

FILED: July 13, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of C. R. P., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

C. M. P.,
Appellant.

Jefferson County Circuit Court
00383354

Petition Number
09JV0172

A147224 (Control)

In the Matter of H. G. L., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

C. M. P.,
Appellant.

Jefferson County Circuit Court
00373851

Petition Number
09JV0171

A147225

George W. Neilson, Judge.

Argued and submitted on April 20, 2011.

Holly Telerant, Deputy Public Defender, argued the cause for appellant. With her on the brief was Peter Gartlan, Chief Defender, Appellate Division, Office of Public Defense Services.

Inge D. Wells, Assistant Attorney General, argued the cause for respondent. On the brief were John R. Kroger, Attorney General, Mary H. Williams, Solicitor General, and Kristen G. Williams, Assistant Attorney General.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Rosenblum, Senior Judge.

ORTEGA, P. J.

Reversed and remanded.

1 ORTEGA, P. J.

2 Mother appeals judgments terminating her parental rights to her two young
3 daughters, HL and CP, entered two years after she, at the age of 19, killed the children's
4 father during a domestic dispute. The Department of Human Services (DHS) took
5 custody of HL shortly after the incident and of CP shortly after her birth several months
6 later. Mother ultimately pleaded guilty to criminally negligent homicide and was
7 sentenced to sixty months' imprisonment. The children were initially placed in the care
8 of mother's sister (DP), but after 13 months DHS elected to move them to live with their
9 paternal grandmother in Washington State. The juvenile court terminated mother's
10 parental rights on the grounds that she was unfit due to alcohol abuse, domestic violence,
11 and her continued incarceration. On *de novo* review, ORS 19.415(3)(a), we conclude that
12 the record lacks clear and convincing evidence that mother's past alcohol abuse and the
13 domestic violence that characterized her relationship with father renders her presently
14 unfit. We also conclude that mother's continued incarceration does not provide a basis
15 for termination under the circumstances presented here. Accordingly, we reverse.

16 We begin by reviewing the pertinent facts as we find them, addressing first
17 mother's relationship with father and the incident that led to her incarceration. We then
18 address mother's background and the evidence regarding whether she is presently unfit.
19 Finally, we address the evidence regarding the children.

20 Mother met father in the summer of 2006 when she was 16 years old. They
21 quickly became a couple, and she gave birth to HL the following spring. The relationship
22 between mother and father was volatile from the beginning. The arguments between

1 mother and father frequently turned violent, and father physically assaulted mother on
2 several occasions.

3 Although mother estimated that father struck her about 10 times over the
4 course of their relationship, we recount only the specific incidents about which mother
5 testified about at trial. Mother secured a restraining order in September 2007 after an
6 incident in which father threatened her with a baseball bat, broke down a locked door
7 with the bat, and then, after dropping the bat, struck mother in the eye. Mother, however,
8 maintained contact with father while the restraining order was in place, and during that
9 period father and mother again were involved in an argument that turned violent. During
10 the course of that argument, father slapped mother and grabbed HL so that mother would
11 not leave. When mother attempted to leave, father chased her down the street while
12 holding HL and slapped mother repeatedly. A few weeks later, when father indicated to
13 mother that he was going to turn himself in to authorities because of an outstanding
14 warrant, she agreed to drop the restraining order so that she could visit him in jail. She
15 voluntarily dismissed the restraining order in January 2008.

16 Several months later, father struck mother while she was cooking and
17 began to choke her. Mother scratched him and grabbed the knife she was using to cook
18 with. Father "backed off" and told her to put the knife down, but stopped coming after
19 her. Mother was surprised that the knife scared father.

