

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of H. D. F., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

L. F.,
Appellant.

Lane County Circuit Court
10342J

Petition Number
10342J02

A152179

Eveleen Henry, Judge.

Argued and submitted on February 05, 2013.

Kimberlee Petrie Volm, Deputy Public Defender, argued the cause for appellant. With her on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Cecil A. Reniche-Smith, Senior Assistant Attorney General, argued the cause for the respondent. With her on the brief was Ellen F. Rosenblum, Attorney General, and Anna M. Joyce, Solicitor General.

Before Armstrong, Presiding Judge, and Nakamoto, Judge, and Egan, Judge.

EGAN, J.

Jurisdictional judgment affirmed. Dispositional judgment reversed and remanded with instructions to enter a dispositional judgment that does not require urinalyses; otherwise affirmed.

1 EGAN, J.

2 The juvenile court entered jurisdictional and dispositional judgments
3 related to mother's son, H. Mother appeals from the jurisdictional judgment, contending
4 that the evidence in the record is insufficient to support jurisdiction under ORS
5 419B100(1)(c), on the basis that mother was unable or unwilling to meet or understand
6 the medical and developmental needs of H, who had been diagnosed with autism.
7 Mother also appeals from the dispositional judgment, assigning error to the provision
8 ordering her to submit to urinalysis. As explained below, we affirm the jurisdictional
9 judgment, and we reverse and remand the dispositional judgment with instructions to
10 enter a dispositional judgment that does not require urinalysis.

11 The following facts are undisputed. The juvenile court asserted jurisdiction
12 over H in 2010 based on mother's stipulation that she had a current diagnosis of severe
13 attention deficit hyperactivity disorder, adjustment disorder with mixed anxiety, and
14 depressed mood, and that those diagnoses posed a risk of harm to H.

15 The Department of Human Services (DHS) subsequently filed an amended
16 petition for jurisdiction in which it asserted, as an additional basis for jurisdiction against
17 mother, that the circumstances and conditions of H are such as to endanger his welfare as
18 follows:

19 "The child has been subject to threat of harm and/or neglect by the
20 mother, in that the mother is unable and/or unwilling to meet the child's
21 medical and developmental needs. The child has special needs and has
22 been diagnosed with autism; the mother is unable and/or unwilling to

1 understand, or demonstrate an understanding of, the child's specific needs
2 to ensure his health and well-being."

3 Mother contested the amended petition.

4 At the jurisdictional hearing on the amended petition, the parties stipulated
5 that, since the court had asserted jurisdiction over H, he had been diagnosed with autism
6 and with severe impairments of expressive and receptive language, including delays in
7 communication, cognitive skills, and social skills. The parties also stipulated to the
8 admission of a report by Hyslop, an autism specialist at Early Childhood CARES. In the
9 report, Hyslop explained that, because of H's developmental disabilities, he receives
10 speech therapy and attends an autism class. She further explained that the focus of the
11 autism class is to work with parents and caregivers in understanding the learning style of
12 a child with H's disabilities and to help the parents and caregivers implement strategies to
13 meet the child's needs.

14 After H was diagnosed with developmental disabilities, the juvenile court
15 ordered mother to attend all of his therapy sessions and classes in order to understand his
16 special needs and learn the skills required to meet those needs. Despite the court's order,
17 Hyslop estimated that mother had attended only 60-70 percent of the classes.

18 Furthermore, the parties stipulated that, between the time when DHS filed the amended
19 petition for jurisdiction and the time of the hearing on that petition, mother had missed
20 seven of the 14 speech therapy sessions that H had attended and seven of the 18 autism
21 classes that he had attended.

22 Hyslop further explained that mother had a tendency to leave the classes

1 that she did attend before they were finished, although she noted that mother generally
2 gave a reason for leaving early. When Hyslop asked mother to arrange not to leave
3 during class unless it was an emergency, mother agreed. Hyslop further explained that,
4 when mother came to H's classes, she was enthusiastic about his learning, was engaged in
5 the class, and was receptive to feedback.

6 The parties also stipulated to the following:

7 "[G]randmother believes * * * [that mother] loves her son and has
8 made some effort to address his needs. However, grandmother feels that
9 [mother] cannot or will not make the commitment required to meet all of
10 his needs for a prolonged period of time.

11 "[Mother] continues, grandmother believes, to address [H's] needs
12 according to [her] priorities and her level of commitment, and not the level
13 of need that [H] requires.

14 "Given the length of time that has passed, grandmother cannot
15 foresee a lasting commitment by [mother] to parent [H], or [mother]
16 making a lasting effort to meet his extraordinary needs.

17 "On mother's behalf, mother would state that she loves her child. * *
18 * That mother was attempting to do the best that she could to meet [H's]
19 needs while maintaining employment and safe and stable housing."

