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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re P.L., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.K. et al.,

Defendants and Appellants.

E061616

(Super.Ct.No. RIJ101635)

OPINION

APPEAL from the Superior Court of Riverside County. Tamara L. Wagner,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and  
Appellant, J.K.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and  
Appellant D.L.

Gregory P. Priamos, County Counsel, Anna M. Marchand, Deputy County Counsel, for Plaintiff and Respondent.

### **FACTUAL AND PROCEDURAL HISTORY**

On November 13, 2013, plaintiff and respondent Riverside County Department of Public Social Services (the Department) filed a Welfare and Institutions Code<sup>1</sup> section 300 petition as to P.L. (Minor). Minor is female and was born in November 2013. Defendant and appellant, D.L. (Father) was 45 years old; defendant and appellant, J.K. (Mother) was 38 years old.

The petition alleged that Father and Mother (collectively, Parents) abused illegal substances and had histories with the Department involving other children. Parents have had their parental rights to other children terminated. Father had used marijuana since he was 19 years old and used methamphetamine since he was 30 years old. Father used methamphetamine on a monthly basis. Mother began using methamphetamine when she was 22 years old. Parents also had criminal histories and Mother had a history of mental health issues.

Minor was placed in a foster home. The juvenile court detained Minor on November 14, 2013.

On January 24, 2014, the juvenile court amended the petition regarding allegation B1 to identify that Mother had a history of chronic substance abuse, and established

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

jurisdiction. The court also denied reunification services under section 361.5, subdivision (b)(10), (11), and (12). Supervised visits were ordered to occur at least once a month. Parents did not object to the visitation schedule.

On March 11, 2014, Father filed a Request to Change Court Order. Three days later, on March 14, 2014, Mother also filed a Request to Change Court Order. Parents alleged that they had completed outpatient substance abuse programs and a parenting course. Father and Mother were participating in an eight-week aftercare program<sup>2</sup> and Father had been referred to 12-step meetings. Parents also alleged that they had developed bonds with Minor by and through supervised visits. Parents requested reunification services.

Minor continued to live with her foster parents, with whom she had originally been placed. Minor demonstrated signs of bonding to these caregivers, who were also identified as her prospective adoptive parents. The prospective adoptive parents were bonded to Minor.

Minor cried during supervised visits with Parents. Her prospective adoptive mother would sometimes have to interrupt the visit to hold Minor until she calmed down. At least during one visit, Minor cried until she fell asleep and then slept during the remainder of the supervised visit.

Mother offered stipulated testimony at the time of the hearing on the section 388 petitions, which focused on her history of chronic substance abuse and her abstention

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<sup>2</sup> Parents completed an aftercare program on April 9, 2014.

from drug use during the time of the dependency proceeding. Minor's attorney opposed the section 388 petitions.

On July 25, 2014, the juvenile court denied Parents' Requests to Change Court Orders (§ 388), finding that Parents were merely in the process of changing their circumstances and that a changed order was not in Minor's best interest. On that same date, the court found Minor adoptable and terminated parental rights.

Mother filed a notice of appeal on July 25, 2014. Father filed his notice of appeal on August 21, 2014. Mother has not made any specific arguments on this appeal and simply joins in the brief filed by Father. The appeals challenge the visitation schedule imposed by the court on January 25, 2014, claiming that the schedule deprived Parents of an opportunity to mount successful arguments for changed court orders. For the reasons set forth below, we shall affirm the juvenile court's order.

### **DISCUSSION**

Parents claim that the juvenile court erred in denying their section 388 petitions for reunification services and terminating their parental rights because, "[t]he proceedings lacked fundamental fairness."<sup>3</sup> To support their argument, Parents contend that the proceedings were infected by a structural error in that the juvenile court's disposition order limiting visitations with Minor made the proceedings fundamentally unfair. Parents specifically contend that a reduction in the visits to once a month precluded them from developing a bond that could satisfy the best interest requirement under section 388.

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<sup>3</sup> Parents do not challenge the findings made by the juvenile court at the section 388 hearing.

Parents, however, have forfeited their argument since they failed to object to the visitation order in the juvenile court, and failed to raise this issue at the time of the hearing on the section 388 petitions. ““An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the [trial] court by some appropriate method.”” (*In re Dakota* (2000) 85 Cal.App.4th 494, 501.) Even a violation of due process such as a constitutional right to notice must be raised at the earliest opportunity to preserve the issue for review. (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754.) The forfeiture may be corrected by raising the issue at a subsequent hearing, but precluding the issue from being raised in the juvenile court altogether makes it unlikely to be substantively addressed on appeal. (*Ibid.*)

Notwithstanding Parents’ waiver, their argument fails on the merits because there was no structural error. A structural error is defined as a defect in the judicial system which affects “the framework within which the trial proceeds.” (*In re Angela C.* (2002) 99 Cal.App.4th 389, 394.) These errors exist “in a very limited class of cases: the total deprivation of the right to counsel at trial [citation], a biased judge [citation], unlawful exclusion of members of the defendant’s race from a grand jury [citation], denial of the right to self-representation at trial [citation], denial of the right to a public trial [citation], and erroneous reasonable-doubt instruction to jury [citation].” (*Id.* at pp. 394-395.)

Recently, “the California Supreme Court has cautioned against using the structural error doctrine in dependency cases. In *In re James F.* (2008) 42 Cal.4th 901 . . . , the Supreme Court explained that the concept of structural error was developed in criminal

cases.” (*In re A.D.* (2011) 196 Cal.App.4th 1319, 1326.) The California Supreme Court noted that there were significant differences between criminal proceedings and dependency proceedings which provided “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. [Citations.]” (*In re James F.*, *supra*, 42 Cal.4th at pp. 915-916.)

