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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J.S.1, et al., Persons Coming Under  
the Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

P. S.,

Defendant and Appellant.

A130103

(Contra Costa County  
Super. Ct. Nos. J08-02005, J08-02006)

Father P. S. (Father) appeals from an October 2010 order denying his petition under Welfare and Institutions Code section 388<sup>1</sup> seeking reunification services and contact with his minor children, J.S.1 (born June 2000) and J.S.2 (born March 2005). He has also filed a petition for writ of habeas corpus alleging ineffective assistance of counsel in connection with the section 388 petition and denial of his constitutional rights. We affirm the challenged order and, in a separate order, summarily deny his habeas corpus petition.

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

## BACKGROUND

This case comes to us in an unusual procedural posture. We previously denied Father’s writ petition challenging the juvenile court’s subsequent April 5, 2011, order setting a hearing under section 366.26 to select permanent plans for his minor daughters. (*P.S. v. Superior Court* (July 14, 2011, A131878) [nonpub. opn.].) We recited the background of the case in detail in our opinion in that original writ proceeding and thus quote from that opinion<sup>2</sup>:

Father “currently lives in Sweden under the auspices of a work visa he obtained while living in his native country, Nepal. . . . [¶] On December 18, 2008, Concord police officers arrested A.S. (Mother) at the house where she and the minors were staying with the maternal grandmother. The officers found Mother intoxicated and unconscious in a vehicle parked in front of the home, with a syringe of heroin in her purse. The minors appeared to be suffering from neglect. The Contra Costa County Bureau of Children and Family Services (Bureau) removed the two girls from the physical custody of Mother and filed dependency petitions under section 300 four days later, on December 22.

“Mother reported she had been born on the island of Saipan, in the Commonwealth of the Northern Mariana Islands, and she and the minors had only recently come from there to Contra Costa Country. She was married to Father, but separated due to domestic violence on his part. She thought he lived in Nepal, but had had no recent contact with him. However, the older daughter, J.S.1, said Father had moved to Sweden with an older daughter from another relationship.

“On January 6, 2009, the juvenile court sustained jurisdictional allegations under section 300, subdivision (b), that Mother (a) had a chronic substance abuse problem affecting her ability to care for the minors and (b) had placed the minors at risk of harm in that she had been a victim of domestic violence by Father, with some incidents in the

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<sup>2</sup> On our own motion, we take judicial notice of our opinion and records. (See Evid. Code, §§ 451, subd. (a), 452, subd. (d).) We also deny respondent’s previously deferred request for judicial notice.

children's presence. The court also raised Father's status from alleged to presumed father.

“In its report for the disposition hearing, the Bureau reported Father had made no contact and his whereabouts were still unknown, although it was attempting through county counsel to provide him with notice pursuant to the Hague Convention. The Bureau did not recommend reunification services for Father, and ‘ha[d] not considered placement’ with him as a noncustodial parent because his whereabouts were unknown and he had not made contact to request either a noncustodial parent placement or reunification services.

“At the disposition hearing on March 6, the juvenile court dismissed jurisdictional allegations against Father on motion by county counsel. It then issued dispositional orders, including ordering reunification services for Mother. It ordered reunification services ‘were not to be provided’ to Father, but directed the Bureau to arrange visitation ‘when [Father was] in the local area.’ At the six-month review hearing on September 1, the juvenile court continued Mother’s reunification services.

“Later in September (more than nine months after the minors had been detained and the dependency proceedings, filed), Father for the first time left telephone messages with the Bureau that included his e-mail address. The Bureau informed Father about the minors’ foster placement and directed him to write a letter to the court requesting appointment of counsel. Father replied with a message describing his circumstances: When Mother told him she was going to the United States with the minors, he left Saipan without completing the ‘paperwork’ that would have allowed him to stay or return. He now lived in Sweden, and wanted ‘to have [his] kids.’ The next day he sent another message directed to the court, asking for ‘help to get me attorney . . . to fight for my 2 girls and bring them to me and give them good life with me.’ The Bureau responded with a reminder for him to request counsel, and Father then did so.

