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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.H., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.H.,

Defendant and Appellant;

W.H.,

Appellant.

E055405

(Super.Ct.Nos. J241508 &
RIJ1101182)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Reversed with directions.

Allison H. Ting, under appointment by the Court of Appeal, for Defendant and Appellant for Defendant and Appellant J.H.

Marilee Marshall, under appointment by the Court of Appeal, for Appellant W.H.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Andrew Mestman, and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

J.H., a minor, was caught assisting several others in stealing a car. J.H. admitted unlawfully driving or taking a vehicle, commonly referred to as “joyriding” (paragraph 1; Veh. Code, § 10851, subd. (a)). J.H. and his mother, W.H. (mother), appeal from judgment entered on December 21, 2011, declaring J.H. a ward of the court and ordering him placed in the custody of the probation department, for placement in a suitable foster care facility.

J.H. and mother have filed separate appeals, which will both be addressed in this decision. J.H. and mother join in each other’s arguments raised on appeal. (Cal. Rules of Court, rule 8.200(a)(5).)¹ Mother and J.H. contend the probation officer and prosecutor assigned to this matter failed to exercise due diligence in attempting to notify mother of J.H.’s juvenile delinquency proceedings. J.H. also argues the juvenile court violated his constitutional liberty and due process rights by denying J.H. deferred entry of judgment (DEJ) without conducting a noticed suitability hearing.

We conclude mother has standing to appeal the issue of not receiving notice of her son’s juvenile delinquency proceedings; but we also conclude the record does not show

¹ All references to rules are to the California Rules of Court.

that there was noncompliance with the notice requirements as to mother. We further conclude the juvenile court committed reversible error by not conducting a properly noticed DEJ suitability hearing. This case is therefore remanded to the juvenile court for proper consideration of DEJ, by either summarily granting DEJ or conducting a noticed DEJ suitability hearing. (Welf. & Inst. Code, § 790,² subd. (b); see also rule 5.800(b).)

II

FACTS AND PROCEDURAL BACKGROUND

On August 24, 2011, J.H. was a passenger in a stolen car. J.H. and several others were seen driving the car away from the car owner's home and were apprehended by police a short distance away.³ J.H. was almost 17 years old and was living in a group home. J.H. had recently been expelled from high school and was enrolled in an alternative school in November 2011.

On August 26, 2011, the Riverside County District Attorney filed a juvenile wardship petition alleging that J.H. came within the provisions of section 602, by virtue of J.H. unlawfully driving or taking a vehicle (paragraph 1; Veh. Code, § 10851, subd. (a)) and willfully and unlawfully receiving a known stolen vehicle (Paragraph 2; Pen. Code, § 496d, subd. (a)).

² Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

³ These facts are taken from the probation officer/social worker's assessment report filed October 11, 2011.

On September 13, 2011, the prosecution filed a notice of determination of eligibility (Judicial Council form JV-750), stating that J.H. was eligible for DEJ. At the initial hearing on the delinquency petition on September 13, 2011, the juvenile court ordered a probation officer/social worker's assessment report under section 241.1 (section 241.1 assessment report).

On October 11, 2011, the Riverside County Probation Department and the Department of Public Social Services filed a section 241.1 assessment report. The report stated that, according to the San Bernardino County Department of Children and Family Services (CFS), J.H. was removed from mother's home three times, from September 1999 to October 2009. On each occasion, J.H. reunified with mother. J.H.'s father had been convicted of willful cruelty to a child and had not had any contact with his children for the past two years. Father had been in prison for several years. Mother also had a criminal history and was a habitual transient. In September 2010, J.H. was removed from mother's care and placed in Cicero's H.O.P.E. group home. A month later, J.H. was declared a dependant of the juvenile dependency court on the grounds his parents failed to protect and provide for his support.

J.H. had a history of incorrigible and delinquent behavior. In April 2011, J.H. ran away from his group home. In May 2011, he was placed at the Downs and Martin Children Services group home, but was discharged in June 2011, because of behavior problems. He was then placed at Ferree's Group Home, where he was residing when he committed the offenses charged in the instant case.

The section 241.1 assessment report further stated that J.H. had weekly supervised

visits with mother, arranged through CFS. Mother reportedly was cooperative with CFS. The section 241.1 assessment report recommended J.H. be detained and the matter transferred to San Bernardino County, where J.H. resided.

