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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Bryce L. et al., Persons Coming Under
the Juvenile Court Law.

B236755 and B239426

(Los Angeles County
Super. Ct. No. CK84248)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

BRADLEY L.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Marilyn Mordetsky, Juvenile Court Referee. Affirmed.

Jack A. Love, under appointment by the Court of Appeal for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

In two related appeals, appellant Bradley L. (“Father”) challenges the juvenile court’s jurisdiction and disposition orders declaring his three children dependents of the court and removing them from the custody of Father (Welf. & Inst. Code¹ § 300, subd. (b)), and its subsequent orders terminating jurisdiction and granting sole physical and legal custody of the children to their mother, Stacy L. (“Mother”) (§§ 364, subd. (c), 362.4). Father argues that the juvenile court violated his statutory and constitutional rights by failing to ensure that Father was transported from prison to court for the jurisdiction and disposition hearing. Father also asserts that the juvenile court abused its discretion in denying his attorney’s requests for a continuance of two status review hearings to allow Father a meaningful opportunity to participate in such hearings. We conclude that Father has failed to demonstrate any prejudicial error in the juvenile court’s rulings, and accordingly, affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Section 300 Petition

Father and Mother are the married parents of 17-year-old Bryce L., 14-year-old Lucas L., and 10-year-old Ethan L. The current matter came to the attention of the Los Angeles County Department of Children and Family Services (“DCFS”) in August 2010 based on a referral alleging alcohol abuse and domestic violence by Father.² It was reported that, on August 27, 2010, Father was drinking alcohol when Mother returned home from work. Mother told Father to leave the home because he was drunk, and he responded by hitting Mother across the face. Mother called the police and Father was arrested. Following Father’s arrest, Mother obtained a criminal restraining order

¹ Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

² The family had been the subject of prior referrals in both Los Angeles and Contra Costa counties based on Father’s alcohol abuse and domestic violence.

prohibiting Father from coming within 100 yards of Mother or having any personal contact with her.

On August 30, 2010, a DCFS social worker went to the family home to investigate. Father was alone and appeared to be under the influence of alcohol. When asked about the August 27, 2010 incident, Father admitted that he had a couple of drinks and argued with Mother, but denied that he hit Mother or that the children were present during the argument. He also denied any physical or emotional abuse of the children. He acknowledged, however, that he had a prior arrest for domestic violence.

On September 17, 2010, the social worker met with Mother and the children. Mother stated that Father was a good man and had been a good provider, but he started drinking after the children's paternal grandmother died and spent all of their money. Mother denied that the children were ever physically abused or were afraid of Father, but said that she believed Father was emotionally abusing them with his drinking. She also reported that Father had two recent arrests in September 2010 for violating the restraining order and being drunk in public. The children conveyed that they loved Father, but they did not want him in the family home because of his drinking. They denied that Father abused them, but said that he caused problems in the home whenever he was drunk by being verbally abusive toward Mother. Both Mother and the children often stayed at the maternal grandmother's home when Father was drinking.

On October 2, 2010, Father was arrested again for violating the restraining order. A few days later, on October 7, 2010, he made another attempt to enter the family home. After Mother locked all the doors, Father walked around the home looking for an open window and yelled obscenities at Mother when he was unable to get in. He left the area before the police arrived, but returned a short time later. Father was then arrested and taken back to jail. On October 8, 2010, the DCFS detained the children from Father and released them to Mother. The DCFS thereafter filed a section 300 petition on the children's behalf, alleging domestic violence and alcohol abuse by Father and a failure to protect by Mother.

On October 14, 2010, the juvenile court held a detention hearing. Father was in county jail at the time and was not transported to court for the hearing. The court ordered that the children be detained from Father and allowed to remain with Mother as long as Father did not reside in the family home. The court also ordered an arraignment hearing for Father. On October 19, 2010, Father was transported to court, appointed an attorney, and arraigned on the section 300 petition. At that time, the court made an order for Father to be transported to court for a pretrial resolution conference on November 22, 2010.

