



April 2010

***DHS v. G.G.***, \_\_\_ Or App \_\_\_ (April 14, 2010) (Wollheim, J.) (Washington Co.)  
Vacated and remanded.  
<http://www.publications.ojd.state.or.us/A143342.htm>

This case discussed a juvenile court's obligations concerning communications with an out-of-state court about a transfer of jurisdiction under the UCCJEA. Soon after R.G. was born in Montana, Child Protective Services in Montana assessed R.G.'s parents. R.G.'s parents then brought R.G. to Oregon. Within two months, Oregon DHS placed R.G. in foster care and filed a dependency petition. Meanwhile, R.G.'s parents returned to Montana and the Oregon juvenile court found R.G. within its jurisdiction. Eight months later, R.G. was moved to a relative foster placement in Montana.

Before the permanency hearing, R.G.'s father moved to transfer jurisdiction to Montana under the UCCJEA. During the permanency hearing, the Oregon juvenile court discussed father's motion with the Montana court, then sent a letter to the parties stating that both courts agreed that the Oregon juvenile court should retain jurisdiction over R. G. Father moved the Oregon court to disclose the record of its communication with the Montana court, but the Oregon court entered an order denying father's motion to transfer jurisdiction without first giving the parties an opportunity to address the communication with the Montana court. The Oregon court then amended the permanency plan from reunification to adoption. Several weeks later, the Oregon court denied father's motion to disclose the record of the communications between the Oregon and Montana courts.

Father appealed the permanency judgment, arguing that the juvenile court denied his motion to transfer jurisdiction to Montana and failed to disclose the records of its communication the court in Montana. Two weeks after oral arguments in the appeal, the juvenile court notified the parties that its communications with the Montana court had actually been placed in the left side of the court file and thus had not been included in the appellate record. The Court of Appeals permitted the state to supplement the record with those communications, but the Court held that the juvenile court failed to comply with certain obligations under ORS 109.731. Although the juvenile court ultimately disclosed the communications as required under ORS 109.731(4), it did not allow the father to present facts and legal arguments before making the jurisdictional decision on the motion to transfer, as required by ORS 109.731(2). Consequently, the Court of Appeals vacated the permanency judgment and remanded with instructions to permit father to present factual and legal arguments on father's motion to transfer jurisdiction.

**DHS v. K.L.R.**, \_\_\_ Or App \_\_\_ (April 21, 2010) (Brewer, C.J.) (Clackamas Co.)  
Reversed and remanded.  
<http://www.publications.ojd.state.or.us/A143609.htm>

In this case of first impression, the Court of Appeals clarified that requiring a parent to make an admission of abuse as a condition of family reunification violates the parent's Fifth Amendment right to avoid self-incrimination. Mother and father stipulated to dependency jurisdiction in this case involving allegations of multiple unexplained injuries to their infant son. In the dispositional order, the juvenile court required the parents to complete a polygraph test to determine if they caused the child's injuries or if they knew who or what caused the injuries. Mother's attorney objected, contending that the polygraph requirement violated her right against self-incrimination. The court discussed the option of providing parents immunity from criminal prosecution for any incriminating statements that they might make during the polygraph examination, but ultimately did not grant immunity for the parents. Mother appealed the dispositional order.

The Court of Appeals first addressed whether mother's claim was unripe either because she had not yet refused to submit to the polygraph examination or because the juvenile court had not yet penalized her for refusing to take the polygraph. The Court distinguishing this case from *State ex rel Juv. Dept. v. Black*, 101 Or App 626 (1990), where a father's appeal of a dispositional order to participate in incest treatment was unripe because there was no indication that the ordered treatment would cause him to incriminate himself. In contrast, the Court reasoned that mother's appeal in this case was ripe because the juvenile court's order offered mother only the "Hobson's choice of waiving her rights against self-incrimination or suffering adverse consequences in her quest to preserve her parental rights." Slip Op. at 3. Answering questions during a polygraph examination could expose mother to criminal liability, while refusing to complete the polygraph could allow the juvenile court to draw an inference adverse to her parental interests.

In analyzing the merits of mother's appeal, the Court drew widely from the Fifth Amendment jurisprudence of the United States Supreme Court and state appellate courts in Ohio, Vermont, Nebraska, Minnesota, New Jersey, New York, California, and Maryland. From these decisions, the court derived several principles concerning the balance between a parent's Fifth Amendment right to avoid self-incrimination and the juvenile court's role in dependency proceedings:

"(1) requiring an admission of abuse as a condition of family reunification violates a parent's Fifth Amendment rights; (2) on the other hand, terminating or limiting parental rights based on a parent's failure to comply with an order to obtain meaningful therapy or rehabilitation, perhaps in part because a parent's failure to acknowledge past wrongdoing inhibits meaningful therapy, may not violate the Fifth Amendment; and (3) providing use immunity from criminal prosecution is a necessary condition to compelling potentially incriminating statements as an inducement for full cooperation and disclosure during dependency proceedings."

Slip Op. at 6.

Applying these principles, the Court held that, in this case, the polygraph requirement violated mother's Fifth Amendment right to avoid self-incrimination. First, the polygraph was imposed specifically to determine the cause of the child's injuries, not as one part of "a suite of treatment, training, or services" designed to enable reunification. Second, although the juvenile court discussed providing mother with immunity from criminal prosecution, the court never actually ordered the "use immunity" necessary to compel mother to participate in the polygraph examination. Consequently, the Court of Appeals reversed and remanded.

***Dept. of Human Services v. L.P.H.***, \_\_\_ Or App \_\_\_ (April 21, 2010) (per curium)  
(Jackson Co.)

Permanency judgment reversed and remanded.

<http://www.publications.ojd.state.or.us/A143299.htm>

Mother appeals two judgments, one establishing jurisdiction over her son and committing him to DHS custody and the other approving a permanency plan of adoption. The Court focused on the second claim, in which mother asserted that the juvenile court failed to make the findings necessary under ORS 419B.476(5)(d) to authorize the change in permanency plan. ORS 419B.476(5)(d) requires that the permanency judgment must include the court's determination that "none of the circumstances enumerated in ORS 419B.498(2) is applicable." Since the judgment in this case did not explicitly include the necessary determination and the Court could not infer that determination from the "judgment as a whole," the Court reversed the judgment and remanded.