

FILED: December 18, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of J. H.,
a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Appellant,

and

J. H.,
a Child,
Appellant,

v.

G. L. H.,
Respondent.

Washington County Circuit Court
J120042

Petition Number
01J120042M

A154396

Eric Butterfield, Judge.

Argued and submitted on October 17, 2013.

Michael Casper, Deputy Solicitor General, argued the cause for appellant Department of Human Services. On the brief were Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Shannon T. Reel, Assistant Attorney General.

Megan L. Jacquot filed the brief for appellant J. H.

Shannon Storey, Senior Deputy Public Defender, argued the cause for respondent. With her on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Duncan, Judge.

SCHUMAN, P. J.

Reversed and remanded.

1 SCHUMAN, P. J.

2 In this juvenile dependency case, the Department of Human Services
3 (DHS) appeals from a permanency judgment of the juvenile court dismissing the state's
4 wardship over mother's six-year-old child, J. The child also appeals from the juvenile
5 court's judgment and joins in DHS's contention that the juvenile court erred in dismissing
6 the wardship. DHS and the child have requested that we review this case *de novo*. We
7 decline to exercise our discretion to review *de novo*, but we conclude that the juvenile
8 court's findings are not supported by legally sufficient evidence, *Dept. of Human Services*
9 *v. N. P.*, 257 Or App 633, 639, 307 P3d 444 (2013), and, for that reason, that the juvenile
10 court erred in dismissing jurisdiction. We therefore reverse the juvenile court's judgment.

11 DHS has been involved with the family since 2011, when intensive home
12 services were provided to mother on a voluntary basis. The child was taken into
13 protective custody on March 5, 2012, after multiple calls to DHS expressing concerns of
14 neglect.

15 The state filed a petition for jurisdiction on March 6, 2012. At a status
16 hearing on May 4, 2012, mother admitted to the juvenile court's jurisdiction based on
17 allegations that (1) mother's mental health problems and borderline intellectual
18 functioning interfere with her ability to competently care for J and J's siblings; (2)
19 mother's use of methamphetamine impairs her ability to provide minimally adequate care
20 for J and J's siblings; and (3) mother's impulsive and angry behavior places J and J's
21 siblings at risk of harm in her care.

1 J was placed in foster care with another sibling, and the juvenile court took
2 jurisdiction over J and established a permanency plan of reunification, with a concurrent
3 plan of adoption.¹ At a permanency hearing on March 1, 2013, the juvenile court found
4 that DHS had made reasonable efforts and that mother had not made sufficient progress
5 toward meeting expectations. The court continued the case plan of reunification and
6 ordered mother to participate in services. The court also ordered DHS to "staff case w/
7 A.G. within 45 days," which the parties understand to be a shorthand instruction to move
8 the case forward to termination of parental rights. The court attached findings to the
9 judgment supporting the determinations that DHS had made reasonable efforts and that

¹ The juvenile court attached these findings:

"What facts demonstrate that it is in the best interest of the child to be placed in the Temporary Custody of DHS- Child Welfare? The mother struggles to safely parent the children due to her ongoing mental health issues, borderline intelligence and possible methamphetamine abuse. The mother left the children with another person without making a plan for their care or needs. The mother has been offered extensive services through DHS, but has been unable to alleviate the ongoing safety concerns. The children do not have legal fathers.

"What facts demonstrate that reasonable efforts have been made to prevent or eliminate the need for this placement? (If no services have been offered, would any service have eliminated the need for placement?) DHS has been working with the mother on a voluntary case for the last nine months. Services have included ISRS, drug and alcohol information and a psychological evaluation. There are concerns that the mother is abusing drugs and her behavior remains erratic. At this time, the children are unsafe in her care."

(Boldface in original.)

1 mother had not made sufficient progress.² The court set a permanency hearing for May
2 28, 2013.

3 At that hearing, neither mother, child, nor DHS presented any testimony.
4 Mother did not challenge the juvenile court's continued jurisdiction or seek to dismiss the
5 wardship. The court received into evidence DHS caseworker Judy Cooper's report
6 outlining DHS's efforts to achieve the primary plan of return to parent. The report noted
7 that mother had had "spotty" participation in drug and anger management treatment, had
8 received counseling services, and was on medication for depression. The report stated
9 that, although there was no evidence that mother was continuing to use

² The attached findings stated:

"What facts demonstrate that it is in the best interest of the child to be placed in the continued Custody of DHS- Child Welfare? DHS was contacted in March, 2012. This was the sixth report to the Child Abuse Hotline regarding neglect of [mother's] two young children. [Mother] was screaming, crying, cursing, threatening to kill herself, pushing and kicking things in the presence of her young children. She was out of control to the point that a second police car was called. She was taken to the hospital and the children were placed in protective custody. She was later found to have a positive UA for methamphetamine during this episode. The father of [J] was deported. The whereabouts of the father of [J's sibling] were unknown.

"What facts demonstrate that reasonable efforts have been made to prevent or eliminate the need for this placement? (If no services have been offered, would any service have eliminated the need for placement?) A voluntary case was opened in 2011. Two rounds of intensive in-home services were provided. A psych eval of the mother was provided.

"What facts demonstrate that reasonable active efforts have been made to reunify the family? Services were offered to this family for a year prior to their removal."