II. Jurisdiction and Disposition Hearing

For its Jurisdiction/Disposition report, the DCFS conducted further interviews with Mother and the children. Mother reported that, during the August 2010 incident, Father hit her once in the face with an open hand as they were arguing in the living room. The children were in another room at the time and heard the argument, but did not see Father hit Mother. In the past, Father had pushed Mother when they were alone and Father was under the influence of alcohol. Mother stated that Father was a great husband and father when he was sober and that she did not believe he would harm the children. Mother also said that she wanted the children to maintain contact with Father while he was incarcerated, but she did not intend to resume her relationship with him until she knew he could remain sober. In their interviews with the DCFS, all three children denied that Father ever physically abused them. They had heard Father yell at Mother in the past, but they never saw any physical violence between them. The children also expressed that they had a good relationship with Father and enjoyed their time with him when he was sober. Both Mother and the children indicated that they wanted Father to receive treatment for his alcohol abuse before he returned home.

Father was not interviewed by the DCFS for the Jurisdiction/Disposition report. According to the report, on November 15, 2010, Father was sentenced to three years in state prison following a conviction for felony stalking in violation of Penal Code section 646.9, subdivision (b). Father was in county jail and awaiting transfer to a state prison

facility. The DCFS recommended that the children be declared dependents of the juvenile court, that Mother be provided with family maintenance services including parenting and domestic violence education, and that Father be provided with family reunification services including an alcohol rehabilitation program, on-demand drug and alcohol testing, and parenting and domestic violence education.

At the November 22, 2010 pretrial resolution conference, Father was present in court and represented by counsel. The court decided to continue the matter for a supplemental report on the DCFS's interview with Father, which had been conducted that morning. During the hearing, Father's attorney noted that Father had not received a copy of the DCFS's Jurisdiction/Disposition report.³ Father also told the court that, based on the paperwork he had received, he wanted to be present at the next hearing. The court ordered that Father be transported to court for the upcoming jurisdiction hearing on January 12, 2011.

In its supplemental report, the DCFS summarized its interview with Father. Father denied any history of domestic violence against Mother. He stated that there were some conflicts in their marriage due to his unemployment and his belief that a male neighbor was trying to have a relationship with Mother. However, he denied that he hit Mother and did not understand why there was a restraining order against him. Father admitted that he drank heavily in the past and had been arrested for some alcohol-related offenses. He described himself as a functioning alcoholic and insisted that his alcohol abuse only affected him and not his family. Father also stated that he believed the restraining order should be lifted because he never hurt anyone. The DCFS continued to recommend that Father be offered family reunification services.

On January 12, 2011, the juvenile court continued the jurisdiction hearing because Father was not present. Father's attorney stated that she had not yet spoken to Father about the supplemental report and did not know if he had been transferred to state prison.

³ The notice of the November 22, 2010 hearing that was sent to Father included a copy of the section 300 petition, but not a copy of the Jurisdiction/Disposition report.

The court ordered Father's attorney to advise Father that the court did not intend to offer him any family reunification services because the children had been placed with Mother, and to determine whether the attorney was authorized to act on Father's behalf. The court also issued a statewide removal order for Father to be transported to court for the continued jurisdiction hearing on February 24, 2011. The DCFS thereafter prepared a removal order for Father from North Kern State Prison. However, the statewide tracking sheet that was returned indicated that Father was at the Substance Abuse Treatment Facility in Corcoran State Prison and that the removal order needed to be resubmitted.

On February 24, 2011, the juvenile court again continued the jurisdiction hearing because Father was not present. Father's attorney stated that Father had sent her a letter requesting that he be present for the hearing and that she was not authorized to proceed in his absence. The juvenile court stated that it would make one more attempt to bring Father to court for the jurisdiction hearing, but instructed Father's attorney to inform Father that the court could not keep continuing the case for his presence. The court issued another statewide removal order for Father to be transported to court for the continued jurisdiction hearing on April 11, 2011. For reasons that are not clear from the record, the DCFS once again prepared a removal order for Father from North Kern State Prison. The statewide tracking sheet that was returned again stated that Father was at the Substance Abuse Treatment Facility in Corcoran State Prison and that the removal order needed to be resubmitted.

On April 11, 2011, the juvenile court held the jurisdiction and disposition hearing in Father's absence. At the start of the hearing, the court asked Father's attorney whether Father had been given notice of the hearing by counsel. Father's attorney confirmed that their office had been in contact with Father, but asked for a continuance so that Father could be transferred to court for the hearing. The court denied the request for a continuance, noting that multiple attempts had been made to bring Father to court but none had resulted in his presence.