On October 25, 2011, the Riverside juvenile court held an initial hearing on the juvenile wardship petition regarding J.H. During the hearing, the probation officer recommended denying informal probation under section 654. The court asked the probation officer if she recommended DEJ. The probation officer stated there was no recommendation of DEJ for J.H. The prosecutor submitted on the matter. The court stated that, if J.H. admitted the charges, the court intended to transfer the case to San Bernardino County for disposition and would allow the San Bernardino County court to decide whether to order DEJ or wardship for J.H. J.H.'s attorney stated he believed the prosecutor was willing to dismiss Paragraph 1 of the petition charges, if J.H. admitted Paragraph 2, with the understanding J.H. would be eligible for DEJ. The prosecutor agreed this was true. The prosecutor confirmed Paragraph 1 would be dismissed under section 1385 in the interest of justice.

After J.H. was advised of his constitutional rights and waived them, J.H. admitted the allegations in Paragraph 2 of the wardship petition (willfully and unlawfully receiving a known stolen vehicle; Pen. Code, § 496d, subd. (a)). The court dismissed Paragraph 1 (unlawfully driving or taking a vehicle; Veh. Code, § 10851, subd. (a)). The court further advised J.H. his maximum confinement time was three years and ordered the case transferred to San Bernardino County for disposition.

San Bernardino County juvenile court accepted transfer of the case and ordered

the probation department to prepare a section 241.1 assessment report and a dispositional report. On December 21, 2011, the San Bernardino Probation Department filed a section 241.1 assessment report, recommending that “it would be in the minor’s best interest to receive services through probation. The minor ‘continues to have difficulty adhering to rules and social norms despite numerous attempts by undersigned and group home staff to work with [J.H.] and provide him with direction and support. [J.H.] has been participating in anger management classes and sees a counselor for individual counseling and group counseling through the group home but he does not appear to be benefiting from these services. [J.H.] continues to use marijuana, he is defiant and has angry outbursts. He leaves the group home facility without permission on a regular basis and has no interest in attending school or participating in the Independent Living Program. It is apparent [J.H.] requires closer monitoring than CFS can provide for this youth who lacks appropriate social skills and behaviors.’” The probation committee recommended J.H. be declared a ward of the court pursuant to section 602 and receive services through the probation department.

In a second report, the probation department further stated that J.H.’s father was in prison and mother was a habitual transient. She was not cooperating with CFS or completing the CFS requirements for reunification with her children. J.H. had weekly visits with mother but CFS anticipated that mother’s parental rights would be terminated at the next hearing. CFS suspected mother had mental health issues, but she refused to have a psychological evaluation or attend counseling. During an interview, J.H. denied involvement in stealing a vehicle and claimed he did not know the car he was riding in

was stolen. J.H. did not take responsibility for his actions. He was nonchalant and expressed no remorse. While residing in several group homes, he had displayed “an abundance of negative behavior.” J.H. had at least four prior contacts with law enforcement and had been expelled from school for his defiant behavior. “He is definitely in need of structure and discipline.” The probation department concluded “[a] placement recommendation is the only option in this matter” and therefore recommended J.H. “be remanded into custody pending placement in a facility equipped to deal with Probation youth.”

The juvenile court held a dispositional hearing on December 21, 2011. The court acknowledged it had received and reviewed the section 241.1 assessment report and dispositional report. The parties both submitted on the reports. J.H.’s attorney noted that J.H. was happy in his current residence at Ferree’s Group Home. The court stated it agreed with the probation committee’s recommendation in the section 241.1 assessment report. The court accordingly ordered J.H. declared a ward of the court and placed in the custody of the probation officer, with placement ordered to be in a juvenile delinquency group home. The court ordered J.H. placed in the probation officer’s custody, and released to probation in juvenile hall while awaiting placement in a suitable foster care facility.

III

NOTICE OF THE JUVENILE DELINQUENCY PROCEEDINGS

Mother and J.H. contend mother was deprived of her constitutional due process right to notice of J.H.’s juvenile delinquency proceedings. The People argue mother does

not have standing in the instant appeal. We conclude mother has standing to challenge on appeal deprivation of her due process right to notice of the juvenile delinquency proceedings against her son.