20 On the night of father's death in July 2008, mother and father argued about
21 putting HL, then 14 months old, to sleep. Mother had been drinking that night and was
22 trying to wean HL in any event, so she did not want to breastfeed HL to soothe her to

1 sleep. Father insisted that mother do so. During the argument, father struck mother and
2 knocked her mobile phone out of her hand. When mother walked towards HL, father
3 pushed mother down, and mother told father that he "wouldn't be acting so bad if I had a
4 knife in my hand." Father urged her to get a knife, and mother proceeded to pick up HL
5 and grab a kitchen knife.¹ At some point, father was holding the knife, and father's uncle
6 was standing between them trying to calm them down. Father stated, "Here, take the
7 knife," and gave it to mother. She "swung it over [father's] uncle's shoulder," and it
8 entered father's chest. Mother called 9-1-1, then called DP, and then called 9-1-1 again
9 when father stopped breathing. Father died from the stab wound and mother was taken
10 into custody. DP took HL home with her that night, and she remained in DP's care for 13
11 months.

12 Mother was indicted on charges of first-degree manslaughter, ORS
13 163.118, and incarcerated in Jefferson County Jail while awaiting trial. She learned
14 shortly after her indictment that she was pregnant with father's child. She gave birth to
15 CP at the county jail in February 2009, and DHS immediately took custody of CP and
16 placed her in the care of DP. The juvenile court took jurisdiction over HL in September
17 2008 and CP in June 2009.

18 In early 2009, a DHS adoption committee approved the children's paternal
19 grandmother as their adoptive resource, although DP had also sought to adopt them.

¹ There is some evidence that father's uncle was holding HL during the fatal confrontation, but mother, while confessing some uncertainty in her memory as to the events of that night, believes that she held HL during the fight.

1 Both children stayed with DP until August 2009, when DHS changed the permanency
2 plan to adoption, identified grandmother as the adoptive resource, and placed the children
3 with her in Washington State.

4 Mother pleaded guilty to, and was convicted of, criminally negligent
5 homicide in February 2010. She was sentenced to 60 months' imprisonment with credit
6 for time served, and 3 years of post-prison supervision. Mother was prohibited from
7 receiving any good time credits, early release, or alternative incarceration programs. She
8 was transferred to Coffee Creek Correctional Facility in March 2010 and is eligible for
9 release in July 2013.

10 We proceed to address mother's background and the evidence regarding
11 present unfitness. Mother was exposed to domestic violence in the home in which she
12 grew up. She testified that her father physically and verbally abused her and her mother,
13 and that he was incarcerated during her teenage years for stabbing her mother's boyfriend.
14 When mother's father went to prison for that attack, mother dropped out of high school to
15 avoid the embarrassment of facing her peers, and she obtained her general equivalency
16 diploma.

17 In November 2008, while in the county jail, mother participated in a
18 comprehensive mental health assessment. She admitted to using alcohol on a regular
19 basis starting when she was 13 years old until she became pregnant with HL. She also
20 admitted to using methamphetamine heavily at the age of 15 and cocaine and marijuana
21 on a few occasions before the pregnancy. However, alcohol was her "drug of choice."
22 She admitted to drinking to the point of intoxication three times in the two weeks before

1 her fatal confrontation with father. During the assessment, mother indicated that she did
2 not believe that she needed mental health or substance abuse treatment. However, she
3 acknowledged suffering from anxiety and depression, which she attributed to her
4 incarceration and the circumstances leading up to it. The evaluator tentatively diagnosed
5 her with depressive disorder, generalized anxiety, alcohol dependence, cannabis abuse,
6 cocaine abuse, and methamphetamine dependence, and opined that mother would benefit
7 from treatment and therapy. However, no services were available to mother at the
8 Jefferson County Jail, and DHS was relieved of making reasonable efforts in December
9 2009.

10 Mother testified at trial about her past drinking and drug use. She
11 indicated that she had quit drinking while pregnant, and she testified that after HL was
12 born, she "went to maybe ten parties and * * * drank at the parties." She indicated that
13 the night of father's death was the only occasion that she had consumed alcohol in HL's
14 presence. She acknowledged that she has a problem with alcohol, as do many members
15 of her family, and that she has become more aware while in jail about the problems that
16 alcohol has caused in her life. Since her transfer to Coffee Creek, she has attended
17 several Alcoholics Anonymous meetings, and she expressed the intention to abstain from
18 drinking alcohol after her release from prison. She also has arranged to attend a
19 substance abuse treatment program at Coffee Creek when she is eligible to do so, during
20 the last six months of her prison term.

