

FILED: October 19, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of N. E., a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

G. E.,
Appellant.

Douglas County Circuit Court
0700557

Petition Number
08JU066

A146271

William A. Marshall, Judge pro tempore.

On appellant's petition for reconsideration filed July 15, 2011. Opinion filed June 15, 2011. 243 Or App 471, ___ P3d ___.

Peter Gartlan, Chief Defender, and Mary Shannon Storey, Senior Deputy Public Defender, Office of Public Defense Services, for petition.

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

SCHUMAN, P. J.

Reconsideration allowed; former opinion modified and adhered to as modified; former disposition withdrawn; reversed and remanded for entry of judgment dismissing jurisdiction.

1 SCHUMAN, P. J.

2 Mother requests reconsideration of our decision reversing and remanding a
3 June 2010 judgment of the juvenile court denying mother's motion to dismiss jurisdiction
4 over her child, N, [*Dept. of Human Services v. G. E.*](#), 243 Or App 471, ___ P3d ___
5 (2011). In our opinion, we concluded that the juvenile court "may have based its decision
6 [denying mother's motion to dismiss] on some facts that are extrinsic to the jurisdictional
7 judgment. For that reason, we must reverse and remand for clarification and possible
8 amendment of the original jurisdictional judgment." *Id.* at 478-79. Mother contends,
9 however, that we erroneously determined that mother's untreated substance abuse, as
10 described in the original petition and jurisdictional judgment, continues to provide a basis
11 for the court's jurisdiction. The original petition had alleged that "[m]other has a history
12 of substance abuse which could impact her ability to safely parent. She agrees to
13 participate in recommended treatment." The juvenile court found in its June 2010
14 judgment that mother had not completed substance abuse treatment. In our opinion, we
15 concluded that, "based on the allegations of the petition and the jurisdictional judgment,
16 mother should have been on notice that she needed to follow through with recommended
17 substance abuse treatment, and she did not do so." *Id.* at 483. Mother does not dispute
18 the juvenile court's finding that she did not follow through with recommended substance
19 abuse treatment. She contends, however, that there is no evidence in the record that she
20 is currently suffering from a substance abuse problem or that any substance abuse
21 problem endangers N. Therefore, mother contends, there is no factual basis for

1 continuing jurisdiction, and the wardship should have been dismissed. We allow
2 reconsideration and modify our former disposition to require dismissal of the juvenile
3 court jurisdiction over N.

4 As we said in our first opinion, we are bound by the juvenile court's
5 findings of historical fact as long as there is any evidence to support them. State v. S. T.
6 S., 236 Or App 646, 654-55, 238 P3d 53 (2010); Dept. of Human Services v. C. Z., 236
7 Or App 436, 442, 236 P3d 791 (2010) (explaining court's standard of review under ORS
8 19.415(3)(b)). In its June 2010 judgment, the juvenile court found that mother

9 "has not completed [substance abuse] treatment and does not have the
10 foundation, based on completing treatment, to deal with substance abuse
11 issues or been honest with the provider or the Court. She indicated in 2009
12 that a month before that hearing she had decided that she was not going to
13 drink anymore or allow anyone else drinking or doing drugs around her
14 children. That is not the date of abstinence that she would have others
15 believe. At the end of the 2009 hearing, the Court observed specific
16 instances of substance abuse evidence in which the mother only revealed
17 what she believed the Court already knew or was about to hear evidence
18 regarding. At the 2009 hearing, the treatment provider indicated that the
19 mother was likely drinking more than she indicated that she was. She has
20 not been consistent with any evaluation about the nature of her substance
21 abuse problems."

22 Thus, the juvenile court found that mother had a substance abuse problem in the past and
23 had not followed up with substance abuse treatment recommendations, and there is
24 evidence in support of those findings.

25 However, the uncontradicted testimony of mother's own case worker is that,
26 although mother did not complete treatment, she does not *currently* suffer from a
27 substance abuse problem. Additionally, mother is correct that there is no evidence that

1 any possible substance abuse problem presents a threat to N. See [State ex rel Dept. of](#)
2 [Human Services v. D. T. C.](#), 231 Or App 544, 554-55, 219 P3d 610 (2009) (requiring
3 evidence that, at time of hearing, child is at risk as a consequence of parent's substance
4 abuse). Accordingly, we agree with mother that there is no basis for a continuation of
5 jurisdiction based on the original jurisdictional judgment and that the juvenile court
6 therefore erred in denying mother's motion to dismiss.

7 Reconsideration allowed; former opinion modified and adhered to as
8 modified; former disposition withdrawn; reversed and remanded for entry of judgment
9 dismissing jurisdiction.