

**FILED: May 02, 2012**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of  
N. S., aka N. D. S.-T., a Child.

DEPARTMENT OF HUMAN SERVICES,  
Petitioner-Respondent,

and

S. D.-V.,  
Respondent,

v.

A. R. S.;  
and N. S., aka N. D. S.-T.,  
Appellants.

Washington County Circuit Court  
J070280

Petition Number  
02J070280

A149152 (Control)

---

In the Matter of  
N. S., aka N. D. S.-T., a Child.

DEPARTMENT OF HUMAN SERVICES,  
Petitioner-Respondent,

v.

A. R. S.,  
Appellant.

Washington County Circuit Court  
J070280

Petition Number  
02J070280

A149284

James Lee Fun, Jr., Judge.

Argued and submitted on March 13, 2012.

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

Megan L. Jacquot argued the cause and filed the brief for appellant N. S., aka N. D. S.-T.

Laura S. Anderson, Senior Assistant Attorney General, argued the cause for respondent Department of Human Services. With her on the brief were John R. Kroger, Attorney General, and Anna M. Joyce, Solicitor General.

Margaret McWilliams argued the cause and filed the brief for respondent S. D. V.

Before Armstrong, Presiding Judge, and Haselton, Chief Judge, and Duncan, Judge.

PER CURIAM

Reversed and remanded.

1 PER CURIAM

2 This is a consolidated dependency case in which mother and child  
3 separately appeal permanency judgments of the juvenile court. In those judgments, the  
4 court determined that mother had not made sufficient progress toward reunification to  
5 enable child to be returned to her within a reasonable period. *See* ORS 419B.476(2).  
6 The court also determined that father *had* made sufficient progress and, therefore, that the  
7 permanency plan for child would remain return to parent and, pending completion of  
8 certain conditions, child would be returned to father's care in Mexico not later than  
9 September 2011.<sup>1</sup> *See* ORS 419B.476(5)(b)(A).

10 The parties raise various challenges to the court's judgments; among other  
11 issues, mother and child argue that the court erred in determining that mother had not  
12 made sufficient progress to allow for reunification within a reasonable time because the  
13 court based that determination on the legally erroneous premise that mother was required  
14 to demonstrate that she was able to parent child independently. A detailed discussion of  
15 the facts of this case would be of little benefit to the bench, bar, or public. It suffices to  
16 say that we have reviewed the record, and it appears that the juvenile court was indeed  
17 operating under a misapprehension that mother must be able to parent child  
18 independently--that is, without the assistance of child's maternal grandmother, who was  
19 child's foster placement and with whom mother (with grandmother's approval and  
20 encouragement) wanted to live--in order to demonstrate sufficient progress under the

---

<sup>1</sup> The judgments were stayed pending our resolution of this appeal.

1 statute. We agree that that was legal error.<sup>2</sup> See [State ex rel Dept. of Human Services v.](#)  
2 [Smith](#), 338 Or 58, 86, 106 P3d 627 (2005) (ability to parent independently is not a legal  
3 requirement for parental fitness; rather, all that is required is that "the parent's inability to  
4 parent the child independently not work to the detriment of the child"). In [Dept. of](#)  
5 [Human Services v. B. L. J.](#), 246 Or App 767, 773-74, 268 P3d 696 (2011), we held,  
6 relying on *Smith*, that the mother's inability to parent her children without the assistance  
7 of a couple with whom the mother was living and who were willing to support the mother  
8 in her parenting did not demonstrate a reasonable likelihood of harm to the welfare of the  
9 children sufficient to warrant juvenile court jurisdiction. It necessarily follows that the  
10 determination of a parent's progress toward reunification following the establishment of  
11 jurisdiction also may not be based on that requirement.

12 Here, the juvenile court repeatedly referred to mother's inability to  
13 independently care for child in explaining the reasons for its decision. And, contrary to  
14 the state's suggestion, there is no indication in the record that, at the time of the  
15 permanency hearing, the court was concerned that grandmother was not, *in fact*, a reliable  
16 and safe resource for assisting mother in caring for child. Accordingly, we reverse the  
17 judgments and remand for the juvenile court to reconsider in light of the correct legal  
18 principles.

19 Reversed and remanded.

---

<sup>2</sup> Child's and mother's arguments that the court erred in not *dismissing* wardship were not preserved for our review, and we reject those arguments without further discussion. ORAP 5.45(1).