

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of A. H.,
fka B. G. H., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

J. C. H.,
Appellant.

Umatilla County Circuit Court
18JU08723; A169900

Thomas B. Powers, Judge.

Argued and submitted June 24, 2019.

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.

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

Before Lagesen, Presiding Judge, and DeVore, Judge, and James, Judge.

PER CURIAM

Reversed and remanded for entry of a jurisdictional judgment omitting allegation 2(C) (regarding mother's residential instability) as basis for jurisdiction; otherwise affirmed.

PER CURIAM

Mother appeals a judgment taking dependency jurisdiction over her 19-month-old daughter, A. The juvenile court determined that jurisdiction was warranted on three different grounds: (1) that mother's substance abuse impaired her ability to safely parent her child; (2) that her mental health problems interfered with her ability to safely parent her child; and (3) that her "residential instability" interfered with her ability to safely parent A. On appeal, mother does not dispute the juvenile court's findings that she has substance abuse problems, that she has mental health problems, or that she has suffered from residential instability. Instead, she contends that the evidence is insufficient to support a determination that those identified conditions, alone or together, placed A at a "current, nonspeculative risk of serious loss or injury," as is required for the exercise of dependency jurisdiction. *See Dept. of Human Services v. A. F.*, 243 Or App 379, 385-86, 259 P3d 957 (2011) (stating jurisdictional standard).

We review for legal error the juvenile court's determination that dependency jurisdiction was justified on the identified grounds, accepting the court's factual findings that are supported by the record.¹ *Dept. of Human Services v. J. E. F.*, 290 Or App 164, 166-67, 421 P3d 415, *rev den*, 362 Or 794 (2018).

A detailed recitation of the facts would not benefit the bench, the bar, or the public. We have reviewed the record and conclude that it is sufficient to support the juvenile court's determination that mother's substance abuse and mental health condition present nonspeculative risks of serious loss or injury to A. Specifically, the record would support an inference that, at and shortly before the jurisdictional hearing, mother's mental health and substance abuse combined to interfere with her ability to attend to A in the manner required to ensure the safety of a child so young. Further, it is inferable that that interference poses a risk to A because mother is parenting on her own, making A solely dependent on mother for her safety, and because A is too young to ensure her own safety.

¹ No party has requested *de novo* review.

We disagree, however, that the record supports the inference that mother's residential instability, alone or along with the other jurisdictional grounds, exposes A to a non-speculative risk of harm. In that regard, we note that the record reflects that, although mother has experienced residential instability much of A's life, there is no evidence that A has been harmed by that instability. *See Dept. of Human Services v. A. R. S.*, 258 Or App 624, 636-37, 310 P3d 1186 (2013) (residential instability did not support dependency jurisdiction absent evidence that the instability posed a risk of harm to the child).

Reversed and remanded for entry of a jurisdictional judgment omitting allegation 2(C) (regarding mother's residential instability) as basis for jurisdiction; otherwise affirmed.