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Oregon Rules of Juvenile Court Procedure

REPORT

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OREGON RULES OF JUVENILE COURT PROCEDURE: A REPORT

Executive Summary

Imagine playing a board game in which each player is given a different set of rules. While some sort of game may ensue, the outcome is unpredictable and the participants are frustrated. Even if this imaginary game is eventually governed by only one set of rules suppose those rules are for Monopoly and the board on the table is for Checkers. In that instance, even though the rules are certain, they just don't work. The situation for the participants is little improved.

Juvenile dependency proceedings in Oregon face challenges similar to those illustrated above. The procedural rules governing juvenile dependency proceedings are drawn from multiple sources, including the Oregon Rules of Civil Procedure (ORCP) and the juvenile dependency law itself, but without certainty as to which rules apply in a given instance. When a recent ruling on a pre-appeal motion applied the ORCP, Rule 71, the question of whether the ORCP would be applied in its entirety to juvenile dependency proceedings was raised.¹ Many practitioners were concerned about the practical workability of many parts of the ORCP in dependency and termination of parental rights proceedings.

In light of these developments, the Oregon Law Commission's Juvenile Code Revision Work Group drafted the Oregon Rules of Juvenile Court Procedure (ORJCP). This Report highlights the procedural concerns in juvenile dependency and termination of parental rights proceedings and describes the Work Group's effort culminating in a set of rules for these two types of juvenile proceedings. The ORJCP address the need for process predictability and uniformity, timeliness and administrative efficiency.

Introduction

Juvenile dependency proceedings begin with the removal of a child from a home after reported neglect or abuse. The State Office for Services to Children and Families (SCF) is responsible for removing the child and initiating a petition with the circuit court to establish the court's jurisdiction over that child's case. The court is charged with deciding and overseeing the steps that must be taken before that child can safely return home. When a child cannot be returned home a

¹ ORCP Rule 71 governs motions for relief from judgments.

separate proceeding may be initiated within the dependency proceeding to terminate parental rights so the child may be adopted. Proceedings of this sort are common throughout Oregon, however, a lack of certainty as to which procedural rules apply at each stage risks similar cases producing dissimilar results. Lack of clear procedures also creates confusion, inefficiency and diminished trust in the system.

The rules used in juvenile dependency proceedings vary from case to case and from county to county. The majority of counties have traditionally limited the applicability of the ORCP in juvenile dependency and termination of parental rights proceedings. In the ruling on pre-briefing motions in State ex rel v. Clark, the Oregon Court of Appeals' "motions panel" concluded that ORCP 71 applies in juvenile court cases. The pre-briefing ruling states, in relevant part:

"The court determines that ORCP 71 is applicable to juvenile court cases, because: (1) ORCP 1 A provides that the [ORCP] apply in all circuit courts of the state, including proceedings of statutory origin, except where a different procedure is specified by statute or rule; (2) the juvenile court proceedings are statutory proceedings in a circuit court; (3) while ORS 419A.200(6)(a) addresses the authority of a juvenile court to exercise jurisdiction by reason of matters transpiring subsequent to the order being appealed, neither ORS 419A.200(6)(a) nor any other provision of the Juvenile Code addresses the authority of a juvenile court to grant relief from a judgment on the grounds specified in ORCP 71."²

Although the question of the applicability of the ORCP to juvenile dependency and termination of parental rights proceedings has been raised, neither the Oregon Court of Appeals nor the Oregon Supreme Court have decided whether the ORCP apply generally in juvenile dependency and termination of parental rights

² State ex rel Juvenile Dept. v. Lucinda Clark, Multnomah County Circuit Court, No. 9011-831712, CA A108606, April 10, 2000. Multnomah County termination of parental rights appeal. The Juvenile Court denied the motion to set aside the termination judgment. This case is now being briefed in the Court of Appeals and the state in its brief will again raise the ORCP question.

proceedings.³ Since the ruling in Clark, the use of ORCP motions has increased dramatically in some counties.⁴

