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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re S.A., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.L.,

Defendant and Appellant.

E055900

(Super.Ct.No. RIJ112872)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,  
for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant and appellant L.L. (Mother) appeals from an order terminating her parental rights to her daughter, S.A. The order was made at a hearing held pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> Mother contends that order must be reversed because she was never properly notified of the section 366.26 hearing. We agree that the court did not comply with the notice requirements set forth in section 294, but hold that she was not deprived of due process. We conclude that any error was harmless.

## II. SUMMARY OF FACTS AND PROCEDURAL HISTORY

### A. *Background—Detention, Jurisdiction, and Disposition (December 2010-March 2011)*

On December 24, 2010, Mother was stopped for a traffic violation and then arrested for being under the influence of methamphetamine. Sixteen-month-old S.A. was in the car at the time. S.A. was released to her father (Father). Prior to the arrest, Mother had been living with her mother, and Father had been living with his mother and a brother. After her arrest, Mother was kicked out of her mother's house. She then moved in with Father. A social worker told Father that S.A. could remain with him only if, among other conditions, he was not under the influence of drugs while caring for S.A. and Mother did not live in the same house. Father then asked Mother to leave.

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

On February 16, 2011, Father was arrested for domestic violence against Mother. The social worker then learned that Mother had continued to live in Father's home and that both Mother and Father had been using marijuana and methamphetamine during the preceding weeks. The Riverside County Department of Public Social Services (DPSS) then placed S.A. in protective custody.

According to DPSS's detention report, Mother had two older children who had been removed from her custody in 2006. Mother received reunification services in that case, but failed to reunify with the children. One child was placed in a legal guardianship with his paternal grandmother; the other child was adopted and Mother's parental rights to her terminated.

DPSS filed a petition concerning S.A. alleging that S.A. came within the court's jurisdiction under section 300, subdivision (b) (failure to protect) because of the parents' history of abusing controlled substances, the domestic violence between the parents, Mother's history with DPSS, and Father's failure to abide by the condition that Mother not live in the home with S.A.

At a detention hearing on February 22, 2011, Mother was present in court. The court appointed counsel for Mother and ordered that S.A. be detained.

The same day, Mother submitted a Notification of Mailing Address (form JV-140) indicating a certain address in Riverside. This form provides notice to Mother that "[t]he court, the clerk, and the social services agency . . . will send all documents and notices to the mailing address provided, until and unless you notify the court or the social worker

. . . on your case of your new mailing address. [¶] **Notice of the new mailing address must be provided in writing.**”

At a jurisdictional/dispositional hearing in March 2011, the court found DPSS’s jurisdictional allegations true and adjudged S.A. to be a dependent of the court. Mother was denied reunification services; Father was provided with services.

*B. Six-month Review Period (April 2011-September 2011)*

In a report prepared for the six-month review hearing, DPSS reported that Mother and Father visited sporadically with S.A. Sometimes Mother would call to set up a visit and not show up. Sometimes she showed up late; other times she left early.

According to the social worker’s review of the “Riverside County Criminal Website,” Mother was arrested for burglary and attempt to defraud on July 9, 2011. Her arraignment was scheduled for September 26, 2011.

Father failed to maintain contact with DPSS and made no effort to comply with his reunification plan. DPSS recommended that reunification services be terminated for Father and that the court set a hearing to be held pursuant to section 366.26 to establish a permanent plan of adoption for S.A.

The six-month review hearing was held on September 28, 2011. Mother and her counsel were present at the hearing. The court terminated Father’s reunification services and stated: “The matter is set for a [section] 366.26 hearing to select the most appropriate plan for the child. DPSS and its licensed County adoption agency, or the California Department of Public Social Services acting as an adoption agency will

prepare and serve an assessment as required.” After discussing the parties’ rights to seek an extraordinary writ for review of the court’s ruling, the court added: “The matter is set for a 366.26 hearing January 26, 2012, 8:30 a.m. this department. The mother is present today and ordered to appear that date and time without further notice.”

