

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of R. A. D.,
a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

D. R. D.,
Appellant.

Clatsop County Circuit Court
18JU04923; A169363

Paula Brownhill, Judge.

Argued and submitted April 5, 2019.

Sarah Peterson, Deputy Public Defender, argued the cause for appellant. Also on the briefs was Shannon Storey, Chief Defender, Juvenile Appellate Section, Office of Public Defense Services.

Inge D. Wells, Assistant Attorney General, argued the cause for respondent. With her on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Lagesen, Presiding Judge, and DeVore, Judge, and James, Judge.

JAMES, J.

Affirmed.

JAMES, J.

In this juvenile dependency case, father appeals from the review hearing judgment wherein the juvenile court ordered that he “shall successfully complete a psychological evaluation and comply with all recommendations.” ORS 419A.200(1). On appeal, father argues that the juvenile court erred in ordering him to submit to a psychological evaluation because, although ORS 419B.387 allows for “treatment or training,” the statute does not authorize the juvenile court to order parents to submit to a psychological evaluation that is invasive and potentially incriminatory by nature. The Department of Human Services (DHS) responds that the juvenile court has broad authority to make orders to further the best interests of its wards and, because the juvenile court has specific authority under ORS 419B.387 to order a parent to participate in “treatment or training,” that authority must also necessarily include the ability to order assessments to determine the type and extent of the treatment or training that is needed to enable a parent to resume care of a child.¹ We conclude that ORS 419B.387 authorizes the juvenile court to order a parent to participate in treatment or training, but conditions that authority on a finding of need, following an evidentiary hearing. Here, in accordance with ORS 419B.387, the juvenile court was within

¹ After oral argument in this case, DHS filed a notice of probable mootness. In it, DHS notes that the juvenile court has rescinded its order that father participate in a psychological evaluation and changed child’s permanency plan away from reunification. DHS suggests that these events render this appeal moot. We disagree. In its notice, DHS quotes the juvenile court’s order as stating the following:

“The Court rescinds the October 29, 2018 order for father to complete a psychological evaluation. Father has not completed the psychological evaluation; he failed to appear for the evaluation appointment. He has not engaged in any services, he continues to use illegal drugs, and he has not visited the child since February 2019. A psychological evaluation at this time would not benefit the child and would delay permanency unnecessarily.”

It is clear from the terms of the court’s order that its decision to rescind the order for a psychological evaluation and change the permanency plan turned, in part, on father’s failure to comply with its order that he complete a psychological evaluation. Were this court to agree with father’s contentions on appeal that the juvenile court lacked the authority to order him to participate in a psychological evaluation, it could have a practical effect on father’s rights because it would necessarily require the juvenile court to reexamine its permanency decision to the extent that decision rested on father’s failure to complete a psychological evaluation that was not legally authorized.

its statutory authority when it ordered father to participate in needed treatment or training, including a psychological evaluation, after considering the evidence presented at the hearing. Accordingly, we affirm.

“We review the juvenile court’s legal conclusions for errors of law and its findings for any evidence.” *Dept. of Human Services v. A. F.*, 295 Or App 69, 71, 433 P3d 459 (2018). “To resolve this dispute, we begin our analysis with the text and the context of the relevant provisions of the juvenile code. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993).” *State ex rel Juv. Dept. v. G. L.*, 220 Or App 216, 221, 185 P3d 483, *rev den*, 345 Or 158 (2008). “In assessing the authority that those statutes confer—indeed, in addressing any issue of statutory construction—we do not address each statute in isolation. Rather, we address those statutes in context, including other parts of the statute at issue. *See, e.g., Lane County v. LCDC*, 325 Or 569, 578, 942 P2d 278 (1997) (“[W]e do not look at one subsection of a statute in a vacuum; rather, we construe each part together with the other parts in an attempt to produce a harmonious whole.”)” *Dept. of Human Services v. J. R. F.*, 351 Or 570, 579, 273 P3d 87 (2012). The relevant facts are set out below.

Father’s infant became a ward of the court after both father and mother admitted to lengthy and significant drug addictions and current drug use.² In July 2018, the “case came before the [juvenile court] for settlement conference. The parties reached a settlement, and the case proceeded to jurisdiction and disposition hearing.” As outlined in the judgment of jurisdiction and disposition, the juvenile court asserted dependency jurisdiction over the infant on the specified basis that “[f]ather’s substance abuse interferes with his ability to safely parent the child, placing the child at risk of harm.” In the jurisdictional judgment, the juvenile court ordered that “DHS shall refer mother and father for services consistent with the orders in this judgment,” including that “[f]ather shall successfully complete a substance abuse assessment and comply with all recommendations,” that “[f]ather shall comply with all requests for alcohol/drug tests

² Mother is not a party to this appeal.

by DHS, the Court, Community Corrections, evaluators, and treatment providers,” and that, “[i]f father continues to use illegal drugs for 60 days or more, he shall successfully complete a psychological evaluation to determine if there are psychological issues contributing to his drug addiction. He shall comply with all recommendations that are rationally related to his drug use.” The judgment of jurisdiction and disposition is not on appeal before us.

