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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

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

KERN COUNTY DEPARTMENT OF HUMAN
RESOURCES,

Plaintiff and Respondent,

v.

ELIZABETH S.,

Defendant and Appellant.

F069574

(Super. Ct. No. JD128397-00 &
JD128398-00)

OPINION

APPEAL from an order of the Superior Court of Kern County. William D.
Palmer, Judge.

Carol A. Koenig, under appointment by the Court of Appeal, for Defendant and
Appellant.

Theresa A. Goldner, County Counsel, and Kelli R. Falk, Deputy County Counsel,
for Plaintiff and Respondent.

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Elizabeth S. (mother) appeals from an April 16, 2014 order terminating parental rights (Welf. & Inst. Code, § 366.26)¹ to two of her daughters, then five-year-old D.S. and two-year-old T.S, whose father is Michael S. (father).² Mother contends the juvenile court (1) violated her statutory and due process rights because the Kern County Department of Human Services (Department) did not mail notice of the hearing to the address she had on file or provide her with a copy of the adoption assessment, and (2) abused its discretion when it denied her attorney's request to continue the termination hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 2, 2012, the Department filed dependency petitions for three-year-old D.S. and eight-month-old T.S., based on domestic violence between mother and father. The petition alleged the girls came within the provisions of section 300, subdivision (b), as the parents had engaged in domestic violence in the girls' presence for the last six or seven months. The petitions listed apartment "#B" at an address on A Street, in Bakersfield (apartment B), as the parents' address.

On April 3, 2012, mother and father both filed forms JV-140, "Notification of Mailing Address"; mother's JV-140 listed apartment B as her mailing address, while father's JV-140 listed his mailing address as apartment "#A" at the same street number on A Street (apartment A). The girls' paternal grandfather lived in apartment A. The girls were detained and placed in a foster home. At the detention hearing, the juvenile court ordered twice weekly one hour visits for the parents.

Mother and father were both present at the May 15, 2012, jurisdictional hearing. After amending the petitions, the juvenile court found the petitions' allegations true. In

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Mother has four older children whose father is Keith S. These children live with Keith and are not subjects of this proceeding.

the Department's report prepared for the dispositional hearing, the social worker stated that the girls were in their second placement since being removed from their parents. The social worker noted the parents denied any domestic violence and continued in their relationship. Mother did not believe she needed domestic violence counseling and made excuses for father's violent behavior.

Mother appeared at the June 18, 2012 dispositional hearing. The juvenile court adjudged the girls dependents, removed them from their parents' custody, and ordered reunification services for both parents, which included counseling, random drug testing, and weekly two hour supervised visits. That same day, mother filed a JV-140 form, in which she reported her current mailing address was on Saffron Court, in Bakersfield.

Mother received 18 months of reunification services, while father's services were terminated at the 12-month review hearing. By the 18-month review hearing, mother had successfully completed counseling for parenting, child neglect and domestic violence. However, she repeatedly failed to drug test despite being ordered to submit to random drug tests at least monthly, resulting in presumptive positive tests. Mother enrolled in counseling for substance abuse, but she failed to attend regularly and ultimately was discharged from the program for failing to submit to random drug tests. Mother re-enrolled in substance abuse counseling in November 2013, but it would take six months for her to complete the program.

Mother consistently visited the girls during the reunification period. Visits were reported to be of strong quality and would conclude without incident. Mother was observed to be loving with the girls, attentive to their needs, and appropriate with them.

The reports prepared for the review hearings listed mother's address as apartment B. Notices of the six- and 12-month review hearings were mailed to mother at both apartment A and apartment B, while notice of the 18-month review hearing was mailed to her at apartment B. Mother personally appeared at each review hearing.

On December 14, 2013, a social worker went to mother and father's home to verify their respective residences, as the postal service had returned mail to the Department. The social worker learned father did not reside at the address he provided to the court, and it appeared mother may not reside at her reported address. Two social workers first went to apartment A to verify if mother lived there. A teenage boy answered the door and said "No" when asked if "Elizabeth" was home. One of the social workers asked if Elizabeth lived there. The teenager turned back to a person behind the door and asked if she lived there; after receiving a response, the teenager turned back to the social worker and stated she lived there, but she was asleep. The social worker gave the teenager a copy of the most recent court report in a sealed envelope, along with the social worker's business card, and told him to give the envelope to mother and tell her to call the social worker. The social workers then went to apartment B to verify if father lived there. Eventually a woman answered the door and shook her head "no" when asked if Michael lived there. The woman insisted she did not know a Michael and he did not live there.