21 Mother held three part-time jobs in the months before her incarceration in
22 an effort to support herself and HL and was well thought of by her employers. Although

1 father provided some money to help her rent the house where she lived, he did not
2 contribute on a regular basis. At the time of trial, mother was employed in the kitchen at
3 Coffee Creek and participated in a "Toastmasters" group. She also stated an intention to
4 enroll in an "entrepreneur's class" at the prison and expected to begin one-on-one
5 counseling with a therapist at the prison in the near future.

6 Dr. Sebastian, a licensed psychologist, evaluated mother "with regard to her
7 parenting" after her arrest in 2008 and again shortly before the termination trial.

8 Generally, Sebastian testified that mother demonstrated the ability to parent her children.
9 In particular, Sebastian testified that mother, "unlike probably most of the people that I
10 see who come to termination[,] * * * has insight into her children's situation. She has
11 gained a lot of insight into herself." She noted that mother "is in treatment * * *. She has
12 a desire to change * * * and she has the intellectual ability to be able to handle
13 parenting." Sebastian remarked that, before her incarceration, mother did "her best" to
14 support HL, despite her low socioeconomic status and young age. Further, mother has
15 demonstrated an interest in gaining skill and an education to assist in her transition out of
16 prison and has had no incidents of aggression or acting out in prison.

17 As for potential impediments to mother resuming her duties as a parent,
18 Sebastian testified that mother does not suffer from any personality disorder or other
19 disorder that would prevent her from parenting adequately, and that although mother
20 abused substances during her teenage years, she does not now exhibit signs of
21 dependence or addiction. Further, mother now has a better understanding of "what
22 domestic violence is" and, with therapy and education, she can learn about "making good

1 choices about relationships." Sebastian acknowledged that mother exhibited signs of a
2 major depressive disorder in 2008 and that mother still was not sleeping well at the time
3 of trial. However, Sebastian opined that, with assessment and therapy, such depression
4 was treatable and manageable and should not provide an impediment to parenting.

5 Finally, Sebastian was asked generally about a child's primary attachment
6 years. She opined that the first five years are the most important for a child in terms of
7 attaching to a primary caretaker, and that "we know that children have the capability of
8 attaching to more than one primary caregiver, but we're never sure how many you can do
9 after one or two primary caretakers."

10 Mother testified that her plan for the children if her parental rights are not
11 terminated is to slowly transition them back into her care after her prison term ends. She
12 expressed concern that removing the children from their grandmother's home and
13 returning them to mother would be difficult on the children, but she was hopeful that they
14 could adjust.

15 Currently, the children, now ages 4 and 2, are not attached to mother.
16 Mother has not seen HL since father's death when HL was a year old. The court
17 approved DHS's decision not allow visits between HL and mother at the county jail
18 because the jail did not allow "contact" visits and DHS staff determined that it would be
19 harmful to HL to see mother "through a glass." Initially, DP brought CP for visits at the
20 county jail, and mother saw CP a few times after the child was moved to Washington, but
21 has not seen her since October 2009.

22 We turn to the evidence regarding the children. There is little in the record

1 about the period when the children were in DP's care, other than a suggestion that they
2 were bonded to her. The bulk of the evidence relates to the time between placement with
3 their grandmother and the termination trial.

4 The children's DHS caseworker testified that she first visited the children in
5 August 2009. During the first visits, CP was an infant and showed no concerning issues,
6 but HL was "very aggressive" toward the caseworker and showed signs of "attachment
7 issues." The caseworker referred HL to "parent-child intervention therapy" with Connie
8 Au at the Children's Response Center. The caseworker testified that, since that initial
9 meeting in August 2009, she has seen the children monthly and HL's behavior "has
10 improved so much." While HL "still has tension here and there, * * * she is easily
11 redirected"; she "still tends to be a little aggressive at times, but more so in the typical age
12 range." CP, for her part, is "doing great." Both kids are "healthy" and bonded with
13 grandmother and feel "safe" around her. They do not ask about other family during the
14 caseworker's visits.

