

COURT OF APPEALS OF OREGON

Dept. of Human Services v. K. C. W.

347 Or. App. 425 (2026) · No. A187937 (Control); A187938; A187939 · Decided February 25, 2026

SUMMARY

The Oregon Court of Appeals reversed juvenile court judgments establishing guardianships over three Indian children under ORS 419B.366. The court held that the mother's unpreserved challenge was reviewable under the Indian Child Welfare Act and that the Department of Human Services failed to prove by clear and convincing evidence a causal nexus between the mother's substance use and the likelihood of serious emotional or physical damage to the children. The court did not address the mother's remaining assignments of error.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Egan, J.; Aoyagi, Presiding Judge; Egan, Judge; Pagán, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	February 25, 2026
DOCKET	A187937 (Control); A187938; A187939
DISPOSITION	reversed
PROCEDURAL POSTURE	Mother appealed juvenile court judgments establishing general guardianships over her three children under ORS 419B.366. She challenged the sufficiency of the evidence under the Indian Child Welfare Act (ICWA), including the required causal nexus between her substance use and the likelihood of serious emotional or physical damage to the children. Although she had not preserved that specific issue below, the Court of Appeals reviewed it under ICWA's enforcement provision.
STANDARD OF REVIEW	The court reviewed legal conclusions for errors of law, was bound by explicit and implicit historical findings supported by any evidence in the record, and deferred to the juvenile court's credibility determinations.
PRECEDENTIAL VALUE	Published Oregon Court of Appeals opinion
PARTIES	K. C. W. v. Department of Human Services

TOPICS

guardianships

indian child welfare act

preservation of error

appellate procedure

standard of review

PRACTICE AREAS

Juvenile law

Indian child welfare

Guardianships

Appellate procedure

QUESTIONS PRESENTED

1. Whether mother's unpreserved challenge to the ICWA-required finding under 25 USC section 1912(e) was reviewable for the first time on appeal under 25 USC section 1914.
2. Whether ODHS presented clear and convincing evidence establishing a causal relationship between mother's particular conditions, including substance use and instability, and the likelihood that continued custody by mother would result in serious emotional or physical damage to the children.
3. Whether the juvenile court erred in ordering guardianships under ORS 419B.366.

HOLDINGS

1. A parent of an Indian child may raise on appeal, without preservation, a challenge asserting that a guardianship violated ICWA's minimum protections, because ICWA section 1914 authorizes a petition in any court of competent jurisdiction and preempts conflicting state preservation requirements.
2. Before ordering a guardianship constituting a foster-care placement, the juvenile court must have clear and convincing evidence, including qualified-expert testimony, that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child; evidence of substance abuse or instability alone is insufficient without a demonstrated causal relationship to harm to the particular children.

KEY QUOTATIONS

"Given that ICWA provides "minimum Federal standards for the removal of Indian children from their families and section 1914 provides a method of enforcing those minimum federal standards," the preservation rule—which could "preclude[] a party from using section 1914 on appeal to assert a right under section 1912(d)"—"stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"" (431-432)

"Although the record contains very general evidence that mother's substance use continued at the time of the hearing, it does not demonstrate how that condition posed a risk of serious emotional or physical damage to the children at the time of the guardianship proceeding." (434)

"On this record, the evidence does not permit the inference required under ICWA that custody by mother was likely to result in imminent serious emotional or physical damage to the children." (435)

FACTUAL BACKGROUND

ODHS removed the three children from mother's care after the parents admitted that their substance abuse interfered with safe parenting. The children were later returned after mother engaged in treatment, but were

removed again after she relapsed and was discharged from treatment for noncompliance. At the guardianship hearing, the evidence showed ongoing but unspecified substance use, inconsistent participation in a Suboxone program, missed urinalysis testing, unstable housing, and limited visitation; however, ODHS presented no evidence explaining how the particular substance use or instability affected mother's parenting or was likely to cause serious emotional or physical damage to these specific children.

PROCEDURAL HISTORY

The juvenile court asserted jurisdiction over the children after the parents admitted that their substance abuse interfered with their ability to safely parent. After the children were removed, returned following treatment, and removed again after mother's relapse, the permanency plans changed from reunification to guardianship. The juvenile court appointed the paternal grandparents as guardians and found that continued custody by the parents was likely to result in serious emotional or physical damage. The Court of Appeals reversed because the record did not contain clear and convincing evidence establishing the required causal relationship.

DISPOSITION

reversed

CASES CITED

- Dept. of Human Services v. J. G., 260 Or. App. 500, 504, 507-13, 520, 317 P.3d 936 (2014)
- Dept. of Human Services v. N. S., 246 Or. App. 341, 344, 265 P.3d 792 (2011), rev den, 351 Or. 586 (2012)
- Dept. of Human Services v. A. J. G., 304 Or. App. 221, 230, 465 P.3d 293, rev den, 366 Or. 826 (2020)
- Quinn v. Walters, 320 Or. 233, 260, 881 P.2d 795 (1994)
- Dept. of Human Services v. A. R. E., 340 Or. App. 73, 76-77, 571 P.3d 211 (2025)
- Dept. of Human Services v. E. M., 264 Or. App. 76, 83, 331 P.3d 1054 (2014)
- Dept. of Human Services v. M. H., 256 Or. App. 306, 331, 300 P.3d 1262 (2013)