The juvenile court terminated mother's services at the 18-month review hearing held on December 17, 2013. At that hearing, mother's counsel stated that mother told him she does live at apartment A, and explained that the teenager who answered the door knew mother by her middle name, which is why he had to ask someone else whether she lived there. According to mother, her father-in-law was the primary resident of the home; mother had a room in the back which no one goes into if the door is closed, which is why no one checked on her that day. Counsel further explained that the mail that was returned was sent to apartment B, but mother lived in apartment A.

After terminating mother's services and setting a section 366.26 hearing for April 16, 2014, the juvenile court advised the parents as follows: "Now, pursuant to Section 294(F)(1) of the Welfare and Institutions Code, the parents are advised of notice of permanency planning hearing as follows: The hearing pursuant to Section 366.26 of

the Welfare and Institutions Code will be held on April 16, 2014, at 8:00 a.m. in the Kern County Superior Court, Metropolitan Division, Juvenile Justice Center. [¶] The purpose of this hearing is to select and implement a permanent plan of adoption, legal guardianship, or long-term foster care for your children. You have the right to appear at the hearing and have an attorney represent you. You're ordered to appear at the hearing. The only additional notice of this hearing you'll receive will be from the Department of Human Services by first class mail to your usual place of residence or business."

On January 17, 2014, notices of the section 366.26 hearing were mailed by first-class mail to mother at apartment B and to father at apartment A. On February 21, 2014, notices of the hearing were also sent by certified mail, return receipt requested to father at apartment A and mother at apartment B. The Department's assessment report was not included with these notices. The Department received back return receipts for both notices signed with the same name; the first name is illegible, but does not appear to be either mother's or father's first names, but the last name is the same as father's last name. Mother's notice was delivered on February 24, 2014, while father's was delivered on February 22, 2014.

The social worker's report prepared for the section 366.26 hearing, which the social worker signed on April 1, 2014, lists apartment A as the address for both mother and father. The social worker recommended termination of parental rights so the girls could be freed for adoption.

An adoption assessment was completed on February 11, 2014. Since the girls were placed in protective custody on March 28, 2012, they had been in a total of three out-of-home placements. The first placement, an emergency foster home, ended on April 16, 2012, while the second placement ended on April 30, 2012 at the foster parents' request. The girls had been in their current placement since April 30, 2012.

The girls were both healthy and their caretakers believed they were developmentally on-track for their ages. Five-year-old D. could print a few letters, tell

stories, sing songs, walk backwards, skip and hop, and give her first and last name. Two-year-old T. could kick a ball and run; she had a vocabulary of 20 words, used two-word phrases, and imitated adults. The adoption social worker observed the girls to be appropriately oriented to others and their surroundings, and would complete age-appropriate tasks. Their caretakers did not report any major behavioral or emotional issues. While D. was diagnosed with disruptive disorder in August 2012, by December 2012 her behaviors had subsided and she was adjusting well to her placement. The caretakers did say that D. would frequently cry when she did not get things her way and tended to lie, while T. would throw tantrums, but these behaviors typically occurred after visits with mother and father. Since there were limited rules during parental visits, the girls struggled when they returned home and transitioned back to the house rules and expectations. D. was attending kindergarten; while she had trouble staying on task, she responded well to praise and encouragement.

As to visitation, the social worker noted that, according to case records, mother had attended 121 of 129 documented scheduled visits. Of the eight missed visits, mother had cancelled or failed to show up to three, one was cancelled due to court, and four were cancelled because the girls were sick. The report recounted the details of four of the visits. At a visit on January 17, 2013 with mother and father present, it was documented that mother and father played with the girls; mother put D. in time-out for a few moments for her behavior; and the parents played with and showed each child attention equally. The July 1, 2013 visit was between the girls, mother, and mother's 15- and eight-year-old sons. D. played with her eight-year-old brother most of the time, while T. told mother "no" a lot and would not sit still. When T. came to the social worker a few times to show her something, the social worker redirected T. to mother. Mother asked D. a couple of times to be nice towards her brother and to lower her voice, but D. continued to talk loudly and yell. The girls had no problem separating from mother or their brothers at the end of the visit.