20 Based on the stipulations and the evidence, the juvenile court found that H
21 has developmental problems requiring focused treatment, particularly because of his age-
22 -which was two years at the time of the jurisdictional hearing--and that mother has not
23 been able to consistently meet these needs. Although the court noted that mother had
24 been commended for her enthusiasm in learning about H's disabilities, it emphasized that
25 she had demonstrated an inability to consistently be present at H's therapy sessions and
26 classes so that she could learn more about H's needs and how she could meet them.

1 Consequently, the court concluded that the state had proved, by a
2 preponderance of the evidence, the additional jurisdictional allegation alleged in the
3 amended petition for jurisdiction:

4 "The child has been subject to threat of harm and/or neglect by the
5 mother, in that the mother is unable and/or unwilling to meet the child's
6 medical and developmental needs. The child has special needs and has
7 been diagnosed with autism; the mother is unable and/or unwilling to
8 understand, or demonstrate an understanding of, the child's specific needs
9 to ensure his health and well-being."

10 The court entered a judgment of jurisdiction under ORS 419B.100(1)(c) over H based on
11 the additional allegation and also issued a dispositional judgment in which it ordered
12 mother to "submit to [urinalyses] as requested by [DHS] and/or treatment provider."

13 Mother appeals, arguing, in essence, that the evidence is insufficient as a
14 matter of law to establish jurisdiction under ORS 419B.100(1)(c) based on the additional
15 jurisdictional allegation.¹ ORS 419B.100(1)(c) provides, in relevant part, that "the
16 juvenile court has exclusive original jurisdiction in any case involving a person who is
17 under 18 years of age" and "[w]hose condition or circumstances are such as to endanger
18 the welfare of the person or of others." The child's condition or circumstances endanger
19 the welfare of the child, for purposes of ORS 419B.100(1)(c), when they give rise to a
20 current threat of serious loss or injury to the child that is reasonably likely to be realized.

¹ Mother does not dispute the juvenile court's jurisdiction over H based on the facts in the original petition--*viz.*, that mother has a current diagnosis of severe attention deficit hyperactivity disorder, adjustment disorder with mixed anxiety, and depressed mood, that poses a risk of harm to H.

1 *Dept. of Human Services v. A. F.*, 243 Or App 379, 386, 259 P3d 957 (2011).² The
2 burden of proving facts sufficient to warrant jurisdiction is on the state. *Dept. of Human*
3 *Services v. S. P.*, 249 Or App 76, 84, 275 P3d 979 (2012).

4 We determine whether jurisdiction is proper by reviewing "the facts found
5 by the juvenile court to determine whether they are supported by any evidence, and then
6 to determine whether, as a matter of law, those facts together with facts implicitly found
7 by the juvenile court, provide a basis for juvenile court jurisdiction under ORS
8 419B.100(1)(c)." *Dept. of Human Services v. G. J. R.*, 254 Or App 436, 443, 295 P3d
9 672 (2013) (quoting *Dept. of Human Services v. C. Z.*, 236 Or App 436, 442, 236 P3d
10 791 (2010)).³ Because, here, the historical facts are undisputed, we are left to determine,

² The state contends that the standard for establishing jurisdiction under ORS 419B.100(1)(c) that we articulated in *A. F.* is inconsistent with *Dept. of Human Services v. Smith*, 316 Or 646, 853 P2d 282 (1993). We have previously explained that the standards of *A. F.* and *Smith* "complement each other and correctly state the standard" for the juvenile court's jurisdiction under ORS 419B.100(1)(c). *Dept. of Human Services v. D. M.*, 248 Or App 683, 686, 275 P3d 971 (2012). We therefore reject the state's argument.

³ When the juvenile court has already asserted jurisdiction, as the court did here, and the parent is only challenging an additional jurisdictional allegation,

"the juvenile court has jurisdiction in this case on the additional allegation if there is sufficient evidence, from which a reasonable factfinder could conclude by a preponderance of the evidence, either that a current risk of harm to [the child] exists from the additional allegation standing alone, or that the additional allegation contributes to or enhances the risk associated with the already established bases of jurisdiction."

G. J. R., 254 Or App at 443-44. Because we conclude that a reasonable factfinder could conclude, by a preponderance of the evidence, that a current risk of harm to H exists from the additional allegation standing alone, we focus our analysis on that standard.

1 first, whether DHS has presented evidence from which the juvenile court could find that
2 mother is unable or unwilling to meet and understand H's medical and developmental
3 needs. If we conclude that DHS has presented sufficient evidence to support that finding,
4 we must determine whether that finding, together with facts that the juvenile court
5 implicitly found, provides a basis for the court to conclude that H's conditions or
6 circumstances give rise to a current threat of serious loss or injury to H that is reasonably
7 likely to be realized. As we explain below, we conclude that--in the totality of the
8 circumstances--there was sufficient evidence in the record to find that mother is unable or
9 unwilling to meet and understand H's medical and developmental needs and that that
10 inability or unwillingness poses a current risk of harm to H that is reasonably likely to be
11 realized.