“The Bureau advised the court of the e-mail correspondence with Father, and the court discussed appointment of counsel at a hearing on October 9. However, the court did not appoint counsel at that time since Father had ‘not contacted CCCDP’ (the Contra

Costa County Dependency Program, which administers the assignments for appointed counsel in the county's dependency proceedings).<sup>3</sup>

“In late January 2010, the Bureau submitted a report in anticipation of the 12-month permanency hearing that characterized (fairly) the e-mail messages Father sent to the Bureau in September 2009 as a request for placement with a noncustodial parent, but not a request for reunification services. With respect to the request for placement, the report stated the Bureau had ‘very little information on [Father,] . . . was concerned [about Mother’s] reports that [Father had been] domestically violent towards her[, and was] further concerned that [Father] ha[d] been estranged from his children for almost two years.’ The report also observed that, as Father was living in Sweden, he had not visited the minors. For these reasons, the Bureau did not believe it would be ‘safe or appropriate’ to place the minors in his care as a noncustodial parent. At the conclusion of the hearing, on January 29, 2010, the court ordered an additional three months of reunification services for Mother. It also found ‘return of the children to the custody of their mother/father would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of each child.’

“In its report completed in late April 2010, for the 18-month permanency review hearing, the Bureau reported it had had no contact with Father during that review period. At the conclusion of the hearing, on June 1, the court terminated Mother’s services and set the matter for a hearing under section 366.26.<sup>4</sup>

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<sup>3</sup> “In fact, whether Father received information about contacting CCCDP in time to make contact before the October 9 hearing is unclear. A Bureau report submitted in January 2010 noted only that the Bureau had notified Father by e-mail ‘with information to contact [CCCDP] after the Court referred him to counsel.’ . . . In any event, a Bureau memorandum submitted in August 2010 reported the Bureau sent Father CCCDP paperwork by e-mail on December 29, 2009, Father confirmed receipt of that e-mail on January 8, 2010, but did not thereafter contact the CCCDP.” (Italics omitted.)

<sup>4</sup> “Mother, but not Father, challenged this order by petition for extraordinary writ. This court denied Mother’s petition on August 25 (*A.S. v. Contra Costa County Superior Court* (Aug. 25, 2010, A128769) [nonpub. opn.]”)

“The same month, Father contacted the Bureau, which again e-mailed him the CCCDP paperwork for appointment of counsel, and this time he responded. An attorney was assigned on June 23, and the appointment of counsel was accepted on July 13.

“A month later, on August 17, Father’s appointed counsel filed a section 388 petition, seeking modification of both the March 6, 2009, dispositional order, in which the court declined to order reunification services for Father, and the June 1, 2010, order setting a section 366.26 hearing. Father asserted no jurisdictional allegations against him had ever been sustained, and he requested that he ‘be allowed to participate in a case plan and have a period of time to provide evidence of his ability to care for his children.’ Father also sought approval for contact with the minors by ‘web cam and/or phone.’ He asserted the requested modifications would benefit the minors because of his existing bond with his daughters.

“In a memorandum dated August 30, the Bureau opposed Father’s section 388 petition. The Bureau reported Father had provided the following additional information: He and Mother were married in October 2000 (four months after the birth of the older minor, J.S.1). He lived with the minors from that time until September 17, 2008 (three months before the initiation of these proceedings). He took the minors to church, the beach, and the playground, and taught them to swim. He had provided for their care while living with them, and ‘was also sending them money’ and ‘talk[ed] to them regularly’ after Mother ‘took them away from [him]’ and went to California. He loved them and thought about them all the time, and he ‘live[d] a good life’ and ‘ha[d] work[ed].’ The minors would ‘have a good life and [go] to [a] good school’ if placed with him. He asked the ‘Court of California . . . to help [him] get [his] children back.’ The Bureau additionally reported Father was residing in Sweden with his older daughter by another relationship, pursuant to a work visa set to expire in 2011. He planned to renew his visa for another two years and establish permanent residence there. It also appeared, however, Father ‘would not be able to [enter] the United States in order to establish a relationship with his two daughters’ in the local area.

“The Bureau further observed Father had not had a relationship with the minors for about two years. After the institution of the dependency proceedings, he did not communicate with the girls until June 2010, when he sent them e-mails and photographs, which the case worker read to the girls on July 20, 2010. J.S.1 was ‘excited to see the pictures and read the emails,’ but J.S.2 did not recognize Father in the photographs and ‘did not display a lot of interest when the emails were being read.’ On July 28, the case worker informed Father he could, and should, continue sending e-mails and these would be forwarded to the minors. But Father had not communicated further. The reporting case worker noted J.S.1 had, earlier in the proceedings, said she did not want to talk to Father on the telephone or live with him in Saipan.

