



February 2010

Dept. of Human Services v. J.L.J./L.L.L./C.J., ___ Or App ___ (February 17, 2010)
(Wollheim, P. J.) (Clackamas Co.) Affirmed in part and reversed in part.
<http://www.publications.ojd.state.or.us/A141958.htm>

DHS appeals judgments of the juvenile court: (1) approving placement of child with father; (2) dismissing child's commitment to the custody of DHS and (3) setting aside and vacating a judgment terminating mother's parental rights. Father also assigned error to the juvenile court's denial of his motion for guardianship.

After the court terminated mother's parental rights in 2007, father signed a release giving custody of the child to DHS and authorizing adoption. He also signed an accompanying certificate stating that the release would be irrevocable after DHS placed the child in the physical custody of an adoptive placement. At the time, the child lived with a foster family whom DHS had identified as a potential adoptive placement, but ultimately did not adopt the child.

A year later, DHS found that the father had significantly improved his circumstances and engaged him in a psychiatric evaluation, counseling, and visits with the 12 year old child. After deciding that father could adequately parent, the juvenile court changed the case plan from adoption to reunification with father. At a shelter hearing, all the parties and the juvenile court agreed that it was in the child's best interests to live with father, but DHS represented that it could not certify placement with father because of the previously signed release and certificate of irrevocability. The juvenile court approved placement with father, dismissed DHS custody (continuing the child as a ward of the court), and, on its own motion, vacated the earlier judgment terminating mother's parental rights.

DHS argued that the father's release precluded the juvenile court from reunifying the child with the father and dismissing DHS custody. The Court of Appeals disagreed on both counts. First, the Court found that father's release did not effect a termination or severance of the parent-child relationship; such severance can only be accomplished by a court order. The Court also explained that the decision to reunify was consistent with the juvenile court's role to promote the child's best interests. Second, Court noted that the juvenile court did not abuse its discretion by dismissing DHS custody in this case because ORS 419B.337(7)(a)(A) permits the juvenile court to dismiss a commitment when the ward has been safely reunited with a parent.

Finally, DHS contended that the juvenile court improperly set aside and vacated the judgment terminating mother's parental rights because there was no motion to set aside the judgment, the judgment was two years old and had been affirmed on appeal, and neither mother nor representative were present at or provided notice of the proceeding. The Court explained that, although ORS 419B.923(8) provides the juvenile court inherent authority to "modify" a judgment within a reasonable time (which might arguably include vacating that judgment entirely), "it would still be necessary for the particular circumstances presented to bring the case within the scope of the court's inherent power to vacate." Slip. Op. at 5 (citing *DHS v. B.A.S./J.S.*, 232 Or App 245 (2009)). Those circumstances include making a technical amendment, correcting a court error, or other extraordinary circumstances such as fraud, overreaching by a party, duress, breach of fiduciary duty, or gross inequity. Since there were no such extraordinary circumstances in this case, the juvenile court's authority had no authority to vacate the termination judgment on its own motion.

State v. J.G., ___ Or App ___ (February 17, 2010) (per curiam) (Jackson Co.)
Vacated and remanded.
<http://www.publications.ojd.state.or.us/A142946.htm>

Father appeals the juvenile court's judgment committing child to DHS custody, asserting that the allegation in the dependency petition (that father has a history of assaultive behavior) was an insufficient basis for jurisdiction. The state conceded that the allegation alone was insufficient and that the state did not prove facts curing the defect. The parties, however, agreed that father had earlier stipulated to jurisdiction on the basis that he was unable to protect the child from mother. The Court remanded the case for judgment establishing jurisdiction based on the allegation admitted by father.

Dept. of Human Services v. G.E., ___ Or App ___ (February 17, 2010) (per curiam) (Douglas Co.) Reversed and remanded.
<http://www.publications.ojd.state.or.us/A142930.htm>

Mother appeals the juvenile court judgment changing the permanency plan for her daughter to adoption. She argued that the court did not include determinations required by ORS 419B.498(2) in its judgment, failed to make several required findings of fact, and erred in approving the change in plan. The Court of Appeals agreed with mother's first contention, noting that on the judgment, the check-box corresponding to "[n]one of the circumstances in ORS 419B.498(2) applies" was left unchecked. In *State ex rel Juv. Dept. v. J.F.B.*, 230 Or Ap 106 (2009), the Court previously held that if the court changes the permanency plan to adoption, the judgment's failure to include the court's determination that "none of the circumstances enumerated in ORS 419B.498(2) is applicable" is a deficiency requiring reversal and remand. Consequently, the Court reversed and remanded without addressing mother's other arguments.