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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.P. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

Y.A.,

Defendant and Appellant.

G046303

(Super. Ct. Nos. DP-021799,
DP-021800, DP-021801,
DP-021802, DP-021803,
& DP-021804)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Jane L. Shade,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J.
Agin, Deputy County Counsel, for Plaintiff and Respondent.

* * *

On October 20, 2011, D.N., the youngest of Y.A.'s six children, was born with a positive toxicology screen for both methamphetamine and marijuana. The result was that all six of Y.A.'s children were taken into protective custody two days later. The five older children were found with dirty clothes, filth about their bodies, and head lice.

Within the week, on October 26, the juvenile court held a detention hearing with both Y.A. (mother) and V.N. (father) present. The court found that detention was necessary to protect the children's well-being and ordered both parents to return to the court on November 28, 2011, for "pretrial," and also to return again on December 12, 2011. The order was made orally from the bench, with the trial judge adding "without further order of the court."

Neither mother nor father appeared for the scheduled pretrial hearing on November 28, so the court continued the case to December 12, 2011. On December 12, the court trailed the case to the next day, December 13, because mother and father failed to attend the hearing.

Neither parent attended the December 13th hearing. Mother's appointed counsel told the court she had not had "any contact" with her client even though she had left telephone messages for her. Mother's counsel requested a brief continuance to reach her client, but the trial court rejected the request as not in the children's best interest. Both mother's and father's counsel had agreed to proposed findings which would allow the juvenile court to establish jurisdiction over the children. The court then made jurisdictional and dispositional orders as to the six children, removing them from parental custody and vesting custody with the director of the Social Services Agency (SSA). The court then set May 30, 2012, for a six-month review.

There is no dispute that the mother did not receive written notice of the December 12 hearing as required by Welfare and Institutions Code section 291.¹ Given the positive toxicology of the newborn, the head lice, the filthy conditions, and mother's failure to visit the children or even stay in contact with the relevant social workers in the period leading up to December 12, mother's appellate counsel does not argue that written notice would have produced a different result. Rather, appellate counsel argues that the noncompliance with section 291 was a "structural error, requiring no showing of prejudice."

We cannot agree. Structural error, as this court recently explained in *In re A.D.* (2011) 196 Cal.App.4th 1319 (*A.D.*), is a concept borrowed from the criminal law having no clear analog in dependency proceedings. (*Id.* at p. 1327, citing and discussing *In re James F.* (2008) 42 Cal.4th 901, 915 (*James F.*).)² In *A.D.*, we applied a harmless error analysis when a mother failed to receive the "statutorily mandated notice" of a review hearing that resulted in the termination of reunification services. (*A.D.*, at pp. 1324-1325.) We rejected the mother's argument that structural error applied to the case, following the Supreme Court's decision in *James F.* (See *A.D.*, at pp. 1327-1328.)

¹ All further statutory references are to the Welfare and Institutions Code. Section 291 provides in pertinent part: "After the initial petition hearing, the clerk of the court shall cause the notice to be served in the following manner: [¶] (a) Notice of the hearing shall be given to the following persons: [¶] (1) The mother[] [¶] . . . [¶] (e) Service of the notice of the hearing shall be given in the following manner: [¶] . . . [¶] (2) If the child is detained and the persons required to be noticed are present at the initial petition hearing, they shall be noticed by personal service or by first-class mail."

² As explained in *James F.*, the structural defect doctrine derives from *Arizona v. Fulminante* (1991) 499 U.S. 279 (*Fulminante*), which involved a coerced confession. While trial errors are assessable in the context of other evidence — hence amendable to a harmless error test — "structural" errors go to the very reliability of a criminal trial as a vehicle for determining guilt or innocence. (See *James F. supra*, 42 Cal.4th at p. 917.)

Mother's reliance on two opinions of this court preceding *James F.* is not persuasive. *In re DeJohn B.* (2000) 84 Cal.App.4th 100 (*DeJohn B.*), like *A.D.*, involved the lack of notice of a hearing that resulted in the termination of reunification services. This court simply concluded that *James F.* had superseded the "structural error" analysis on which *DeJohn B.* relied. (*A.D.*, *supra*, 196 Cal.App.4th at pp. 1325-1327.)

The present case is also distinguishable from *DeJohn B.* because, as the *DeJohn B.* court emphasized, there was a *total* lack of notice. (See *DeJohn B.*, *supra*, 84 Cal.App.4th at p. 108 ["Here, *nothing* was done" (original italics)].) Here, actual notice was given from the bench. (Cf. *In re Marcos G.* (2010) 182 Cal.App.4th 369, 387 [distinguishing "no attempt to serve a parent with notice" from error "in" the notice itself].)

The other pre-*James F.* case, *In re Jasmine G.* (2005) 127 Cal.App.4th 1109, applied a structural error analysis when SSA failed to notify a parent of a selection and implementation hearing. But *Jasmine G.* expressly relied on *Fulminante* for a structural error analysis, a reliance which *James F.* repudiated. (See *James F.*, *supra*, 42 Cal.4th at pp. 914-919.) *A.D.* likewise did not follow *Jasmine G.* because the structural error discussion in *James F.* made it clear that *Jasmine G.* should not be followed.

In the present case, mother does not argue that the error in not sending out the written notice as required by section 291 was prejudicial. She concedes the error was harmless. Since the harmless error standard applies, the jurisdictional and dispositional orders of December 13, 2011, are affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.