REASONABLE EFFORTS TO REUNIFY IN DEPENDENCY CASES

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Summary

Oregon statutes, case law, and administrative regulations governing case planning in dependency cases establish criteria for determining whether DHS has made reasonable efforts to reunify the family following disposition. These rules require that the agency's efforts be timely, suited to solving the problems that brought the children into care, and adapted to the individual family's needs and strengths. Inherent in these requirements is the obligation of the agency to offer services that fit together as a package and accommodate a parent's other obligations, including work. The agency's obligations to make these accommodations when arranging visitation is described in detail in administrative regulations.

Oregon statutes and administrative regulations do not define "reasonable efforts" to prevent the need to remove a child from the parent's home or to reunify the parent and child after removal. However, criteria for evaluating whether the agency has made reasonable efforts following disposition can be gleaned from statutes and regulations governing case planning because the obligations of DHS to make reunification efforts are set out in the case plans. The first section of this memo analyzes Oregon statutes and regulations, as well as the limited available case law, to develop criteria for evaluating whether DHS has made reasonable efforts to reunify following the dispositional hearing. The second section discusses in more detail the agency's duty to accommodate parents' other obligations, particularly those related to work, when it offers services and arranges visitation. The last section reviews recent cases that address the reasonable efforts requirement in the context of recurring, difficult fact patterns.

I. Defining and modifying case plans

Most fundamentally, DHS efforts to reunify the family must bear a "rational relationship to the jurisdictional findings that brought the ward within the court's jurisdiction," ORS 419B.343(1)(a). The case plan must specify services that the agency will provide, including "appropriate and timely referrals to services and service providers suitable to address identified safety threats or strengthen parental protective capacity," OAR 413-040-0010(1)(g)(B); *see also* ORS 419B.343(2). "The type and sufficiency of efforts that the state is required to make and whether the types of actions it requires parents to make are reasonable depends on the particular circumstances." *State ex rel. SOSCF v. Frazier*, 152 Or. App. 568, 955 P.2d 272 (1998).

The plan must be based on the family's needs and its resources to change and must include "the perspective of the ward and family," ORS 419B.343(1)(b). *See also State ex rel. SOSCF v. Hammons*, 170 Or. App. 287, 300-02, 12 P.3d 983 (2000) (reasonable efforts must be tailored to the facts of each case). To the extent possible, the family must be allowed to assist in designing the service program. *Id.* If sufficient resources are available, the agency must use "culturally appropriate services and service providers," OAR 413-040-0011(1).

When DHS has employed a consultant to evaluate the parent, child or both and to make

recommendations, it ordinarily should provide the services that the consultant recommends. However, if the agency provides different services on the recommendation of the parent's expert, the parent may not later complain about failure to comply with the recommendations of the agency expert. *State ex rel. SOSCF v. Hammons*, 170 Or. App. 287, 300-02, 12 P.3d 983 (2000).

Although DHS often requires parents to pay for treatment programs, under some circumstances the reasonable efforts obligation may mean that the agency must pay. For example, in *State ex rel. SOSCF v. Burke*, 164 Or. App. 178, 990 P.2d 922 (1999), the court held that where a parent repeatedly asked the agency for help in paying for treatment that the agency had made a precondition to reunification, had shown strong and consistent interest in being an adequate parent, and had very limited financial resources so that the cost of treatment was an insurmountable barrier, the state had to pay for the service. This holding, the court concluded, was a specific application of the general principle that a realistic reunification plan must provide an opportunity for the parent to complete the required treatment successfully. On the other hand, in *Frazier, above,* the court rejected a father's claim that the state was obliged to pay for his therapy where he had failed to take advantage of significant opportunities to develop and demonstrate his parenting skills and to improve his mental condition.

Parents who refuse to accept services that are offered or to attempt to correct the problems that caused the court to remove children from their custody may not later object that the offered services were not adequate. *State ex rel. SOSCF v. Farish*, 152 Or. App. 568, 601-02, 955 P.2d 272 (1998).