The court also expressly adopted certain findings proposed by DPSS in its status review report, but did not state the findings orally in court. Among these findings is: “The likely date by which the child may be placed for adoption, for legal guardianship, or in an identified placement with a specific goal is 3/28/2011.” (This date occurred six months prior to the date of the six-month review hearing.)

According to an entry in a DPSS delivered service log, the social worker spoke with Mother at the courthouse after the hearing. The social worker reported that Mother “wanted to know what was going to happen.” The social worker “explained that a family is being matched for [S.A.] and that she will be placed up for adoption.”<sup>2</sup>

### *C. Events Occurring After the Six-month Hearing*

S.A. was placed in a prospective adoptive home in October 2011. DPSS reported she bonded with the prospective adoptive parents, and appeared to be “extremely happy” and flourishing in the new home.

At some point between the September 28, 2011, six-month review hearing and November 3, 2011, Mother was charged with numerous crimes, including burglary, theft

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<sup>2</sup> The delivered service log is attached to a DPSS report that was submitted into evidence at the section 366.26 hearing.

by forgery, and possession of controlled substances. (It is not clear from our record if these alleged crimes are in addition to the burglary and attempt to defraud charges the social worker had referred to in the six-month status review report.)

An entry in the DPSS delivered service log dated November 3, 2011, states: “T/C to Robert Presley. [Mother] is currently in custody. She had a court hearing today, but the outcome was not in the system.” Another entry with the same date indicates an attempt to reach Mother and the maternal grandmother at different telephone numbers, both of which had been disconnected.

On December 5, 2011, DPSS sent a notice of the section 366.26 hearing to Mother at the Riverside address she had designated as her permanent mailing address. The notice states that, “[a] hearing under . . . section 366.26 has been set for [January 26, 2012 at 8:00 a.m. in Department J-4]. At the hearing[,] the court may terminate parental rights and free the child for adoption, order tribal customary adoption, establish legal guardianship, or place the child in a planned permanent living arrangement.” In addition, the notice states that the social worker recommends “[t]ermination of parental rights and implementation of a plan of adoption.” The notice was sent by first-class mail. There is nothing in the record indicating Mother actually received this notice, and nothing to indicate that Mother did not receive it.

A delivered service log entry by a DPSS social worker dated December 7, 2012, indicates that the social worker called the Robert Presley Detention Center and was

advised that Mother's next court date was December 23, 2011. It is not clear from this entry whether Mother was then being housed at the detention center.

On January 6, 2012, DPSS filed a "combined 366.26 selection & implementation / 366.3 post permanent plan report." (Capitalization omitted.) The report was signed by social workers on January 3, 2012. The report lists Mother's address as the address for the Robert Presley Detention Center, and states that Mother "is currently at Robert Presley Detention Center, pending court on January 10, 2012."

In the morning of January 26, 2012, the section 366.26 hearing was held in the courtroom identified in the court's oral notice to Mother and in the written notice. Mother's attorney was present; Mother was not. Counsel for DPSS requested that the court find "good notice" as to both parents. There was no objection or statement of any kind by Mother's counsel. The court then found that "notice of the hearing was given as prescribed by law."

Mother's counsel made no objection to DPSS's recommendations of terminating parental rights and the permanent plan of adoption. The court found (among other findings) that it was likely that S.A. would be adopted and that adoption is in the child's best interest. The court then terminated Mother's and Father's parental rights.

### III. DISCUSSION

Mother contends she was not notified of the section 366.26 hearing in accordance with section 294 and the constitutional requirement of due process. We first consider DPSS's argument that Mother has forfeited these claims by failing to raise them below.

### A. Forfeiture

DPSS contends Mother has forfeited the argument that she was not provided with notice of the section 366.26 hearing. The agency argues that Mother was represented by counsel at the hearing and made no objection or argument that Mother had not received proper notice. Indeed, when DPSS's counsel requested the court find "good notice" as to both parents, Mother's counsel was silent.