15 Au, HL's therapist, testified that she first saw HL and CP shortly after they
16 moved to live with grandmother. HL had returned from a visit to DP's home over a long
17 weekend and exhibited temper tantrums and prolonged crying and behaved aggressively
18 toward CP. Au was concerned that HL did not have a basic ability to soothe herself and
19 that she needed time to bond with grandmother in her new environment.

20 Au's testimony as to the potential causes for HL's behavior was equivocal,
21 noting that HL's overall history of exposure to domestic violence, the death of her father,
22 and multiple moves (from her parents to DP to grandmother) all could have contributed

1 to her inability to regulate her emotions. Au initially diagnosed HL with an adjustment
2 disorder stemming from changes of caregiver and changes of home environment over the
3 first two years of her life. She considered the possibility that HL suffered from post-
4 traumatic stress disorder that may have been attributable to witnessing her father's death,
5 but ultimately Au declined to make that diagnosis because she could not say definitively
6 that HL's "behavior problem is caused by * * * trauma." Nevertheless, Au recounted an
7 incident during an early therapy session in which HL used a toy knife to stab a toy "man
8 figure" and afterwards indicated that she was mad at Au. Although Au could not
9 definitively attribute HL's behavior to domestic violence, she indicated that, in her
10 training and experience, HL's behavior was consistent with that of other children who
11 have been traumatized.

12 When asked how much of HL's behavior could be attributed to an unstable
13 home life, Au testified that she

14 "lacks--there's a lack of opportunity for her to learn that--to learn emotional
15 soothing in the environment. Somehow her environment has been
16 disrupted repeatedly, with not enough adult attention for her to master those
17 skills, the emotional stability skills."

18 Although Au did not provide therapy to CP, she observed that CP was interactive,
19 attentive, and comfortable in grandmother's home.

20 Au also testified about the children's need for permanence. She opined that,
21 for a child with HL's history, the best thing is

22 "for her to settle and stay in one home. If she is in a home where she can
23 thrive right now, and she's already developed routine and stability, the best
24 thing for her is to stay in that environment, unless that environment is life
25 frightening or abusive.

1 "If this environment she is in right now is nurturing and stable, then
2 [HL] can start from here, you know, and just like in the last year I already
3 observed many improved--many, many good progress and improvement in
4 her behavior. To keep changing her is not a good option for her."

5 Au was asked, "[W]hat if [HL] had to wait three years for a caregiver, a
6 change in caregiver, and that home was one where domestic violence regularly
7 occurred?" Au responded,

8 "Well, I would prefer no children in a domestic violence
9 environment, you know. Even children that came from a stable home
10 environment that have separation from parents have good childhoods, and
11 then suddenly placed in a domestic violence environment, that child will be
12 impacted."

13 Au testified that if HL is

14 "uprooted again and go[es] to an environment potentially somewhat
15 domestic violent * * * it would not be a good scenario for [HL] in her
16 childhood development.

17 "* * * * *

18 "But if she leaves grandma and then all of a sudden goes to another
19 household to be raised in another household, so means there are pretty
20 much like three disruptions of caregivers and home environments for [HL]
21 in such a short timeframe. So there is a possibility that she may lose all her
22 learning, I mean her learning--her bonding with an adult, and with the
23 bonding with an adult is she trusts--that is her trust in human relationships."

24 As for whether CP was subject to the same types of risks, Au
25 acknowledged that CP presented different issues because of her age and because she did
26 not witness her father's death. Au did, however, explain,

27 "So [CP] went to [DP's] home for a few months. She was still an
28 infant. So for [CP] changes in the first twelve months, it was like two
29 times, you know, and then now she stayed with her grandma--I think her
30 placement with grandma is like the longest time in her life. So of course,
31 you know, another move could cause confusion, you know, for [CP]."