A. Standing

This court does not have authority to decide an appeal “in the absence of appellate jurisdiction. [Citation.] The right to appeal is statutory and a judgment or order is not appealable unless expressly made so by statute. [Citations.] The orders and judgments in juvenile delinquency matters which are appealable are restricted to those set forth in Welfare and Institutions Code section 800. [Citation.] Code of Civil Procedure section 902, providing for a right to appeal by ‘[a]ny party aggrieved,’ has no applicability to juvenile delinquency matters. ‘[T]he appealability of juvenile court orders is governed, not by the Code of Civil Procedure, but by the Welfare and Institutions Code.’ [Citation.]” (*In re Almalik S.* (1998) 68 Cal.App.4th 851, 854.)

Section 800, subdivision (a) provides: “A judgment in a proceeding under Section 601 or 602 may be appealed from, by the minor, in the same manner as any final judgment, and any subsequent order may be appealed from, by the minor, as from an order after judgment. . . .” Section 800, as amended in 1992, “affords no right of appeal to parents in juvenile delinquency matters. Prior to this amendment the statute contained nonrestrictive language that had been interpreted by the appellate courts as giving parents standing to appeal certain judgments and orders. This right to appeal can no longer be judicially implied as the current incarnation of the statute specifically limits this right to minors [*In re Almalik S.* (1998) 68 Cal.App.4th 851, 854].” (Seiser & Kumli, Cal.

Juvenile Courts Practice and Procedure (2011 ed.) § 3.122[1], p. 3-209.)

Effective in January 1990, rule 5.585 (formerly rule 1435(a)) was adopted based on case law at the time, and thus provided that in a juvenile delinquency matter, a parent could appeal from any judgment, order, or decree specified in section 800 ““in which the child is removed from the physical custody of the parent.”” (*In re Almalik S.*, *supra*, 68 Cal.App.4th at p. 853, quoting former rule 1435(a).) In July 2010, rule 5.585 was renumbered rule 5.590 and amended.

Rule 5.590(a) provides in relevant part: “If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300, 601, or 602 . . . , the court after making its disposition order . . . , orally or in writing, the child, if of sufficient age, and, if present, the parent or guardian of: [¶] (1) *The right of the child, parent, and guardian to appeal from the court order if there is a right to appeal.*” (Italics added.) The Advisory Committee Comments relating to rule 5.590(a) state: “The right to appeal in Welfare and Institutions Code section 601 or 602 (juvenile delinquency) cases is established by Welfare and Institutions Code section 800 and case law (see, for example, *In re Michael S.* (2007) 147 Cal.App.4th 1443, *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, and *In re Sean R.* (1989) 214 Cal.App.3d 662).”

The court in *In re Michael S.*, *supra*, 147 Cal.App.4th at page 1448, held that a restitution order against the mother of a minor in a juvenile delinquency proceeding was appealable by the mother of the minor. *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 is also a juvenile delinquency case, in which a parent appealed a restitution order holding the parent and minor jointly and severally liable for restitution to the victim. As

explained in *Jeffrey M.*, “The order of the juvenile court making Maria jointly and severally liable for restitution to the victim is an appealable order. Although section 800 does not expressly afford a minor’s parent the right to appeal a judgment or order of the juvenile court made in a section 601 or 602 proceeding, *a parent has the authority to appeal to protect their own interests.* [Citations.]” (*Id.* at p. 1021; italics added.) In *In re Sean R.* (1989) 214 Cal.App.3d 662, the public defender’s office appealed an order in a juvenile delinquency proceeding, in which the court ordered the minor’s defense counsel personally to pay expert witness fees and travel expenses, because of the delay caused by the defense requesting a continuance of the jurisdictional hearing. The court in *Sean R.* held that defense counsel had standing to appeal the order requiring him personally to pay costs. (*Id.* at p. 665, fn. 2.)