Proceeding with adjudication, the court admitted into evidence each of the prior reports filed by the DCFS. The court also accepted Mother's waiver of rights and

agreement to submit on the basis of the reports. Father's attorney argued that the section 300 petition should be dismissed because the children did not personally witness any domestic violence between the parents and there was no nexus between Father's alcohol abuse and any risk of harm to the children. Both counsel for the DCFS and counsel for the children argued that the petition should be sustained based on Father's history of domestic violence and alcohol abuse as well as his repeated violations of the restraining order. The court sustained an amended petition pursuant to section 300, subdivision (b), based on findings that Father had engaged in domestic violence against Mother in August 2010, had been arrested and charged with violating a restraining order in October 2010, and had an ongoing history of alcohol abuse which rendered him incapable of providing regular care for the children.

Turning to disposition, the juvenile court ordered that the children be removed from the custody of Father and remain in the home of Mother subject to court supervision. The court also directed the DCFS to provide family maintenance services to Mother including parenting education and domestic violence counseling, but denied family reunification services to Father under section 361.5, subdivision (e)(1). The court noted that Father was not entitled to reunification services because the children were in the care and custody of Mother. The court also noted that Father's incarceration time would exceed the statutory period for reunification services and that Mother indicated she did not intend on reuniting with Father after his incarceration ended. The court did grant Father monitored visitation with the children after he was released. A status review hearing was set for September 29, 2011.

III. September 29, 2011 Status Review Hearing

In its status review report for the September 29, 2011 hearing, the DCFS stated that the children appeared to be healthy, happy, and safe in Mother's care. She was actively involved in the children's lives and able to ensure that all of their educational and medical needs were being met. Mother was participating in a domestic violence program and recently had enrolled in a parenting education program. Neither Mother nor

the children were interested in individual counseling. Father was still incarcerated at the Corcoran State Prison and had not had any contact with the children. On September 11, 2011, Father sent a letter to the DCFS stating that he had completed a substance abuse program and was the class Valedictorian. He received a six-week reduction in his sentence for completing the course and he believed that it gave him a new perspective on life. Father also had completed an office services course which reduced his sentence by six weeks. He reported that his anticipated release date was January 15 or 16, 2012. Father further stated that he was participating in weekly domestic violence and anger management classes and that he felt he was gaining knowledge so that he could be a better person for his family. In its report, the DCFS recommended that the juvenile court continue its jurisdiction for another three months to allow Mother to complete her court-ordered programs and address case issues.

On September 9, 2011, Father was served with a written notice of the upcoming status review hearing which stated that the DCFS was not recommending any change in orders, services, placement, custody, or status. The record does not reflect whether a copy of the report was served on the parties, but does show that the report was not signed by the social worker until September 22, 2011.

On September 29, 2011, the juvenile court held the status review hearing. Father was not present in court, but was represented by counsel. Father's attorney requested a continuance on the grounds that Father had asked to personally attend every hearing and had not been timely served with a copy of the DCFS's status review report although he was given notice of the hearing date. The court denied the request for a continuance because Father had received timely notice of the hearing and he had not been granted any family reunification services. The court ordered continued supervision of the children and set the matter for a further status review hearing on January 4, 2012 to address the termination of jurisdiction. The court advised Father's attorney to contact Father before the next hearing date because the court likely would grant Mother sole legal and physical custody of the children at that time with monitored visitation for Father. Father's

attorney asked that Father be transported to court for the next status review hearing, but the court denied the request.

On October 3, 2011, Father filed his first notice of appeal, challenging all of the prior findings and orders of the juvenile court.

IV. January 4, 2012 Status Review Hearing

In its status review report for the January 4, 2012 hearing, the DCFS informed the court that Mother continued to provide a stable, safe, and loving home for the children. Mother also continued to comply with her court-ordered case plan by completing a parenting education program and participating in a domestic violence program. Father remained incarcerated at the Corcoran State Prison where he had no contact with the children. On September 28, 2011, Father sent a letter to the DCFS documenting his progress in various programs, including a certificate of participation in a drug and alcohol education program, a certificate of completion of an office services and computer technology program, and a certificate of completion of a 90-day substance abuse treatment program. In its report, the DCFS recommended that the juvenile court terminate its jurisdiction and issue a family law order granting Mother sole legal and physical custody of the children and granting Father monitored visitation. The DCFS also recommended that Father's visitation not be subject to modification until he completed an anger management and domestic violence program.