On the other hand, when services are provided, parents must be given sufficient time to learn the new skills and correct the problems. The Court of Appeals recently held that a permanency plan should not have been changed from reunification to termination of parental rights because the parents had not been given enough time to implement what they had learned. The court said,

> [T]he record indicates that, with the exception of the parenting classes, most of the services provided to parents took place in the four months immediately preceding the permanency hearing. Additionally, both service providers had limited opportunity to work with the family after [the child] returned home… Expecting parents to consistently apply and perfect newly learned parenting skills within a few weeks of the return of three young children to their home is unrealistic. Parents' failure to do so may fall short of what would be expected of model parents, but that is not the standard. Rather, the question is whether parents' default in that regard put [the child's] health and safety at risk, ORS 419B.476(2)(a), and we conclude that it did not. Thus, parents should be afforded further opportunity to demonstrate their ability to adjust their conduct and become minimally adequate parents …

State ex rel. DHS v. Shugars, 208 Or. App. 694, 717-18, 145 P.3d 354 (2006). *See also State ex rel. Dept. of Human Services v. K.D.*, 228 Or. App. 506, 209 P.3d 810 (2009), where DHS changed the case plan to require a mother to achieve new goals, including demonstrating "autonomy and independence from her abusive family members," discontinuing "aggravating the educational development of her child," developing "appropriate parenting skills and stop her pattern of misrepresentation to authority figures" and putting "her child's needs above her own and work with" the agency, and other authority figures. At the permanency hearing two weeks later, the court found that mother had not made sufficient progress toward achieving these goals

and changed the permanent plan from reunification to adoption. The court of appeals, citing *Shugars*, reversed, saying "as we have stated before it is unreasonable for DHS to expect parents to master parenting techniques in a short period of time before a permanency hearing. The two weeks between the new case plan and the permanency hearing was not sufficient time to measure further progress under the new plan." 228 Or. App. at 517.

Significantly, the Court of Appeals has also recognized that assessing the needs of the children and providing them appropriate services can be part of reasonable efforts because this helps DHS determine how to help parent meet the needs of the children. *State ex rel. Dept. of Human Services v. E.K.*, -- Or. App. --, -- P.3d.—(July 29, 2009).

DHS has an ongoing obligation to monitor and adapt the treatment plan, particularly to respond to significant changes in the parent's situation. The statute governing agency reports at the six-month review contemplates that DHS will engage in this analysis, since it requires that the report include a "proposed treatment plan or proposed continuation *or modification* of an existing treatment plan…" ORS 419B.443(b), (c), (d) (emphasis added). The Court of Appeals discussed this obligation in *State ex rel. Dept. of Human Services v H.S.C.*, 218 Or. App. 415, 427 n. 2, 180 P.3d 39, 46 (2008):

> When fundamental facts relevant to family reunification are significantly different during the assessment period (prior to the permanency hearing) from those that existed when the case plan was formulated and the service agreement was struck, such as when either parent dies, becomes incarcerated, or is deported, it may be necessary to modify the plan and service agreement to reflect those changes in circumstances in order for DHS to satisfy its obligation to make reasonable efforts to make it possible for the ward to safely return home under ORS 419B.476(2)(a).

See also See also State ex rel. Dept. of Human Services v. K.D., 228 Or. App. 506, 209 P.3d 810 (2009).

Together, the statutes, administrative regulations and case law mean that the whether the agency has offered "reasonable efforts" to reunify the family should be evaluated by asking whether the services offered:

-- are designed to solve the problems that caused the court to find the child dependent;

-- are tailored to the specific strengths and needs of the family, rather than being standardized;

-- specify appropriate, timely, and effective services that the agency will provide;

--afford the parents a reasonable amount of time to adjust their conduct; and

--are changed when fundamental facts relevant to family reunification change, as when a parent is incarcerated, detained, or deported.

