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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re T.R., A Person Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.R.,

Defendant and Appellant.

B277199

(Los Angeles County  
Super. Ct. No. CK87289)

APPEAL from orders of the Superior Court of Los Angeles County. Natalie Stone, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Father D.R. appeals from the juvenile court's jurisdictional and dispositional orders as to his daughter, T.R., contending that the Los Angeles County Department of Children and Family Services (Department) failed to give him notice of the dependency proceedings. Finding that any notice deficiency was necessarily harmless, we affirm the orders below.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Because of the narrow issue on appeal, we limit our discussion to those facts necessary to resolve father's claim. On October 21, 2014, then three-year-old T.R. (and her older siblings by a different father, who are not at issue in this appeal) came to the attention of the Department when mother C.T. and her boyfriend engaged in a violent altercation in front of the children. Mother repeatedly slashed her boyfriend with a knife, and mother's boyfriend attempted to strangle her. Mother and her boyfriend were arrested, and T.R. and her siblings were taken into protective custody. Mother subsequently tested positive for methamphetamine.

Mother reported that she had not seen T.R.'s father, D.R., in over a year, and did not know his whereabouts, although she believed that he was in prison. The Department's detention report reflected a Los Angeles County jail address as father's last known address, but service was never attempted at this address.

The jurisdiction/disposition report did not identify a fixed address for father. Instead, the report stated that "the Department initiated a search for . . . father. . . . The search yield[ed] 5 [residential] addresses for the father . . . , 10 relatives, 1 associate and 7 neighbor[s]." On December 4, 2014, the Department "mailed certified notices to the [residential] addresses generated by the due diligence search." The

Department maintained that it was unable to contact father and his whereabouts remained unknown.

The Department's December 11, 2014 declaration of due diligence reflected that a November 17, 2014 search of Child Support Services databases revealed that father was incarcerated in the Los Angeles County jail, North County Correctional facility. A November 10, 2014 search of prison databases yielded four matches for father based on a search of his name, date of birth, and social security number. Father's CLETS printout, which was appended to the Department's jurisdiction/disposition report, also reflected that he was sentenced to 16 months in prison on June 9, 2014, based on a felony probation violation involving possession of a controlled substance. Notwithstanding this information, service was not attempted at any jail or correctional facility.

Father has a history with the Department. From 2005 to 2006, mother and father had an open case for father's three now adult children, with allegations that mother abused marijuana, that father sold drugs from the family home, and that father had an extensive criminal history. Law enforcement officers found eight pounds of marijuana, a kilo of methamphetamine, and "a quantity" of rock cocaine in the family home. Father ultimately failed to reunify with his children.

Also, in a 2011 dependency concerning T.R., the court sustained allegations under Welfare and Institutions Code section 300, subdivision (a)<sup>1</sup> that T.R. was at risk of harm because of father's acts of domestic violence against mother. In

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

the 2011 case, the juvenile court had made a finding that father was T.R.'s presumed father. Father failed to reunify with T.R. and jurisdiction was ultimately terminated with a family law order awarding mother custody of T.R.

Father's criminal history dates back to 1978, and includes convictions for resisting a public officer, inflicting corporal injury on a spouse, possession of controlled substances for sale, multiple convictions for possession of a controlled substance, parole and probation violations, and a conviction for being a felon in possession of a firearm. Father has at least two strike convictions, and, according to the Department's December 2014 jurisdiction/disposition report, father "is currently incarcerated and is being charged with possessing a controlled substance for sale, possess[ion of] marijuana for sale, felon possessing a firearm, carry[ing] a concealed stolen weapon, receiving known stolen property, [and] willful cruelty to a child."

The Department recommended that reunification services be bypassed for father, pursuant to section 361.5, subdivision (b)(10), based on father's failure to reunify with his older children, and with T.R. in T.R.'s previous dependency case.

On December 19, 2014, the juvenile court took jurisdiction over T.R. and her siblings, sustaining allegations based on the domestic violence incident between mother and her boyfriend, mother's substance abuse, and father's extensive criminal history and failure to reunify with his children during his prior dependencies. The court denied reunification services to father under section 361.5, subdivision (b)(10). Father did not make an appearance at the hearing, and was found to be an alleged father.

T.R. was placed with maternal grandmother, and her siblings were placed with their father in Arizona. Mother failed

to regularly visit with T.R. or participate in court-ordered services. On June 30, 2015, the court terminated jurisdiction over T.R.'s older siblings with a family law order vesting custody with their father.

Father was present, in custody, for the January 13, 2016 permanency planning hearing for T.R., and filed a Statement Regarding Parentage, a Parental Notification of Indian Status, and a notification of mailing address, indicating a Cudahy address to which the Department had previously mailed notices as part of its due diligence. Father's counsel made a special appearance at the hearing. The court continued the hearing.

On February 24, 2016, the Department filed a last minute information indicating that a new due diligence search was conducted for father, revealing that father was released from the Pitchess Detention Center on February 8, 2016.

On April 13, 2016, father filed a section 388 petition, seeking to have the jurisdictional and dispositional findings vacated because he had not received notice of the proceedings until he was brought to court on January 13, 2016. He admitted to living at the Cudahy address where service had been attempted on December 4, 2014, but was in custody between May 8 and December 27, 2014, and between July 29, 2015 and February 8, 2016. He also stated that he completed a court-ordered domestic violence program. The court set the section 388 petition for hearing.