On December 8, 2011, Father was served with a written notice of the upcoming status review hearing which stated that the DCFS was recommending termination of jurisdiction over the children. A copy of the DCFS's status review report was mailed to the parties on December 23, 2011.

On January 4, 2012, the juvenile court held the status review hearing. Father was not present in court, but was represented by counsel. Father's attorney requested a continuance and a statewide removal order for Father because Father had indicated that he wanted to be present for all hearings. Father's attorney also argued that a continuance should be granted because the DCFS's status review report had not been mailed to Father

15 days before the hearing as required by section 364.05. In support of the request, the attorney reasoned that, although Father had not been offered reunification services, his parental rights would be impacted by an order granting Mother sole legal and physical custody of the children. However, when asked by the court, the attorney could not identify any portion of the proposed orders that Father would contest if he were present. The court agreed that the DCFS's report had not been timely served, but denied the request for a continuance and removal order because Father's presence at the hearing would not change any of its findings or orders.

The juvenile court proceeded to terminate its jurisdiction over the children. The court ordered that Mother be granted sole legal and physical custody of the children and that Father be granted weekly monitored visitation with the children to be supervised by a professional or mutually agreed upon monitor. However, because the DCFS's status review report had not been timely served on Father, the court decided to stay its orders for a nine-day period pending receipt of a family law custody order to cure the defect in service of the report. The matter was therefore continued to January 13, 2012. On that date, the family law custody order was signed and filed by the juvenile court and its jurisdiction over the children was terminated.

On February 16, 2012, Father filed a second notice of appeal, challenging the juvenile court's findings and orders from the January 4, 2012 and January 13, 2012 hearings.

DISCUSSION

I. Failure to Ensure Father's Presence at Jurisdiction and Disposition Hearing

Father first contends that the juvenile court violated his constitutional and statutory rights to personally attend the jurisdiction and disposition hearing by failing to ensure that Father was transported from prison to court for the hearing pursuant to Penal

Code section 2625, subdivision (d).⁴ We conclude that the juvenile court violated the statutory requirements of Penal Code section 2625 by proceeding with the jurisdiction and disposition hearing in Father’s absence, but that such error was harmless.

Penal Code section 2625 requires a juvenile court to order an incarcerated parent’s temporary removal and production before the court under certain circumstances. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 599.) Subdivision (d) of the statute provides, in pertinent part, as follows: “Upon receipt by the court of a statement from the prisoner or his or her attorney indicating the prisoner’s desire to be present during the court’s proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner’s production before the court. . . . [N]o petition to adjudge the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions Code may be adjudicated without the physical presence of the prisoner or the prisoner’s attorney, unless the court has before it a knowing waiver of the right of physical presence. . . .” (Pen. Code, § 2625, subd. (d).) Absent such a waiver, the statute requires the presence of both the prisoner and the prisoner’s attorney at a jurisdiction or disposition hearing. (*In re Jesusa V.*, *supra*, at pp. 622-624; *In re Marcos G.* (2010) 182 Cal.App.4th 369, 385.)

Although an incarcerated parent has a right under Penal Code section 2625 to be present at a jurisdiction or disposition hearing, a violation of that statutory right does not, in and of itself, establish a denial of the constitutional right to due process. (*In re Jesusa V.*, *supra*, 32 Cal.4th at pp. 625-626.) Rather, the due process rights of an

⁴ Although Father did not file a notice of appeal from the April 11, 2011 jurisdiction and disposition orders until October 3, 2011, the DCFS concedes that Father is entitled to seek appellate relief for the juvenile court’s alleged failure to ensure his presence at the jurisdiction and disposition hearing because the record does not reflect that Father was ever served with a copy of the jurisdiction and disposition orders or with a written notice of his right to seek review of the referee’s order by a juvenile court judge. (Cal. Rules of Court, rules 5.538(b)(3), 5.540(c), 8.406(a)(2).) We accordingly consider the merits of Father’s appeal from the juvenile court’s April 11, 2011 orders.

incarcerated parent are adequately protected where, as here, the parent is represented by counsel at the hearing. (*Ibid.*; see also *D.E. v. Superior Court* (2003) 111 Cal.App.4th 502, 513 [“Conducting a dispositional hearing in the absence of an incarcerated parent who has expressed a desire to be present may violate a statutory right, but not a due process right.”].) Moreover, any violation of an incarcerated parent’s right to be present at a dependency hearing is subject to a harmless error analysis. (*In re Jesusa V., supra*, at p. 625 [“[W]e have regularly applied a harmless-error analysis when a defendant has been involuntarily absent from a criminal trial. [Citations.] We do not believe the Legislature intended a different result in the analogous circumstance here, when a prisoner is involuntarily absent from a dependency proceeding.”].) Under the “familiar harmless-error test,” reversal is proper only if it is reasonably probable that a result more favorable to the appellant would have been reached in the absence of the error. (*Ibid.*; see also *People v. Watson* (1956) 46 Cal.2d 818, 836.)