II. The obligation to accommodate parents' schedules in planning services and visitation

Reunification plans often call for parents to participate in a variety of services, such as substance abuse treatment, parenting classes, and domestic violence treatment, as well as requiring them to find and maintain employment and visit their children regularly. If the plans are not carefully crafted, parents may be unable to take advantage of all the necessary services and may, therefore, be out of compliance with their obligations under the plan. The Oregon juvenile code recognizes that at times parents will be unable to comply with court orders to

participate in treatment or training, and thus it requires them to inform the court of the problem "as soon as reasonably possible" and allows them to seek relief, including modification of court orders where necessary. ORS 419B.389.

Parents should not, however, routinely be forced to ask the court to relieve them from conflicting obligations. Instead, plans must be designed and modified as needed to avoid such conflicts. Inherent in the general planning and reasonable efforts requirements discussed above is the obligation of DHS to offer a parent a package of services that fit together and fit with the parent's work schedule.

DHS regulations are even more explicit about the obligations of caseworkers to do everything possible to enable parents to visit their children. The regulations recognize the importance of the agency's "responsibilities in arranging frequent contact between any child or young adult in substitute care, the family, and other people with whom the child or young adult has a significant connection." OAR 413-070-0800. The regulations also recognize that "[t]he child or young adult, a parent or legal guardian, and each sibling have the right to visit each other while the child or young adult is in substitute care. The child or young adult, the parent or legal guardian, and each sibling have a right to visit as often as reasonably necessary to support and enhance their attachment to each other….." unless visiting would jeopardize the child's safety or the court prohibits visits. OAR 413-070-0830(1), (4).

In every case the caseworker must develop a written visitation plan within 30 days of the time that the child enters foster care that satisfies the following criteria:

> -- "The type, time of day, frequency, length, and location of visits maximize contact between the parents or legal guardians and the child or young adult and support the ongoing safety plan."
>
> -- Visits fulfill "the unique needs of the child or young adult, especially the child or young adult's chronological or developmental age and sense of time as they affect the child or young adult's attachment to a parent or legal guardian and other family members."
>
> ---Visits do not "disrupt the school schedule of the child or young adult whenever possible."

OAR 413-070-0860(2)(f).

This regulation also requires the caseworker to "address barriers to visitation that must be overcome in order for the parent, legal guardian, child or young adult to participate in the visits, including transportation, adaptations for those traveling long distances, health care requirements, and arranging child care for a child's sibling;" and "work within each parent's or legal guardian's employment and treatment obligations…" *Id.* When the agency does not have the resources to meet the family's needs for visitation, "the caseworker must solicit help from family and community resources." OAR 413-070-0830(3).

In contrast to these detailed regulations about visitation, the regulations regarding provision of services are much more general, and no Oregon case law addresses the obligation to develop plans that actually work for parents. However, some cases from other states include such discussions. The most helpful are two unpublished cases from California. In *In re Ivan C.*, 2005 WL 1317045 (Cal. App. 2 Dist., 2005), the court of appeals said, "The Department's obligation to tailor services to an individual family's needs includes making reasonable efforts to assist in areas where compliance is difficult. This includes helping to meet the scheduling needs of a working parent" (citations omitted), *id.* at *2. The opinion in *In re Diamond J.*, 2001 WL

1356990 (Cal. App. 4 Dist., 2001), is to the same effect. The court held that a child should not have been removed from the parent's home, because, i.a.,

> the court failed to consider something less drastic than removal, despite its finding that reasonable efforts were made to prevent or eliminate removal. Mother was steadily employed, both before and after Diamond's birth, by a temporary agency. She took off work for a short time before delivery and used her savings for living expenses; she had applied for Medi-Cal. Mother attempted to attend perinatal classes but they conflicted with her work schedule. She asked to have her class times changed but was refused. She told the social worker, "my job would not schedule around [the classes]." She was afraid to lose her job because then she would "not be able to support [Diamond]." The record does not reflect reasonable efforts to solve this scheduling problem. Likewise, no effort was made to find an alternative method for drug testing."