In October 2018, the juvenile court convened a review hearing on father’s motion. Father’s counsel explained:

“We’re not contesting reasonable efforts or the placement. The jurisdictional order essentially said that if Father continues to use illegal drugs for 60 days or more, he shall complete a psych evaluation.

“My reading of that order is it essentially put DHS in the position of a fact-finder about whether or not he’s used illegal drugs, and I haven’t received any evidence that he has. And I understand DHS has referred him for a psych eval, so I want clarification about whether or not the Court is ordering him to do a psychological evaluation.”

In response, the juvenile court stated, “I’ll need some evidence before I can make that determination” and confirmed with DHS that it had referred father for a psychological evaluation. The juvenile court also received, as Exhibit No. 1, report from DHS and allowed witness testimony.

Father’s counsel examined DHS caseworker Amanda Palmer regarding father’s engagement in services:

“[FATHER’S COUNSEL]: Okay. So the Court’s jurisdiction order allows for the agency to refer Father for a psychological evaluation if it was more than 60 days after the jurisdictional [judgment] and he was continuing to use illegal drugs. What information do you have that [father] was continuing to use illegal drugs?”

“[PALMER]: [Father] has not engaged in any service referrals that have been made for him.

“[FATHER’S COUNSEL]: Do you believe that this psychological evaluation would assist Father in addressing

his substance abuse issue? Do you believe in some form of treatment for him?

“[PALMER]: I believe that the psychological evaluation will give some insight as to why he is not engaging in substance abuse treatment so that we could get him the proper services, so that he can engage in treatment and remain clean and sober to be a parental resource for this child.

“*****

“[FATHER’S COUNSEL]: Does [the psychologist] offer what’s called feedback sessions, where the evaluator will get together with the parent to discuss the findings he made?

“[PALMER]: I do not know. I’m willing to have that conversation with him. I normally go over those psych evals with them.”

Father’s counsel argued to the juvenile court as follows:

“Your Honor, I think, you know, essentially ordering a psychological evaluation is really drifting far away from the statute, which is ORS 419B.387, that allows the Court to order essentially services that are treatment or training. *** [Although] the Court [may] order anything that’s rationally related to the jurisdictional basis, and I still maintain that substance abuse should be ameliorated through substance abuse treatment.

“I think that ordering a psychological evaluation is giving license to the State to look for other issues that may arise. ***

“I would maintain that a psychological evaluation is not treatment, as Ms. Palmer testified that [the psychologist] does not offer any form of feedback session. I don’t think it is training to ameliorate the parenting concerns that the agency has.

“And so I think that when we order a psychological evaluation when it’s a situation where the only issue is substance abuse, we’re drifting far away from the statute, and I don’t think there is a rational relationship between a psychological evaluation and substance abuse.”

DHS later called father as a witness. On the stand, father was asked:

“[DHS’ COUNSEL]: And in response to the Court’s orders, DHS requested you engage in what’s called a color line to determine when you needed to take UAs. Were you aware that you needed to do that?”

“[FATHER]: No.

“[DHS’ COUNSEL]: You were not?”

“[FATHER]: Well, I mean, eventually I knew I would.

“[DHS’ COUNSEL]: I’m sorry?”

“[FATHER]: I knew I would once I started treatment, but I don’t—

“[DHS’ COUNSEL]: [W]hy have you failed to engage in treatment?”

“[FATHER]: Well, there’s no good excuse. I just—I haven’t. I live out in the middle of nowhere, and I have no transportation and no money.

“[DHS’ COUNSEL]: Do you recall having a conversation with a DHS caseworker on one occasion since jurisdiction?”

“[FATHER]: Amanda [Palmer].

“[DHS’ COUNSEL]: You told her you were doing good, despite using methamphetamine?”

“[FATHER]: No. At the time I was doing good. I was not using.

“[DHS’ COUNSEL]: Okay.

“[FATHER]: So I wouldn’t have told her I was.

“[DHS’ COUNSEL]: I’m sorry, are you denying that you told her that you were using methamphetamine?”

“[FATHER]: I guess I am, yeah, because I don’t remember telling her that at all. I said I was doing good, is what I said.

“[DHS’ COUNSEL]: When [was] the last time you used methamphetamine?”

“[FATHER]: Last Thursday.”