At a January 2014 visit between the girls and their parents, the social worker noted that mother asked D. in a low voice whether anyone had come to talk to her about adoption. The social worker explained to mother, outside the visitation room, that it was inappropriate to ask the girls about the case as the girls might become confused. Mother cried and stated “how hard” this was on her. The social worker encouraged mother to have a good visit and focus on her time with the girls, not on the case. When mother returned to the visitation room, she played with D. During the visit, the girls called their parents “mom” and “dad,” and appeared comfortable around their parents. Mother and father provided appropriate and positive modeling for the girls by providing clear and simple instructions, and praised them for their accomplishments. When the visit ended and the parents took the girls to the lobby where the caretakers were, the girls called out to the caretakers and went over to show them the items they got during the visit. The girls “freely and comfortably” left the visitation center with their caretakers.

During the last documented visit on February 10, 2014, unlike other visits, mother primarily watched the girls in their various activities while seated on the couch and did not actively engage with them. Mother told the social worker she was not feeling well. When the parents brought the girls out to their caretaker, both girls called out “mommy” to the caretaker and showed her things they completed during the visit. The parents asked the girls for “hugs and kisses.” D. hugged and kissed them while continuing to talk with the caretaker. T. stood next to the caretaker and pointed to her while stating “mommy” repeatedly. T. gave the parents a hug and kiss with the caretaker’s encouragement.

The social worker noted that in the 23 months since the girls were placed into protective custody, mother had maintained regular contact with the Department to arrange visitation. Although the majority of the visits had been enjoyable for everyone, and it was apparent the girls had some degree of attachment to mother and a relationship with her, case records indicated D. had made unfavorable statements about mother. On

July 18, 2013, D. told the social worker she slept well at night except when she had a “bad visit[,]” after which she had nightmares. D. liked visiting mother, but sometimes she got mad at her “[b]ecause she is bad and she lies.” D. liked living with the caretakers and wanted to stay with them. D. did not want to live with mother because mother was “a bad girl” who lied and was mean to her when the social worker was not looking. On July 30, 2013, the caretaker told the social worker that D. was making consistent comments that she did not want to visit mother as mother was “mean to her.” On August 6, 2013, D. told the social worker she did not want to live with her parents because they fight a lot, which makes her afraid. The adoption social worker had seen both girls consistently fail to respond to mother’s instructions and requests.

The adoption social worker opined that the girls did not look to mother to meet their daily physical or emotional needs; instead, they relied on their caretakers to meet their needs. Moreover, the girls had developed an attachment to their caretakers. While the girls might experience some short-term adjustment issues due to losing contact with mother, ultimately the benefit of adoption and the permanency it provides outweighed the benefits of maintaining mother’s parental rights. Accordingly, the adoption social worker opined it would be in the girls’ best interests to sever mother’s parental rights and free the girls for adoption. The adoption social worker reached the same conclusions regarding the girls’ relationship with father and opined it would be in the girls’ best interests to sever his parental rights as well.

The adoption social worker attempted to speak with D. about her permanency plan on January 7, 2014. D. stated she like living with “mom and dad,” i.e. her caretakers, because “I get to practice being a ballerina.” D. indicated her caretakers were nice to her when she was good, and she felt safe and happy with them. D. mentioned that mother told her when “the girls” talked to her, she should say “no,” but D. did not want to say “no,” she wanted to say “yes” because she wanted to live with the caretakers and stay there. The social worker spoke with D. about adoption again on February 18 and March

11, 2014. D. told the social worker she continued to enjoy visits with her parents, who she referred to by their first names, because they give her “stuff when I be naughty,” but she wanted to continue to live with her caretakers, who she called “mommy” and “daddy.” D. indicated it would not bother her if she did not see her parents again, because “I love it here” with the caretakers. The social worker explained adoption to D., but due to D.’s age and developmental level, it was unclear whether D. understood what it meant.

