

WHEN DO I NEED TO BRING IT?

What is it?

What/which are evidentiary hearings?

- The judge hears facts
- Everything is an evidentiary hearing.

Our Goal today.

- Make you all lawyers (?).
 - Nope.
- Knowledge is power.
 - A little knowledge

DHS v. JVG, 277 Or App 201, 211 (2016)

- “[T]he legislature has imposed a significant evidentiary threshold [on] * * * those who * ** seek to make a child a ward of the court *** by using only competent evidence” in a motion to dismiss a jurisdictional determination. Id. at 752. Under OEC 802, “[h]earsay is not admissible except as *** provided by law.” “Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.” OEC 801(3). * * * *. Moreover, DHS does not argue, * * *, that the DIF report was not hearsay * * * *. Thus, we conclude that the juvenile court erred in admitting * * * for purposes of ruling on father’s motion to dismiss.

Question: Does the Evidence Code Apply?

- Oregon Rule of Evidence
 - Hearsay? Your CASA report?
- Evidence Code doesn't always Apply
 - But if the Evidence Code applies, your report must comply with the EC to be admitted as evidence.

Disposition vs. Adjudication

- Disposition is the stage of a Juvenile Proceeding after the child is found within the jurisdiction of the Court.
- Adjudication is the stage where the Court decides whether the Court will place the child under the jurisdiction of the Court.

First Things First

- First Comes Adjudication
- Then Comes Disposition
- However, in a juvenile case, an adjudication hearing can follow a disposition hearing.
 - Motion to Dismiss Jurisdiction

How do I know if Evidence Code Applies?

- Ask
- And then if that doesn't work.
- Ask
- Can I ask the Judge?
 - After an objection. Yes, an “offer of proof.”
 - You tell the Judge what the evidence is and the Judge tells you whether it is admissible.

What's not Hearsay?

- Party's own Statement. 801(4)(b).
- Child
- Parent
- DHS Caseworker? (representative capacity)

What CAN a CASA do at a hearing?

- question witnesses,
- subpoena witnesses, etc.
- Have an opinion.
- Tell the judge you think something is admissible evidence.
- Ask Questions
- Offer Evidence

What should a CASA do?

- Depends.

Representing Yourself?

- , "and this is so unfair to CASA because CASA would be practicing law without a license if they try to "
- Is that Legal?

You are a party.

- Practicing law without a license is when a person attempts to offer legal services to represent another person or party (in court or out of court), and is not licensed to practice law.
- This does not apply to a person representing themselves, self-help.

What should the CASA do in preparation for these evidentiary **hearing**?

- Is it an Adjudication?
- Write a detailed report.

CASA Report

- For an Adjudication Hearing
- Format – Admissible Evidence
 - - Only put things in report that you have a basis to think is admissible and that you can otherwise testify about.
 - - Your personal observations
 - - Statements of Child, Parents (DHS?)

Write a Second Report

- If there are other things that you think is probably not admissible at an adjudication hearing (Evidence Code – Hearsay)
- Put that stuff on page two (on second report).
- Allow information to be segregated.

DHS v. CME., 278 Or App 297 (2016)

- “At a December 2014 permanency hearing, M’s attorney and the court appointed special advocate (CASA) requested that the permanency plan be changed from reunification to adoption. The juvenile court determined that DHS had failed to make reasonable efforts to provide mother with services during the first seven months of the case—that is, the periods when mother was in jail, at OHSU, and at Telecare. Thus, the court declined to change the plan and scheduled the next permanency hearing”

CME

- In a report dated August 10, 2015, the CASA indicated that, despite mother's participation in numerous services and her obvious love for her son, mother continued to display the same characteristics identified by [psychologist] in December 2014. **Specifically, the CASA explained that mother continued to have "shallow insight into her mental health,"** as evidenced by mother's **responses to questions** regarding the circumstances that prompted formal DHS intervention.

CME

- Specifically, the CASA report noted that, “[a]s recently as last week [mother] described the circumstances that brought [M] into care as the result of her being ‘falsely accused’ by * * * police of committing graffiti in a park, after which [mother] says she fell into depression and was extremely tired.” When asked about the likely effects of her depression on M, mother responded only that [s]he “probably missed having someone to talk to when she was sleeping.”

CME

- The **CASA report referred to a psychological evaluation of M conducted by Dr. Munoz** in July 2014. That evaluation noted that M was “at an age where he begins to make sense of his world and safety” and that M’s ability to do so was contingent upon having a secure caregiver. Moreover, Munoz concluded that M “clearly has that with his foster family whereas a significant portion of his time in the care of his mother was impacted by her mental health issues that impaired her ability to provide a safe and stable environment.” The report also suggested that M exhibited “possible cognitive impairments” that require a caregiver who is capable of advocating for M’s needs at school and providing M with a “stable and enriched environment.”

CME

- Moreover, the report echoed providers' concerns that mother had failed to develop an adequate parental role in relation to M and continued to exhibit limited insight into M's needs. For example, when asked by the CASA about her participation in the Families Together program, mother replied that "she did not learn anything" and that she knew more about parenting based on her own experience and the parent-empowerment program in which she participated at CBH.

RECAP

- Identify the hearing type
 - Adjudication or Disposition?.
- Attribute information in your report to sources of information.
- Segregate information in a way that allows it to be used in Court.
- If you don't know if the Rules of Evidence are being applied, ask.