After father’s testimony, the juvenile court ruled on the issue of whether father needed a psychological evaluation and offered the following findings. The juvenile court spoke to father, stating:

“THE COURT: I would really like you to do the psych eval because when you were here at the jurisdictional hearing, you said you wanted to raise this child, right? And I really want you to be able to do that, but you’re not—it appears to me that you’re not able to stay clean and sober on your own, so there might be some underlying reasons why you’re not. I think it would help you. Are you willing to do that?”

“[FATHER]: Yeah.

“[CHILD’S COUNSEL]: Shall we take that as a stipulation, then?”

“THE COURT: No. I’m still—I’m going to order it.”

The juvenile court then made an oral ruling:

“This is a review hearing at the request of Father. Proof is by a preponderance. I’ll consider the testimony of witnesses and exhibits received in evidence.

“Case plan is return to parent. That plan is in the child’s best interest, shall continue in effect at this time.

“Conditions for return—we’ll include those in the judgment, but I don’t think you need to read them at this point.

“Okay. So I’m going to continue the child as a ward of the court in the legal custody and guardianship of DHS for placement in substitute care. All prior orders remain in effect, and the order for a psychological evaluation—I will order that at this time.

“[Father], stay in touch with Amanda [Palmer] so you know when your eval is, and you really need to get in touch with her for visits and for services.”

Following the review hearing, the juvenile court issued a judgment that explained that “[t]his matter came before the court for review hearing pursuant to ORS 419B.449 at the request of father. DHS has submitted the required report. Proof is by a preponderance of the evidence.” The judgment included findings that father “continues to abuse methamphetamine” and that his participation in a “psychological evaluation will help DHS determine what it can do to motivate father to engage and what services are best to help father maintain sobriety and develop a relationship with the child.”

Before us on appeal is the review hearing judgment from father’s ORS 419B.387 motion. We dismissed as moot father’s appeal from the juvenile court’s first judgment, the jurisdiction and disposition judgment, which created the child’s case plan and included other DHS requirements under ORS 419B.337 and ORS 419B.343. As such, we now review only the juvenile court’s review hearing judgment on father’s ORS 419B.387 motion.³

Our foundational and underpinning policy is that “[i]n Oregon, children are individuals who have legal rights, including the rights to permanency with a safe family, freedom from abuse, and freedom from substantial neglect of basic needs” under ORS 419B.090(2)(a). *A. F.*, 295 Or App at 73 (internal quotation marks omitted). In addition, ORS 419B.090(4) announces that “[i]t is the policy of the State of Oregon to guard the liberty interest of parents protected by the Fourteenth Amendment to the United States Constitution.” *See also J. R. F.*, 351 Or at 579 (stating that ORS 419B.090(4) “makes clear that the due process rights of parents are always implicated in the construction and application of the provisions of ORS chapter 419B”). We have explained the importance of those policy considerations:

³ In advancing his argument regarding ORS 419B.387, father urges this court to overrule its prior precedent authorizing the juvenile court, under ORS 419B.337(2), to order parents to submit to psychological evaluations because, as father argues, those prior cases are plainly wrong and fail to give effect to ORS 419B.387. We decline the invitation. Because this juvenile court, in this case, acted pursuant to ORS 419B.387, and not ORS 419B.337(2), this case is not a proper vehicle for such a challenge.

“To strike a balance between those sometimes competing interests, the statutes provide that Oregon’s policy is to remove an endangered child from his or her parents, but to then make reasonable efforts ‘to allow [parents] the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time.’ ORS 419B.090. If, however, parents do not make it possible for their child to return to them, then ‘the State of Oregon has the obligation to create or provide an alternative, safe and permanent home for the child.’ ORS 419B.090(5).”

Dept. of Human Services v. T. L., 279 Or App 673, 677-78, 379 P3d 741 (2016).

When a child is removed from his or her parents, the juvenile court asserts jurisdiction over the child—or ward—and places the ward in the legal custody of DHS. ORS 419B.100. Once the ward is committed to the legal custody of DHS, ORS 419B.337 grants “the juvenile court authority to order DHS to provide [services].” *Dept. of Human Services v. K. J.*, 295 Or App 544, 548, 435 P3d 819 (2019). ORS 419B.337 instructs, in relevant part:

“(1) When the court determines it would be in the best interest and for the welfare of a ward, the court may place the ward in the legal custody of the Department of Human Services for care, placement and supervision. When the court enters an order removing a ward from the ward’s home or an order continuing care, the court shall make a written finding as to whether:

“(a) Removal of the ward from the ward’s home or continuation of care is in the best interest and for the welfare of the ward;

“(b) Reasonable efforts, considering the circumstances of the ward and parent, have been made to prevent or eliminate the need for removal of the ward from the home or to make it possible for the ward to safely return home. In making this finding, the court shall consider the ward’s health and safety the paramount concerns; and

“(c) Diligent efforts have been made to place the ward pursuant to ORS 419B.192.