“In the meantime, on July 9, the case worker had a telephone conversation with Father, with the assistance of a Nepali interpreter. Father related details of his relationship with Mother, stating, among other things, that he had worked hard to support Mother and the minors while they lived in Saipan, had nursed her when she was ill with kidney problems, but had slapped her once because she had been ‘cheating on him’ and said she would not leave her boyfriend. Ongoing marital discord culminated in his ejection from Mother’s family home, and eventually his departure from Saipan following Mother’s departure for the United States in 2008. Father then returned to his native Nepal for a year, after which he obtained a visa to work in Sweden.

“The case worker concluded that, while Father loved his daughters and had provided for their care when they were younger, they had been estranged for two years, such that the younger minor, J.S.2, did not recognize him. Father ‘ha[d] not shown consistency in trying to maintain regular contact’ with them. Further, he had delayed contacting CCCDP to obtain counsel, and it appeared he could not legally enter the country, ‘making it difficult for [him] to engage and participate in services successfully.’ Accordingly, the Bureau recommended denial of his section 388 petition.

“In a supplemental memorandum dated September 2, the Bureau reported on the minors’ status, including that the older minor, J.S.1, was showing increasingly

aggressive, defiant, and disturbing behaviors, particularly toward the prospective adoptive parent and her younger sister. These behaviors indicated underlying past trauma and anger issues, and seemed to be triggered by contacts with Mother. The prospective adoptive parent was no longer willing to have J.S.1 in her care, although she remained open to having J.S.1 return in the future. The Bureau had therefore decided to move J.S.1 to a separate foster placement, and had referred her for assessment for more intensive therapy.

“Originally set for September 7, 2010, the section 366.26 hearing was continued to October 5, the date set for hearing on Father’s section 388 petition. The court denied Father’s section 388 petition. . . . Proceeding to the section 366.26 hearing, the court continued the hearing to March 2011, as to the older daughter, J.S.1. As to the younger, J.S.2, the court terminated parental rights and directed her placement for adoption. Ten days later, however, the court set a special hearing on its own motion, and on October 19 set aside its October 5 order to the extent it had terminated parental rights to J.S.2. The court then granted Mother four additional months of reunification services as to both minors, and set a hearing in March 2011, to review this period of additional services.” (*P.S. v. Superior Court, supra*, A131878, fn. omitted.)

On October 19, 2010, Father filed a notice of appeal from the “Termination of Parental Rights.” After the juvenile court set aside its order terminating parental rights, Father filed a motion in this court to construe or amend the notice of appeal to include the order denying his section 388 petition, which we granted on December 30, 2010.<sup>5</sup>

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<sup>5</sup> Father has also appealed from the subsequent order of July 19, 2011, terminating his parental rights as to J.S.2 and ordering a permanent placement plan of adoption for her, and that appeal remains pending. (Case No. A132873.)

## DISCUSSION

### *Section 388 Petition*

#### *Mootness*

The Bureau maintains Father’s appeal from the denial of his section 388 petition is moot given the “subsequent 366.26 hearings [terminating his parental rights] which took place on July 19, 2011.”

An appellate court’s jurisdiction extends only to actual controversies for which the court can grant effective relief. (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.) “In juvenile cases, when an issue raised in a timely notice of appeal continues to affect the rights of the child or the parents, the appeal is not necessarily rendered moot by the dismissal of the underlying dependency proceedings. [Citation.] Rather, the question of mootness must be decided on a case-by-case basis.” (*In re Hirenia C.* (1993) 18 Cal.App.4th 504, 517-518.)

An appeal in a dependency proceeding “is not moot if the purported error is of such magnitude as to infect the outcome of [subsequent proceedings] . . . or where the alleged defect undermines the juvenile court’s initial jurisdictional finding.” (*In re Kristin B.* (1986) 187 Cal.App.3d 596, 605.) We must decide on a case-by-case basis whether subsequent events in a juvenile dependency proceeding make a case moot and whether our decision would affect the outcome in a subsequent proceeding. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.)

A parent’s appeal from an order denying a section 388 petition is moot if the court subsequently terminates parental rights and the parent fails to appeal from that order, because then “no effective relief” is possible. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315.) In this case, however, the Bureau acknowledges Father has appealed from the subsequent order terminating parental rights as to J.S.2 (case No. A132873). Thus, a reversal of the order denying Father’s section 388 petition seeking reunification services potentially could affect the outcome of subsequent proceedings. Accordingly, we do not find this appeal moot and address Father’s challenge to the denial of his section 388 petition.