The adoption social worker opined the girls were generally adoptable children, as they were beautiful, social and happy, free of major medical or mental health diagnoses, and appeared to be meeting their developmental milestones. The caretakers were committed to adopting the girls but the social worker stated that if adoption with them was unsuccessful, it would not be difficult to find another pre-adoptive home. The adoption social worker further opined that the girls had a visiting relationship with mother and father, but it was not significant enough that they would suffer severe emotional trauma should parental rights be terminated, and they would experience a minimal level of detriment should they be freed from their parents’ control that would be outweighed by the permanence afforded by adoption.

The section 366.26 hearing took place on April 16, 2014. While mother was not present at the hearing, her counsel was. County counsel informed the juvenile court that the Department was prepared to proceed and was submitting on the April 1 report and recommendations. The court noted mother’s counsel had indicated he wanted to set a contested hearing and told him there was plenty of time that morning. Mother’s counsel argued mother had a due process right to request a contested hearing, citing *In re Thomas R.* (2006) 145 Cal.App.4th 726, 727. He also requested he be provided with delivery service logs after services were terminated and a copy of the actual lab report referenced

in the social worker's April 9 supplemental report,³ which he needed to "cross-examine and challenge additional evidence."

The court asked mother's counsel whether that matter could be dealt with that afternoon if those documents were provided to him that day. Mother's counsel said he needed additional time to review the delivery service logs to see if there was information on visitation that would make it possible to apply the beneficial parent/child relationship exception. While counsel understood the girls had been in foster care for a substantial period of time, mother had visited consistently and visits were going well.

The court, pointing out that services had been terminated 120 days before, asked mother's counsel whether he had requested discovery under local rules; counsel responded that he had not because he did not know the Department's recommendation until his recent receipt of the report. While mother's counsel recognized there was an informal discovery rule, he did not request the information from the Department when he received the report because that had not been standard practice with respect to termination hearings. Instead, typically requests for discovery and a contested hearing were made at the time of the termination hearing.

The court complained that many courtrooms were dark that week and asked the attorneys to figure out a way to be more efficient in their use of time. The court stated it was going to have to put the hearing out a month in order to properly accommodate mother's counsel's request, and it would be unfair to go forward that morning. The court, however, stated that in the future, it was going to push counsel to be ready on the day of the hearing even where there was going to be some testimony, and that the parties should engage in informal discovery before the hearing date. With that said, the court found good cause to continue the matter. Counsel for both father and mother made suggestions

³ Ultimately, the juvenile court refused to consider the April 9 supplemental report and it is not part of the appellate record.

addressing the court's concern about contested hearings, but the court stated it would take the issue up the following week.

County counsel objected to the continuance, as the Department was ready to proceed, and noted the parents were not there, the report had been on file for some time, and the Department always was willing to provide discovery, but it had not been requested. The court stated it was aware of the case mother's counsel cited, which could be found to apply, but that it did not totally agree with that decision.

Mother's counsel admitted he had received the report at least ten days before the hearing. The primary issue he needed to discuss with mother was the positive drug test information in the April 9 supplemental report, and the incident and allegations heard at the last visit. The court stated it would not consider the April 9 report and determined that the matter would go forward that morning over mother's counsel's objection, particularly in light of the fact that neither parent was present. Mother's counsel asked if the matter could be trailed to the afternoon, as mother typically had been at all other proceedings and he did not know her current status. The court agreed to trail the matter, but only to the end of the calendar, and excused mother's counsel so he could try to reach her.

When the matter was taken up again, mother's counsel stated he did not have a good number to contact mother and had been unsuccessful in his attempts. He had spoken with mother around April 12, when she told him that she was still having problems with the call-in system for drug testing. Mother's counsel pointed out that mother had completed parenting, child neglect, and nearly had completed the substance abuse program, which she was going to discuss with him. Mother's counsel argued that, with regard to drug testing, mother had made progress, and mother had maintained regular visitation with the girls as she had attend 121 of the 129 scheduled visits. He further argued the girls would benefit from a continuing relationship with mother. While mother's counsel understood the girls had been in foster care for a significant amount of

time – two years – counsel pointed out that D. lived with mother and father before the dependency case and, while in foster care, mother maintained that relationship and continually visited her. Accordingly, he believed the beneficial parent/child exception to adoption applied. He also pointed out that mother was given additional time at the contested review hearing because it had been acknowledged in previous reports that mother had “issues” with the call-in system. In mother’s absence, he had no further evidence or argument to make, and submitted. Father’s attorney joined mother’s argument as to the applicability to the beneficial relationship exception to adoption.

