

“REASONABLE EFFORTS”

“SUFFICIENT PROGRESS”

“REASONABLE TIME”

Navigating the Legal Landscape

INTRODUCTION

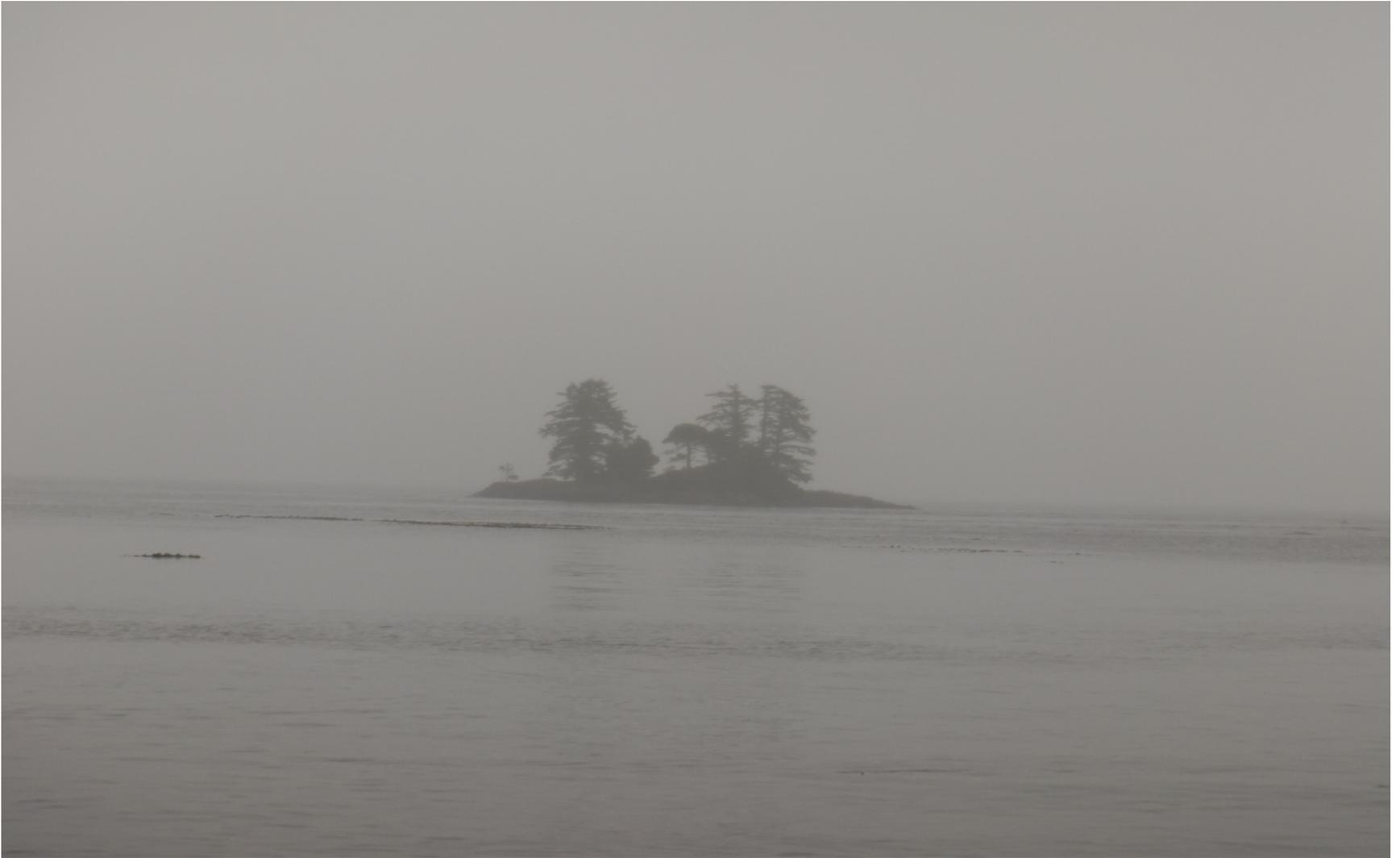
INTRODUCTION



What do these terms mean, and how are they related?

INTRODUCTION

We can't tell from here



INTRODUCTION

Let's take a closer look



INTRODUCTION

The basic principles are accessible



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Navigating the Legal Landscape

REASONABLE EFFORTS

REASONABLE EFFORTS

Statutory requirements

Shelter care and foster care

Has DHS made “reasonable efforts” (or “active efforts” in an ICWA case) to prevent or eliminate the need for removal from the child’s home and to make it possible for the child to safely return to the home? [ORS 419B.185](#); [419B.337](#); and [419B.340](#).