(Boldface in original.)

1 methamphetamine regularly, she continued to exhibit poor judgment as to safety issues,
2 had failed to visit the child regularly, and had overdosed on antidepressant medication in
3 a suicide attempt on February 26, 2013. Cooper's report also referred to two
4 psychological evaluations of mother. Both evaluations had concluded that mother had
5 significant limitations that would impair her ability to parent. The report noted that, in a
6 psychological evaluation performed on October 9, 2012, Dr. Deitch had concluded that
7 mother

8 "is not considered to be a viable placement resource for her sons at this
9 time, and she will require close oversight and supervision by another
10 responsible adult, should a decision be made to return the children to her
11 care. Her prognosis for being able to become a consistently safe and
12 responsible long-term independent residential parenting resource for her
13 sons is considered to be highly guarded."

14 Cooper's report concluded with a recommendation that the child continue as a ward of the
15 court and remain in the custody of DHS for care, placement, and supervision. DHS
16 requested that the court find that DHS had made reasonable efforts that were in the best
17 interests of the child and that the court order that DHS and mother abide by the signed
18 action agreement.

19 Cooper did not testify at the hearing but gave a statement that, as directed
20 by the court in March 2013, DHS had met with an assistant attorney general twice but
21 had not yet decided whether to pursue termination of mother's parental rights. DHS was
22 waiting for additional information and was considering a long-term placement of the
23 child with his maternal grandfather, who was undergoing certification and wanted to be a
24 placement for the child either through adoption or guardianship.

1 The child's attorney expressed approval of DHS's plan, although she urged
2 that DHS move more quickly. She explained that the child was doing well in his current
3 foster placement and noted that mother had missed some recent visits.

4 Mother's attorney reported that mother had completed a requested drug and
5 alcohol assessment and had a series of clean urine tests, had a stable residence, and a
6 letter from a psychiatrist who reported that "[w]e see no indications that [mother] would
7 not be able to adequately parent her children." Mother's attorney reported that mother
8 had told him that she was looking for work and also applying for SSI.

9 The juvenile court, as noted, did not take testimony but allowed those
10 present at the hearing to make statements. The maternal grandmother expressed concern
11 for the number of placements and requested that she be considered as a resource for the
12 child. The child's maternal grandfather explained that he was prepared to care for the
13 child as soon as he was certified and expressed agreement with DHS's plan. Mother
14 explained that she had missed one visit with the child because of an interview and one
15 visit because of a misunderstanding. She asked for additional supervised visits. No
16 person present at the hearing requested a termination of the wardship.

17 At the conclusion of the hearing, the juvenile court stated that it would
18 make the findings requested by DHS. Nonetheless, the court said:

19 "You know, these cases don't always work out perfectly. And this
20 may not be a great solution, but I'm going to dismiss the case today.

21 "I order[ed] the State to staff it, hoping that they would agree that it
22 was appropriate to move forward to terminate the mother's parental rights,
23 they elected not to do so--and without having them decided on their end.

1 And mom has made some progress towards the issues that I have
2 jurisdiction over.

3 "The case is going to be dismissed. Thank you."

4 The juvenile court issued a permanency judgment on May 28, 2013, in
5 which it found that DHS had made reasonable efforts and that mother had made sufficient
6 progress toward meeting the expectations set forth in the service agreement. The
7 judgment did not include an explicit finding as to whether the child could be safely
8 returned to mother's care. With regard to DHS's reasonable efforts, the judgment stated
9 that findings were attached and incorporated. A form attached to the judgment set forth
10 the facts demonstrating that reasonable efforts were made to reunify the family.
11 However, the attached form is the same form that had been attached to the permanency
12 judgment of March 1, 2013, and it also describes facts that it states demonstrate that "it is
13 in the best interest of the child to be placed in the continued Custody of DHS." Thus,
14 there is an inconsistency between the attached findings and the juvenile court's judgment
15 that the wardship should end. The judgment then dismissed the wardship and DHS's
16 legal custody and guardianship.

17 On appeal, the state asserts that the juvenile court erred in terminating the
18 wardship and dismissing DHS's legal custody and guardianship of the child. When, as
19 here, the case plan at the time of the hearing is to reunify the family, ORS 419B.476(2)(a)
20 requires that the juvenile court determine whether DHS has made reasonable efforts and
21 whether the parent has made sufficient progress to make it possible for the ward to return
22 safely home. Although the juvenile court did not explicitly find that mother had made

1 sufficient progress to make it possible for the child to safely return home, that finding is
2 implicit in the court's decision to terminate the wardship. The state asserts that this
3 record does not support that implicit finding, and we agree. The only evidence in the
4 record is the caseworker's report, and it documents that, although mother's abuse of
5 methamphetamine appears to be in remission and her housing situation has stabilized,
6 mother's mental health problems and borderline intellectual functioning continue to
7 interfere with her ability to care for J. Viewing the evidence in the light most favorable
8 to the court's disposition, we conclude that the juvenile court's implicit finding that
9 mother has made sufficient progress to make it possible for the child to safely return
10 home is not supported by legally sufficient evidence. *N. P.*, 257 Or App at 639. We
11 conclude, accordingly, that the juvenile court erred in dismissing the wardship.

12 Reversed and remanded.