In this case, Father’s attorney informed the juvenile court of Father’s desire to be present at the jurisdiction and disposition hearing. As the DCFS concedes, the juvenile court’s decision to proceed with the adjudication and disposition of the section 300 petition in Father’s absence constituted a violation of Penal Code section 2625. However, the juvenile court’s error in failing to ensure Father’s presence at the hearing was harmless because it is not reasonably probable that the result would have been more favorable to Father if he had personally attended the proceeding. Father argues that his presence at the hearing was necessary because his attorney did not have the authority to cross-examine witnesses or present evidence on Father’s behalf. Father also asserts that, if he had been present in court, he would have been able to provide testimony that his alleged conduct did not pose a risk of harm to the children and that it was in the children’s best interests for Father to receive family reunification services. Yet Father fails to explain why his attorney lacked the authority to call witnesses or present other evidence in Father’s absence, but was permitted to argue on his behalf for the dismissal of the section 300 petition and the granting of family reunification services. Furthermore, beyond his anticipated release date and the fact of his completion of classes, Father fails

to identify what specific testimony or evidence he could have offered at the hearing that would have supported a different outcome in this case.

On the other hand, there was strong evidence to support the juvenile court's jurisdictional finding that Father had engaged in acts of domestic violence against Mother which posed a substantial risk of harm to the children. In August 2010, Father struck Mother in the face during an altercation in the family home. The children were present in the home and were aware that their parents were having an altercation. In the past, Father also pushed Mother and was arrested for spousal battery. Notwithstanding the issuance of a restraining order in August 2010 prohibiting Father from contacting Mother, Father refused to stay away from Mother and was arrested multiple times in September and October 2010 for violating the terms of the restraining order. Indeed, Father's repeated violations of the restraining order culminated with him being convicted of felony stalking and sentenced to a three-year prison term while this dependency case was pending.

There was also compelling evidence to support the juvenile court's jurisdictional finding that Father's alcohol abuse rendered him incapable of providing regular care to the children. Each family member interviewed by the DCFS confirmed that Father drank to excess and was an alcoholic. They further disclosed that Father was verbally abusive toward Mother when he was drunk and that Mother and the children often had to leave the family home and stay with the maternal grandmother because of Father's drinking. Father's acts of physical violence against Mother, including the August 2010 incident, also occurred while Father was intoxicated. When the DCFS initially interviewed Father about the domestic violence allegations, Father appeared to be under the influence of alcohol. In a subsequent interview with the DCFS, Father attempted to minimize the detrimental impact of his drinking on the children and insisted that his alcohol abuse only affected him, not his family. There is nothing in the record to suggest that Father's testimony at the jurisdiction hearing could have refuted the overwhelming evidence showing that his alcohol abuse posed a substantial risk of harm to the children.

With respect to the juvenile court's disposition order, it is not reasonably probable that Father would have been granted family reunification services if he had been present

at the hearing. Under section 361.5, subdivision (e)(1), reunification services generally must be offered to an incarcerated parent unless the juvenile court finds that such services would be detrimental to the child. (*In re Kevin N.* (2007) 148 Cal.App.4th 1339, 1344.) However, section 361.5's mandate to provide reunification services absent specified exceptions only applies in cases where the child is placed in out-of-home care, and not where the child is placed with a custodial parent. (See § 16507, subd. (b) ["[f]amily reunification services shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously non-custodial parent under the supervision of the juvenile court"]; *In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19 [§ 361.5's provision for family reunification services "does not apply when, at the disposition hearing, a child does not enter foster care, but is returned to a parent"].) As the juvenile court noted at the disposition hearing, because the children had remained in the care and custody of Mother at all times, Father was not entitled to reunification services.

