

**FILED: June 18, 2014**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of T. A., a Child.

DEPARTMENT OF HUMAN SERVICES,  
Petitioner-Respondent,

v.

B. A. and B. O.,  
Appellants.

Jackson County Circuit Court  
13JU00498

A155213

Lisa C. Greif, Judge.

Argued and submitted on March 11, 2014.

Shannon Storey, Senior Deputy Public Defender, argued the cause for appellant B. A. With her on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Megan L. Jacquot argued the cause and filed the brief for appellant B. O.

Matthew J. Lysne, Senior Assistant Attorney General, argued the cause for respondent. With him on the brief were Ellen F. Rosenblum, Attorney General, and Anna M. Joyce, Solicitor General.

Before Sercombe, Presiding Judge, and Hadlock, Judge, and Tookey, Judge.

TOOKEY, J.

Appeal dismissed as moot.

1                   TOOKEY, J.

2                   Mother and father separately appeal from a judgment of the juvenile court  
3 taking jurisdiction over their two-year-old daughter, T, under ORS 419B.100(1)(c),<sup>1</sup>  
4 based on allegations that (1) mother has unresolved substance abuse that presents a  
5 danger to the child; and (2) father lacks an order granting him sole legal custody of T and  
6 is therefore unable to protect T from mother.

7                   Parents live together. They admitted at the hearing that mother is an  
8 alcoholic, that that condition presents a potential risk to T if she is left alone with mother,  
9 and that father lacks a custody order that would prevent mother from asserting control  
10 over T. Parents asserted, however, that they have voluntarily implemented a safety plan  
11 that prevents mother from parenting T alone and, for that reason, there is no risk of harm  
12 to T.

13                   In assuming jurisdiction over T and establishing the wardship, the juvenile  
14 court found that mother's unresolved substance abuse presents a danger to T, and found  
15 further that, although father "has taken appropriate protective actions to not allow mother  
16 to be alone with the child," in the absence of an order granting father sole legal custody

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<sup>1</sup>                   ORS 419B.100 provides, in part:

                  "(1) \* \* \* [T]he juvenile court has exclusive original jurisdiction in  
any case involving a person who is under 18 years of age and:

                  "\* \* \* \* \*

                  "(c) Whose condition or circumstances are such as to endanger the  
welfare of the person or of others[.]"

1 of T, he is unable to protect T from mother. *See* ORS 419B.100(1)(c) (juvenile court has  
2 exclusive jurisdiction in any case involving a person who is under 18 years of age and  
3 "[w]hose condition or circumstances are such as to endanger the welfare of the person or  
4 of others[.]"); *but see Dept. of Human Services v. R. L. F.*, 260 Or App 166, 172, 316 P3d  
5 424 (2013) (lack of a custody order alone does not provide a basis for jurisdiction,  
6 without evidence that one parent is unable to protect the child from the other parent or  
7 that the child will suffer some risk of actual harm because one parent lacks sole legal  
8 custody).

9           On appeal, parents challenged the juvenile court's determinations. The state  
10 now advises the court that father has obtained an order granting him sole legal custody of  
11 T and that, on the state's motion, the juvenile court has dismissed jurisdiction and  
12 terminated the wardship. The state seeks to dismiss the appeal, asserting that the juvenile  
13 court's dismissal of jurisdiction and termination of the wardship renders moot any claim  
14 raised on appeal with respect to the underlying jurisdictional judgment. For the reasons  
15 explained herein, we agree with the state that the appeal is moot; we therefore dismiss the  
16 appeal.

17           As the Oregon Supreme Court recently stated in *State v. Hemenway*, 353 Or  
18 498, 500, 302 P3d 413 (2013), Oregon courts do not have authority to decide moot cases.  
19 A case is moot when it involves a matter that no longer is a controversy between the  
20 parties. *Yancy v. Shatzer*, 337 Or 345, 362-63, 97 P3d 1161 (2004). Because the juvenile  
21 court has dismissed its jurisdiction and terminated the wardship, the parties no longer

1 have adverse interests. As we recently held in *Dept. of Human Services v. C. W. J.*, 260  
2 Or App 180, 181-82, 316 P3d 423 (2013), a juvenile court's termination of jurisdiction  
3 and wardship ordinarily renders the parent's appeal of the underlying jurisdictional  
4 judgment moot.