1 Finally, Au testified that the transitions for the children from DP's home in
2 Oregon to the paternal grandmother's home in Washington was "very, very difficult" but
3 that HL's behavioral issues have subsided and she is "more like a regular two, three year
4 old child right now."

5 We proceed to our analysis. The trial court terminated mother's parental
6 rights based on unfitness pursuant to ORS 419B.504, which provides, in pertinent part:

7 "The rights of the parent * * * may be terminated as provided in
8 ORS 419B.500 if the court finds that the parent [is] unfit by reason of
9 conduct or condition seriously detrimental to the child * * * and integration
10 of the child * * * into the home of the parent * * * is improbable within a
11 reasonable time due to conduct or conditions not likely to change. In
12 determining such conduct and conditions, the court shall consider but is not
13 limited to the following:

14 "(1) Emotional illness, mental illness or mental retardation of the
15 parent of such nature and duration as to render the parent incapable of
16 providing proper care for the child * * * for extended periods of time.

17 "(2) Conduct toward any child of an abusive, cruel or sexual
18 nature.

19 "(3) Addictive or habitual use of intoxicating liquors or controlled
20 substances to the extent that parental ability has been substantially
21 impaired.

22 "* * * * *

23 "(6) Criminal conduct that impairs the parent's ability to provide
24 adequate care for the child * * *."

25 Accordingly, the state has the burden of proving, by clear and convincing
26 evidence, that the parent is unfit because the parent engages in conduct or is characterized
27 by a condition that is seriously detrimental to the child and it is improbable that the child
28 can be integrated into the parent's home within a reasonable time because the conduct or

1 condition is unlikely to change. State ex rel SOSCF v. Stillman, 333 Or 135, 145-46, 36
2 P3d 490 (2001). "Evidence is clear and convincing if it makes the existence of a fact
3 'highly probable' or if it is of 'extraordinary persuasiveness.'" State ex rel Dept. of Human
4 Services v. A. M. P., 212 Or App 94, 104, 157 P3d 283 (2007) (quoting State ex rel Dept.
5 of Human Services v. Hinds, 191 Or App 78, 84, 81 P3d 99 (2003). The fitness of the
6 parent is measured at the time of the termination trial. State ex rel Dept. of Human
7 Services v. Simmons, 342 Or 76, 96, 149 P3d 1124 (2006).

8 The trial court found mother to be unfit because she "repeatedly exposed
9 [HL] to the physical danger and emotional abuse of domestic violence" resulting from
10 mother's failure to address both her substance abuse issues and the "cycle of violence
11 behaviors within the home of her family of origin and her home with [father]." The court
12 noted that mother's condition "led to the criminal episode where she deprived the children
13 of their father by killing him and their mother because she was sentenced to serve 60
14 months of incarceration." The court further found that CP had "never known" mother
15 and that HL had not seen mother in the 26 months preceding the termination trial and that
16 mother will be unavailable to parent the children for at least an additional 34 months.
17 Given that the children are bonded with grandmother and "[o]nly the stability of a safe
18 and nurturing environment will allow the children to develop positive bond[s] and
19 appropriate behavior norms[.]" the court concluded that to disrupt their placement would
20 "have an adverse impact on the children."

21 On appeal, mother argues that DHS failed to prove that she was unfit
22 because the agency failed to prove that she is characterized by any seriously detrimental

1 conduct or condition that persisted at the time of trial. She frames the heart of DHS's
2 case as follows: One domestic violence incident led to mother's incarceration, which
3 made her unavailable to parent for such an extended period that it was likely to be
4 seriously detrimental. In response, mother asserts that her expert evaluation indicated
5 that she is free of personality disorders associated with domestic violence, that she does
6 not require drug and alcohol treatment, and that she is likely to be capable of safely and
7 adequately parenting her children upon her release. Further, mother contends that the
8 psychological evidence of HL's behavior problems did not definitively establish that
9 mother's conduct or condition caused those problems. That is, HL's behavior problems
10 were related to the transition from DP's home to grandmother's home, and the only
11 evidence that mother's incarceration was detrimental was an observation that HL had
12 trouble adjusting to the move to grandmother's home. Mother also notes that there is no
13 evidence that CP exhibited troubling behaviors.

