

FILED: December 30, 2015

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of A. S.-F., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

B. K. F.,
Appellant.

Josephine County Circuit Court
15JU01011

A159806 (Control)

In the Matter of T. S.-F., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

B. K. F.,
Appellant.

Josephine County Circuit Court
15JU01012

A159807

Michael Newman, Judge.

Submitted on November 06, 2015.

Shannon Storey, Chief Defender, Juvenile Appellate Section, and Valerie Colas, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Paul L. Smith, Deputy Solicitor General, and Cecil A. Reniche-Smith, Assistant Attorney General, filed the brief for respondent.

Before Sercombe, Presiding Judge, and Nakamoto, Judge, and Tookey, Judge.

SERCOMBE, P. J.

Jurisdictional judgments reversed and remanded for entry of judgments establishing dependency jurisdiction based on allegations other than (f) and (i); otherwise affirmed.

1 SERCOMBE, P. J.

2 In this consolidated juvenile dependency appeal, mother challenges June
3 2015 jurisdictional judgments in which the juvenile court asserted jurisdiction over her
4 two children, A and T, and dispositional judgments in which the court made the children
5 wards of the court, placed them in the legal and physical custody of the Department of
6 Human Services (DHS), and, among other things, ordered mother to participate in drug
7 and alcohol treatment, complete a psychological assessment, and maintain a safe and
8 stable home.¹ Mother seeks reversal of the jurisdictional judgments, asserting that the
9 evidence is insufficient to support two of the grounds for jurisdiction.

10 As alleged in its petitions, DHS sought jurisdiction over the children
11 because the conditions of the children endangered their welfare. *See* ORS
12 419B.100(1)(c). The petitions alleged facts relating to both mother and father that
13 endangered the children. With respect to mother, the petitions alleged the following:
14 (1) "mother's substance abuse interferes with her ability to safely parent the child[ren]"
15 (allegation (f)); (2) "mother exposed the child[ren] to persons who pose a risk of harm to
16 the child[ren]"; (3) "mother is unwilling and/or unable to maintain a safe environment"
17 for the children because she "has allowed the child[ren] to live in a home that is unsafe
18 and/or unsanitary, as the home does not have running water, electricity, heat, has little
19 food, and the child[ren were] exposed to pornographic materials and drug paraphernalia

¹ The judgments related to both mother and father. However, father does not appeal.

1 was within the child[ren's] reach"; and (4) "despite prior services offered to * * * mother
2 through DHS and other agencies," she "has been unable and/or unwilling to overcome the
3 impediments to [her] ability to provide, safe adequate care to the child[ren]" (allegation
4 (i)). Mother contested those allegations and, after a hearing, the juvenile court asserted
5 jurisdiction based, among other things, on all four allegations relating to mother.²

6 On appeal, mother asserts that the juvenile court erred in asserting
7 jurisdiction over the children with respect to two of those grounds. Specifically, she
8 contends that the court erred in concluding that DHS's evidence "was sufficient to prove
9 that jurisdiction was warranted on the grounds of her substance abuse or failure to benefit
10 from prior services." DHS, for its part, "concedes that--even under an 'any evidence'
11 standard of review--the evidence is insufficient to establish that, at the time of the
12 jurisdictional hearing, mother was currently abusing drugs or alcohol or that her
13 substance abuse posed a current risk of harm to her children's welfare." It also concedes
14 that the evidence was "insufficient to prove that, despite being offered or provided
15 services by DHS or other agencies, mother was unable or unwilling to adjust her
16 circumstances to provide the children with a safe home." According to DHS, at best, the
17 evidence presented to the juvenile court demonstrated that "almost five years prior to the
18 hearing mother had stated she needed help for substance abuse, and that prior to the court
19 taking jurisdiction mother had declined services." We accept the concession by DHS.

² The court also took jurisdiction based on all of the allegations relating to father. None of those grounds for jurisdiction are at issue on appeal.

1 As the state recognizes, we have held that such evidence is insufficient to support
2 jurisdiction. *See Dept. of Human Services v. A. B.*, 264 Or App 410, 416, 333 P3d 335
3 (2014) (substance abuse does not provide a basis for juvenile court jurisdiction where
4 there is "no evidence in support of a determination that [the parent] had a substance abuse
5 problem at the time of the jurisdictional hearing"); *Dept. of Human Services v. E. M.*, 264
6 Or App 76, 82-83, 331 P3d 1054 (2014) (DHS failed to prove that "mother had a
7 substance abuse problem at the time of the [jurisdictional] hearing"); *Dept. of Human
8 Services v. M. Q.*, 253 Or App 776, 787, 292 P3d 616 (2012) (evidence of a history of
9 methamphetamine use does not support an inference of current use; "[j]urisdiction cannot
10 be based on speculation that parent's past problems persist at the time of the jurisdictional
11 hearing in the absence of evidence that the risk, in fact, remains").

12 According to DHS, because mother has not challenged the other grounds
13 upon which the juvenile court took jurisdiction, "the appropriate remedy is to reverse the
14 jurisdictional judgment as to each child and remand to the juvenile court for entry of new
15 judgments omitting the findings" at issue. DHS further points out that, although mother
16 appealed from the dispositional judgments, she has not assigned error to any aspect of
17 those judgments and they should, therefore, be affirmed. We agree with DHS on both
18 points. *See State ex rel Juv. Dept. v. S. A.*, 230 Or App 346, 347, 214 P3d 851 (2009)
19 (where allegation that father had "a history of substance abuse, which if active, would
20 endanger the welfare of the child" was insufficient, reversing and remanding for entry of
21 judgment establishing jurisdiction based on admitted allegations (internal quotation

1 marks omitted)). Accordingly, we reverse and remand the jurisdictional judgments for
2 the juvenile court to enter judgments establishing jurisdiction based on allegations (a) to
3 (e), (g), and (h), but omitting allegations (f) and (i) as grounds for jurisdiction, and we
4 affirm the dispositional judgments.

5 Jurisdictional judgments reversed and remanded for entry of judgments
6 establishing dependency jurisdiction based on allegations other than (f) and (i); otherwise
7 affirmed.