On appeal, DPSS relies on *In re Wilford J.* (2005) 131 Cal.App.4th 742, which states: "An appellate court ordinarily will not consider challenges based on procedural defects or erroneous rulings where an objection could have been but was not made in the trial court. [Citation.] Dependency cases are not exempt from this forfeiture doctrine. [Citations.] The purpose of the forfeiture rule is to encourage parties to bring errors to the attention of the juvenile court so that they may be corrected. [Citation.] Although forfeiture is not automatic, and the appellate court has discretion to excuse a party's failure to properly raise an issue in a timely fashion [citation], in dependency proceedings, where the well-being of the child and stability of placement is of paramount importance, that discretion 'should be exercised rarely and only in cases presenting an important legal issue.' [Citation.]" (*Id.* at p. 754.)

The *Wilford* court concluded that the appellant father had forfeited the argument that he had not been given proper notice of a jurisdictional hearing concerning his children. (*In re Wilford J., supra*, 131 Cal.App.4th at p. 754.) That case, however, is factually distinguishable. Although the father in *Wilford* did not appear at the

jurisdictional hearing, he did appear at several subsequent dispositional hearings, during which neither he nor his counsel raised the issue of improper notice at the jurisdictional hearing. (*Id.* at pp. 749, 754.) The Court of Appeal held that the failure to challenge the deficient notice earlier “deprived the juvenile court of the opportunity to correct the mistake. [Citation.] Accordingly, he has forfeited that issue on appeal.” (*Id.* at p. 754.)

Here, by contrast, there was no subsequent hearing following the section 366.26 hearing and, therefore, no hearing at which Mother could personally appear and complain about any defective notice. Arguably, her counsel forfeited the issue by failing to assert an objection to notice at the section 366.26 hearing. Even if her counsel could cause a forfeiture of the issue (a question we do not decide), we will exercise our discretion and address the notice issue.

#### *B. Notice Requirements Under Section 294*

Notice to parents regarding a section 366.26 hearing is governed by section 294. That statute provides seven alternative methods for giving such notice. The only one pertinent here is in subdivision (f)(1), which provides: “If the parent is present at the hearing at which the court schedules a hearing pursuant to section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct

that the parent be notified thereafter by first-class mail to the parent’s usual place of residence or business only.” (§ 294, subd. (f)(1).)<sup>3</sup>

Mother was present at the six-month review hearing when the court scheduled the section 366.26 hearing. The court orally informed Mother that the purpose of the hearing was “to select the most appropriate plan for the child.” The court advised Mother of the date, time, and place of the hearing, and directed her to appear for the hearing. As to the requirement that the court advise Mother of “the nature of the proceedings,” DPSS contends that this was satisfied when the court stated that the purpose of the hearing was “to select the most appropriate plan for the child.” Mother disagrees, and contends that the court was required to “clarify that the plan to be selected could involve adoption and an associated order terminating [M]other’s parental rights.” Neither party cites authority for their position on this point.

We need not decide what, specifically, must be said to communicate to the parent “the nature of the proceedings”; even if the court’s statements satisfied this requirement, there is no dispute that the court did not advise Mother of her “right to counsel” or that

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<sup>3</sup> Other methods include personal service to the parent (§ 294, subd. (f)(3)), and “[c]ertified mail, return receipt requested, to the parent’s last known mailing address” (§ 294, subd. (f)(2)). These methods do not apply here because personal service was not made on Mother and DPSS did not send notice by certified mail.

Service by first-class mail to the parent’s usual residence is sufficient “[i]f the recommendation of the . . . social worker is legal guardianship or long-term foster care.” (§ 294, subd. (f)(6).) This method does not apply because DPSS’s recommendation was for adoption.

the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court thus failed to comply with section 294.

As we discuss in part D, *post*, we hold the error is harmless. Before addressing the issue of prejudice, however, we consider whether Mother was deprived of her right to due process.

### C. *Due Process*

In addition to the statutory notice requirements under section 294, parents ““are entitled to due process notice of juvenile [dependency] proceedings affecting their interest in custody of their children. [Citation.] And due process requires ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’ [Citation.]” [Citation.]” (*In re Anna M.* (1997) 54 Cal.App.4th 463, 468 (*Anna M.*)) Until parental rights have been terminated, the parents must be given such notice at every stage of the proceedings. (*In re Jennifer O.* (2010) 184 Cal.App.4th 539, 545; *David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1018.)