Id. at *2 –3. The Minnesota Court of Appeals also emphasized the importance of accommodating parents' schedules in finding that the agency had made reasonable reunification efforts in *In re Children of L.V.*, 2005 WL 705225 (Minn. App. 2005). The court said,

> Services aimed at reunification must 'go beyond mere matters of form' and include real, genuine assistance. Here, the record contains substantial evidence supporting the district court's determination that KCFS made the requisite reasonable efforts to reunite the family. Among other things, KCFS provided: (1) PATH-certified full-time foster care and support services for the children; (2) assistance for L.V. to develop parenting skills and implement effective parenting techniques; (3) free transportation for L.V. to and from the foster home; and (4) *supervised parenting time that accommodated L.V.'s work schedule.*

Id. at *4 (Minn. App. 2005) (citations omitted, emphasis added).

III. Reasonable efforts in specific types of cases

Recent Court of Appeals decisions have discussed the meaning of reasonable efforts in several types of cases that present particularly difficult issues: Those whether a child's legal parent has not been identified, where a parent is incarcerated, and where a parent has a serious mental illness.

Putative fathers: It is DHS policy that a putative father must establish his legal paternity before he is entitled to services, a policy that the Court of Appeals has found to be consistent with the agency's duties under the juvenile code. *State ex rel. Juv. Dept. v. C.D.J.,* 229 Or. App. 160, 165, 211 P.3d 289 (2009). By the same token, a putative father is not held responsible for failure to take measures to make himself a viable custodial parent before his legal paternity is established. *State ex rel. DHS v. Rardin,* 340 Or. 43. 134 P.3d 940 (Or. 2006). In *C.D.J.* the court held that if DHS makes timely efforts to help a putative father establish his legal parentage, that may constitute reasonable efforts. However, since the agency cannot require him to do anything more unless his legal relationship is established, it cannot then turn around and move to change the permanency plan from reunite with parent to adoption on the basis that the father did not

make sufficient progress to allow the child to live with him during the period before his paternity was established.

Incarcerated parents: In *State ex rel Juv. Dept. v. Williams*, 204 Or.App. 496, 130 P.3d 801(2006), the father was in jail from the time the child was taken into DHS custody in May 2004 until the permanency hearing in March 2005 except for two weeks when he was briefly out on parole (and then reincarcerated for violating the conditions of his parole). DHS made a case plan with him, but its only requirement was that he contact DHS when he was released. Later, DHS told him to participate in any available programs in the jail, which he did. At the permanency hearing DHS asked that the permanency goal be changed from return to parent to adoption, even though the father had engaged in the programs as asked. The trial judge's finding that DHS had made reasonable efforts as to the father was reversed on appeal. The court observed that DHS is not excused from making reasonable efforts solely because a parent is incarcerated and that what was reasonable for such a parent depended on the circumstances. In this case, because the father was incarcerated for a relatively short time, the trial court lacked information about his relationship with the child, and he was due to be released within four months of the permanency hearing, the appellate court ruled that the agency should have done more. While the court declined to delineate exactly what types of efforts would be reasonable when a parent is incarcerated, it said that in this case DHS could have:

> engaged in any number of activities that it did not attempt and that might constitute reasonable efforts under some circumstances involving incarcerated parents. For example, DHS could have contacted father and investigated the history and extent of father's relationship with child. It could have assessed father's parental strengths and deficiencies. It could have explored services available to father during his incarceration, incorporated those services into a service agreement, and documented whether father participated in those services. It could have monitored father's progress through his corrections counselor or another employee of the jail. It could have looked into whether visitation at the jail was possible and appropriate. It could have compared father's release date with the dependency case timelines and child's particular needs to determine whether reunification was possible within a reasonable time and, if so, it could have inquired into father's probable post-release situation and plan.

