



May 2010

***Dept. of Human Services v. B.J.W., 235 Or App 307*** (May 12, 2010) (Shuman, P.J.)  
(Lane Co.) Permanency judgment affirmed.  
<http://www.publications.ojd.state.or.us/A143593.htm>

In this case, the Court of Appeals addressed the admissibility of documents at a permanency hearing where objections under ORS 419B.325 had been made. Father appealed from a judgment authorizing DHS to change the permanency plan for his child from reunification to adoption, arguing the trial court erred in admitting hearsay evidence in the form of exhibits that did not fall within the exception for evidence “relating to the ward’s mental, physical and social history and prognosis.”

The Court of Appeals construed the statute, emphasizing the meaning of the above words, and began its discussion by identifying the nature of the exhibits sought to be admitted, which consisted of material focusing on the father and which included material from two years before the child’s birth. The Court concluded that an “all-purpose bright line rule” was not necessary, but provided some helpful guidance. After analyzing the word “prognosis,” the court concluded that

“... a prognosis or general forecast regarding a ward's physical, mental, or social condition depends to some extent on the environment in which the ward is placed. Thus, information about that environment - including possible caretakers – ‘relates to’ the ward's prognosis. In sum, we conclude that evidence relates to a ward's ‘mental, physical and social \* \* \* prognosis’ if it provides information that is relevant to a forecast or prediction of how the ward will fare in the future, and it necessarily includes information about the ward's future potential caregivers. We therefore reject father's contention that ORS 419B.325(2) encompasses material only if its direct and exclusive subject is the ward.” Slip Op. at 4.

However, the Court noted that its rejection of the position that material must relate directly and exclusively to the ward to be admissible

“does not necessarily mean that ORS 419B.325(2) allows the court to receive any and all evidence that has a relationship, no matter how tenuous, with any of the ward's past, present, or potential future caregivers.” *Id.*

The Court found it unnecessary to define the precise line between admissible and inadmissible, but its ruling is instructive:

“Material that deals expressly with [the child’s] history is admissible. Additionally, the statute allows the admission of material in reports that either the court or DHS ordered for the purpose of evaluating whether, or to what extent, father can maintain his relationship with [the child].” *Id.*

Of the 11 exhibits to which father objected, the Court found that eight fell within one or another of the above categories. The court did not rule on other exhibits that were either cumulative of properly admitted exhibits or not objected to.

Although the court did not cite to it, this understanding of the meaning of “history and prognosis” is consistent with the holding in *Kahn v. Pony Express*, 173 Or App 127, 20 P3d 837 (2001) discussed later in this memorandum.