



January 2010

State ex rel Juv Dept v L.B and N.A.M., ___ Or App ___ (January 27, 2010)
(Wollheim, P. J.) (Washington Co.) affirmed.
<http://www.publications.ojd.state.or.us/A138333.htm>

In this appeal from the juvenile court's assertion of jurisdiction over an infant with unexplained injuries, the state argues that the appeal is moot because the juvenile court dismissed jurisdiction at some point after the appeal was filed. Parents argue that the collateral consequences of the original jurisdictional order prevent the appeal from being moot. On the merits both parents argue that the jurisdictional findings were not supported by a preponderance of the evidence, because, they assert, the injury was explained. Father also argues that an "unexplained" injury, unless the injury is as a result of "abuse" or caused by "non-accidental" means, cannot support juvenile court jurisdiction.

The Court of Appeals agreed with the parents that the appeal was not moot, citing the potential adverse consequences, not only of the jurisdictional finding but of the DHS administrative conclusion that the report of abuse was "founded." The Court noted that under DHS' own rules, it will not provide an administrative review of the conclusion that a report is "founded" where a juvenile court's findings are consistent with a founded disposition. Citing a case involving an appeal by a person civilly committed who had been released prior to resolution of the appeal for the proposition that the stigma attached to the civil commitment was enough to defeat the mootness argument, the court declined to dismiss the case as moot.

On the merits, the court deferred to the "implicit credibility finding" of the juvenile court that mother's explanation, offered at trial, had not been communicated to the physicians and others attempting to find a cause at the injury at the time it was diagnosed. As to father's argument that an "unexplained" injury is not enough for jurisdiction, the court pointed out that the case had been pleaded and tried under the "conditions and circumstances" portion of the jurisdictional statute (ORS 419B.100(1)(c)) and not under a different subsection of the statute which refers to subjecting the child to "unexplained physical injury." ORS 419B.100(1)(e)(C). The court's precedents establish a totality of the circumstances test for "conditions and circumstances" that was met here.

State v. M.A.H., ___ Or App ___ (January 27, 2010) (*Per curiam*) (Clackamas Co.)
appeal dismissed as moot.
<http://www.publications.ojd.state.or.us/A142422.htm>

DHS appealed from judgments denying its request to change the permanency plan for mother's children from reunification to adoption. The juvenile court refused to change the plan because DHS had not identified and approved an adoptive resource. Since the judgments appealed from, the agency *has* identified and approved an adoptive home, thus, the appeal is moot. The court noted,

“The only relief that we could grant would be a remand for the court to reconsider the request under the circumstances as they now exist; yet nothing in the trial court's judgment precludes DHS from obtaining that same relief independently of our decision, by requesting a change in the permanency plan based on the changed circumstances.”