaged in all services at Coffee Creek, the children had not visited mother although J may be able to do so soon, M’s therapist reported M needed more time to heal before

visitation would be appropriate. The referee changed the plan to adoption and found reasonable efforts since the last hearing and that mother failed to make sufficient progress. Mother sought a rehearing.

At the July 2015 rehearing, held de novo in the juvenile court, the caseworker testified that J had one visit with mother and it went well, both children regressed after the visit, and mother was making continued progress in services. The juvenile court judge agreed with the referee and “affirmed” the referee’s order.

On appeal, mother argues that the court failed to consider reasonable efforts throughout the life of the case and that DHS’ efforts, over the life of the case, were unreasonable as a matter of law because DHS cut off all contact with mother for over a year and made only four months of efforts toward reunification.

The Court of Appeals agreed, noting that the referee found that from July 2014 to December 2014 DHS was not making efforts to facilitate contact between mother and children, that the therapist recommended against contact, and DHS did nothing to indicate it was preparing the children for contact.

In arriving at its holding, Court first reviewed the jurisdictional bases: incarceration, prior drug problem, and needing DHS help to establish a relationship with the children. Next the Court considered, in light of the jurisdictional bases, whether the period in which DHS made reasonable efforts was long enough to make the efforts reasonable overall. “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

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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.V.-G., 278 Or App 758 (2016)

On June 8, 2016, the Court of Appeals issued an opinion in [Dept. of Human Services v. J.V.-G., 278 Or App 758 \(2016\)](#), in which the Court, on *de novo* review, agreed with DHS and father that the evidence is insufficient to support termination of father’s parental rights on the grounds of unfitness.

Dept. of Human Services v. D.W.W., 278 Or App 821 (2016)

On June 15, 2016, the Court of Appeals issued an opinion in [Dept.](#)

[of Human Services v. D.W.W., 278 Or App 821 \(2016\)](#), in which the Court remanded a judgment of jurisdiction and disposition for the purpose of clarifying that father was not required to undergo a psychological evaluation.

Father appealed the judgment ordering father to undergo a psychological because the evaluation is not rationally related to the basis for jurisdiction: substance abuse. The Court, citing to [Dept. of Human Services v. B. W., 249 Or App 123, 128 \(2012\)](#), stated that a rational relationship is required for the court to have authority to order the evaluation. However, 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 juvenile court found a psychological evaluation was not necessary to help father ameliorate

his substance abuse; DHS conceded that it was error for the court to order the evaluation.

Dept. of Human Services v. T.E.B., 279 Or App 126 (2016)

On June 15, 2016, the Court of Appeals issued an opinion in [Dept. of Human Services v. T.E.B., 279 Or App 126 \(2016\)](#), in which the

Court affirmed the juvenile court’s order establishing jurisdiction as to the child E after father admitted to facts which formed the bases of jurisdiction.

At the jurisdictional hearing, the court advised father of his right to trial and right to admit to a portion of the jurisdictional petition if that was his preference. The court then asked:

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“[P]aragraph 2E of the petition says, ‘The conditions and circumstances of the child are such as to endanger the welfare of the child by reason of the following facts: The child’s father is incarcerated and unavailable to be a custodial resource at this time.’ Is that true?”

Father confirmed this statement as true and the court found father’s admission to be knowing and voluntary. Prior to the jurisdictional hearing, father filed a pro se petition in which he requested his child be placed with a number of relatives and objected to DHS taking custody based on father’s criminal history. At the jurisdictional hearing, father’s attorney reported father was prepared to admit to allegation 2E in exchange for dismissal of another allegation in the petition. Before father made the admission, the court asked father if he wanted to withdraw his pro se petition; he said he did not and father’s attorney

indicated that the court could proceed with the admission and then address the petition later (note that allegations against mother were still pending).