Even if Father had been eligible to receive family reunification services under section 361.5, the juvenile court acted within its discretion in finding that such services would be detrimental to the children. As discussed, during the pendency of this case, Father was convicted of felony stalking based on his repeated violations of the restraining order and was sentenced to a three-year term in state prison. In addition, both Mother and the children informed the DCFS that they did not want Father to live with them in the family home because of his alcohol abuse. Bryce specifically stated that he did not want Father in the home because he was afraid that Father would hurt Mother or the children. Lucas similarly related that Father's alcoholism caused trouble for the family and that the children were happy when Father was in jail because they did not have to see him drunk. Ethan likewise reported that he did not want Father in the home and was glad when Father left. Prior to denying reunification services for Father, the juvenile court also confirmed with Mother that she did not intend on reuniting with Father once he was released from prison. Under these circumstances, Father cannot show how his presence at the hearing would have resulted in a more favorable disposition.

In sum, it is not reasonably probable that the outcome of the jurisdiction and disposition hearing would have been different if Father had been transported to court for the hearing as required by Penal Code section 2625. The juvenile court's statutory error in failing to continue the hearing to ensure Father's presence was therefore harmless.

II. Denial of Requests to Continue Status Review Hearings

Father also challenges the juvenile court's denial of his requests to continue the two status review hearings held on September 29, 2011 and January 4, 2012. Father contends that there was good cause for a continuance of each hearing because the DCFS failed to timely serve Father with its status review reports in accordance with section 364.05. Father also claims that the juvenile court's denial of a continuance deprived him of a meaningful opportunity to discuss the contents of the DCFS's reports with his attorney and to advise the court of his current status and progress in addressing case issues. We conclude that Father did not suffer any prejudice as a result of the DCFS's failure to timely serve the status review reports, and thus, the trial court did not abuse its discretion in denying Father's requests for a continuance.

Section 352 is the primary statute governing continuances in dependency proceedings. (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 194.) It states that the juvenile court may continue a dependency hearing upon a showing of good cause provided that the continuance is not contrary to the interest of the minor. (§ 352, subd. (a).) In considering the minor's interests, the court must "give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (*Ibid.*) A juvenile court's denial of a request for a continuance will not be overturned on appeal absent a showing of an abuse of discretion. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180; *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811.)

Section 364 is the primary statute governing status review hearings when a child is not removed from parental custody. Subdivision (b) of the statute provides that, at least 10 calendar days prior to the hearing, "the social worker shall file a supplemental report

with the court describing the services offered to the family and the progress made by the family in eliminating the conditions or factors requiring court supervision.” (§ 364, subd. (b).) Section 364.05 states that a copy of the report “shall be provided to all parties at least 10 calendar days prior to the hearing,” which “may be accomplished by mailing the report at least 15 calendar days prior to the hearing.” (§ 364.05.) It further provides that “[t]he court shall grant a reasonable continuance, not to exceed 10 calendar days, upon request by any party or his or her counsel on the ground that the report was not provided at least 10 calendar days prior to the hearing as required by this section, unless . . . the court finds that the party’s ability to proceed at the hearing is not prejudiced by the lack of timely service of the report.” (*Ibid.*) Father argues that the DCFS failed to comply with section 364.05 because it did not mail either of its status review reports at least 15 days before the hearing, and that the lack of timely service warranted a continuance.

A. September 29, 2011 Hearing

With respect to the September 29, 2011 status review hearing, the record reflects that the DCFS timely served Father with a written notice of the hearing on September 9, 2011. The notice provided that the DCFS was not recommending any change in orders, services, placement, custody, or status, but it did not include a copy of the status review report. The DCFS filed its report with the juvenile court on the date of the hearing, but the record does not reflect whether it served a copy of the report on Father, and if so, when the copy was served. However, in light of the fact that the report was not signed by the social worker until September 22, 2012, it does not appear that the report was mailed to Father at least 15 calendar days before the hearing as required by section 364.05.

Although the DCFS failed to timely serve Father with a copy of the status review report for September 29, 2011 hearing, the error was harmless. As reflected in the timely served notice of the hearing, the DCFS was not recommending any changes to the juvenile court’s orders in its report. Instead, the DCFS was recommending that the court continue its jurisdiction over the children for another three months to allow Mother to complete her court-ordered programs. Because Father was still incarcerated at the time

of the hearing and had not been granted any family reunification services, the DCFS's limited recommendation of continued court supervision for a three-month period did not adversely affect Father's parental rights.