The girls’ counsel asked the court to follow the recommendations. While the parents had visited the girls, counsel did not believe the visits had been of sufficient quality to show parental nurturing, the parents were still fighting sobriety, and they had not taken responsibility. The girls’ counsel thought it would be detrimental for the girls to not be adopted, and asked the court to terminate parental rights.

County counsel also asked the court to terminate parental rights. He noted the adoption social worker looked closely at the girls’ relationship with their parents. While D. lived with her parents for three years and visits were good, the girls looked to their caretakers to meet their needs and called them “mommy” and “daddy.” D. wanted to continue to live there. He did not think continued contact with the parents would outweigh the benefit of permanence through adoption.

After taking the matter under submission, the court stated it did not find that the beneficial parent/child relationship set forth in section 366.26, subdivision (c)(1)(B) applied, or that there was a compelling reason to find that terminating parental rights would be detrimental. The court noted the report was replete with evidence to the contrary, namely that the girls, who had been with the current caretakers over half their lives, would not suffer detriment. The court did not consider the fact that the parents were struggling; instead, it looked to whether there would be detriment to the girls because the parents had maintained regular visitation and contact. The court found no

evidence that would support a benefit to continuing that relationship. The court found the parents had been provided proper notice, and there was clear and convincing evidence the girls were likely to be adopted, and terminated parental rights.

DISCUSSION

Notice of the Section 366.26 Hearing

Mother contends her statutory and due process rights were violated because she did not receive adequate notice of the section 366.26 hearing. Although mother concedes the oral notice of the section 366.26 hearing that the juvenile court gave at the 18-month review hearing was correct, she asserts the required subsequent service of notice was inadequate as the Department did not comply with any of the statutory service methods set forth in section 294, subdivision (f)(1)-(4). Specifically, mother asserts (1) the notice sent by first-class mail was not sent to her designated mailing address, (2) she did not sign the return receipt for the notice sent by certified mail, (3) she was not personally served with the notice, and (4) the Department did not complete substitute service.

Mother argues there is insufficient evidence in the record to show she was notified properly of the section 366.26 hearing, as her last-filed JV-140 form showed her address as being on Saffron Court, her mail was sent to the varying apartment letters on A Street, she did not sign the return receipt, the social worker suspected mother did not live on A Street, and she failed to appear at the section 366.26 hearing. Mother also asserts there is nothing in the record to show she was provided with a copy of the social study prepared for the section 366.26 hearing at least 10 days before the hearing, as required by California Rules of Court, rule 5.725(c).

The Department contends mother's claims are forfeited because they were not raised below. We do not decide that issue, however, because any failure to give notice or provide mother with a copy of the assessment was plainly harmless.

Mother's claim that her statutory and due process rights were violated fails because she cannot show reversible error. "In dependency proceedings, due process

violations have been held subject to the harmless beyond a reasonable doubt standard of prejudice.” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 193.)

Initially, we reject mother’s contention that the error is structural and requires automatic reversal. For this argument, mother relies primarily on *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535 (*Judith P.*). In *Judith P.*, the social service agency did not provide the mother and her attorney with a copy of the status report until the morning of the section 366.21, subdivision (f) review hearing, at which the juvenile court terminated reunification services, contrary to the express statutory mandate requiring service of the report at least 10 calendar days before the hearing. (*Judith P.*, *supra*, 102 Cal.App.4th at pp. 539-540.) The Court of Appeal held that because neither the mother nor her counsel received the statutorily required report, they did not have “reasonable notice of the issues raised by such report, and no reasonable opportunity to prepare to rebut the evidence contained in the report via a contested hearing.” (*Id.* at p. 558.) Relying on precedent pertaining to the consequences of an error implicating the constitutional rights of a criminal defendant, the appellate court concluded the failure to give a copy of the report to mother and her attorney was a structural error and therefore reversible per se. (*Id.* at pp. 554-559.)