It is not enough to merely inform the parent of the date, time, and place of a hearing; the parent has a due process right to be informed of the *nature* of the hearing, including what will be decided at the hearing, in order that the parent may make an informed decision whether to appear and contest the matter. (*In re Wilford J., supra*, 131 Cal.App.4th at p. 751; *In re Stacy T.* (1997) 52 Cal.App.4th 1415, 1424; see also *Anna*

*M., supra*, 54 Cal.App.4th at p. 468 [notice regarding the setting of a section 366.26 hearing must notify the parent “of what [is] truly at stake in the section 366.26 hearing”].)

In her brief on appeal, Mother includes in her argument regarding section 294 suggestions that the noncompliance with the statute deprived her of due process. However, it does not necessarily follow that the trial court’s failure to comply with the requirements of section 294 means that Mother was deprived of her constitutional right to due process. As the court in *Tyler v. Children’s Home Society* (1994) 29 Cal.App.4th 511, stated: “A failure to comply with state or local procedural requirements does not necessarily constitute a denial of due process; the alleged violation must result in a procedure which itself falls short of standards derived from the Due Process Clause. [Citations.]’ [Citation.]” (*Id.* at p. 546; accord, *In re Axsana S.* (2000) 78 Cal.App.4th 262, 271, disapproved on another point in *In re Jesusa V.* (2004) 32 Cal.4th 588, 624, fn. 12.)

Although the court did not inform Mother of each of the items required by section 294, we conclude that, under all the circumstances, she was not deprived of her due process right to notice and an opportunity to present her objections. Mother was present at the six-month review hearing when the court scheduled the section 366.26 hearing. The court advised her of the date, time, and place of the hearing, and directed her to appear for the hearing. She was informed that the purpose of the hearing was “to select the most appropriate plan for the child,” and that an adoption agency will prepare and serve an assessment as required. Any doubt as to the recommended plan for S.A. was

removed immediately after the hearing when Mother asked the social worker what would happen; the social worker informed her “that a family is being matched for [S.A.] and that she will be placed up for adoption.” Finally, Mother’s rights to another child had previously been terminated and that child placed for adoption. Under all these circumstances, there is no doubt that Mother understood “what was truly at stake in the section 366.26 hearing.” (See *Anna M.*, *supra*, 54 Cal.App.4th at p. 468.)

Moreover, any failure to explain to Mother the nature of the section 366.26 hearing was alleviated by the notice sent to her by first-class mail.<sup>4</sup> Significantly, Mother, as required by law, informed the court of her permanent mailing address. (See § 316.1, subd. (a) [each parent “shall designate for the court his or her permanent mailing address”]; Cal. Rules of Court, rule 5.534(m).) Mother provided this address on a form that states that DPSS and the court “will send all documents and notices to the mailing address provided, *until and unless [she] notifies the court or the social worker . . . of [her] new mailing address.*” (Italics added.) She was further informed that any change of address must be in writing. As one court stated: The juvenile dependency “statutory scheme places on the parent the responsibility of keeping [the social services agency] apprised of his or her current mailing address, so that mailed notices do not go awry.” (*In re Jennifer O.*, *supra*, 184 Cal.App.4th at p. 549.)

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<sup>4</sup> Again, although Mother argues that first-class mail did not comply with section 294 in this situation, the constitutional requirement may be satisfied even if the statutory elements are not met. The constitutional issue is whether the notice was reasonably calculated, under all the circumstances, to apprise Mother of the pendency of the action and afford her an opportunity to present her objections.

The written notice of the Welfare and Institutions Code section 366.26 hearing was mailed to the address Mother designated as her permanent mailing address. The record does not indicate that Mother (or anyone) ever notified DPSS, any social worker, or the court, formally or informally, in writing or otherwise, that her mailing address had changed or that she desired to have notices sent to another location. Furthermore, Mother does not assert that the mailed notice was not correctly addressed and mailed. We must presume, therefore, that it was “received in the ordinary course of mail.” (Evid. Code, § 641.) There is nothing in the record to indicate that the mailed notice was ever returned to DPSS or that DPSS had any reason to believe Mother did not actually receive it.