5           Parents assert that *C. W. J.* was wrongly decided or is distinguishable. In  
6 *C. W. J.*, the father appealed a jurisdictional judgment entered on the ground that the  
7 father did not have a custody order and therefore could not protect the child from the  
8 child's mother, who presented a risk of harm to the child. After receiving notice that the  
9 juvenile court had entered a judgment terminating jurisdiction and the wardship, we  
10 dismissed the appeal as moot. We distinguished our opinions in *State v. S. T. S.*, 236 Or  
11 App 646, 238 P3d 53 (2010), and *State ex rel Juv. Dept. v. L. B.*, 233 Or App 360, 226  
12 P3d 66 (2010), two cases in which we held that a dismissal of a jurisdictional judgment  
13 did not render the appeal moot because of the existence of collateral consequences from  
14 the underlying jurisdictional judgment. We noted that the bases for the underlying  
15 jurisdictional judgments in *L. B.* and *S. T. S.*--abuse or neglect in *L. B.*, 233 Or App at  
16 365, and domestic violence causing risk of harm to the child in *S. T. S.*, 236 Or App at  
17 650--involved probable adverse consequences to the parent, including adverse  
18 employment consequences, adverse impact on the parent's records with the Department  
19 of Human Services (DHS), and social stigma associated with the factual bases for  
20 jurisdiction. We explained that the father in *C. W. J.* had not asserted any particular  
21 collateral consequence from the factual basis for jurisdiction--the lack of a custody order-

1 -and, further, that the considerations addressed in *S. T. S.* or *L. B.* did not apply. 260 Or  
2 App at 181-82.

3           Mother and father assert that, despite the juvenile court's dismissal of  
4 jurisdiction and termination of the wardship, and, despite our opinion to the contrary in  
5 *C. W. J.*, there are collateral consequences in a case such as this that make the appeal  
6 justiciable. They point to possible consequences both outside of and within the child  
7 welfare system.

8           Outside of the agency, parents assert, there is a social stigma associated  
9 with a judicial determination of jurisdiction. DHS responds that juvenile court records  
10 are generally confidential and not available to the public, ORS 419A.255(1) (records of a  
11 prior adjudication are maintained in the juvenile court, but are marked "confidential" and  
12 may be viewed only by the juvenile court judge, court staff, the child, the parents or  
13 guardians, service providers, and DHS), and, for that reason, are unlikely to give rise to  
14 any social stigma.

15           We agree with DHS on this point. It is possible that the fact of parents'  
16 involvement with DHS itself could result in social stigma, but that stigma would not be  
17 alleviated by a reversal of the underlying judgment. Additionally, jurisdiction has  
18 already been dismissed by the juvenile court. In light of the confidentiality of DHS and  
19 juvenile court records, we conclude that the possibility of a social stigma associated with  
20 the underlying jurisdictional judgment itself is minimal and speculative. *See S. T. S.*, 236  
21 Or App at 654.

1                   Mother argues that, although juvenile court and DHS records are  
2 technically confidential, there are many circumstances when those records are subject to  
3 disclosure. For example, citing administrative rules, mother points out that teachers,  
4 school volunteers, health and child care providers, and contractors for the Oregon Health  
5 Authority, are required to submit to background checks and, in those circumstances, the  
6 jurisdictional judgment could be made available. Mother contends that a prospective  
7 employer may then fail to subsequently investigate the underlying bases for jurisdiction  
8 in order to determine the parent's nonculpability.

9                   Mother asserts, further, that in the absence of a reversal of the underlying  
10 jurisdictional judgment, DHS will not reconsider its "founded" referral, which will  
11 remain on the parents' record within the agency, and subject to the agency's consideration  
12 on future referrals. Mother asserts that the presence of a "founded" referral in a DHS  
13 client file might also affect the records DHS is permitted to transmit to third parties. *See*  
14 *generally* OAR 413-010-0045(2)(a)(B) (requiring disclosure of client records "if no court  
15 order prohibits the disclosure and the client has authorized the Department in writing to  
16 disclose the records to the third party"). Because of those potential collateral  
17 consequences, mother contends, it is important that parents have an opportunity to  
18 challenge within DHS any "founded" referrals, and they assert that a reversal of the  
19 jurisdictional judgment is a necessary prerequisite.