Father nevertheless asserts that a brief continuance of the September 29, 2011 hearing was warranted so that his attorney could confirm Father's anticipated release date and arrange for the next status review hearing to be scheduled after Father's release. However, unlike the jurisdiction and disposition hearing, Father did not have a statutory right to be present at the status review hearings held during his period of incarceration, and the juvenile court was not required to delay any such review hearings pending Father's release from prison. (*In re Marcos G.*, *supra*, 182 Cal.App.4th at p. 386 [“[O]nly in proceedings to adjudicate a child of a prisoner a dependent of the juvenile court or to terminate parental rights must a court order production of a prisoner for the hearing. For all other proceedings, the trial court has discretion whether to order removal from the institution of a prisoner-parent”].) Considering that the juvenile court did not modify any of its prior orders at the September 29, 2011 hearing but merely continued its dependency jurisdiction for an additional three months, Father cannot show that he was prejudiced by the lack of timely service of the DCFS's status review report.

B. January 4, 2012 Hearing

With respect to the January 4, 2012 status review hearing, the record reflects that the DCFS timely served Father with a written notice of the hearing on December 8, 2011. The notice provided that the DCFS was recommending the termination of jurisdiction and issuance of a family law order, but it did not include a copy of the status review report. The DCFS mailed the report to the parties on December 23, 2011, 12 calendar days before the scheduled hearing. Accordingly, service of the report did not comply with the statutory notice period required by section 364.05.

The DCFS's failure to timely serve Father with a copy of the status review report for the January 4, 2012 hearing was also harmless error. The record reflects that the juvenile court cured any defect in the service of the report by staying the effective date

of its final orders for nine days following the hearing. As a result of the stay, the orders terminating jurisdiction over the children and granting sole legal and physical custody to Mother with monitored visitation to Father did not take effect until January 13, 2012, 21 days after service of the report. Father reasons that the issuance of a nine-day stay was not sufficient time for his attorney to discuss the court's proposed orders with him and to obtain any additional information about his release date and progress in addressing case issues. However, at the September 29, 2012 hearing, the juvenile court specifically directed Father's attorney to contact Father prior to the next status review hearing and to notify him of the court's intent to terminate its jurisdiction and grant Mother sole legal and physical custody of the children at that time. Father thus had more than three months to confer with his attorney about the proposed custody order and to present the court with any further information that might be relevant to its final decision.

Moreover, as the juvenile court noted in denying the request for a continuance of the January 4, 2012 hearing, Father's attorney could not identify which portions of the proposed custody or visitation orders Father would contest if a continuance were granted. As the court further observed, Father's mere presence at a continued hearing would not change any of its findings or orders; the court did not need to hold multiple hearings to determine that the termination of jurisdiction with a family law custody order was proper. Under these circumstances, Father cannot show that he was prejudiced by the DCFS's three-day delay in serving a copy of its status review report.

C. Reversal Is Not Required

Finally, we reject Father's argument that the DCFS's failure to timely serve the status review reports in accordance with section 364.05 constitutes structural error requiring automatic reversal. In support of this argument, Father cites to *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 553-558, where the appellate court relied heavily on criminal cases in holding that non-compliance with the notice requirements of section 361.21 was structural error and thus reversible per se. However, the California Supreme Court has cautioned against using the structural error doctrine in dependency

cases. (See *In re James F.* (2008) 42 Cal.4th 901, 915-916 [“[The] significant differences between criminal proceedings and dependency proceedings provide reason to question whether the structural error doctrine that has been established for certain errors in criminal proceedings should be imported wholesale, or unthinkingly, into the quite different context of dependency cases.”].) Instead, the Supreme Court has held that, 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.” (*Id.* at p. 910; see also *In re A.D.* (2011) 196 Cal.App.4th 1319, 1326-1327 [declining to apply *Judith P.*’s structural error analysis to claim of failure to give notice of dependency proceeding]; *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1419-1420 [same].)

In this case, there is nothing in the record to support a conclusion that the outcome of the dependency proceedings would have been different if Father had been timely served with copies of the DCFS’s status review reports or allowed to be present at the two status review hearings. The juvenile court accordingly did not abuse its discretion in denying Father’s requests for a continuance.

DISPOSITION

The orders of the juvenile court are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.