REASONABLE EFFORTS

Statutory requirements

Permanency hearing – plan is reunification

Has DHS made “reasonable efforts” (or “active efforts” in an ICWA case) to make it possible for the child to safely return to the home?

ORS 419B.476(2)(a) and (5)(a). *Dept. of Human Services v. N.M.S.*, 246 Or App 284, — P3d — (2011) (DHS's efforts must be evaluated by reference to the facts that formed the bases for juvenile court jurisdiction in the case).

Permanency hearing – plan is not reunification

Has DHS made “reasonable efforts to place the [child] in a timely manner in accordance with the plan”? ORS 419B.476(2)(b).

REASONABLE EFFORTS

Statutory requirements

Termination of parental rights under ORS 419B.504

Has the state made “reasonable efforts” (or “active efforts” in an ICWA case) to assist parents in making the adjustments to enable them to become minimally adequate parents? *See State ex rel SOSCF v. Frazier, 152 Or App 568, 955 P2d 272, rev den 327 Or 305 (1998).*

REASONABLE EFFORTS

Statutory requirements

CRB Review – required findings

Were “reasonable efforts * * * made[,] prior to the placement, to prevent or eliminate the need for removal of the child * * * from the home”? [ORS 419A.116\(1\)\(a\)](#).

If the plan is reunification, has DHS “made reasonable efforts or, if the [ICWA] applies, active efforts to make it possible for the child * * to safely return to the home * * *”? [ORS 419A.116\(1\)\(b\)](#).

If the plan is not reunification, has DHS made “reasonable efforts to place the child * * * in a timely manner in accordance with the case plan”? [ORS 419A.116\(1\)\(c\)](#).

REASONABLE EFFORTS

What efforts are “reasonable”?

“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 DHS v. R.O.W.*, 215 Or App 83, 168 P3d 322 (2007).

“‘Active efforts’ entails more than ‘reasonable efforts’ and ‘impose[s] on the agency an obligation greater than simply creating a reunification plan and requiring the client to execute it independently.’” *Dept. of Human Services v. K.C.J.*, 228 Or App 70, 207 P3d 423 (2009).

REASONABLE EFFORTS

Discussion and questions



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SUFFICIENT PROGRESS

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Statutory requirements

Review hearing

The juvenile court must determine “if the court should continue jurisdiction and wardship,” which necessarily includes an assessment of a parent’s progress in addressing the bases for juvenile court jurisdiction, and, if the child is in substitute care, the court must determine “[w]hy continued [substitute] care is necessary,” which is a different question from whether wardship can/should continue. See ORS 419B.449(1) and (3).

SUFFICIENT PROGRESS

Statutory requirements

Permanency hearing – plan is reunification

The juvenile court must determine “whether the parent has made sufficient progress to make it possible for the [child] to safely return home.” ORS 419B.476(2)(a) and (5)(a). See *Dept. of Human Services v. N.M.S.*, 246 Or App 284, — P3d — (2011) (a parent’s “progress” must be evaluated by reference to the facts that formed the bases for juvenile court jurisdiction in the case).

SUFFICIENT PROGRESS

Statutory requirements

Case law examples

State ex rel SOSCF v. Frazier, 152 Or App 568, 955 P2d 272, rev den 327 Or 305 (1998): “Simply attending classes and parroting back the information taught in the class is not enough”; “[t]here must be some evidence that father used that information to ‘adjust [his] underlying belief system.’”

State ex rel Juv. Dept. v. K.D., 228 Or App 506, 209 P3d 810 (2009): Where the jurisdictional basis “is mother’s allowance of continued association between father and [the child,] * * * mother made progress with respect to that problem” because she “was directed to divorce father by the November 2007 case plan, and she did so.”

SUFFICIENT PROGRESS

Statutory requirements

CRB Review – required findings

“[W]hether the parent has made sufficient progress to make it possible for the child * * * to safely return home.” ORS 419A.116(1)(b).

“Compliance with the case plan.” ORS 419A.116(1)(e).

“The progress which has been made toward alleviating the need for placement.” ORS 419A.116(1)(f).

SUFFICIENT PROGRESS

Jurisdiction and physical custody

A child can be returned home and still remain within the juvenile court's jurisdiction. See *Dept. of Human Services v. S.P.*, — Or App —, — P3d — (March 28, 2012) (“jurisdiction and physical custody are separate concepts; the court may have jurisdiction under ORS 419B.100(1) ‘even though the child is receiving adequate care from the person having physical custody of the child.’”)

DHS's administrative rules require that the caseworker identify (and include in the case plan) the “conditions of return” -- i.e., “the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan,” regardless whether the parent has completed “services” to address the bases for jurisdiction. OAR 413-040-0005(6); OAR 413-040-0009(2).