Mother argues that she was incarcerated at the time DPSS sent the mailed notice and the social worker was aware that she was no longer living at her home address. Mother supports this assertion by pointing to the November 3, 2011, entry in the delivered service log noting that the social worker called “Robert Presley” and that Mother “is currently in custody.” The social worker further noted that Mother “had a court hearing today, but the outcome was not in the system.” These statements do not indicate that Mother’s mailing address has changed for purposes of receiving notice of the dependency proceedings. One may, of course, be “in custody” without necessitating a change in one’s mailing address.

The record does not indicate how long her time “in custody” had been or was expected to last. Even if Mother had been incarcerated, she could reasonably have decided to keep her home address as her mailing address and to arrange to have her mail

brought to her in jail.<sup>5</sup> If she wanted to have notices sent to her in jail, she could have—indeed, was required to—inform DPSS of that fact. (See § 316.1, subd. (a).) In light of Mother’s failure to notify DPSS of any change of address, DPSS’s mailing of the notice to the address designated was, under all the circumstances, reasonably calculated to apprise Mother of the nature of the proceedings and of the opportunity to respond.

Mother argues that this case is similar to *Anna M.*, *supra*, 54 Cal.App.4th 463, in which the court reversed an order terminating parental rights. That case is easily distinguished. In *Anna M.*, the appellant mother was present when the court set a section 366.26 hearing. (*Id.* at p. 466.) At that time, the social services agency was recommending legal guardianship for the dependent children. (*Id.* at pp. 465-466.) In setting the hearing, the court stated: “I’ve no choice but to terminate the services . . . and set the matter . . . for a hearing for which the most permanent plan will be presented to the court. [¶] At this point in time, it looks like it will be guardianship, but things can change. . . .” (*Id.* at p. 466.) Not only was this oral notice statutorily insufficient, but there was a “complete lack of written notice” of the hearing. (*Id.* at p. 469.) Furthermore, three days before the scheduled hearing, the social services agency changed its recommendation to termination of parental rights and adoption for the children. (*Id.* at p. 467.) The mother did not appear at the hearing and the court denied her counsel’s

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<sup>5</sup> It appears that Mother was in custody based on recent charges and pending trial; i.e., she was not serving a sentence. Persons accused of crimes, of course, may be released on bail or on their own recognizance. There is nothing in the record to suggest that the social worker had been told that Mother would remain at the Robert Presley Detention Center for any length of time.

request for a continuance. (*Ibid.*) The Court of Appeal held that the court’s disregard of the statutory notice requirements and her counsel’s ineffectiveness resulted in prejudice that “virtually leaps from the record.” (*Id.* at p. 469.) It remanded the matter “for proceedings comporting with due process.” (*Id.* at p. 465.)

Here, unlike in *Anna M.*, Mother was informed by a social worker immediately after the six-month hearing that DPSS’s plan was to place S.A. for adoption. For purposes of due process, it is insignificant that this information was provided by the social worker instead of the court: Mother was on notice that adoption and the termination of parental rights was at stake. In contrast to the change in plan from guardianship to adoption shortly before the hearing in *Anna M.*, there was no change in DPSS’s recommendation in this case. Importantly, unlike the complete lack of any written notice to the mother in *Anna M.*, DPSS sent written notice to Mother regarding the hearing, which made clear that “the court may terminate parental rights and free the child for adoption,” and that the social worker recommends “[t]ermination of parental rights and implementation of a plan of adoption.” As explained *ante*, under the circumstances in this case, such written notice comported with due process. In short, contrary to Mother’s assertion, *Anna M.* is not at all similar to the present case; the significant factual differences make it inapposite here.

#### D. *Prejudice*

As discussed *ante*, we hold that the court erred by failing to comply with the requirements of section 294, but that, under all the circumstances, Mother was not

deprived of due process. Because the only error was an error of state law, the appropriate standard of review is the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818. Under this standard, we will not reverse a judgment unless, after examining the entire cause, including the evidence, we are of the opinion that “it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*Id.* at p. 836.) However, even if we apply the “harmless beyond a reasonable doubt” standard applicable to federal constitutional error (see *Chapman v. California* (1967) 386 U.S. 18, 24), we conclude the error does not require reversal.