Although in the instant case mother is not challenging an order requiring her personally to pay restitution or some other monetary amount (*In re Michael S., supra*, 147 Cal.App.4th at pp. 1449-1450, fn. 4), mother nevertheless has standing to appeal based on deprivation of her own due process right to notice of the juvenile delinquency proceedings against her son. The People’s reliance on *In re Almalik S., supra*, 68 Cal.App.4th 851, for the proposition mother does not have standing to appeal, is misplaced. In *Almalik S.*, a juvenile delinquency case, the minor’s mother’s appeal was not based on violation of her due process right to notice of her son’s juvenile delinquency charges and proceedings, as in the instant case. Rather, the mother challenged the substantive merits of the jurisdictional and dispositional orders. Also, the minor was not ordered removed from the mother’s physical custody. He was ordered placed on

probation in the mother's home. (*Id.* at pp. 852-853.)

Here, J.H. was not ordered removed from mother's physical custody because he was residing in a group home, as a dependent of the juvenile dependency court. Because mother's parental rights had not yet been terminated, she still had a right to notice of J.H.'s juvenile delinquency proceedings, since the proceedings could result in precluding mother from regaining physical custody of J.H. (*In re K.C.* (2011) 52 Cal.4th 231, 236.) Unlike in *Almalik S.*, mother's appeal is premised on deprivation of her right to notice of the juvenile delinquency proceedings. She therefore has standing to appeal on the issue of notice.

B. Notice

Generally, where a parent's address is known and the parent is not notified of their child's juvenile delinquency proceedings and thus does not appear, due process mandates reversal for lack of jurisdiction. The United States Supreme Court in *In re Gault* (1967) 387 U.S. 1, established that the basic requirements of due process and fairness must be satisfied in juvenile delinquency proceedings. (*Id.* at pp. 30-33.) The court held that due process in a juvenile delinquency proceeding requires adequate notice to a minor and his parents. (*Id.* at p. 33.) This is because, when a charge of misconduct is being adjudicated, the interests at stake involve not only the minor's freedom, but also the parents' right to custody.

Under section 630, in a juvenile delinquency proceeding in California, if a juvenile wardship petition is filed under section 656, and if the minor is alleged to be a person described in section 601 or 602, immediately upon filing the petition with the clerk of the

juvenile court, “the probation officer or the prosecuting attorney, as the case may be, shall serve such minor with a copy of the petition and notify him of the time and place of the detention hearing. The probation officer, or the prosecuting attorney, as the case may be, shall thereupon *notify each parent or each guardian of the minor* of the time and place of such hearing *if the whereabouts of each parent or guardian can be ascertained by due diligence. Such notice may be given orally.*” (§ 630, subd. (a); italics added.)

The People argue they complied with the notice requirements under section 630 by serving J.H.’s guardian, Ferre’s Group Home. We disagree. Although J.H. was living in a group home, and not with mother, at the time of the charged offenses, mother was nevertheless entitled to notice of the juvenile delinquency proceedings because her parental rights to J.H. had not yet been terminated. “All parents, unless and until their parental rights are terminated, have an interest in their children’s ‘companionship, care, custody and management’ [Citation.] This interest is a ‘compelling one, ranked among the most basic of civil rights.’ [Citation.]” (*In re K.C., supra*, 52 Cal.4th at p. 236, quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 306.)

J.H. argues that the lack of notice to mother deprived him of his right to confer with her in the preparation of his case. J.H. forfeited this objection by not raising it in the juvenile court. He therefore is precluded from raising it for the first time on appeal. (*In re Brian K.* (2002) 103 Cal.App.4th 39, 42.) Even assuming J.H. did not forfeit the objection, mother and J.H.’s notice challenge lacks merit because there is sufficient evidence in the record to support the juvenile delinquency court’s finding that notice was properly provided to mother. The determination of whether proper notice was provided

to mother, and whether there was due diligence in attempting to provide such notice, is a question of fact for the juvenile court.

Since the juvenile court found notice was sufficient, this court must give deference to such finding unless there is insufficient evidence in the record to support it. “We review factual findings in the light most favorable to the juvenile court’s order. [Citation.] Indeed, ‘[w]e must indulge in all legitimate and reasonable inferences to uphold the [judgment]. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.’ [Citation.]” (*In re H.B.* (2008) 161 Cal.App.4th 115, 119-120.)

