

FILED: November 7, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of N. J. S.,
a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,

v.

S. C. S.,
Appellant.

Petition Number
11572J01

Lane County Circuit Court
11572J

A150957

Eveleen Henry, Judge.

Argued and submitted on August 14, 2012.

James A. Palmer argued the cause and filed the brief for appellant.

Karla H. Ferrall, Assistant Attorney General, argued the cause for respondent. With her on the brief were Ellen F. Rosenblum, Attorney General, and Anna M. Joyce, Solicitor General.

Before Schuman, Presiding Judge, and Hadlock, Judge, and You, Judge pro tempore.

SCHUMAN, P. J.

Affirmed.

1 SCHUMAN, P. J.

2 In this juvenile dependency case, mother appeals from a judgment of the
3 juvenile court taking jurisdiction over mother's infant daughter, N, after finding that
4 mother has a mental or emotional condition that puts N at risk. Mother contends that the
5 court did not have jurisdiction over the case because she and N are both from Indiana and
6 that, if the court did have jurisdiction, it erred in finding against mother on the facts. We
7 affirm.

8 Mother grew up in Indiana, but most recently had lived for four years in
9 Oregon while taking care of her ailing father. While in Oregon, she became pregnant and
10 had prenatal care. The Department of Human Services (DHS) first came into contact
11 with mother in April 2011, during her pregnancy, when her doctor reported that she had
12 tested positive for methamphetamine use at a prenatal visit. In September 2011, mother
13 returned to Indiana and gave birth to N. One month later, mother returned to Oregon
14 with N in order to collect her belongings. She testified that it was her intention to then
15 return to Indiana.

16 In November 2011, mother--still in Oregon--sought medical care for N
17 based on her belief that N was allergic to milk-based formulas and was having seizures
18 after consuming them. On November 18, mother took N to four health care providers
19 and three area hospitals. She reported that N, after being fed, appeared to slip into a
20 coma-like state and would "blow up." Medical personnel did not detect a problem.

21 On November 19, mother again sought medical attention for N, taking her

1 to Doernbecher Children's Hospital at OHSU with the same concerns. She reported that
2 the infant had seizures after consuming milk-based formulas, explaining that N would
3 puff up and then get "a mean look on her face like she's going to come after me and eat
4 my face." Mother explained that N would then sleep for hours and would not wake up
5 for her next feeding. She reported to doctors that she was feeding N whole milk with a
6 bit of Karo syrup and chamomile tea to calm her stomach.

7 According to hospital staff, the infant tolerated regular formula quite well.
8 N weighed seven pounds, 11 ounces, and appeared to be healthy, but doctors admitted
9 her for observation. However, mother became concerned when she noticed that hospital
10 staff were feeding N a milk-based formula, rather than a soy-based formula. When
11 hospital personnel persisted in feeding N a milk-based formula, mother took N out of the
12 hospital, despite the fact that she had not been discharged. OHSU staff contacted DHS
13 with concerns for N's nutritional health based on mother's reports of what she was
14 feeding her. On November 21, 2011, a DHS caseworker went to mother's house and
15 found her in her car. Mother reported that her sister had taken the infant to Indiana.

16 The caseworker attempted to locate N in Indiana to verify her safety. In
17 fact, she subsequently determined that N was still in Oregon. Mother was receiving
18 public assistance, and the caseworker put a hold on her benefits in order to induce her to
19 come forward.

20 During a December 9, 2011, meeting with mother and N, the caseworker
21 asked mother about her mental health and possible drug use. Mother denied using drugs,

1 but stated that she had been diagnosed with ADHD and chronic anxiety and had been
2 prescribed medications in Indiana. Mother explained that she was behaving erratically
3 because she was concerned for N's health and was seeking medical treatment for N. The
4 caseworker suggested that, in light of mother's prior methamphetamine use, she would
5 conduct an assessment and ask mother to submit a urine sample.

6 During the meeting, mother made a telephone call to her mother in Indiana.
7 In a conversation with family members on speaker phone, mother expressed concern that
8 DHS was trying to take her infant. Family members urged her to bring N back to
9 Indiana. The caseworker then told mother that, because of concerns that mother would
10 run from an investigation, the state would take N into protective custody. Mother became
11 agitated and a scuffle ensued, during which mother nearly dropped the infant and
12 threatened to assault the caseworker. After N's removal, mother and family members
13 made threatening telephone calls to DHS and threatened the DHS caseworker with
14 physical violence. The DHS caseworker subsequently obtained a stalking protective
15 order against mother.