12 We begin by addressing whether there is sufficient evidence in the record to
13 support the court's finding that mother is unable or unwilling to meet and understand H's
14 medical and developmental needs. The stipulations, along with Hyslop's report, establish
15 the following facts. At the time of the jurisdictional hearing, H was two years old and
16 had been diagnosed with autism and severe impairments of expressive and receptive
17 language. He was receiving speech therapy and attending an autism class, the purpose of
18 which was to both aid H with his disabilities and also aid his parents and caregivers in
19 understanding his disabilities and learning how to meet his needs. The juvenile court
20 could reasonably infer from that evidence that a caregiver who has not attended those
21 therapy sessions and classes is not able to understand and meet the needs of a child who

1 has the disabilities that H has.

2 Furthermore, the record establishes that, despite being ordered to attend H's
3 therapy sessions and classes in order to understand his special needs and learn skills to
4 meet those needs, mother's attendance was, at best, 70 percent. Mother specifically
5 stipulated that, since DHS filed the amended petition for jurisdiction, she had missed
6 seven of the 14 speech therapy sessions that H had attended and seven of the 18 autism
7 classes that he had attended. The stipulations further establish that, in the opinion of
8 grandmother, H's foster parent, mother is incapable of meeting H's needs for a prolonged
9 period of time and that mother addresses H's needs according to her own priorities.
10 Based on grandmother's opinion, the court could infer that mother has had a poor
11 attendance record to H's therapy sessions and classes because mother has not prioritized
12 meeting H's needs.⁴ Furthermore, the court could infer that mother's inability to place H's
13 interests before her own will cause her to continue to have poor attendance at H's therapy
14 sessions and classes.

15 Thus, the juvenile court reasonably could have inferred, based on the
16 evidence in the record, that caregivers of H need training to understand and meet his

⁴ Mother argues that the juvenile court was not permitted to rely on grandmother's opinion because she was a "lay witness," relying on *Dept. of Human Services v. M. Q.*, 253 Or App 776, 242 P3d 616 (2012). Regardless of whether *M. Q.* provides any support for mother's argument, she did not challenge the admission of grandmother's opinion before the juvenile court. To the contrary, mother stipulated to grandmother's opinion. We therefore conclude that mother's argument is unpreserved and decline to consider it. *See* ORAP 5.45 ("No matter claimed as error will be considered on appeal unless the claim of error was preserved in the lower court[.]").

1 needs. Furthermore, the court could infer that mother has failed, and will continue to fail,
2 to attend many of H's therapy sessions and classes because she has not prioritized H's
3 interests over her own. Given the combination of those inferences, the juvenile court
4 reasonably could have inferred that mother was unable or unwilling to attend H's therapy
5 sessions and classes and that her absences from those therapy sessions and classes would
6 prevent her from understanding, and thereby becoming capable of meeting, H's medical
7 and developmental needs. Thus, there is evidence in the record to support the juvenile
8 court's finding that mother is unable or unwilling to understand and meet H's medical and
9 developmental needs.

10 Although it is a close call, we further conclude that the evidence in the
11 record was sufficient for the juvenile court to conclude that mother's inability or
12 unwillingness to meet H's medical and developmental needs subjected H to a threat of
13 harm or neglect. As we have stated, the stipulations establish that, at the time of the
14 jurisdictional hearing, H was two years old and had been diagnosed with autism and
15 severe impairments of expressive and receptive language. Based on those facts and the
16 juvenile court's finding, it was reasonable for the court to conclude that H's development
17 and welfare would be injured if mother were responsible for his care because she does
18 not understand how to meet his special needs. Without the ability to understand and meet
19 H's developmental and medical needs, it is reasonably likely that mother's care would
20 hinder H's development and fall short of satisfying his medical needs. Thus, we conclude
21 that continued jurisdiction under ORS 419B.100(1)(c) was appropriate.

1 Mother also assigns error to the juvenile court's order, in the dispositional
2 judgment, that mother submit to urinalyses. Mother contends that such an order is not
3 rationally related to the bases for jurisdiction, *see* ORS 419B.343(1)(a), and emphasizes
4 that, at the jurisdictional hearing, the court ruled that it would not require her to submit to
5 urinalyses. The state agrees that the juvenile court decided that it would not require
6 mother to submit to urinalyses and that the requirement that mother do that was
7 erroneously included in the dispositional judgment. We agree and reverse and remand
8 the dispositional judgment for the juvenile court to correct that error.

9 Jurisdictional judgment affirmed. Dispositional judgment reversed and
10 remanded with instructions to enter a dispositional judgment that does not require
11 urinalyses; otherwise affirmed.