However, after *Judith P.*, our Supreme Court clarified the application of the structural error doctrine to dependency proceedings in *In re James F.* (2008) 42 Cal.4th 901 (*James F.*). There, the juvenile court appointed a guardian ad litem for a mentally incompetent father without conducting an appropriate hearing. (*Id.* at pp. 906-907.) The guardian acted on the father’s behalf in the subsequent proceedings, which resulted in a termination of his parental rights. (*Id.* at pp. 907-910.) The appellate court concluded the error in appointing the guardian was structural, requiring automatic reversal. (*Id.* at p. 910.)

Our Supreme Court concluded that error in the procedure used to appoint a guardian ad litem for a parent in a dependency proceeding was amenable to harmless

error analysis, rather than a structural defect requiring reversal without regard to prejudice. (*James F.*, *supra*, 42 Cal.4th at p. 915.) In so holding, the Court identified “significant differences between criminal proceedings and dependency proceedings [that] 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.” (*James F.*, *supra*, 42 Cal.4th at pp. 915-916.) The rights and protections afforded parents in a dependency proceeding differ from those afforded defendants in criminal proceedings. (*Id.* at p. 915.) Furthermore, “[i]n a criminal prosecution, the contested issues normally involve historical facts (what precisely occurred, and where and when), whereas in a dependency proceeding the issues normally involve evaluations of the parents’ present willingness and ability to provide appropriate care for the child and the existence and suitability of alternative placements. Finally, the ultimate consideration in a dependency proceeding is the welfare of the child [citations], a factor having no clear analogy in a criminal proceeding.” (*Ibid.*, italics omitted.)

In view of these differences, the Court concluded the error in appointing the guardian was amenable to harmless error analysis, as determining prejudice – unlike the task often presented by structural error – did not defy the assessment of harm or “require ‘a speculative inquiry into what might have occurred in an alternate universe.’” (*James F.*, *supra*, 42 Cal.4th at p. 915, quoting *United States v. Gonzalez-Lopez* (2006) 548 U.S. 140, 150.) Appointing the guardian did not result in any actual prejudice to the father, whom the record unequivocally demonstrated to be mentally incompetent. (*James F.*, *supra*, at p. 916.) Accordingly, the Court reversed the appellate court’s decision, stating that “[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 pp. 918-919.)

In *In re A.D.* (2011) 196 Cal.App.4th 1319 (*A.D.*), the mother was not given proper notice of a hearing, or a copy of the agency's report, at which the court terminated reunification services and selected a permanent plan of long-term foster care for the minor. (*Id.* at pp. 1323-1324.) Relying heavily on our Supreme Court's decision in *James F.*, the appellate court rejected the mother's contention that the agency's failure was structural error and thus reversible per se, and held that the case was amenable to a harmless error analysis. (*A.D.*, *supra*, at pp. 1325-1327.)

In light of the foregoing discussion, we conclude that the purported errors in this case – failing to mail notice of the section 366.26 hearing to mother's designated address and to provide her with a copy of the report before the hearing – are amenable to harmless error analysis. There was no complete failure to make any attempt to give notice, as in *In re Jasmine G.* (2005) 127 Cal.App.4th 1109 or the other case mother cites, *In re DeJohn B.* (2000) 84 Cal.App.4th 100.⁴ In contrast to those cases, mother had oral notice of the hearing, and mother's counsel spoke with her several days before the hearing after having received the report. Moreover 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.

Here, any error in failing to mail notice of the section 366.26 hearing to mother, or failing to provide her with the report, was plainly harmless beyond a reasonable doubt. Mother received oral notice of the hearing and offers nothing to demonstrate her failure to attend the hearing was due to a lack of notice. Even if she had attended, the evidence

⁴ In *DeJohn B.*, the agency did not attempt to notify the mother of the six-month review hearing at which the court terminated reunification services and scheduled a permanency hearing. (*DeJohn B.*, *supra*, 84 Cal.App.4th at p. 102.) The appellate court reversed the judgment, holding that where the agency did not even attempt to advise the parent of the proceedings, the failure to give notice was not harmless. (*Id.* at pp. 102, 110.)

compelled the juvenile court to rule as it did. While the implications of a section 366.26 hearing are considerable, the substantive scope of the hearing is fairly limited. The juvenile court must first determine whether the child is likely to be adopted. (§ 366.26, subd. (c)(1)). We note mother does not contest on appeal the sufficiency of the evidence to support the juvenile court's adoptability finding.