On appeal, Father argued that his statements and pro se petition demonstrate that father admitted only that he was incarcerated, he did not knowingly and voluntarily admit facts sufficient to establish jurisdiction, and that father’s counsel was inadequate, rendering the jurisdictional proceeding fundamentally unfair. Father contends that the admission that he was incarcerated and not able to provide day-to-day care was insufficient given his proposed family plan for grandmother to care for E. The Court disagreed, holding that father did admit to circumstances which presented a danger to the welfare of E despite his proposal to entrust E to the care of grandmother. (See FN 2 which discusses father’s admission in light of D.D. (holding that jurisdiction

can’t be created by stipulation) and the Court’s conclusion that father admitted to facts which established jurisdiction.)

While the Court concluded the juvenile court had the discretion to allow a parent to withdraw an admission, there is sufficient evidence in this case to conclude father’s admission was knowing and voluntary. “Before accepting father’s admission, the trial court advised and questioned father extensively.” Last, the Court concluded that father did not develop a sufficient evidentiary record to prove his claim of inadequate assistance of counsel. Father can do so through a motion to set aside the judgment pursuant to ORS 419B.923. See [**Dept. of Human Services v. T.L., 358 Or 679 \(2016\).**](#)

Dept. of Human Services v. S. M. S., 279 Or App 364 (2016)

On July 7, 2016, the Court of Appeals issued an opinion in [**Dept. of Human Services v. S. M. S., 279 Or App 364 \(2016\)**](#), in which the court affirmed the juvenile court’s order asserting jurisdiction over mother’s infant child, L, on the basis of mother’s mental illness. On appeal, Mother argued that the evidence was insufficient to support, by a preponderance of the evidence, that L’s circumstances, at the time of trial, posed a current threat of harm and that the court’s determination was speculative given mother’s stability at the time of trial.

The relevant facts are as follows: Mother, age 24 at the time of the trial, had a history of severe mental illness dating to schizophrenia-like conditions since age 17 which resulted in multiple hospitalizations over the years, sometimes as a result of mother’s failure to comply with treatment. In 2010, mother was

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diagnosed with bipolar disorder, spent eight months hospitalized and, during that hospitalization gave birth to her first child. Mother wanted no interaction with the child and her parental rights were terminated. In 2012, mother spent 4-6 months in psychiatric hospitalization. Upon release, she moved to Florida where she spent another two months hospitalized. In 2013, she was hospitalized again and, in 2014 became pregnant with L. During her pregnancy, mother obtained prenatal care and moved to Portland. She gave birth in Corvallis and, shortly thereafter, hospital staff became concerned about mother's mental health, mother was transferred to the psychiatric unit, and DHS removed L from mother's care.

At the jurisdictional trial, mother's psychiatrist testified that mother's mental illness was, at that time, adequately managed but if mother were to interrupt treatment her

symptoms would return. In addition to keeping all of her counseling appointments, mother had procured an apartment and car, was attending parenting classes and was regularly visiting L.

Despite mother's progress, the juvenile court asserted jurisdiction and concluded that the infant L's circumstances created a current threat of serious loss or injury because of mother's short period of stabilization, lengthy history of interrupting her treatment with resulting psychiatric hospitalizations, and that mother had no friends or family in Oregon to monitor her treatment and detect her symptoms.

The Court of Appeals determined that the evidence provided a legally sufficient basis for the court to assert jurisdiction over L and it was reasonable for the court to infer that mother's mental illness was only temporarily stable at the time of trial and still posed a threat to L. "Once more, we note that the juvenile court

was required to consider the totality of the circumstances." Dept. of Human Services v. S. P., 249 Or App 76, 84 (2012).

Dept. of Human Services v. T. L., 279 Or App 673 (2016)

On July 27, 2016, the Court of Appeals issued an opinion in [**Dept. of Human Services v. T. L., 279 Or App 673 \(2016\)**](#) in which an en banc court vacated and remanded the juvenile court's denial of Father's motion to dismiss dependency jurisdiction as to his son T.

