

FILED: March 6, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of S. N., Alleged to be a Mentally Ill Person.

STATE OF OREGON,
Respondent,

v.

S. N.,
Appellant.

Wasco County Circuit Court
1200013MC

A151837

Janet L. Stauffer, Judge.

Submitted on January 04, 2013.

Janie M. Burcart filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Shannon T. Reel, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Reversed.

1 PER CURIAM

2 Appellant seeks reversal of the trial court's judgment committing her as a
3 mentally ill person for a period not to exceed 180 days. ORS 426.130. She contends that
4 the trial court committed plain error when it failed to advise appellant of her rights. *See*
5 ORS 426.100(1).¹ The state concedes that the court's failure constitutes plain error and
6 that the error is not harmless in this case. *See State v. S. J. F.*, 247 Or App 321, 326, 269
7 P3d 83 (2011) (a violation of ORS 426.100(1) is plain error); *State v. Scharf*, 201 Or App
8 71, 74, 116 P3d 949 (2005) (violation of ORS 426.100(1) is not harmless where the
9 record does not demonstrate that the "appellant was adequately advised of his rights or
10 that he, in fact, exercised those rights at the hearing"). We agree, accept the state's
11 concession, and reverse.²

12 Reversed.

¹ ORS 426.100(1) provides:

"At the time the allegedly mentally ill person is brought before the court, the court shall advise the person of the following:

"(a) The reason for being brought before the court;

"(b) The nature of the proceedings;

"(c) The possible results of the proceedings;

"(d) The right to subpoena witnesses; and

"(e) The person's rights regarding representation by or appointment of counsel."

² Because we reverse the judgment on that basis, we do not address appellant's other assignments of error.