In his Oregon Law Review article, Professor Fredric R. Merrill explained that the ORCP do not apply generally to juvenile proceedings:

The ORCP apply only when necessary to achieve the purpose of the juvenile proceeding. In general, this would not include application of the ORCP or other general procedural statutes. The juvenile proceedings are comprehensively regulated by their own statutory procedures, which specifically incorporated only specific sections of civil procedure rules.⁵

Proponents of the general applicability of the ORCP to juvenile dependency and termination of parental rights proceedings point to ORCP 1A, which provides in part:

These rules govern procedure and practice in all circuit courts of this state except the small claims department of circuit courts, for all civil actions and special proceedings[,] whether cognizable as cases at law, in equity, or of statutory origin except where a different procedure is specified by rule or statute.⁶

The uncertainties raised by the Clark case emphasize the need to clarify what rules apply in juvenile dependency and termination of parental rights proceedings. The rules drafted by the Juvenile Code Revision Work Group incorporate existing procedural sections of Oregon Revised Statutes Chapter 419B and adopt many of the provisions of the ORCP.

³ See State ex rel Upham v. McElligott, 326 Or 547, 554-55, 956 P2d. 170 (1998), (even assuming that the Oregon Rules of Civil Procedure generally govern such proceedings, the advisory jury procedure authorized by ORCP 51D does not apply in juvenile delinquency proceedings, because ORS 419C.400 specifies a different procedure); State ex rel SOSCF v. Cox, 152 Or App 756, 763, 954 P2d 1227 (1998), (because the state did not contend at trial that the juvenile court was without authority to grant the mother's ORCP motion for directed verdict or to dismiss the case under ORCP 54 B(2), the Court of Appeals did not consider the merits of the state's arguments on appeal challenging the juvenile court's application of these ORCP provisions); State ex rel Juv. Dept. v. Charles, 123 Or App 229, 233, 859 P2d 1162 (1993), *rev den* 318 Or 326 (1993) ("[a]ssuming, without deciding, that ORCP [discovery rules] apply ***, mother points to no evidence that was withheld from her or to any on her ORCP motions").

⁴ State ex rel Juvenile Department v. Lucinda Clark, Multnomah County Circuit Court, No. 9011-831712, CA A108606, April 10, 2000. Multnomah County termination-of-parental-rights proceeding. The juvenile court denied the motion to set aside the termination judgment. Clark is now being briefed in the Court of Appeals and the state in its brief will again raise the ORCP question.

⁵ Fredric R. Merrill, *The Oregon Rules of Civil Procedure - History and Background, Basic Application, and the "Merger of Law and Equity,"* 65 Or Law Rev 527, 566-67(1986).

⁶ ORCP Rule 1A

Juvenile Code Revision Work Group History

In 1997, the Oregon State Bar created the Juvenile Law Section, which developed a legislative project of improving the procedural provisions of the juvenile code. In 1998, representatives of the Section approached the Oregon Law Commission and proposed that the Law Commission take on the project of revising the procedures of the juvenile code. The Law Commission agreed and appointed a Juvenile Code Revision Work Group.⁷ Senator Kate Brown chairs the Work Group, which is charged with exploring statutory improvements in both the juvenile dependency code and the juvenile delinquency code. The Work Group focused its energies on several topic areas, each of which was organized into a Sub-Work Group⁸. One such Sub-Work Group took on the task of drafting the new ORJCP.