The juvenile court took jurisdiction over T shortly after T's birth after both parents made admissions. The juvenile court placed T in substitute care. At the permanency hearing, the juvenile court found although DHS made reasonable efforts to reunify T with his parents, parents had not made

sufficient progress and, as a result, changed the permanency plan to adoption. After the change in plan, DHS shifted its efforts from reunification to executing the plan of adoption. Eight months after the PH, parents moved to dismiss dependency jurisdiction. Parents argued that, although neither had remediated the conditions which led to jurisdiction, the conditions no longer posed a threat of harm to T because T's paternal aunt could assist in parenting and mitigate risk to T. The trial court refused to consider evidence about the aunt, determined that the basis for jurisdiction continued, and denied the motion to dismiss. Father appealed, arguing that the juvenile court erred in denying the motion.

The full Court of Appeals considered two "important and recurring questions related to motions to dismiss juvenile court jurisdiction." First, what is the

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legal standard governing a motion to dismiss and is evidence that another person is available and willing to help care for the child in a way which mitigates risk relevant to the determination of whether jurisdiction continues? Second, when the permanency plan is not reunification, which party bears the burden of proof on that motion?

Regarding question one, the Court held that evidence of an additional caregiver is relevant to the jurisdictional determination:

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. (emphasis added)

According to the Court, the determination is not restricted to whether the original jurisdictional bases continue to be present; the inquiry also requires an assessment of how likely it is that those bases will result in harm to the child. If there is no reasonable likelihood of harm, there is no basis for jurisdiction to continue.

Regarding question two, the Court held that the burden of proof on a motion to dismiss shifts when the permanency plan changes from reunification.

If the permanency plan for a child is something other than reunification, a parent seeking dismissal of dependency jurisdiction on the ground that the jurisdictional bases no longer endanger the child bears the burden of proving that the bases for juvenile court jurisdiction no longer endanger the child, unless the proponents of jurisdiction opt not to put them to their burden.

In essence, a permanency plan other than return to parent gives rise to the presumption that the child cannot safely return home. If the presumption is invoked, a parent seeking dismissal bears the burden of proving, by a preponderance, that the jurisdictional bases no longer pose a current threat of harm reasonably likely to be realized.

Dept. of Human Services v. L. E., 279 Or App 712 (2016)

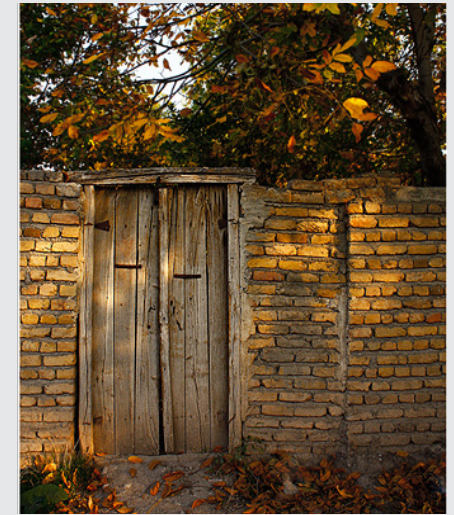


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On July 27, 2016, the Court of Appeals issued an opinion in **Dept. of Human Services v. L. E., 279 Or App 712 (2016)** in which the court granted the agency's motion to dismiss the appeal as moot.

In this case, mother appealed from the juvenile court's judgment establishing jurisdiction as to her son N. While the appeal was pending,

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the juvenile court dismissed jurisdiction and terminated wardship.

“A termination of the juvenile court’s jurisdiction and the wardship ordinarily renders an appeal of the underlying jurisdictional judgment moot.” Dept. of Human Services v. C. W. J., 260 Or App 180, 181-82, 316 P3d 423 (2013). However, adverse collateral consequences may prevent an appeal from becoming moot.

In this case, Mother opposed the motion, arguing that there are probable adverse consequences flowing from the juvenile court judgment: first, the dismissal prevents her from challenging the DHS “founded” disposition in her child welfare record and second, the judgment’s jurisdictional bases create a social stigma. The Court disagreed, found mother’s arguments to be speculative, and dismissed the appeal as moot.