If a dependent child is likely to be adopted, the preferred plan is adoption and the juvenile court is required to terminate parental rights unless it is able to find a statutory exception to adoption exists. (§ 366.26, subds. (b), (c)(1); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1341-1342.) It was 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.)

Below, mother's counsel argued the juvenile court should apply the beneficial relationship exception. (§ 366.26, subd. (c)(1)(B)(i).) The juvenile court declined to do so, finding that while the parents had maintained regular visitation and contact with the girls, the record was replete with evidence that the girls would not suffer detriment if parental rights were terminated and there was no evidence that there was a benefit to continuing the parental relationship. On appeal, mother does not challenge the juvenile court's findings based on the record before the court. Instead, she argues that, if she had written notice of the hearing or the report, she would have been present at the hearing and could have testified about her visits with the girls and her relationship with them, namely that she believed the girls were bonded to her and it would be detrimental to them to terminate parental rights.

For the beneficial relationship exception to apply, mother was required to show that (1) she maintained regular visitation and contact with the girls, and (2) the benefit of continuing the parent-child relationship outweighed the benefits of adoption. (§ 366.26, subd. (c)(1)(B)(i).) A beneficial parent/child relationship has been defined as one that "promotes the well-being of the child to such a degree as to outweigh the well-being the

child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Ibid.*)

A parent must show more than frequent and loving contact, or pleasant visits, for the exception to apply. (*In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re C.B.* (2010) 190 Cal.App.4th 102, 126; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) “The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.] Further, to establish the section 366.26, subdivision (c)(1)(B)(i) exception the parent must show the child would suffer detriment if his or her relationship with the parent were terminated.” (*In re C.F.*, *supra*, at p. 555.)

While the record shows that mother maintained regular contact with the girls, the girls had spent the past 23 months in the home of their prospective adoptive parents. The girls’ need for permanency and stability plainly favored that placement. The evidence showed it was the prospective adoptive parents, not mother, who occupied a parental role in the girls’ lives. Even if mother testified that she believed the girls were bonded to her and termination of her parental rights would be detrimental to them, she does not explain on appeal what evidence she would have offered to establish that she had more than frequent, loving contact, or pleasant visits, with the girls, or that she occupied a parental role in their lives.

Because mother offers nothing to undermine the court’s findings, her alleged lack of notice of the hearing at which the court made those findings, and her alleged failure to receive the report, were harmless beyond a reasonable doubt. (See *In re Angela C.*

(2002) 99 Cal.App.4th 389, 393 [defect in notice of continued section 366.26 hearing was harmless beyond a reasonable doubt when evidence unequivocally showed that parental rights should have been terminated].) In sum, mother has failed to demonstrate reversible error.

Request for Continuance

Mother also contends the juvenile court abused its discretion when it denied her counsel's request to continue the section 366.26 hearing so he could receive copies of the service logs describing visits. She argues she was prejudiced by the denial, as the service logs could have provided information about visits that would have bolstered her claim that the beneficial relationship exception applied.

Section 352, subdivision (a) provides that the juvenile court may continue any hearing if it is not contrary to the interest of the minor. The statute also states: "Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for continuance." (§ 352, subd. (a).) "In considering a request for a continuance, 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." [Citation.] We reverse an order denying a continuance only on a showing of abuse of discretion. (*In re J.I.* (2003) 108 Cal.App.4th 903, 912.) "Discretion is abused when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice." (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.) We cannot reverse the denial of a request for continuance unless mother shows it resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1430.)

We need not decide whether the juvenile court abused its discretion in denying the request for continuance because, even if the court erred, mother has failed to meet her burden of showing the denial was prejudicial. Mother asserts she was deprived of the

opportunity to provide evidence about the visits detailed in the service logs, which could be relevant to prove the beneficial relationship exception. But, as we explained above, even if mother presented evidence that visits were positive, and even beneficial, she has not shown how such evidence would establish that she occupied a parental role in the girls' lives, or that the girls would suffer detriment if mother's parental rights were terminated. Accordingly, even if we assume the juvenile court erroneously denied mother's counsel's request for continuance, we cannot reverse because the court's error was harmless.

DISPOSITION

The order terminating parental rights is affirmed.

Gomes, J.

WE CONCUR:

Cornell, Acting P.J.

Franson, J.