Initially, we reject Mother’s contention that the error is structural and requires automatic reversal. For this argument, Mother relies primarily on *In re Jasmine G.* (2005) 127 Cal.App.4th 1109. In that case, the mother did not appear at a continued six-month review hearing at which the court set the date for the section 366.26 hearing. (*Id.* at p. 1113.) The social services agency informed the court at that time that the mother’s address and telephone number were unknown. By the time of the section 366.26 hearing, however, the “social worker had spoken with [the mother] eight times . . . and met with her once,” but never told her about the upcoming hearing. (*Ibid.*) Although the agency listed a new address for the mother in a report prepared for the section 366.26 hearing, there was nothing in the record to indicate that the agency attempted to notify the mother at that address or advise her attorney of the address. (*Id.* at pp. 1113-1114.) At the hearing, the court denied the mother’s attorney’s request for a continuance to allow him to locate and notify her of the hearing. (*Id.* at p. 1114.)

The *Jasmine G.* court reversed the order terminating parental rights, stating that: “[T]he failure to attempt to give a parent statutorily required notice of a selection and implementation hearing is a structural defect that requires automatic reversal. It denies a parent the opportunity to confer with her attorney, prepare her case, or defend against the loss of parental rights. Without this, we cannot say the loss of parental rights—or the hearing—is fundamentally fair. The absence of any reasonable attempt to give notice goes well beyond trial error. It is not merely a mistake that hinders a party’s ability to present the case effectively, but rather a flaw in the systemic framework that denies that party the opportunity to be heard at all. It goes to the basic fairness of the structural scheme. Since this was structural error, we do not consider whether it was also harmless.” (*In re Jasmine G.*, *supra*, 127 Cal.App.4th at p. 1116.)

The court distinguished two other cases that had found errors in notice harmless—*In re Angela C.* (2002) 99 Cal.App.4th 389, and *In re Daniel S.* (2004) 115 Cal.App.4th 903. The critical fact in *Jasmine G.* that was not present in the other cases is that the social services agency in *Jasmine G.* “never even tried to give [the mother] notice of the selection and implementation hearing, despite having been in regular contact with her and having a current address.” (*In re Jasmine G.*, *supra*, 127 Cal.App.4th at pp. 1117-1118.) This was “the difference between a sound structure which fails due to human error and an unsound structure which can never support a fair process.” (*Id.* at p. 1118.)

The present case is not comparable to the complete absence of any attempt to give the mother notice in *Jasmine G.* Here, Mother was in fact informed of the hearing and

told (albeit by the social worker, not the court) that DPSS's plan was to place S.A. for adoption. Any information not explained orally at or immediately after the hearing was provided in the letter sent to Mother's permanent mailing address (as designated by Mother). Because the facts essential to *Jasmine G.*'s structural error holding are not present here, the rationale and holding of that case are inapplicable.

Three years after *Jasmine G.* was decided, the California Supreme Court decided *In re James F.* (2008) 42 Cal.4th 901. The precise issue in *James F.* was whether a juvenile court's error in the procedure used to appoint a guardian ad litem always requires reversal or instead is subject to harmless error analysis. Although it did not address the precise issue here, it is nevertheless instructional.

In *James F.*, the Supreme Court explained that the “[s]tructural defects requiring automatic reversal of a criminal conviction typically involve basic protections without which “a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair.” [Citations.] These include total deprivation of the right to counsel, denial of the right of self-representation, trial before a judge who is not impartial, unlawful exclusion of members of the defendant's race from a grand jury, and denial of the right to a public trial. [Citation.] Admission of an involuntary confession by the defendant, the high court concluded, was a trial error subject to harmless error analysis. [Citation.]” (*In re James F.*, *supra*, 42 Cal.4th at p. 914.)

The court noted that the United States Supreme Court has never “held that harmless­ness is irrelevant when the right of procedural due process—the constitutional right on which [the appellant] here relies—has been violated.” (*In re James F.*, *supra*, 42 Cal.4th at p. 917.) Indeed, the court declared: “[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. 918.)

