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Subject: Recent Oregon Court of Appeals Decisions

Juvenile Court Judges and CRB Field Managers (on bcc line):

The Oregon Court of Appeals released the following opinions on January 27, and February 3:

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

Facts:

Father appealed from a permanency judgment changing the permanency plan for the child from reunification to guardianship. According to father, no party offered evidence during the hearing regarding DHS's efforts at reunification. After the hearing, with no notice to the parties, the court took judicial notice of DHS and CASA reports, and statements made at the hearing by the parties' attorneys.

Held:

Reversed.

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.

Commentary: The Court of Appeals discussed the issue of notice and timing in this case, but did not address the appropriateness of taking judicial notice of the reports. One could argue the facts provided in DHS reports may be subject to reasonable dispute, precluding the court from taking judicial notice of them. *See* ORS 419A.253(1)(b)(A); ORS 40.065. An alternative way for the court to rely on the DHS and CASA reports is to identify the reports on the record, allow the parties an opportunity to object, and then cause the reports to be marked and received as an exhibit. ORS 419A.253(1)(b)(B).

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

Facts:

Mother, father and A moved in with grandfather. Grandfather had helped raise A since A was six months old. After they moved in with grandfather, mother and father had verbal arguments in the basement of grandfather's house. Grandfather asked father to leave the house after father responded aggressively to grandfather's requests for father to calm down. Grandfather filed a petition for a stalking protective order against father, stating that he feared for the physical safety of his home, and all in it, including A. After the court issued a stalking protective order against father, father yelled at the judge, who then said DHS should be involved. The following week, DHS removed A from grandfather's house and placed him in non-relative foster care. DHS filed a petition under ORS 419B.100(1)(c) alleging that A's safety was endangered based on mother's substance abuse, domestic violence in the home, exposure to chaotic living environment and chaotic situations, father's lack of emotional and behavioral regulation and father's residential instability. The juvenile court found DHS had proved all allegations, with the exception of father's residential instability.

Mother appealed, arguing there was insufficient evidence to support the allegations.

Held:

Reversed.

To establish jurisdiction pursuant to ORS 419B.100(1)(c), DHS must present evidence sufficient to support a conclusion that the child's condition or circumstances expose the child to a current threat of serious loss or injury that is likely to be realized. When the petition is based on a parent's conduct, DHS must prove a nexus between the conduct and a current threat of serious loss or injury to the child.

In this case, mother testified she had used methamphetamine twice in the months leading up to the hearing. However, DHS did not present any evidence that mother used drugs while caring for A or that her drug use had an effect on her parenting. With respect to the allegation of domestic violence, there was no evidence that A had ever been exposed to that conduct or that the verbal abuse had ever escalated to physical abuse. Nor was there any evidence the parents' behavior put A at risk of suffering a harm that would justify juvenile court jurisdiction. The court also found the evidence regarding the "chaotic living environment and violent situations" and father's lack of "emotional and behavioral regulation" was insufficient because there was no evidence that A had seen or heard disagreements, or that such exposure put A at risk of serious harm or injury.

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