To begin the ORJCP drafting process the Sub-Work Group first looked at the ORCP. Each rule was independently scrutinized and selected for possible addition, either verbatim or with modifications, to the proposed new rules. Rules were carefully modified to be consistent with juvenile court practices. Next, the Sub-Work Group examined ORS Chapter 419B. After extracting the procedural aspects of Chapter 419B, these provisions and the selected ORCP rules were combined into one set of rules. The Sub-Work Group also considered juvenile code models from Alabama, Tennessee, and Ohio. Finally, the Sub-Work Group took into account input from interested parties.⁹

Objectives of the ORJCP

⁷ Juvenile Code Revision Work Group Membership:

Senator Kate Brown - Chair, Karen Brazeau, Chief Justice Wallace P. Carson, Jeff Carter, Ann Christian, Kingsley Click, Lee Coleman, Honorable Deanne Darling, Lee Ann Easton, Susan Grabe, Elinor Hall, Pat Hinrichs, Lonnie Jackson, Bob Joondeph, Emily Knupp, Honorable Terry Leggert, Michael Livingston, Julie McFarlane, Maureen McKnight, Nancy Miller, Carl Myers, Larry Oglesby, Kathie Osborn, Karen Quigley, John Richardson, Ronelle Shankle, Angela Sherbo, Susan Svetky, Bradd Swank, Ingrid Swenson, Timothy Travis, Honorable Elizabeth Welch, and Bill Taylor.

⁸ Sub-Work Groups: Child Support Enforcement, ORJCP, Termination Petition, Pre-trial Placement, Tribal Court Transfers, Notice of Appeal, Word Usage, and Work Groups on Criminal Delinquency Issues.

⁹ The Sub-Work Group charged with this project was led by Julie McFarlane. The Juvenile Code Revision Work Group and Sub-Work Group met 8 times: May 8, June 7, July 12, July 21, August 2, August 29, September 5 and September 29, 2000. Prior to May 8th, the entire Work Group reviewed and edited the early drafts of the rules.

Sub-Work Group Membership:

Senator Kate Brown, Bill Taylor, Judiciary Committee Counsel; Julie McFarlane, Juvenile Rights Project; Claude Derr, Family Preservation; Lea Ann Easton, Native American Program with Oregon Legal Services; Mike Livingston, Department of Justice; Maureen McKnight, Legal Aid Services of Oregon; Nancy Miller, State Court Administrator's Office; John Richardson, attorney at law; Ingrid Swenson, Oregon Criminal Defense Lawyers Association; Tim Travis, State Court Administrator's Office; Jeff Carter, attorney at law; Amy Holmes-Hehn, Multnomah County District Attorney's Office.

The Work Group's objective in producing the ORJCP is threefold. The rules are designed to promote process predictability and uniformity, timeliness, and administrative efficiency as described below:

- 1) Process predictability and Uniformity. Although the Clark decision provided certainty, in doing so, it eliminated the procedural flexibility that is important in juvenile dependency proceedings. The ORJCP achieves the uniformity and certainty of the ORCP with the added benefit of predictable outcomes based on uniformly applicable rules. Because the ORJCP apply only in juvenile dependency and termination of parental rights proceedings, these specialized matters can anticipate similar outcomes in similar cases without the risk of confusing the law in areas governed by the ORCP.
- 2) Timeliness. The ORJCP addresses the concern of timeliness in the prompt resolution of dependency cases. In a juvenile dependency or termination of parental rights proceeding, timeliness is measured from a child's perspective in which even a few months represent a significant percentage of the child's entire life. By excluding civil litigation procedures that would hamper or delay dependency proceedings, the new rules address the needed balance between just, informed results and a prompt resolution of the case.
- 3) Administrative Efficiency. The ORJCP reduces procedural guesswork by providing consistency in juvenile dependency proceedings. Efficient administration of these proceedings requires the informed involvement of multiple participants: judges, lawyers, SCF caseworkers, parents and others. Standardizing the procedures used in juvenile dependency and termination of parental rights proceedings reduces confusion and creates consistency among courts and participants thus promoting integrity and fairness of the process.

Conclusion

The ORJCP is the result of the efforts of the Oregon Law Commission's Juvenile Code Revision Work Group. The rules address three objectives: process predictability and uniformity, timeliness and administrative efficiency. The ORJCP are presented by the Work Group to the Oregon Law Commission for recommendation to the 71st Oregon Legislative Assembly.