

Constitutional Rights of Children and *Wyatt v. Kotek*

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Wyatt v. Koteck

Who is a "child in care"



Discussion

- Constitutional Rights
 - Parental Rights
 - Children's Rights
- DHS's statutory and Constitutional duties toward foster children
- *Wyatt v. Kotek*
 - *Effect of Settlement Agreement*
 - *Significance of published vs. unpublished decision*



Due Process Clause of the Fourteenth Amendment

- Section 1 of the 14th Amendment to the U.S. Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law;** nor deny to any person within its jurisdiction the equal protection of the laws.

- “Due process” includes procedural due process and substantive due process



Parental Rights

- A parent has the fundamental right under the Due Process Clause of the Fourteenth Amendment to make decisions concerning the care, custody and control of the parent's child until the child attains majority or is emancipated.
- But, parental decision-making is not absolute.
- The state may interfere with parental rights to:
 - Protect the child (e.g. placing the child in protective custody); or
 - Achieve a legitimate state interest (e.g. ensuring the children of certain ages may obtain certain health care without parental consent)



Children's Rights

- "Majority" – determined by the legislature.
 - ORS 109.510 - Turn 18 years old
 - ORS 109.520 - Gets married
 - ORS 109.112 - Become a parent
- Minors and rights to enter into housing/utility agreements (ORS 109.697)
- Minors and medical decision-making
 - 109.640 - Reproductive health care, certain medical treatment, dental treatment
 - 109.670 – Donate blood
 - 109.675 – Outpatient treatment for mental, emotional or substance use disorders



Children's Rights

- No corresponding right to withhold consent to medical treatment that has been consented to on the child's behalf by the child's parent/guardian
- But ...
 - Health care providers have the discretion not to treat a child who is objecting to treatment.
 - Certain types of treatment may implicate the child's liberty rights under the Due Process Clause of the Fourteenth Amendment



Due Process Clause of the Fourteenth Amendment

- Does not:
 - Confer an affirmative right to governmental aid; or
 - Impose a duty on the state to protect individuals from third parties.
- Exceptions:
 - Where the state has created the danger at issue; or
 - Where the state has a special relationship with an individual.



Due Process Clause of the Fourteenth Amendment

- State-created danger exception:
 - When the state affirmatively places a person in danger by acting with deliberate indifference to a known and obvious danger
- Special relationship exception
 - When a custodial relationship exists between a person and the state and the state assumes some responsibility for the person's safety and well-being



Foster Children's Rights

- “[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago County Dept of Soc. Servs.*, 489 U.S. 189 (1989)
- “Once the state assumes wardship of a child, the state owes the child, as part of that person’s protected liberty interests, reasonable safety and minimally adequate care and treatment appropriate to the age and circumstances of the child.” *Lipscomb v. Simmons*, 962 F.2d 1374 (9th Cir. 1992).



Wyatt v. Kotek

- Q: Do the rights that accrue to foster children who are placed in substitute care or an institutional setting, also apply to children who are placed in DHS legal custody but not removed from the home or are returned to the home on a trial basis?
- Yes. "By assuming control over virtually all aspects of a child's life through wardship and legal custody, ODHS restrains the child's liberty in a manner that gives rise to a protected interest under the Due Process Clause."
- "That some children who are wards of the state and in the state's legal custody are placed with their biological parents, rather than with foster parents, does not affect the existence of due process protections."



Child Welfare & DHS

“Ward” means a child found to be within the jurisdiction of the juvenile court under ORS 419B.100 because the child is under 18 and:

- The child is beyond the control of the child’s parents, guardian or other person having custody of the child;
- The child’s behavior is such as to endanger the welfare of the child or of others;
- The child’s condition or circumstances are such as to endanger the welfare of the child or of others;
- The child is dependent for care and support on a child-caring agency that needs the services of the court in planning for the best interest of the child;
- **The child’s parents or any other person or persons having custody of the child have:**
 - **Abandoned the child;**
 - **Failed to provide the child with the care or education required by law;**
 - **Subjected the child to cruelty, depravity or unexplained physical injury; or**
 - **Failed to provide the child with the care, guidance and protection necessary for the child’s physical, mental or emotional well-being;**
- The child is a runaway;
- The child has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; or
- The child is subject to an order entered under ORS 419C.411 (7)(a).



Child Welfare & DHS

A ward of the court is not always in the legal custody of DHS.

419B.337 - Placement of ward in the legal custody of DHS.

- When the court determines that it would be in the best interests and for the welfare of the ward.

419B.372 - DHS guardianship of the ward.

- The court may, but is not required, to grant DHS guardianship of a child in DHS's legal custody.
- If the court does not grant DHS guardianship of a child in DHS's legal custody, then the court has the duties and authority of guardian for the ward.

- **419B.373 - Duties & authority of legal custodian.**
 - To have physical custody and control of the ward.
 - To supply the ward with food, clothing, shelter and incidental necessities.
 - To provide the ward with care, education and discipline.
 - To authorize ordinary medical, dental, psychiatric, psychological, hygienic and other care.
 - In an emergency, to authorize surgery or other extraordinary care
- **419B.376 - Duties and authority of guardian.**
 - To authorize surgery
 - Authorize enlistment in the armed forces
 - To consent to adoption, if parental rights have been terminated
 - To make other decisions concerning the ward of substantial legal significance.



Wyatt v. Kotek - holding

- When DHS takes legal custody of a child, regardless of whether the child is placed in substitute care or with a parent, DHS “assumes responsibility for virtually all aspects of [the child’s life].” And “DHS’s legal custody unqualifiedly ‘interferes with a parent’s right to direct the custody and control of the child.’”
- DHS has a “special relationship” with a ward placed in its legal custody, independent of the ward’s physical custody, and therefore has a duty to ensure the ward is free from serious abuse from third parties, including the ward’s parent.



Wyatt v. Kotek – Settlement Agreement

- How binding is the Settlement Agreement?
 - DHS must make “sufficient and sustained good faith and meaningful efforts that work toward achieving the specific, concrete and identifiable metrics that are goals to be met at the conclusion of the term of the Settlement Agreement.”
 - It does not require “strict compliance” but does require DHS’s efforts to be making meaningful progress toward achieving the end goals.
 - Each year the Neutral will determine whether DHS is in compliance



Wyatt v. Kotek – Settlement Agreement

- Dispute resolution
 - If the Neutral determines that DHS is not in substantial compliance, the plaintiffs may submit the issue for arbitration.
 - The arbiter must make a determination regarding whether DHS is in substantial compliance and, if not, must determine an appropriate remedy.
 - A party may seek judicial review of the arbiter's determination regarding substantial compliance or for an order to enforce a determination or remedy issued by the arbiter.



Wyatt v. Kotek – Published v. Unpublished Opinion

Wyatt v. Kotek, No. 6:19-CV-00556-AA, 2024 WL 3200547 (D. Or. June 27, 2024), reversed and remanded by *Wyatt v. Kotek*, 146 F.4th 1267 (9th Cir. 2025).

The district court opinion in *Wyatt* was unpublished. The Ninth Circuit decision was published.

- Unpublished opinions may be cited in unrelated cases but are, at most, only persuasive, not binding, authority.
- Published Ninth Circuit Court of Appeals opinions are controlling in the Ninth Circuit and persuasive in other circuits.



Thank you. Questions?

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