In the instant case, the register of actions states that on August 29, 2011, notice of the initial hearing was mailed to all parties, including mother. Contrary to the register of actions statement of notice, however, the juvenile wardship petition filed on August 26, 2011, indicates that mother was not notified of the initial hearing on September 13, 2011, because mother lived a transient lifestyle and could not initially be located. The juvenile wardship petition states the addresses of both of J.H.’s parents were unknown. The notice of initial delinquency hearing also states mother’s address was unknown as of service of the petition on August 29, 2011. However, notice was provided to J.H.’s guardian at his group home, Ferree’s Group Home and staff from Ferree’s Group Home were present at the initial hearing on September 13, 2011. The initial hearing was continued to October 25, 2011.

According to the initial section 241.1 assessment report filed on October 11, 2011, mother was located at a homeless shelter and was sent notice of J.H.’s juvenile

delinquency proceedings on October 5, 2011. The initial section 241.1 assessment report states that mother had been continually transient and homeless.

The juvenile delinquency court stated in its order entered on October 25, 2011, that mother's address at that time was unknown. San Bernardino County Probation Department's report filed on December 21, 2011, also states mother's address was unknown and that she was a transient. According to the December probation report, J.H. stated during an interview on December 9, 2011, that, although he visited his mother once a week, during visits arranged by J.H.'s social worker, J.H. did not know where his mother was currently living. The December 9, 2011, report also stated that mother was a habitual transient, who was no longer cooperating with the CFS in reunifying with J.H.

There is sufficient evidence in the record to support the juvenile court's finding that due diligence was used to locate and serve mother with notice of J.H.'s juvenile delinquency proceedings. Because mother was a transient, notice was difficult to accomplish but, the record indicates that, on October 5, 2011, mother was provided notice of the initial juvenile delinquency hearing held on October 25, 2011. There is no evidence in the record that, with due diligence, mother should have been located and served with notice prior to that time. Also, after the juvenile court reviewed the section 241.1 assessment reports and other evidence, the court found on December 21, 2011, during the disposition hearing, that "notice had been given as required by law." In finding there was proper notice, the trial court "is presumed to have been aware of and followed the applicable law." (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114; Evid. Code, § 664.) The party against whom the presumption operates has the burden of proof

as to establishing the nonexistence of the presumed fact. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549.) J.H. has not refuted the presumption that the juvenile court followed the applicable law in concluding notice had been given as required by law.

IV

SUITABILITY HEARING

J.H. argues the juvenile court violated his constitutional liberty and due process rights by denying him DEJ without a noticed suitability hearing. The prosecutor filed a declaration stating J.H. was eligible for DEJ (Judicial Council form JV-750). The juvenile court nevertheless entered a judgment of wardship, without holding a DEJ suitability hearing or stating any findings on suitability for DEJ. Citing *In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123, J.H. asserts that the juvenile court failed to comply with its statutorily mandated duty to either summarily grant DEJ or conduct a suitability hearing. (*Ibid.*) We agree.

A. *Applicable Law*

Under section 790, subdivision (a), a child who is the subject of a petition under section 602 alleging violation of at least one felony offense may be considered for DEJ if all of the following apply: “(1) The minor has not previously been declared to be a ward of the court for the commission of a felony offense. [¶] (2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707. [¶] (3) The minor has not previously been committed to the custody of the Youth Authority. [¶] (4) The minor’s record does not indicate that probation has ever been revoked without being completed. [¶] (5) The minor is at least 14 years of age at the time of the hearing. [¶]”

(6) The minor is eligible for probation pursuant to Section 1203.06 of the Penal Code.”

The prosecution is required under section 790, subdivision (b), to evaluate whether the minor is eligible for DEJ under the factors stated in section 790, subdivision (a). If the minor is eligible, the prosecuting attorney must file a declaration with the court, or state for the record the grounds upon which the determination is based, and provide this information to the minor and his attorney. (§ 790, subd. (b)); see also rule 5.800(b).) The prosecuting attorney shall also notify the minor of DEJ procedures and the consequences and ramifications of DEJ and noncompliance with the terms of probation and DEJ. (§ 791.)

The juvenile court, in its discretion, may grant DEJ if the minor satisfies the six eligibility factors enumerated in section 790, subdivision (a) and the court finds “the minor is also suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts.” (§ 790, subd. (b); see also rule 5.800(b).)