State v. L. P. L. O., 280 Or App 292 (2016)

On August 17, 2016, the Court of Appeals issued an opinion in [State v. L. P. L. O., 280 Or App 292 \(2016\)](#) in which the Court reversed the dismissal of 17-year old L.P.L.O.’s (hereafter youth) petition for juvenile court jurisdiction.

At the time of filing, youth was in federal custody in Oregon. He was born in El Salvador, his mother was deceased, his father was physically abusive, youth’s life was threatened by criminal gangs, and, in 2013 youth fled his home country. After entering the US in 2013, youth was apprehended and placed in the custody of the Office of Refugee Resettlement and was allowed to live with his siblings in Massachusetts until April 2015 when he was transferred to Oregon.

Youth filed a jurisdictional petition in August 2015 when he was 17 years

old for the purpose of qualification for SIJS (Special Immigrant Juvenile Status). At the preliminary hearing, the juvenile court determined that the court had temporary emergency jurisdiction under the UCCJEA because “the child is present in Oregon with no parents available to provide safe care of the child” and set a jurisdictional hearing date.

At the jurisdictional hearing, the state argued the juvenile court did not have jurisdiction under the UCCJEA and that youth had not met his burden to provide a risk of harm. The juvenile court dismissed the petition due to insufficient evidence, but first concluded that the court did have temporary jurisdiction under the UCCJEA and found several of the allegations in the petition – mother is deceased, father physically abused youth, youth ran away from home, gangs have threatened physical harm if youth returns, and that youth has no legal guardian in the US – to be true.

Before youth appealed he turned 18 years old. On appeal, the state argued mootness because youth is 18 and the juvenile court can only take jurisdiction over a child under 18 according to ORS 419B.100. The Court disagreed; holding that the youth’s age for the purpose of the juvenile court’s exclusive jurisdiction is measured at the point the proceedings are initiated and nothing in 419B.100(1) suggests the juvenile court lost its authority to enter a jurisdictional judgment in youth’s case that was properly initiated when he was 17.

Next, the state argued lack of subject matter jurisdiction under the UCCJEA because the youth was not abandoned and youth was in custody (no emergency present) and therefore did not meet the criteria for temporary emergency jurisdiction required by ORS 109.751(1). The Court, in interpreting the temporary

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emergency jurisdiction provision of the UCCJEA, held that the proper focus for courts is whether the child will be at immediate risk of harm upon return to the parent. In this case, it is unknown when youth may return to his abusive father, but it could happen at any time. Therefore, the juvenile court properly exercised temporary emergency jurisdiction.



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Last, the Court reviewed the juvenile court's findings, the underlying evidence, and permissible inferences drawn from the evidence and concluded that jurisdiction was required.

The court erred when it did not take jurisdiction of youth after finding that youth had proven allegations that put youth within the court's jurisdiction as a matter of law.

Dept. of Human Services v. R. M. S., 280 Or App 807 (2016)

On September 8, 2016, the Court of Appeals issued an opinion in **Dept. of Human Services v. R. M. S., 280 Or App 807 (2016)** in which the Court vacated and remanded the juvenile court's determination that Oregon had subject matter jurisdiction to make mother's child, N, a ward of the court.

Before the jurisdictional hearing, mother moved to dismiss the dependency petition on the grounds that Oregon lacked jurisdiction under the UCCJEA because mother and N had resided in Washington for all of N's life.

DHS argued that mother and N effectively lived in Oregon and the Washington address was a "ruse" to prevent child welfare and father's PO from discovering the family was living together in Oregon. The juvenile court denied mother's motion and concluded that the evidence satisfied the venue residency requirement under ORS 419B.118 because the child was, for all practical purposes, living in Oregon. The juvenile court failed to make a "home state" determination as required by UCCJEA. (see ORS 109.741(1)).

DHS conceded that the juvenile court mistakenly relied on the venue statute to resolve mother's challenge to jurisdiction, but asked the Court

to presume that the juvenile court implicitly resolved the factual disputes in a way that gives Oregon jurisdiction under the UCCJEA.