### *Merits*

“Section 388 allows a parent or other person with an interest in a dependent child to petition the juvenile court to change, modify, or set aside any previous order. (§ 388, subd. (a).) ‘Section 388 provides the “escape mechanism” that . . . must be built into the process to allow the court to consider new information.’ [Citations.] The petitioner has the burden of showing by a preponderance of the evidence (1) that there is new evidence or a change of circumstances *and* (2) that the proposed modification would be in the best interests of the child. [Citations.] That is, ‘[i]t is not enough for [the petitioner] to show *just* a genuine change of circumstances under the statute. The [petitioner] must show that the undoing of the prior order would be in the best interests of the child. [Citation.]’ [Citation.] Furthermore, the petitioner must show *changed*, not *changing*, circumstances. [Citation.] The change of circumstances or new evidence ‘must be of such significant nature that it requires a setting aside or modification of the challenged prior order.’ ” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615, italics in original, quoting *Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.)

“In considering whether the petitioner has made the requisite showing, the juvenile court may consider the entire factual and procedural history of the case.” (*In re Mickel O.*, *supra*, 197 Cal.App.4th at p. 616.) “However, the change of circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged prior order.” (*Ansley v. Superior Court*, *supra*, 185 Cal.App.3d at p. 485.)

We review a juvenile court’s denial of a section 388 petition for abuse of discretion. We “may not disturb the decision of the trial court unless that court has exceeded the limits of judicial discretion by making an arbitrary, capricious, or patently absurd determination.” (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1335.)

Father filed his section 388 petition on August 17, 2010. His attorney described the asserted change in circumstances as follows: “The father contacted the Department on 9/29/09 and submitted a request for an attorney as requested. The Court referred the father to CCCDP. I do not see that father received that referral. I accepted for father on

7/13/10.” His attorney indicated the requested changes as: “[F]ather be allowed to participate in a case plan and have a period of time to provide evidence of his ability to care for his children, [and] . . . contact on Web cam and/or phone.” The petition asserted this change would “be better” for the minors because “[a]ccording to the father there was a bond and the child would benefit by allowing the father into her life.”

Father also filed a “Statement Regarding Parentage” (JV-505) in which he described his participation in the children’s activities as follows: “I took my daughters to church and try to teech [*sic*] them about Jesus. I sang with them and took them to the beach and learn them how to swim. I took them to the playground.” He stated he “would never leeve [*sic*] them their[] mother took them away from me. I talk to them regularly and they miss me to[o]. The case worker told me to write them and I did. I live a good life I have work and I have a older daughter who lives with me and I take good care of her. I ask the court of California and the judge to help me get my children back to me. They will have a good life and go to good school.”

Father’s submissions failed to demonstrate either a change in circumstances or that his proposed change was in the children’s best interests.

The only change in circumstances was appointment of counsel for Father. Although his attorney indicated in the section 388 petition she did “not see that father received that referral [to counsel],” the record reflects the Bureau made repeated attempts to prompt Father to contact counsel, which he did not do until June 2010. Father was sent “CCCDP paperwork” on December 29, 2009, by e-mail. Father acknowledged receiving the paperwork on January 8, 2010. However, he did nothing to contact counsel, as instructed, for almost six months, until June 2010 when CCCDP again e-mailed him the paperwork.

Father also failed to demonstrate why granting the petition would be in the children’s best interest. Father still lived in Sweden, apparently could not legally or financially come to the United States, and had not seen his children for approximately two years. Mother had informed a social worker that Father was physically and emotionally abusive and had served time in jail in Saipan. His younger daughter did not

recognize him, and his older daughter had conflicting feelings, and had previously indicated she did not want to live with him. As J.S.2's attorney characterized the situation, "I'm sure he loves the children, but . . . if there's a relationship with [J.S.2] she doesn't know about it."

Since Father demonstrated neither a change in circumstances nor that his proposed modification was in the children's best interest, the trial court did not abuse its discretion in denying his section 388 petition.