SUFFICIENT PROGRESS

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Statutory requirements

The DHS case plan

The plan must be rationally related to the bases for jurisdiction and include:

“[a]ppropriate services to allow the parent the opportunity to adjust the parent’s circumstances, or conditions to make it possible for the ward to safely return home within a reasonable time;”

AND

“[a] concurrent permanent plan to be implemented if the parent is unable or unwilling to adjust the parent’s circumstances, conduct or conditions in such a way as to make it possible for the ward to safely return home within a reasonable time.” ORS 419B.343.

REASONABLE TIME

Statutory requirements

Permanency hearing – plan is reunification

If juvenile court concludes that (despite DHS's reasonable/active efforts) the child cannot be safely returned home at the time of the hearing, before ordering a change-of-plan, the court must consider whether “further efforts will make it possible for the [child] to safely return home within a reasonable time” and, if so, continue the reunification plan and determine “the services in which the parents are required to participate, the progress the parents are required to make and the period of time within which the specified progress must be made.” See [ORS 419B.476\(4\)\(c\) and \(5\)\(c\)](#).

REASONABLE TIME

Statutory requirements

Termination of parental rights under ORS 419B.504

The juvenile court must determine whether “the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child or ward and integration of the child or ward into the home of the parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change.”

REASONABLE TIME

Statutory requirements

CRB Review – required findings

“[The] likely date by which the child * * * may be returned home or placed for adoption.” [ORS 419A.116\(1\)\(g\)](#).

REASONABLE TIME

What does “reasonable time” mean?

“Reasonable time’ means a period of time that is reasonable given a child or ward’s emotional and developmental needs and ability to form and maintain lasting attachments.” [ORS 419A.004\(20\)](#).

“[The within-a-reasonable-time] inquiry is child-specific. It calls for testimony in psychological and developmental terms regarding the particular child’s requirements.” [State ex rel SOSCF v. Stillman, 333 Or 135, 146, 35 P3d 490 \(2001\)](#).

REASONABLE TIME

Application

[Dept. of Human Services v. T.C.A. , 240 Or App 769, 248 P3d 24 \(2011\):](#)

“* * * Although the expert witnesses acknowledged the difficulties of predicting when mother will be far enough into her recovery to be able to parent, they testified that she may well be able to resume caring for the children in a period ranging from six to 18 months. DHS did not show that mother would be unlikely to achieve sobriety or otherwise meet its burden to prove that it was improbable that mother would be able to provide a safe home for the children in that timeframe. Ultimately, the problem here is that the record is devoid of evidence regarding how such a delay in achieving permanency would affect the children's emotional and developmental needs or their ability to form and maintain lasting attachments.

“* * * In short, the record does not contain clear and convincing evidence that a six-to-18-month wait to return to mother's home is unreasonable in light of the children's needs.”

REASONABLE TIME

Discussion and questions



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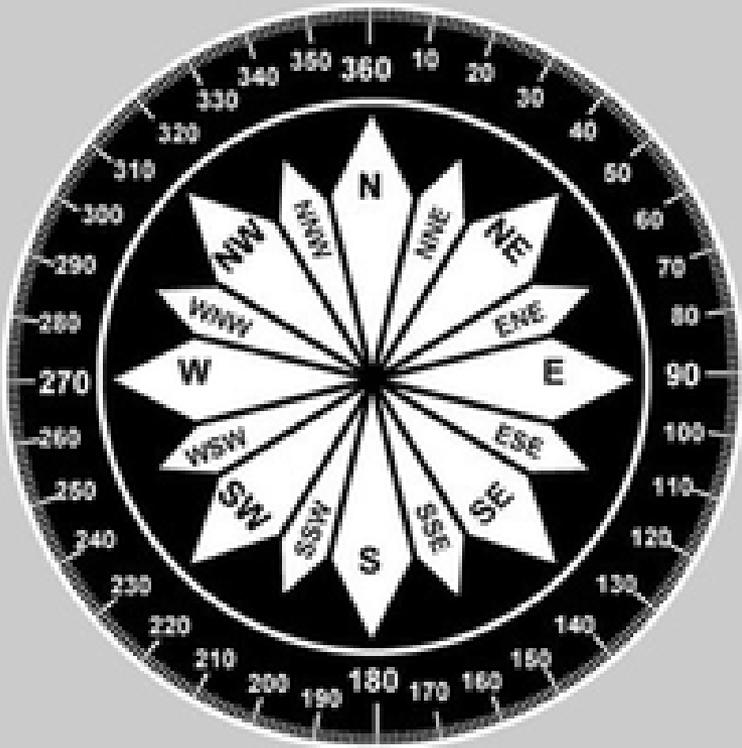
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Navigating the Legal Landscape

USING THE PRINCIPLES

KNOW WHERE YOU'RE GOING



KNOW WHEN YOU GET THERE



Case Scenario

Instructions: Please take a few minutes to read the case scenario and prepare as you would for a review and then work together to make the findings as a group. We will then reconvene to discuss the findings. Note that we are focusing on the findings addressing reasonable efforts, parental progress and the appropriateness of the plan. This is the first review.