With respect to juvenile dependency proceedings, the court stated that 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.” (*In re James F.*, *supra*, 42 Cal.4th at pp. 915-916.) In the case before it, the *James F.* court held the error was amenable to harmless error analysis because “[d]etermining prejudice in this context does not necessarily require ‘a speculative inquiry into what might have occurred in an alternate universe.’ [Citation.]” (*Id.* at p. 915.)

Recently, the same court that decided *Jasmine G.* decided *In re A.D.* (2011) 196 Cal.App.4th 1319. In *A.D.*, the mother was not given proper notice of a hearing at which the court terminated the mother’s reunification services and selected a permanent plan of long-term foster care for the minor. (*Id.* at pp. 1323-1324.) Relying heavily on the Supreme Court’s decision in *James F.*, the court rejected the mother’s reliance on

*Jasmine G.* and held that the case was amenable to a harmless error analysis. (*In re A.D.*, *supra*, at pp. 1325-1327.)

In light of the foregoing discussion, we conclude that the error in this case—the failure to provide Mother with all the information required by section 294—is amenable to harmless error analysis. There was no complete failure to make any attempt to give notice, as in *Jasmine G.*, and we can, like the courts in *James F.* and *A.D.*, evaluate prejudice without a speculative inquiry into what might have occurred in an alternative universe.

Mother was not prejudiced by the court’s failure to inform her of her right to counsel at the section 366.26 hearing. Mother was appointed her counsel at the outset of the case, her attorney was present at the six-month hearing and at the section 366.26 hearing. There is no reason to believe that Mother was unaware that she had a right to counsel or that she would have done anything different if she had been expressly told of that right at the time the section 366.26 hearing was set.

The potentially greater mistake was the court’s failure to inform Mother in court that the court would select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. (See § 294, subd. (f)(1).) In addition, the court arguably failed to advise Mother of the nature of the proceedings. (*Ibid.*) These errors are not prejudicial for two reasons. First, when Mother asked the social worker following the six-month hearing what would happen and the social worker informed Mother that S.A. would be placed for adoption, Mother was effectively informed of the nature of the

hearing—i.e., what was at stake. Furthermore, the written notice sent by mail to her permanent mailing address provided all the required information regarding the hearing. As discussed *ante*, there is no reason to believe that Mother did not receive this letter in the ordinary course. Thus, based on the record before us, it appears that Mother was actually provided all of the information required by section 294.

Second, even if Mother had never received all the information required by section 294, there is nothing in our record to suggest that the outcome of the section 366.26 hearing would have been any different. “The primary issue in a section 366.26 hearing is whether the dependent child is likely to be adopted. . . . [¶] Once the court finds the likelihood of adoption, termination of parental rights is the preferred permanent plan absent proof that termination would be detrimental to the child’s best interests.” (*In re Angela C.*, *supra*, 99 Cal.App.4th at pp. 395-396.) Here, there is no dispute that S.A. was adoptable: She was two years old at the time of the hearing, there were no health or developmental concerns about her, and she was “extremely happy” and flourishing in the home of her prospective adoptive parents.

If, as here, a dependent child is likely to be adopted, the statutory presumption is that termination is in the child’s best interests and therefore not detrimental. (§ 366.26, subds. (b), (c)(1); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1344.) It would have been Mother’s burden to show that termination would be detrimental under one of the statutory exceptions in section 366.26, subdivision (c)(1)(B). (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) The only potentially applicable exception in this case

would have been the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)) based on (1) a parent’s regular visitation and contact with the child and (2) the benefit the child would receive from continuing the relationship. Mother, having limited her argument regarding prejudice to the assertion that the error is structural and reversible per se, offers no facts or argument as to how she might have satisfied her burden of establishing this exception. Indeed, the record indicates that Mother had only sporadic, not regular, visits with S.A.; and, rather than suffer detriment from termination of the parental relationship, the record indicates that S.A. will flourish.

Regardless of whether prejudice is evaluated under the *Watson* or *Chapman* standards, we conclude that any error in providing Mother with notice of the section 366.26 hearing was harmless.

#### IV. DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.