“(2) The court may specify the particular type of care, supervision or services to be provided by the Department

of Human Services to wards placed in the department's custody and to the parents or guardians of the wards, but the actual planning and provision of such care, supervision or services is the responsibility of the department. The department may place the ward in a child care center authorized to accept the ward."

As we reasoned in *G. L.*,

"the text of ORS 419B.337(2) must be read in the context of ORS 419B.343, which requires that DHS' case planning bear a rational relationship to the jurisdictional findings. ORS 419B.337(2) does not expressly limit the court's power to order that DHS provide a particular type of service. *** Thus, the requirement of ORS 419B.343 that DHS ensure that its case planning bears a rational relationship to the jurisdictional findings must also be understood to require that the court's specification of a particular type of service that DHS provides bears a rational relationship to the jurisdictional findings."

220 Or App at 222-23. In accordance with our reasoning in *G. L.*, ORS 419B.337(2) must be read in the context of another statute, ORS 419B.343, which provides, in pertinent part:

"(1) To ensure effective planning for wards, the Department of Human Services shall take into consideration recommendations and information provided by the committing court before placement in any facility. The department shall ensure that the case planning in any case:

"(a) For the reunification of the family bears a rational relationship to the jurisdictional findings that brought the ward within the court's jurisdiction under ORS 419B.100[.]"

The jurisdiction of the juvenile court (ORS 419B.337) and the requirements of DHS in case planning (ORS 419B.343) mark the start of a ward's interactions with the juvenile system. We have remarked that "[t]he jurisdictional phase of a dependency proceeding marks the beginning, not the end, of the court's and [DHS'] protective role. As the state correctly points out, once jurisdiction is established, the juvenile court is charged with determining whether to order father to participate in treatment 'to correct the circumstances that brought the child within the jurisdiction of

the court.’ ORS 419B.387.” *State ex rel Juw. Dept. v. West*, 164 Or App 369, 375, 993 P2d 152 (1999).

ORS 419B.385 confers onto the juvenile court authority over the parents or guardians of a ward, stating that such persons are “subject to the jurisdiction of the court for purposes of this section” and that “[t]he court may order the parent or guardian to assist the court in any reasonable manner in providing appropriate education or counseling for the ward.” Next, ORS 419B.387 authorizes:

“If the court finds in an evidentiary hearing that treatment or training is needed by a parent to correct the circumstances that resulted in wardship or to prepare the parent to resume the care of the ward, the court may order the parent to participate in the treatment or training if the participation is in the ward’s best interests.”

ORS 419B.387, on its face, clearly conditions a juvenile court’s authority to order a parent or guardian to participate in treatment or training upon an “evidentiary hearing” at which point evidence must establish, to the juvenile court’s satisfaction, that such treatment or training is “needed.” Thus, in this case, father’s focus on the potentially incriminating nature of a psychological evaluation is misplaced. It is the determination of a need for treatment or training, following an evidentiary showing establishing such need, that is the legislatively imposed limitation on the juvenile court’s authority, not the potentially incriminating nature of such treatment or training. Therefore, a psychological evaluation—*as a component of treatment or training*—is authorized under ORS 419B.387.

We disagree with DHS’ argument to this court, however, that ORS 419B.387 authorizes the juvenile court to order a parent’s compliance with a psychological evaluation to determine if treatment or training is needed in the first instance. That construction of the statute ignores the requirement for an evidentiary hearing establishing need. ORS 419B.387 does not imbue the juvenile court with authority to order a parent to comply with a discovery mechanism to determine *if* there is a need for treatment or training. Rather, as the statute sets forth, it is the establishment of a need for treatment or training at the evidentiary hearing

that then creates the court's authority to order a parent to comply with that treatment or training.

In the case before us, the juvenile court held an evidentiary hearing on father's ORS 419B.387 motion, receiving evidence and hearing testimony on father's drug use and on the issue of whether DHS needed father to submit to a psychological evaluation. Ultimately, the juvenile court ordered father to participate in a psychological evaluation to be set up by DHS, finding that father was "not able to stay clean and sober" and, so, his participation in a "psychological evaluation will help DHS determine what it can do to motivate father to engage *** and develop a relationship with the child." It is clear on this record that the juvenile court found that DHS had presented evidence to establish a need for substance abuse treatment and that the psychological evaluation was a component of that needed treatment. The juvenile court's findings are supported by evidence in the record that establishes that father needed such treatment or training in order to resume care of his child, as set out in ORS 419B.387. Thus, the juvenile court was within its authority, as provided in ORS 419B.387, when it made that order.

Accordingly, we conclude that the juvenile court did not err when it ordered father to successfully complete a psychological evaluation following a review hearing in accordance with ORS 419B.387.

Affirmed.