Initial Safety Concerns - Bobby and Sarah were placed in care after the mother left the children with a neighbor saying she could no longer care for them. The neighbor contacted DHS. The mother, Crystal Reed, was ranting and threatening to kill herself. She was observed to be under the influence and reported that if tested she would test positive for methamphetamine. She was placed in psychiatric care at a local hospital. Rick Reed, the children's father, was incarcerated at the time the children entered care. The children were placed in care as the mother was so intoxicated that it was determined she could not provide care for the children. The house was observed to be below community standards with piles of laundry all over, garbage cans overflowing, and animal feces on the floor. There have been 12 previous referrals on this family, coded unable to determine or unfounded. The children, Bobby and Sarah, were placed together in foster care.

Paternity - Rick Reed is the legal and biological father of Sarah. The mother named Mark Johnson as Bobby's biological father. She completed a Father's Questionnaire and reported that Mr. Johnson left the home when Bobby was one year old. Paternity for Bobby has not been established.

Jurisdiction – Jurisdiction is based on the mother's admission that her past history of methamphetamine abuse interferes with her ability to parent and the admission of the father, Rick Reed, that he is incarcerated and unavailable to parent and that his history of criminal activity presents a threat of harm to his children.

The Plan - The plan is return to parent. The concurrent plan is adoption. A permanency hearing is scheduled 14 months from the date the children entered care.

Court Ordered Services -The court ordered that the mother successfully complete a drug/alcohol treatment evaluation with an approved DHS/CWP resource, comply with any recommended treatment and sign a release of information; submit to UA's as requested by DHS/CWP or any treatment provider; submit to a psychological evaluation, if requested, and complete all recommended services; complete parent training; and maintain safe and stable housing.

The court ordered that the father, Rick Reed, participate in such services as are available to him while incarcerated.

DHS Services - DHS referred the mother for a drug/alcohol assessment several times, drug/alcohol treatment, UA's, parenting classes and for a psychological evaluation. DHS put an action agreement in place and implemented a visit plan.

DHS implemented a parental search for Mr. Johnson (Bobby's named father) and he has recently been located. DHS sent him a letter informing him that he needed to establish paternity if he wished to be involved.

DHS made/did not make reasonable efforts to provide services to make it possible for the children to safely return home.

The Mother - The mother, Crystal Reed, participated in a psychological evaluation. The mother reported a history of substance abuse and has suffered abuse from previous partners. She was diagnosed with Depression. Substance abuse treatment, mental health treatment and participation in a domestic violence support group were recommended. Prognosis for her to be able to safely parent was determined to be fair.

She missed several drug/alcohol assessments. Last month she completed the assessment and started intensive outpatient treatment two weeks ago. She is living in a recovery house. The mother stated that she has maintained sobriety for three months. Four UA's have been clean and she has failed to submit two requested UA's, most recently two weeks ago. She told DHS she was sick. She has struggled to attend parenting classes regularly. She is having one hour weekly, supervised visits and would like more visit time.

The Father – The father, Rex Reed, is participating in a drug/alcohol treatment program while incarcerated, a parenting program, and a thinking errors program. He is recording books to be played for his children. He also sends them letters and cards which are reported to be appropriate. He would like visits. His release date is December of 2013.

The whereabouts of Mr. Johnson is not known.

The parents have made/have not made sufficient progress to make it possible for the children to safely return home.

The Children – The children continue in their foster placement. Mental health assessments were completed of both children and they were diagnosed with Adjustment Disorder. The children have had current medical and physical exams and their immunizations are up to date.

Sarah, age 8, is not adjusting to foster care. Sarah initially displayed sexually inappropriate behavior, had trouble focusing and was extremely parentified. Sarah is in the third grade. She was placed on an IEP for behavior issues. At home, she got mad at her foster sister for telling on her, and cut her hair while she slept. Sarah's doctor added a third psychotropic medication due to continuing behavior problems, including tantrums and defiance. She is also in mental health counseling. Her counselor reports she misses her mother, has unresolved issues with her parents, is not well adjusted in her foster placement, and recommends family therapy both with her biological and foster parents.

Bobby, age 3, was having meltdowns and was difficult to sooth. He is now doing well. Bobby was evaluated by early intervention services and was found to be developmentally on track. He is on the wait list for Headstart.

The permanency plan is the most/is not the most appropriate plan for the children.