16 Mother attended regular supervised visitation with N, but routinely became
17 angry and threatening with staff. At the first visit, she declined to bottle feed N, stating
18 that she did not want to feed her poison.

19 DHS filed a petition for jurisdiction on December 9, 2011. The juvenile
20 court in Lane County took jurisdiction under ORS 419B.100(1)(c),¹ based on "conditions

¹ Under ORS 419B.100, a juvenile court has jurisdiction "in any case involving a

1 or circumstances" such as to endanger N's welfare. Among other allegations, the petition
2 alleged that mother suffers from a mental or emotional condition that interferes with her
3 ability to parent and that, while suffering from a mental or emotional condition, she is
4 unable or unwilling to provide N with care, guidance and supervision necessary for N's
5 physical, mental, and emotional well being, placing N at risk. The court assumed
6 jurisdiction, making these findings:

7 "The Court does have to make some findings about mother's
8 demeanor, and her manner in testifying today, and I really do that only
9 because to really get a sense of mother's testimony it is something that is *
10 * * much more helpful to understand the Court's ruling if one actually saw
11 the mother's testimony.

12 "And so I am going to make some credibility findings, but * * * I'm
13 actually also making findings as to the court's assessment of mother's
14 demeanor in testifying, and her way that she has explained some of the
15 things that she has done immediately around the time that the child was
16 removed, and then up to the date of the hearing.

17 "And that is that * * * mother's testimony seems to be exaggerated
18 and prone to emotional flourishes. Dismissals out of hand even when there
19 has been testimony that in fact contradicts the things that mother is saying.
20 As though by testifying with great emotion * * * that somehow would
21 make the testimony more believable even when it is at * * * variance with
22 the testimony of others.

23 "I * * * don't know what is happening, and that's not my job to
24 figure out. [The allegation of the petition concerning the risk to the child
25 posed by mother's mental and emotional health has] been demonstrated in
26 part by what occurred up at * * * the children's hospital in Portland where

person who is under 18 years of age and:

"* * * * *

"(c) Whose condition or circumstances are such as to endanger the
welfare of the person or of others[.]"

1 mother left after seeking out what she believed was medical care for the
2 child.

3 "That mother persists in thinking the people are trying to harm the
4 child by giving the child formula which she apparently is by other reports
5 responding to appropriately[.] And even * * * in a visit saying that she
6 wouldn't feed the child because she thought that would be poisoning the
7 child.

8 "You know, taking this entire picture together and filtering out the
9 understandable anger, and fear, and distress at the removal of such a young
10 child which is absolutely understandable, mother has kind of accelerated
11 and expanded upon this in a way that clearly is not taking into account the
12 child's best interest, and even declining to feed the child when having a
13 chance to hold her child and feed her child. And this is just sort of a pattern
14 that has developed over a period of 60 plus days in this case.

15 "There are a number of things that mother has been asked * * * to do
16 on a voluntary basis that she's declined to do so, and I don't think that can
17 be held against her, but it certainly can be part of this overall picture that
18 she is more focused really now on what DHS has done to her, rather than
19 focusing on what she needs to do so that she can safely parent this child."

20 Mother appeals, contending that the juvenile court lacked subject matter
21 jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act
22 (UCCJEA) and that it erred in concluding that N was at risk based on her condition or
23 circumstances. There is no request for *de novo* review. For that reason, and because this
24 is not an exceptional case, we review the court's legal rulings for errors of law and its
25 findings of historical fact for any evidence in the record. ORS 19.415(3); [Dept. of](#)
26 [Human Services v. N. S.](#), 246 Or App 341, 344-45, 265 P3d 792 (2011).

27 We begin with the question of subject matter jurisdiction. The UCCJEA,
28 ORS 109.701 to 109.834, sets forth the rules for determining jurisdiction in custody cases
29 involving multiple jurisdictions. Under ORS 109.741(1), an Oregon court has

1 jurisdiction to make an initial custody determination if:

2 "(a) This state is the home state of the child on the date of the
3 commencement of the proceeding, or was the home state of the child within
4 six months before the commencement of the proceeding and the child is
5 absent from this state but a parent or person acting as a parent continues to
6 live in this state;

7 "(b) A court of another state does not have jurisdiction under
8 subsection (1)(a) of this section, or a court of the home state of the child has
9 declined to exercise jurisdiction on the ground that this state is the more
10 appropriate forum under ORS 109.761 or 109.764, and:

11 "(A) The child and the child's parents, or the child and at least one
12 parent or a person acting as a parent, have a significant connection with this
13 state other than mere physical presence; and

14 "(B) Substantial evidence is available in this state concerning the
15 child's care, protection, training and personal relationships;

16 "(c) All courts having jurisdiction under subsection (1)(a) or (b) of
17 this section have declined to exercise jurisdiction on the ground that a court
18 of this state is the more appropriate forum to determine the custody of the
19 child under ORS 109.761 or 109.764; or

20 "(d) No court of any other state would have jurisdiction under the
21 criteria specified in subsection (1)(a), (b) or (c) of this section."