20                   The state responds that DHS's internal records include a history and  
21 prognosis that would not be affected by overturning either a "founded" referral or the

1 underlying judgment establishing jurisdiction. Thus, the state asserts, there would be  
2 little practical effect in this case to reversing the underlying jurisdictional judgment when  
3 the juvenile court has already dismissed jurisdiction and terminated the wardship.

4           We recognize that in *L. B.*, we concluded that the potential consequences of  
5 an outstanding jurisdictional judgment like those cited here by parents were sufficient  
6 "collateral, practical effects" to make the appeal a live controversy. 233 Or App at 365.  
7 As previously noted, however, in *L. B.*, the child had unexplained injuries, and the factual  
8 basis for the underlying judgment was abuse or neglect; this is not the situation in this  
9 case. Additionally, in *L. B.*, the father submitted evidence that the existence of the  
10 jurisdictional judgment had had an actual adverse effect on his employment. *Id.* at 363-  
11 64. Similarly, in *S. T. S.*, 236 Or App at 650, the jurisdictional judgment included an  
12 express finding of domestic violence by the father against the mother. *Accord Dept. of*  
13 *Human Services v. W. A. C.*, 263 Or App 382, \_\_\_ P3d \_\_\_ (2014).

14           Here, no such factual findings underlie the jurisdictional judgment. The  
15 trial court expressly found that father "has taken appropriate protective actions to not  
16 allow Mother to be alone with the Child, including having his mother or other safe,  
17 responsible adults act as providers for her." But that fact alone was not, in the court's  
18 view, sufficient to eliminate the risk to the child. The record shows that, because father  
19 did not have sole legal custody of the child, there was nothing to prevent mother from  
20 breaching the safety plan and gaining control over the child. In addition to the  
21 undisputed findings regarding mother's substance abuse and her risk of harm to the child,

1 the dispositive paragraph of the judgment recites, simply:

2 "In [*State v. A. L. M.*, 232 Or App 13, 16, 220 P3d 449 (2009)] cited by the  
3 State, the Court of Appeals concluded that a lack of custody order without  
4 other evidence that the other parent is a present danger to the child is not  
5 sufficient to form a basis for jurisdiction. In this case, there is evidence that  
6 Mother presents a danger to the Child's welfare due to her unresolved  
7 substance abuse. Therefore, the Father is unable to protect the Child from  
8 the Mother without an order granting him sole legal custody."

9 Thus, the underlying factual bases for the jurisdictional judgment were the  
10 undisputed fact of mother's substance abuse and the fact that, without a custody order  
11 granting him sole legal custody, father lacked the ability to protect the child. Whether an  
12 underlying jurisdictional judgment presents collateral consequences will necessarily  
13 depend on the particular circumstances of the case, and whether the record shows more  
14 than a "mere possibility" of adverse consequence as a result of the challenged action--"a  
15 speculative consequence does not prevent a case from being moot." *See State v.*  
16 *Hauskins*, 251 Or App 34, 36, 281 P3d 669 (2012). The person asserting adverse  
17 consequences has the burden to establish them. *Id.* In the absence of some evidence of a  
18 probable adverse effect on father, we conclude that the asserted collateral consequences--  
19 the possibility that the underlying jurisdictional judgment could affect future possible  
20 action by DHS and possible prospective employment--are mere possibilities and purely  
21 speculative. *Id.* ("A collateral consequence for purposes of mootness is a probable  
22 adverse consequence to the defendant as a result of the challenged action."); *see also*  
23 *Brumnett v. PSRB*, 315 Or 402, 407, 848 P2d 1194 (1993) (a "mere possibility" that a  
24 collateral consequence will occur does not prevent a case from being moot). We



1 conclude, therefore, that mother and father have not met their burden to present collateral  
2 consequences sufficient to make their appeal justiciable.

3           For the same reasons, we reject mother and father's contention that this  
4 court should vacate the juvenile court's underlying jurisdictional judgment. *See City of*  
5 *Eugene v. PERB*, 341 Or 120, 126, 137 P3d 1288 (2006) (vacatur is an extraordinary  
6 remedy to which a party must show an equitable entitlement).

7           Appeal dismissed as moot.