204 Or. App. at 507-08. Similarly, in *State ex rel. Dept. of Human Services v H.S.C.*, 218 Or. App. 415, 427, 180 P.3d 39 (2008), the court of appeals reversed a trial court holding that DHS had made reasonable efforts on behalf of a father who was detained by Immigration and Customs Enforcement as an undocumented alien. Though the agency had worked with him before he was arrested, as soon as he was detained, DHS quit working with him altogether and then moved at a permanency hearing to change the plan from reunite with parents to adoption. The court said, "the mere detention of the parent does not excuse the state from making reasonable efforts by inquiry and arranging the services that might be available under the circumstances." 218 Or. App. at 427. However, DHS's failure to offered any services to an incarcerated parent does not in and of itself prove a lack of reasonable reunification efforts. *State ex rel. Dept. of Human Services v. J.L.M.,* 220 Or. App. 93, 184 P.3d 1203 (2008). In *J.L.M*, DHS made extensive efforts to offer services and referrals for more than two years before father was incarcerated, but the father never completed any of the services. After he was released from prison, DHS offered

parenting classes which he never took and referrals for drug and alcohol screening which father engaged in sporadically. The Court held that although father had a legitimate complaint about the lack of services offered while he was incarcerated, the reasonable efforts determination must be made by evaluating the efforts made over the life of the case. 220 Or. App. at 123. In this case DHS's efforts were reasonable. *Id.*

Parents with serious mental illness: When the parent's problems stem from serious mental illness, the fundamental question is how far the state must go in accommodating the parent, particularly if as a result of the illness the parent is uncooperative. Recent Court of Appeals decisions do not place a high burden on DHS in this kind of case. For example, in *State ex rel. Juv. Dept. v. T.N.,* 226 Or. App. 121, 203 P.3d 262 (2009), the court held that the agency had made reasonable and active efforts (because one child fell within the requirements of ICWA) where a mother with a long history of untreated mental illness, including psychosis and paranoia, residential instability and homelessness, counseling and housing opportunities. The mother argued that DHS should have offered therapeutic visits with the child, family counseling, and additional housing options. The court rejected her argument, emphasizing that the mother was hostile and resistant. Even though the court recognized that her response was significantly caused by her severe mental illness, it held that the agency had done enough.

Similarly, in *State ex rel. Dept. of Human Services v. E.K.*, -- Or. App. --, -- P.3d.—(July 29, 2009), DHS responded to a parent with cognitive problems (likely as a result of chronic results) that caused her to have a seriously impaired memory by offering her parenting classes and other opportunities to learn to be a better parent. Even though the mother may have simply been able to take advantage of these services, the court held that the agency's efforts were reasonable. *See also State ex rel. Dept. of Human Services v. R.O.W.*, 215 Or. App. 83, P.3d 322, (2007), in which the court rejected a mother's argument that the services offered were not tailored to her specific condition but were only "normal services which are provided for parents." She had been diagnosed as having the cognitive ability of less than a 10-12 year old child and a dependent personality disorder. The court said that the services offered were the services that would best meet mother's needs and the fact that they were ultimately unsuccessful does not mean that offering them was unreasonable. 215 Or. App. at 105.

IV. Conclusion

Oregon statutes, case law, and regulations governing the provision of services to parents and case planning provide general guidelines for evaluating whether DHS has made reasonable efforts to reunify when the permanent plan is to return the child home. These rules make clear that efforts must focus on solving the problems that brought the child into care, be tailored to the needs of the individual family, be offered in a timely manner, and be adjusted as the circumstances of the parents change. They must also afford the parent reasonable time and opportunity to benefit from the services. From these requirements alone, the agency's obligation to accommodate other parental obligations, particularly but not limited to those related to work, in offering services and arranging visitation. The administrative rules governing visitation services explicitly impose obligations on the agency to attempt to remove barriers to visitation. These obligations include scheduling around the parent's work duties and seeking out and employing family and community resources to enable visitation when necessary.