14 The state counters that mother's five-year incarceration, her unresolved
15 domestic violence history, and her untreated alcohol dependence render her unfit to
16 parent the children. Further, the state contends that because of her incarceration, mother
17 will be unavailable to parent her children during their primary attachment years, and that
18 because HL already suffers from an "attachment disorder"² caused by mother's
19 incarceration and both children need permanency as quickly as possible, mother's

² The record does not support DHS's references to an "attachment disorder." Au diagnosed HL with an "adjustment disorder," and HL has not received any other diagnosis.

1 conduct or condition is seriously detrimental to the children. Moreover, because mother
2 has three years remaining on her sentence from the time of the termination trial,
3 integration is improbable within a reasonable time. The state contends that even if
4 mother's unresolved alcohol dependency and domestic violence issues are not enough
5 standing alone to render her unfit, she is unfit when those issues are combined with her
6 five-year incarceration.

7 Initially, we emphasize that unfitness is assessed at the time of trial. Based
8 on the evidence adduced at trial, we agree with mother that the state failed to prove that
9 she was unfit due to her "untreated" alcohol dependence and "unresolved domestic
10 violence history." Sebastian's evaluation of mother revealed self-awareness about the
11 problems that alcohol and domestic violence have caused her and her children and
12 mother's credible intention to engage in services to prevent a recurrence of those
13 problems. Services were unavailable to her during her lengthy incarceration in the
14 Jefferson County Jail, but since her transfer to Coffee Creek, mother has attended
15 Alcoholics Anonymous meetings and has sought individual counseling. Sebastian saw
16 every reason to believe that mother would continue to benefit from services and increase
17 her self-awareness. Mother has not been diagnosed with any personality disorders that
18 would tend to precipitate a pattern of domestic violence, and she has had no incidents of
19 aggression or acting out in prison. Although the record shows *past* incidents of domestic
20 violence and substance abuse by mother during her teenage years, there is little to no
21 evidence, let alone clear and convincing evidence, that mother's past problems with those
22 issues persisted at the time of the termination trial.

1 That leads us to the only remaining basis for the trial court's finding of
2 unfitness: mother's incarceration. In *Stillman*, the Supreme Court concluded that,
3 although incarceration does not constitute "criminal conduct" under ORS 419B.504(6),
4 incarceration and its consequences for children are within the "purview of the court." 333
5 Or at 147-48. That is, incarceration is a "condition" that, "if it were seriously detrimental
6 to the children, would be sufficient to warrant a finding of unfitness[.]" *Id.* at 149
7 (emphasis omitted).

8 Accordingly, in *Stillman*, the court evaluated whether the father's
9 unfinished incarceration and the period of time that he would be required to spend in a
10 halfway house after his prison term expired were seriously detrimental to the children.
11 *Id.* The record in *Stillman* showed that the children were generally well adjusted and
12 happy and the only "detriment" was related to the "children's worry about their parent's
13 well-being and the uncertainty surrounding the termination proceeding itself." *Id.* The
14 court concluded that the level of anxiety that the children experienced in that case was
15 not the "sort of serious detriment that the legislature contemplated as providing the basis
16 for a conclusion that a parent is unfit," noting that "[t]he reason for terminating parental
17 rights ought to be related to the parent's conduct as a parent." *Id.* at 152 (quoting *Simons*
18 *et ux v. Smith*, 229 Or 277, 280, 366 P2d 875 (1961); brackets in *Stillman*). The court
19 also noted that the father retained a strong relationship with the children, in part due to a
20 strong extended family structure. Although the father was unavailable to parent for many
21 months, the court concluded that the termination of his rights was unwarranted in light of
22 the fact that the children were relatively happy and well-adjusted, any anxiety they were

1 feeling was not the sort of serious detriment that provided a basis for terminating parental
2 rights, and the father had a strong extended family and a strong relationship with the
3 children. *Id.* at 150-52.

