

**FILED: February 21, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of J. G. H., C. M. H., A. N. H., and L. K. H., Children.

DEPARTMENT OF HUMAN SERVICES,  
Petitioner-Respondent,

v.

M. E. and T. E. H.,  
Appellants.

Washington County Circuit Court  
J110097, J110098, J110099, J110100

Petition Number  
01J110095M

A150361 (Control)  
A151393

Michele C. Rini, Judge pro tempore.

Argued and submitted on November 29, 2012.

Megan L. Jacquot argued the cause and filed the brief for appellant M. E.

Sarah Peterson argued the cause for appellant T. E. H. With her on the brief was Metcalfe & Peterson LLC.

Justice J. Rillera, Assistant Attorney General, argued the cause for respondent. With her on the brief were Ellen F. Rosenblum, Attorney General, and Anna M. Joyce, Solicitor General.

Before Armstrong, Presiding Judge, and Duncan, Judge, and Brewer, Judge pro tempore.

PER CURIAM

In Case No. A150361, reversed; in Case No. A151393, judgment vacated.

1 PER CURIAM

2 Mother and father appeal a judgment of jurisdiction over their four children  
3 that was based on findings that father had sexually abused one of mother's twin daughters  
4 from a previous marriage and mother did not believe that the abuse had occurred or that  
5 father was a threat.<sup>1</sup> While that appeal was pending, the trial court entered an amended  
6 jurisdictional judgment for the purpose of incorporating excerpts from the transcript of  
7 the hearing that had led to the original judgment. Mother and father also appeal the  
8 amended judgment. We consolidated mother's and father's appeals from the original  
9 judgment (Case No. A150361) and the amended judgment (Case No. A151393).

10 Parents contend that the court erred in failing to dismiss the dependency  
11 petition and in asserting jurisdiction over the children because the state failed to prove  
12 that the children are subject to a current threat of harm that was reasonably likely to be  
13 realized, as is required for jurisdiction under ORS 419B.100(1)(c). *See State ex rel Juv.*  
14 *Dept. v. S. P.*, 249 Or App 76, 84, 275 P3d 979 (2012); *State ex rel Juv. Dept. v.*  
15 *Vanbuskirk*, 202 Or App 401, 405-06, 122 P3d 116 (2005). The state concedes the error.  
16 A discussion of the facts would not benefit the bench, bar, or public. Suffice it to say that  
17 we agree with the state that the evidence is insufficient to support the court's conclusion  
18 that the children's welfare is presently endangered, and we, therefore, accept the state's

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<sup>1</sup> The case was tried together with petitions for jurisdiction over mother's twin daughters. The resulting judgment in that case is the subject of a separate appeal by mother, also decided this date. *See Dept of Human Services v. M. E. (A150359)*, \_\_\_ Or App \_\_\_, \_\_\_ P3d \_\_\_ (Feb 21, 2013).

1 concession.

2                   Accordingly, we reverse the jurisdictional judgment in Case No. A150361.  
3 However, we conclude that the juvenile court lacked jurisdiction to enter the amended  
4 jurisdictional judgment while the appeal of the original judgment was pending. *See* ORS  
5 419A.200(7) (providing that the filing of an appeal does not "preclude the juvenile court  
6 after notice and hearing from entering such further orders relating to the ward or youth  
7 offender's custody pending final disposition of the appeal as it finds necessary by reason  
8 only of matters transpiring subsequent to the order or judgment appealed from"); ORS  
9 419A.200(6) (appeal of juvenile court judgment "must be conducted in the same manner  
10 as an appeal under ORS chapter 19"); ORS 19.270 (describing circumstances under  
11 which a trial court retains jurisdiction notwithstanding the filing of a notice of appeal).  
12 Therefore, we vacate the amended judgment.

13                   In Case No. A150361, reversed; in Case No. A151393, judgment vacated.