The Court first distinguished venue from jurisdiction. "Jurisdiction refers to a court's authority to act whereas venue concerns the particular location where it is appropriate for the court to exercise that authority." "The UCCJEA determines whether any Oregon court has subject matter jurisdiction to determine custody for a particular child."

In this case, the juvenile court erred in applying the venue statute to mother's jurisdictional challenge. Therefore, the presumption that the juvenile court implicitly resolved the factual disputes in a way that gives Oregon jurisdiction under the UCCJEA does not apply..



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CASE SUMMARIES

BY YRJ Summer Law Clerks

***State v. Winn*, 278 Or App 460 (2016)**

In this criminal case, the Court of Appeals held that a search of defendant's make-up compact inside her purse was unconstitutional, because (1) a reasonable person in defendant's position would not have understood that agreeing to a search of the purse included a search of the make-up compact, and (2) defendant was not given a "meaningful opportunity" to contest the search.

When defendant entered the Marion County Juvenile Court, she was asked to place her purse on the conveyer belt to go through the x-ray scanner. On the walls of the court facility were signs that let those entering know they were subject to search, and that all weapons are firearms were prohibited. After defendant's purse had gone through the conveyor belt, SW asked defendant if she could search her purse. Defendant agreed. SW then looked through the

purse, and opened a small make-up compact, finding methamphetamine inside. Defendant moved to suppress evidence obtained through this search, arguing it was unconstitutional. The state argued the search was constitutional because defendant's "unqualified" consent to search her purse was broad enough to cover the search of her make-up compact.

In holding that the search was unconstitutional, the Court of Appeals held that, due to the vague request of SW to "search [the] purse" without specifying what the search was for, a reasonable person in the defendant's shoes would not have understood the "search" was to include the closed make-up compact inside the purse. Thus, for the search of the compact to be valid, there must have been a meaningful opportunity for the defendant to object. The record contained no indication that defendant knew that SW was going to open the make-up compact, or had been given an opportunity to object prior to it being opened. Therefore, the search violated the defendant's constitutional rights, and the evidence obtained from the illegal search should be suppressed.

***State v. M.S.T.-L.*, 280 Or App 167 (2016)**

Youth appealed an adjudication for fourth-degree assault, arguing that he had not caused "physical injury" to the victim. The state conceded that the youth did not cause physical injury, and instead asserted the youth should be found within the jurisdiction for attempted fourth-degree assault. The Court of Appeals agreed that there was insufficient evidence to prove fourth-degree assault, but sufficient evidence to prove attempt. The Court of Appeals reversed and remanded for a finding of attempted fourth-degree assault.

***State v. K.A.M.*, 279 Or App 191 (2016)**

Youth appealed the juvenile court's denial of his motion to suppress. An officer was conducting a lawful sweep of a house when he encountered youth in a bedroom. The officer asked youth his name and whether he had anything illegal in his position. Youth gave the officer his name and admitted that he did have something, ultimately handing the officer a pipe containing methamphetamine residue. Youth moved to suppress, arguing that the officer had violated

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Article I, section 9, of the Oregon Constitution by unlawfully stopping youth.

The Court of Appeals affirmed the trial court's ruling. A person is stopped for the purposes of Article I, section 9, if law enforcement intentionally and significantly restricts, interferes with, or otherwise deprives an individual of liberty or freedom of movement, or if a reasonable person under the totality of the circumstances would believe that that had occurred. The focus of the inquiry is the officer's show of authority, and whether the officer communicated to the person that he/she was not free to terminate the encounter. Under that legal standard, the court explained, the relevant inquiry is not whether a youth with particular characteristics—in this case, a 17-year-old youth who was homeless—would have felt free to leave; rather, it is the nature of the officer's actions and how a reasonable person would have perceived them. Prior case law establishes that a person is not “stopped” for constitutional purposes based on an officer's request to see identification and

other questioning such as that which occurred in this case. The trial court's denial of youth's motion to suppress was affirmed.

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