### ***Other Challenges***

Despite his attorney's representation to this court by letter of May 16, 2011, that "the only issue before this court in this appeal is the denial of appellant's section 388 petition," Father now claims he may, in this appeal, also attack orders of the juvenile court from which he did not appeal predating the denial of his section 388 petition. He acknowledges that normally "an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order." (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) Nevertheless, he asserts he was denied his due process rights at various stages of the underlying proceedings, thus resulting in a "due process exception to the general waiver rule."

"Dependency appeals are governed by section 395, which provides in relevant part: 'A judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment; but no such order or judgment shall be stayed by the appeal . . . .' [¶] This statute makes the dispositional order in a dependency proceedings the appealable 'judgment.' [Citation.] Therefore, all subsequent orders are directly appealable without limitation, except for post-1994 orders setting a .26 hearing when the circumstances specified in section 366.26, subdivision (l) exist. [Citations.] A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order." (*In re Meranda P., supra*, 56 Cal.App.4th at p. 1150.)

“The principle—which for convenience we will identify as the ‘waiver rule’—that an appellate court in a dependency proceeding may not inquire into the merits of a prior final appealable order on an appeal from a later appealable order is sound.” (*In re Meranda, supra*, 56 Cal.App.4th at p. 1151.) “[T]he waiver rule will be enforced unless due process forbids it.” (*In re Janee J.* (1999) 74 Cal.App.4th 198, 208 (*Janee J.*))

Father claims the waiver rule does not apply in this case because he was denied his due process rights. He asserts the Bureau failed to exercise due diligence in searching for him prior to September 2009, and he received “no notice of the review hearings” or his rights prior to the appointment of counsel. He also claims that, once appointed, his attorney “failed to effectively advocate for him by failing to argue that the juvenile court failed to consider placement with Father [as] a noncustodial parent who had requested custody of his children.”

In *Janee J.*, the Court of Appeal set forth guidelines under which the waiver rule “might” be relaxed. “First, there must be some defect that fundamentally undermined the statutory scheme so that the parent would have been kept from availing himself or herself of the protections afforded by the scheme as a whole. Lack of notice of rule 39.1B [predecessor to California Rules of Court, rule 8.452] rights [is] one such example. . . . Second, to fall outside the waiver rule, defects must go beyond mere errors that might have been held reversible had they been properly and timely reviewed. To allow an exception for mere ‘reversible error’ of that sort would abrogate the review scheme [citations] and turns the question of waiver into a review on the merits. . . . Finally, it follows that resort to claims of ineffective assistance as an avenue down which to parade ordinary claims of reversible error is also not enough and that it is never enough, alone, to argue that counsel rendered ineffective assistance by not raising potentially reversible error on rule 39.1B writ review of a setting order.” (*Janee J., supra*, 74 Cal.App.4th at pp. 208-209.)

Thus, Father’s claim of ineffective assistance of counsel is, as *Janee J.* explained, “not enough” to abrogate the waiver rule. (*Janee J., supra*, 74 Cal.App.4th at p. 209.) Moreover, the claimed ineffective assistance was in relation to the section 388 petition,

which did not occur until *after* the unappealed rulings Father now seeks to challenge. Thus, even if Father's counsel was ineffective in regard to the section 388 petition, it could have had no effect on the court's prior rulings.

Father's assertion that he was denied the right to counsel prior to appointment of his attorney is also without merit. The juvenile court is not required to appoint counsel absent a request from the parent. (*In re Ebony W.* (1996) 47 Cal.App.4th 1643, 1648.) Father was informed of his right to counsel and the necessity that he request counsel, both in September 2009 and December 2009. The Bureau reported Father was "referred for counsel on October 06, 2009." At "the Acceptance of Counsel hearing on October 09, 2009, it was noted that [F]ather never contacted the CCCDP." On December 23, 2009, the social worker e-mailed Father: "Like I said in my last e-mail, you have been referred to an attorney. You need to call the attorney's office to contact them. The telephone number is 925-[xxx-xxxx]. You need to call them to get an attorney." Despite acknowledging in January 2010 that he received the necessary forms regarding appointment of counsel, he did *nothing* for six months.

Thus, the record does not demonstrate Father was denied his right to counsel. To the contrary, he was informed of his right to counsel and the fact he had been referred to counsel, but failed to contact the attorney or fill out the paperwork he acknowledged receiving six months earlier.