4 Likewise here, the question we must answer is whether mother's
5 incarceration for 34 months following the termination trial causes the type of detriment to
6 HL and CP that the legislature contemplated as providing the basis for a conclusion that
7 she is unfit. *See id.* at 152. Although we are mindful that, in a general sense, prolonged
8 incarceration could be seriously detrimental to children, we do not find the evidence here
9 to establish clearly and convincingly that mother's incarceration for an additional 34
10 months is seriously detrimental to HL and CP.

11 The focus of the evidence of detriment to the children is two-fold. First,
12 HL suffered from behavior issues "outside the norm" for her age when she was moved
13 from DP's home to grandmother's home. As a result, the child's therapist diagnosed her
14 with an adjustment disorder. There is no similar evidence as to CP. Second, there was
15 general testimony that the first five years of a child's life are the "primary attachment
16 years" and that moving HL and CP to another primary caregiver at the end of mother's
17 incarceration could cause HL to regress and could cause CP confusion.

18 We agree with mother that the evidence relating to HL's problems
19 transitioning from DP's home to grandmother's home is not clear and convincing
20 evidence of serious detriment. In finding that the anxiety the children in *Stillman* were
21 experiencing was not sufficient to justify termination, the Supreme Court noted that such
22 anxiety is not extraordinary in the juvenile system. *Id.* at 152. Likewise here, difficulty

1 adjusting to a placement move is not extraordinary in the juvenile system--or, indeed, for
2 many other children (including those whose parents are engaged in military service
3 abroad). Moreover, here, the most recent placement move was not the result of mother's
4 conduct but rather of DHS's decision to move the children from a placement that was, by
5 all accounts, stable.

6 Further, while the record is replete with general statements about the risks
7 of uprooting these children during their primary attachment years, we do not find here
8 clear and convincing evidence that such a change would be seriously detrimental. By all
9 accounts, the children are in a stable placement and are doing well. Sebastian noted that
10 children can attach to more than one primary caregiver, but that it is unclear how many
11 attachments children can form after one or two primary caretakers. The record in this
12 case does not connect HL's "adjustment disorder" with any future potential placement
13 changes. Rather, the evidence is much more equivocal, and although we acknowledge
14 reason for concern about changing the children's placement in the future, we do not view
15 the evidence of HL's adjustment issues and the general testimony about "primary
16 attachment years" to rise to the level of clear and convincing evidence--that is, evidence
17 that makes the existence of a fact "highly probable" or that is "of 'extraordinary
18 persuasiveness,'" *A. M. P.*, 212 Or App at 104--of serious detriment caused by mother's
19 incarceration.

20 Moreover, the Supreme Court has stated that "the reason for terminating
21 parental rights ought to be related to the parent's conduct as a parent." *Stillman*, 333 Or at
22 152. And, although DHS must act under statutory timelines to achieve permanency,

1 those actions contributed to the current situation in this case. Mother was immediately
2 prohibited from seeing HL by DHS, and the move to Washington effectively eliminated
3 any chance for mother to establish a relationship with CP. Moreover, one of the two
4 changes in primary caregivers was a result of DHS's decision to move the children from a
5 stable placement to a distant placement, yet DHS attributes to mother the issues caused
6 by the move. See [*State ex rel Dept. of Human Services v. Rardin*](#), 340 Or 436, 446, 134
7 P3d 940 (2006) (noting that DHS would not permit father to establish a relationship with
8 the child when evaluating whether the father's conduct was seriously detrimental);
9 *Stillman*, 333 Or at 151 (noting that the children's anxiety was caused in part by DHS
10 prohibition against contact between the father and the children). DHS is responsible for
11 making decisions regarding the welfare of children in its custody, but the consequences
12 of those decisions should not necessarily be attributed to the parent in every instance.

13 In sum, in light of the high evidentiary standard, we do not find that
14 mother's continued incarceration renders her unfit to parent HL and CP.

15 Reversed and remanded.