22 A state is the "home state" of a child less than six months old if it is the
23 state in which the child lived from birth. ORS 109.704(7). N in this case was less than
24 six months old when proceedings began; she was born on September 19, 2011, the
25 petition concerning her was filed on December 9, 2011, and the hearing occurred on
26 February 6, 2012. At the time, she had not lived in any state "from birth." Thus, ORS
27 109.741(1)(a) does not confer jurisdiction on Oregon or Indiana; N had no home state as
28 that term is defined.

29 ORS 109.741(1)(b), on the other hand, *does* confer jurisdiction on Oregon

1 because no other state has jurisdiction under paragraph (1)(a) and both subparagraphs
2 (1)(b)(A) and (1)(b)(B) apply. N and mother "have a significant connection with"
3 Oregon beyond mere physical presence. ORS 109.741(1)(b)(A). Although mother
4 testified that she had come to Oregon with N to collect her belongings and that she had
5 intended to return to Indiana and would have done so if DHS had not removed N, the
6 record also shows that mother had lived in Oregon for four years before she returned to
7 Indiana to give birth to N, had received prenatal care in Oregon, and that, in the six weeks
8 that she and N were in Oregon before N was removed from mother's custody, mother
9 applied for and collected public assistance, which requires that the recipient be an Oregon
10 resident. ORS 412.006(1); OAR 461-120-0010. Mother also had multiple contacts with
11 medical professionals in Oregon with regard to her concerns for N's health. Mother and
12 N were living in Oregon and collecting public assistance when N was removed from
13 mother's care on December 9, 2011.

14 Further, all of the relevant evidence "concerning the child's care, protection,
15 training and personal relationships" was in Oregon: Mother's contacts with health care
16 institutions and professionals, her interactions with DHS, and her erratic conduct. We
17 therefore conclude that, pursuant to ORS 109.741(1)(b), the Oregon court had jurisdiction
18 to make an initial child custody determination for N.

19 The question on the merits is whether DHS proved by a preponderance of
20 the evidence that N's welfare is endangered because, as alleged:

21 "The mother's mental/emotional condition interferes with her ability
22 to parent in that while suffering from a mental/emotional condition the

1 mother is unable and/or unwilling to provide the child with the care,
2 guidance and supervision necessary for the child's physical, mental and
3 emotional well-being."

4 That standard is met if, "under the totality of the circumstances, there is a reasonable
5 likelihood of harm[.]" [Dept. of Human Services v. C. Z.](#), 236 Or App 436, 440, 236 P3d
6 791 (2010). We recognize that this is a close case. Had the court's and the agency's
7 concerns involved only mother's idiosyncratic theories of infant nutrition (about the risk
8 of which there was no medical testimony), her distrust of and hostility toward the agency
9 that was, after all, questioning her about her drug use and interfering with her relationship
10 with her infant daughter, *see* [State ex rel Dept. of Human Services v. Smith](#), 338 Or 58,
11 83, 106 P3d 627 (2005) (hostility toward DHS should not distract from focus on welfare
12 of child in termination proceeding), or her seeking out unnecessary medical care for N,
13 *see* [State ex rel Dept. of Human Services v. Shugars](#), 202 Or App 302, 312, 121 P3d 702
14 (2005) (such conduct not sufficient to justify juvenile court asserting jurisdiction), we
15 might well conclude that DHS failed to prove its allegation by a preponderance of the
16 evidence. But this case involves more. In particular, mother's decision to take N out of
17 OHSU before medical personnel cleared her for discharge, her violence and threats
18 against a DHS employee, and her conduct at the hearing as reported by the trial court
19 judge persuade us that mother's mental and emotional health, manifesting itself in a
20 pattern of exaggerated, erratic, and irrational behavior concerning the care of N, shows an
21 inability to properly assess and make decisions concerning N's needs, and gives rise to a
22 reasonable likelihood of a risk of harm to N.

1 We conclude for that reason that the juvenile court did not err in assuming
2 jurisdiction in this case.

3 Affirmed.