In opposition to the petition, the Department admitted that the certified letters sent to the Cudahy address were returned as unclaimed or undeliverable. The Department urged that any failure to give notice was necessarily harmless, and that father had failed to demonstrate that his participation in the

jurisdictional and dispositional hearings would have yielded a different outcome, or that vacating those orders would be in T.R.'s best interests. Since becoming involved in the case, father had not contacted the Department to inquire about T.R.'s wellbeing or to arrange visitation. He had not had any contact with her in nearly four years.

At the hearing on the section 388 petition, the court found that father had not received adequate notice, but that any error was harmless beyond a reasonable doubt because father failed to reunify with his children in earlier dependencies, and had failed to address the circumstances which led to the prior dependencies, as evidenced by his continued criminal conduct. The court denied the section 388 petition, and this timely appeal followed.

### **DISCUSSION**

“ ‘ “Since the interest of a parent in the companionship, care, custody, and management of his [or her] children is a compelling one, ranked among the most basic of civil rights [citations], the state, before depriving a parent of this interest, must afford him [or her] adequate notice and an opportunity to be heard. [Citations.]” ’ [Citation.]” (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1463.) “ ‘Notice is both a constitutional and statutory imperative. In juvenile dependency proceedings, due process requires parents be given notice that is reasonably calculated to advise them an action is pending and afford them an opportunity to defend.’ [Citation.] ‘The child welfare agency must act with diligence to locate a missing parent. [Citation.] Reasonable diligence denotes a thorough, systematic investigation and an inquiry conducted in good faith. [Citation.]’ ” (*In re J.H.* (2007) 158 Cal.App.4th 174, 182.)

“A section 388 motion is a proper vehicle to raise a due process challenge based on lack of notice. [Citation.]” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) “Section 388 permits ‘[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court’ to petition ‘for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court’ on grounds of ‘change of circumstance or new evidence.’ (§ 388, subd. (a).)” (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.)

Father contends, and respondent concedes, that the Department’s due diligence indicated that defendant was incarcerated at the time of the December 19, 2014 jurisdictional and dispositional hearing, but that the Department failed to give father notice at the jail where he was incarcerated. We find inexplicable this error on the part of the Department. (*In re J.H.*, *supra*, 158 Cal.App.4th at pp. 182-183.) The parties disagree about whether the error was structural, requiring reversal, or is amenable to harmless error analysis. Father contends that because the Department made no effort to notice him, the error is structural. We are not persuaded.

Errors in notice do not trigger automatic reversal, where, as here, the Department made some effort to provide notice of the proceedings. In the dependency context, “[i]f the outcome of a proceeding has not been affected, denial of a right to notice and a hearing may be deemed harmless and reversal is not required. [Citation.]” (*In re James F.* (2008) 42 Cal.4th 901, 918; compare with *In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1116 [complete failure to attempt notice was structural error]; *In re DeJohn B.* (2000) 84 Cal.App.4th 100, 102, 110 [same].) If the defect in notice amounts to a denial of due process, the error is

reviewed under the harmless beyond a reasonable doubt standard. (*In re J.H.*, *supra*, 158 Cal.App.4th at p. 183; see *In re James F.*, at pp. 915, 917-919.) The harmless error analysis must be made in conformity with the “strong public interest in prompt resolution of these cases so that the children may receive loving and secure home environments as soon as reasonably possible [which] ‘would be thwarted if the proceeding had to be redone without any showing the new proceeding would have a different outcome.’ ” (*In re James F.*, at p. 918, citations omitted; see also Cal. Const., art. VI, § 13.) Father bears the burden to show he was prejudiced by the order challenged. (*County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 945.)

First, we conclude that father’s challenge to the court’s jurisdictional orders is nonjusticiable. Even if father had been given notice of the proceedings, the jurisdictional order would not have been affected, as it was based in part on the sustained allegations against mother, and “a jurisdictional finding good against one parent is good against both.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; see also *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.)

As to disposition, we conclude that any failure to give notice was harmless beyond a reasonable doubt. The record is replete with facts demonstrating that notice to father would not have changed the outcome here. Reunification services for father were bypassed under section 361.5, subdivision (b)(10) based on father’s failure to reunify with his older children, and with T.R. when T.R. was previously declared a dependent. Section 361.5, subdivision (b)(10) provides that “[r]eunification services need not be provided to a parent or guardian . . . when the court finds, by clear and convincing evidence [that] . . . [¶] . . . [¶] . . . the



court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling . . . and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child. . . .”

T.R. and her older half siblings were removed from father because of domestic violence, his criminal history, and his drug dealing. Father failed to reunify with his children, was incarcerated *during the pendency of this dependency for this very same conduct*, and had not seen T.R. in years. It is manifest that father was still suffering from the same circumstances that led to the earlier dependencies. In sum, there is no basis on which to conclude that notice to father would have changed any outcome, or that T.R.’s best interests would be served by revisiting the court’s orders. (See *In re J.H.*, *supra*, 158 Cal.App.4th at pp. 183-185; see also *In re Jasmon O.* (1994) 8 Cal.4th 398, 415 [juvenile court’s ruling on a section 388 petition is reviewed for abuse of discretion].)

#### **DISPOSITION**

The orders are affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.