

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of J. M. W.,
a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

M. S. W.,
Appellant.

Lane County Circuit Court
16JU06306; A166844

Karrie K. McIntyre, Judge.

Argued and submitted July 3, 2018.

Tiffany Keast, Deputy Public Defender, argued the cause for appellant. Also on the briefs was Shannon Storey, Chief Defender, Juvenile Appellate Section, Office of Public Defense Services.

E. Nani Apo, Assistant Attorney General, argued the cause for respondent. Also on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Hadlock, Presiding Judge, and DeHoog, Judge, and Aoyagi, Judge.

HADLOCK, P. J.

Reversed and remanded.

HADLOCK, P. J.

In this juvenile dependency case, mother appeals a permanency judgment changing the permanency plan for her child, J, from reunification to adoption. *See* ORS 419B.476. Mother contends that the juvenile court erred in finding that there was no compelling reason not to proceed with terminating mother’s parental rights. *See* ORS 419B.476(5)(d); ORS 419B.498(2)(b);¹ *Dept. of Human Services v. S. J. M.*, 283 Or App 367, 392, 388 P3d 417, *rev allowed*, 361 Or 350 (2017); *see also Dept. of Human Services v. M. S.*, 284 Or App 604, 609, 393 P3d 270, *rev dismissed*, 361 Or 804 (2017) (explaining that, under *S. J. M.*, the proponent of a change in plan from reunification to adoption bears the burden of proving “that there were no compelling reasons to forgo the filing of a petition to terminate mother’s parental rights”). Mother asserts, among other things, that the Department of Human Services (DHS) failed to present sufficient evidence at the permanency hearing to support a finding that there was not “another permanent plan”—in this case, guardianship—“better suited to meet the health and safety needs of the child or ward, including the need to preserve

¹ Under ORS 419B.476(5)(d), “[i]f the court determines that the permanency plan for the ward should be adoption,” the court’s order must include “the court’s determination of whether one of the circumstances in ORS 419B.498(2) is applicable.”

ORS 419B.498(2), in turn, provides, as relevant:

“The department shall file a petition to terminate the parental rights of a parent in the circumstances described in subsection (1) of this section unless:

“(b) There is a compelling reason, which is documented in the case plan, for determining that filing such a petition would not be in the best interests of the child or ward. Such compelling reasons include, but are not limited to:

“(A) The parent is successfully participating in services that will make it possible for the child or ward to safely return home within a reasonable time as provided is ORS 419B.476(5)(c);

“(B) Another permanent plan is better suited to meet the health and safety needs of the child or ward, including the need to preserve the child’s or ward’s sibling attachments or relationships; or

“(C) The court or local citizen review board in a prior hearing or review determined that while the case plan was to reunify the family the department did not make reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the child or ward to return safely home[.]”

the child's or ward's sibling attachments and relationships." ORS 419B.498(2)(b)(B).

As we explained in *Dept. of Human Services v. J. M. T. M.*, 290 Or App 635, 638, 415 P3d 1154 (2018), "before it can change a permanency plan to adoption, a juvenile court must be able to find affirmatively from the evidence that there is *not*" another permanent plan better suited to meet the child's health and safety needs. (Emphasis in original.) "That necessarily means that the record must contain sufficient evidence to permit a rational inference that *none* of the other permanency plans contemplated by the permanency statutes would better meet the child's needs under the circumstances." *Id.* (emphasis added). In this case, DHS presented no evidence suggesting that, under the circumstances, guardianship was not a better plan for J than adoption. Thus, the evidence was insufficient to support the juvenile court's finding that there were no compelling reasons not to file a petition to terminate mother's parental rights, and the trial court erred in changing the permanency plan from reunification to adoption. See *J. M. T. M.*, 290 Or App at 639.

Reversed and remanded.