Parents rely on *In re Jasmine G.* (2005) 127 Cal.App.4th 1109 (*Jasmine G.*), to support their contention that this case should be reversed. The case, however, is distinguishable. In *Jasmine G.*, the mother failed to show up to the hearing where the section 366.26 hearing was set. (*Id.* at p. 1113.) The welfare agency filed the same declaration for a search of the mother at the section 366.26 hearing, as the one filed more than six months earlier at the review hearing. Between hearings, however, the social worker spoke to the mother on numerous occasions and met with her on one occasion. The welfare agency had a possible address for the mother, but failed to follow up. In that case, the appellate court stated, “In fact, [the welfare agency] made no attempt, *absolutely none*, to even *look* for [the mother] after the six-month review. It simply resubmitted the November 2003 search declaration to show compliance with the *later* December 2003 order to serve notice of the upcoming hearing.” (*Id.* at p. 1116.) Although the mother’s attorney was noticed for the section 366.26 hearing, the juvenile court reversed, stating, “the failure to attempt to give a parent statutorily required notice of a selection and implementation hearing is a structural defect that requires automatic reversal.” (*Jasmine G.*, at p. 1116.)

Not only was *Jasmine G.*, *supra*, 127 Cal.App.4th 1109, decided prior to the decision in *In re James F.*, *supra*, 42 Cal.4th 901, where the California Supreme Court cautioned against using the structural error doctrine in dependency cases, *Jasmine G.* decided a wholly different issue than the one presented here. As explained above, the appellate court in *Jasmine G.* reversed the case because the welfare agency failed to give mother notice of the section 366.26 hearing and made absolutely no attempt to locate mother to give notice.

Here, the alleged “structural error” was the limited number of visits afforded Parents with Minor because reunification services were denied. As Father notes in his reply brief, “[i]n situations where no services were offered, the parents of a young child cannot take meaningful advantage of this final chance because court ordered limited visitation has the practical effect of ensuring no parent-child relationship will develop, thus extinguishing the ability to make a credible best interest showing. In short, the outcome of the instant section 388 action was predetermined by the visitation order[.]” In this case, pursuant to section 361.5, subdivision (b), Parents were denied reunification services, and consequently, had no reunification period in their case. Based on this, it appears Parents contend that they only had four months “to address the problems that lead to dependency jurisdiction,” and hence, they could never build a parent-child bond relationship that would be “sufficient to show [Minor’s] best interest was to offer services to her parent(s).” In sum, the crux of Parents’ appeal is the court’s denial of reunification services under section 361.5, subdivision (b). The question, therefore, is whether section 361.5, subdivision (b) violates Parents’ substantive due process rights.

Under section 361.5, subdivision (b), reunification services need not be provided to a parent when “the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian” (§ 361.6, subd. (b)(10); “the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent” (§ 361.5, subd. (b)(11); or “the parent or guardian of the child has been convicted of a violent felony” (§ 361.5, subd. (b)(12).

“Section 361.5, subdivision (b) ‘reflects the Legislature’s desire to provide services to parents only where those services will facilitate the return of children to parental custody.’ [Citations.] When the court determines a bypass provision applies, the general rule favoring reunification is replaced with a legislative presumption that reunification services would be “an unwise use of governmental resources.” [Citations.]” (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.)

Here, reunification services were not provided to Parents for the reasons set forth in section 361.5, subdivision (b)(10), (11), and (12). Courts have addressed and rejected

due process challenges to section 361.5. (See *Renee J. v. Superior Court* (2001) 26 Cal.4th 735,<sup>4</sup> 750 & fn. 8 (*Renee J.*) [section 361.5, subdivision (b)(10) does not violate substantive due process]; and *In re Allison J., supra*, 190 Cal.App.4th at p. 1116 [section 361.5, subdivision (b)(12) does not violate substantive due process].) In *Renee J.*, the California Supreme Court explained section 361.5, subdivision (b)(10) did not violate substantive due process rights because, pursuant to section 361.5, subdivision (c), “the juvenile court may still order reunification services if it finds, by clear and convincing evidence, that reunification is in the best interest of the child. (§ 361.5, subd. (c).) Thus, contrary to [the mother’s] substantive due process argument, evidence of a parent’s current fitness may, in appropriate circumstances, persuade the juvenile court to order reunification services despite his or her problematic history.” (*Renee J.*, at p. 750.) In *Allison J.*, the court stated, “[s]ection 361.5(b)(12) does not deprive a parent of due process, and it does not require a parent to relinquish parental rights. It ‘represents a reasonable and rational means to advance a prime purpose of juvenile court law—providing protection and stability to dependent children in a timely fashion—by efficiently allocating scarce reunification services.’ [Citation.]” (*Allison J.*, at p. 1117.)

We agree with the Supreme Court and other appellate courts that section 361.5, subdivision (b) does not violate Parents’ substantive due process rights. Therefore, we

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<sup>4</sup> Superseded by statute on another ground as stated in *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1457 and *City of West Hollywood v. 1112 Investment Co.* (2003) 105 Cal.App.4th 1134, 1147.

disagree with the Parents' argument that the shorted reunification period as a result of denial of services under section 361.5 somehow violated their due process rights.<sup>5</sup>

**DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

McKINSTER  
Acting P. J.

KING  
J.

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<sup>5</sup> Parents do not challenge the court's finding that Parents had failed to establish a beneficial parent-child relationship. Parents admit that they were unable to build a relationship with Minor because of the alleged structural error as discussed above.