Nor does Father's claim that the Bureau failed to diligently search for him militate relaxing of the waiver rule. When the location of a parent is not known, thereby preventing the giving of requisite notice, "[t]he 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." (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188.) " 'However, there is no due process violation when there has been a good faith attempt to provide notice to a parent who is transient and whose whereabouts are unknown for the majority of the proceedings. [Citations.]' [Citation.] Thus, where a parent cannot be located notwithstanding a reasonable search

effort, the failure to give actual notice will not render the proceedings invalid.” (*In re J.H.* (2007) 158 Cal.App.4th 174, 182.)

In the disposition report for the March 6, 2009 hearing, the Bureau reported that Mother believed Father, a Nepalese citizen, was in Nepal, but that she had no contact with him. J.S.1, then eight years old, thought he was in Sweden. County counsel was “in the process of attempting to notice [Father] (as per the Hague Convention requirements).”<sup>6</sup> Father concedes the Bureau could not conduct the usual search for a missing parent because the “usual means of investigation, such as Department of Motor Vehicles, inmate locator and social security searches, were not available,” and would only aid in finding a parent who had been in the United States.

Instead, father now faults the Bureau for failing to search for him on Facebook,<sup>7</sup> noting “Father found out about the dependency through Mother’s cousin whom he found on Facebook.” Father, however, gives no reason why *the Bureau* had any reason to suspect *he* had a Facebook account. Indeed, father does not claim he had a Facebook account, let alone indicate when it was opened, what name it bore, or that it was a public account. It is complete speculation to suggest the Bureau “would have located Father” if it had conducted a search of Facebook.

Father also asserts that even after he contacted the Bureau, he was not given notice of hearings. “Unless there is no attempt to serve notice on a parent, in which case the error has been held to be reversible per se [citations], errors in notice do not automatically

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<sup>6</sup> The lack of success may have been due to the fact that Father asserts he left Nepal in May 2009 and went to Sweden. Nepal, moreover, is not a signatory to Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereafter Hague Convention), which mandates, inter alia, procedures for service in a foreign country. (Hague Convention, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638; see also <[http://www.hcch.net/index\\_en.php?act=conventions.status&cid=17](http://www.hcch.net/index_en.php?act=conventions.status&cid=17)>, current signatory countries to the Hague Convention [as of March 13, 2012].)

<sup>7</sup> Facebook is an Internet social networking site. (See *In re Victor L.* (2010) 182 Cal.App.4th 902, 926.)

require reversal but are subject to the harmless beyond a reasonable doubt standard of prejudice.” (*In re J.H.* (2007) 158 Cal.App.4th 174, 183.)

The record reflects Father first contacted the Bureau on Saturday, September 26, 2009 by telephone, and left messages asking to be contacted by e-mail. In an e-mail dated September 28, 2009, the social worker informed Father of the court proceedings, told him the next hearing was on October 6, 2009, and informed him he needed to request an attorney. Father responded with a long e-mail stating he loved his children and had contacted their mother, but did not request an attorney. The social worker informed him “the girl[s]’ cases [were] on court calendar for Tuesday, October 6, 2009,” and told him he must write a letter to the court “explaining your current situation and asking for an attorney.” In the status review report for the January 29, 2010 hearing, the social worker reported she “with some difficulty, got [Father] to provide his address” in Sweden.

When the Bureau finally received his mailing address, it gave Father notice by mail on December 28, 2009, of the 12-month permanency planning hearing on January 29, 2010. On April 1, 2010, the Bureau gave Father notice by mail of the 18-month review hearing to be held on April 30, 2010. Although the record does not contain a proof of service of notice to Father of a hearing held on June 1, 2010, the court’s order of that date included a finding that notice was given or waived, and that the matter was continued until September 7, 2010. On June 22, 2010, Father was served by mail with the notice of section 366.26 hearing to be held on September 7, 2010.

Father has failed to show the dependency waiver rule should be abrogated in these circumstances. He has not demonstrated any due process violations, much less any that so “fundamentally undermined the statutory scheme” that they prevented him from availing himself of the statutory protections. (See *Janee J.*, *supra*, 74 Cal.App.4th at pp. 208-209.) Father cannot raise his antecedent claims in this appeal from the denial of his section 388 petition.

**DISPOSITION**

The order denying Father's section 388 petition is affirmed.<sup>8</sup>

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Banke, J.

We concur:

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Marchiano, P. J.

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Margulies, J.

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<sup>8</sup> By separate order filed concurrently with this opinion, we summarily deny Father's petition for a writ of habeas corpus. (Case No. A132976.)