The juvenile court may summarily grant DEJ if the minor admits each allegation in the petition and waives the right to a speedy disposition hearing. (§ 791, subd. (b)); see also rule 5.800(d).) Alternatively, the court may “set the hearing for deferred entry of judgment at the initial appearance under Section 657. The court shall make findings on the record that a minor is appropriate for deferred entry of judgment pursuant to this article in any case where deferred entry of judgment is granted.” (§ 790, subd. (b); see also rule 5.800(d).)

If the juvenile court grants a minor DEJ under section 790 et seq., “in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a

section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed.” (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558; see also §§ 791, subd. (a)(3), 793, subd. (c).)

“While the court retains discretion to deny DEJ to an eligible minor, the duty of the prosecuting attorney to assess the eligibility of the minor for DEJ and furnish notice with the petition is mandatory, as is the duty of the juvenile court to either summarily grant DEJ or examine the record, conduct a hearing, and make ‘the final determination [of the minor’s suitability for DEJ].’” (*In re Luis B., supra*, 142 Cal.App.4th at p. 1123.)

B. Discussion

In the instant case, the prosecution filed a declaration stating that J.H. was eligible for DEJ based on the factors enumerated in section 790, subdivision (a). It is unclear from the record on appeal whether J.H. was served with the prosecution’s declaration of DEJ eligibility. The record does not show that J.H. was provided with notice of DEJ eligibility or of any other information regarding DEJ, as mandated under sections 790, subdivision (b) and 791, subdivision (a).

Even if the prosecution fulfilled all of its duties with respect to DEJ, the court did not. Once J.H. was determined to be eligible for DEJ, the court was required to grant DEJ summarily or hold a noticed hearing on the suitability of DEJ in J.H.’s case. (*In re*

Luis B., supra, 142 Cal.App.4th at p. 1123.) The People argue the hearing on December 21, 2011, served as a DEJ suitability hearing and the court was not required to grant DEJ upon finding he would not benefit from it. The record shows that the hearing was intended to be a dispositional hearing, as stated in the minute order dated December 21, 2011. This is also apparent from the hearing on November 21, 2011, during which the juvenile court stated it was setting a dispositional hearing on December 21, 2011. During the dispositional hearing on December 21, 2011, neither the court nor the parties mentioned conducting a suitability hearing or consideration of DEJ as an option. There also was no notice the December 21, 2011, hearing was intended to be a suitability hearing. It therefore cannot be inferred from the record that the dispositional hearing on December 21, 2011, was intended to be a suitability hearing and served that purpose.

Here, the juvenile court did not follow specific statutorily mandated procedures in determining J.H.'s suitability for DEJ. To comport with due process requirements, J.H. was entitled to notice reasonably calculated to apprise him of the pendency of the DEJ suitability matter and an opportunity to present his evidence and objections. (*In re D.L.* (2012) 206 Cal.App.4th 1240, 1245.) Since the court did not hold a properly noticed DEJ suitability hearing, as mandated under section 790 and rule 5.800, the dispositional order must be set aside, pending a determination as to whether DEJ suitability should be granted.⁴ (*In re Luis B., supra*, 142 Cal.App.4th at pp. 1123-1124.)

⁴ In so holding, we are expressing no opinion on J.H.'s suitability for DEJ.

V

DISPOSITION

Because we conclude the juvenile court committed reversible error in not conducting a properly noticed DEJ suitability hearing, this case is remanded to the juvenile court, which is directed to set aside its findings and dispositional orders, and conduct further proceedings in compliance with section 790 and rule 5.800(b), including either summarily granting DEJ or, alternatively, conducting a noticed DEJ suitability hearing for purposes of determining whether J.H. is “suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts.” (§ 790, subd. (b); see also rule 5.800(b).) If, as a result of those proceedings, the juvenile court grants DEJ to J.H., it shall issue an order vacating the December 21, 2011, findings and orders. If the juvenile court denies DEJ to J.H., it shall make its order continuing in effect the judgment, subject to J.H.’s right to have the denial of DEJ and the findings and orders reviewed on appeal. (*In re Luis B.*, *supra*, 142 Cal.App.4th at p. 1124.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON

J.

We concur:

McKINSTER

Acting P. J.

KING

J.