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IN THE SUPREME COURT OF CALIFORNIA

In re CHRISTOPHER L.,
A Person Coming Under the Juvenile Court Law.

THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CARLOS L.,

Defendant and Appellant.

From a Decision by the Court of Appeal
Second Appellate District, Division One, Case No. B305225
Los Angeles Superior Court Case No. 17CCJP02800B
On Appeal from the Superior Court of Los Angeles County,
Honorable Marguerite D. Downing, Judge

ANSWER BRIEF ON THE MERITS

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Issue Presented

In a juvenile dependency matter, where the trial court convened the jurisdiction/disposition hearing without the presence of the incarcerated father or appointing him counsel, is the error structural and per se reversible even if, given the facts, the mistake is amenable to harmless error analysis, no different outcome would have resulted had the father been present or appointed counsel earlier in the proceedings, and a reversal of trial court's order terminating parental rights would be prejudicial to the child?

Introduction

The Los Angeles County Department of Children and Family Services (DCFS), respectfully requests this Court affirm the decision of the Second District Court of Appeal entitled *In re Christopher L.* (2020) 56 Cal.App.5th 1172 (Opinion).

Dependency proceedings are unique and differ from criminal proceedings in that they implicate fundamental rights of not only parents, but also their children. Due to the competing interests, one often cannot simply "right" a wrong to a parent by unraveling years of proceedings, without causing an undue and significant detriment to the child. This is a tension and consideration not present in criminal, or even civil, proceedings. Childhood cannot and should not be placed on hold for proceedings to return to square one to correct an error that was clearly not prejudicial, and therefore harmless, by even the most stringent standards. Childhood will proceed, the child will grow older, and permanence will be delayed. This is precisely the situation presented in the case at bar.

The instant matter involves Christopher L., now approximately three-and-a-half years old. Young Christopher was detained at birth and has spent the duration of his childhood under the jurisdiction of the juvenile court. He has no relationship with either of his natural parents. His mother did not appear in the underlying proceedings and did not contact him after he was detained. Christopher's father, the Petitioner in the instant matter (Father), was incarcerated shortly after Christopher was conceived and remained incarcerated for the duration of the juvenile court proceedings.

The issue presented in the instant case is whether the juvenile court's error in not ensuring Father was present and/or had waived his right to be present at the combined jurisdiction/disposition hearing and in not appointing counsel for Father at that hearing, was structural, and therefore reversible per se despite the undisputed facts establishing that Father was not prejudiced by not being represented at the hearing, he was subsequently appointed counsel for future hearings, and the errors unquestionably did not impact the trajectory of the case.

Although error occurred, the interests of young Christopher cannot be disregarded and prejudice cannot be deemed irrelevant. Because the error in the instant case was unquestionably harmless under either the *Chapman*[1] or *Watson*[2] standards of review, DCFS urges this Court to follow its

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[1] *Chapman v. California* (1967) 386 U.S. 18.

[2] *People v. Watson* (1956) 46 Cal.2d 818.

precedent and find the error in the instant case is not structural and therefore not reversible per se.

Combined Statement Of The Case And Facts

This matter concerns the welfare of Christopher, the subject of the appeal.[3] V.L. (Mother) is the child's mother.[4] Carlos L. is the child's father and Petitioner herein.

Proceedings in the Juvenile Court

Detention Report

On December 16, 2017, DCFS received a referral alleging Mother gave birth to Christopher that day and both Mother and the child tested positive for methamphetamine. (1CT[5] 16.) On December 28, 2017, DCFS filed a Welfare and Institutions Code[6] section 300 petition on behalf of ten-month-old I.L. and newborn Christopher alleging they were at risk due to the parents' substance abuse histories and Father's extensive criminal history. (1CT 1-9.)

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[3] Although Father references I.L., Christopher's sibling, in his Opening Brief on the Merits and asks that this Court reverse all orders in this case and remand the matter back to the jurisdiction/disposition hearing for both children (Father's Opening Brief on the Merits 45, 47), only Christopher is the subject of the instant appellate proceedings. This Court did not grant review of the Motion Father filed with respect to I.L.

[4] Mother is not a party to the appellate proceedings.

[5] The clerk's transcript consists of three volumes, hereinafter referred to as "1CT," "2CT," and "3CT."

[6] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

The detention report documented Father was convicted of a felony on October 4, 2017, sentenced to seven years in prison, and was currently incarcerated. (1CT 24.) Father was not interviewed for the detention report due to his incarceration. (1CT 28.) DCFS was unsuccessful in its attempt to contact Father's place of incarceration. (1CT 188.) DCFS reported Father had older children who were the subjects of dependency proceedings and currently receiving permanent placement services. (1CT 16.) Mother also had older children who were the subjects of dependency proceedings and with whom she had failed to reunify. (1CT 13-16.)

Father's mother, the paternal grandmother, reported Mother had dropped I.L. off with her. (1CT 20.) DCFS detained I.L. (1CT 20.) The paternal grandmother provided the DCFS social worker with information regarding Father's place of incarceration and reported she and the paternal grandfather were currently caring for two of Father's older children. (1CT 20.) The grandmother wanted visitation with I.L. but said she and the grandfather could not care for her. (1CT 20.)

DCFS provided the juvenile court documentation of Father's lengthy criminal history. (1CT 53-73.) He had numerous convictions for drug-related offenses, a conviction for possession of a stolen vehicle, assault with a deadly weapon or by force likely to produce great bodily injury, second-degree robbery, and several parole and probation violations. (1CT 53-73.)

Detention Hearing

The juvenile court conducted the detention hearing on December 29, 2017. (1RT[7] 1-5.) I.L. was placed with a maternal aunt (MA). (1CT 10.) Christopher remained hospitalized. (1CT 10.) None of the named parents were present in court.[8] (1RT 1.) The juvenile court made detention findings and orders and ordered a "statewide" for Father to secure his appearance for the jurisdictional hearing. (1RT 2.) The court also stated, "Statewide due February 27, and March 9, 2018, father's arraignment set, along with receipt of report on February 27, 2018." (1RT 4.) The court prepared two minute orders with respect to I.L. for the December 29, 2017, hearing. (Respondent's Motion for Judicial Notice[9] [Respondent's MJN], Exh. 1, pp. 1-5.) The first minute order listed the hearing type as a detention hearing and included the order, "[DCFS] is ordered to prepare and submit a Statewide

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[7] The record on appeal consists of three volumes of reporter's transcripts. The first volume (1RT) includes proceedings conducted on December 29, 2017. The second volume (2RT) includes proceedings conducted on March 9, 2018. The third volume (3RT) includes proceedings conducted on July 17, 2018, September 6, 2018, November 15, 2018, December 19, 2018, February 26, 2019, May 28, 2019, June 26, 2019, September 5, 2019, and December 5, 2019. The fourth volume (4RT) includes proceedings conducted on March 5, 2020.

[8] Mother did not participate in the underlying dependency proceedings. (1CT 198; 2CT 361, 480, 584, 606; 3CT 714, 792, 814, 861, 920, 924.) She also did not have any contact with Christopher or I.L. after they were detained. (2CT 378-379, 495; 3CT 728, 826, 878.)

[9] Respondent filed a Motion to Take Judicial Notice with the Court of Appeal that was granted.

Removal Order for [Father], for 02/27/2018 and 03/09/2018." (Respondent's MJN, Exh. 1, pp. 1-4.) The February 27, 2018, hearing is listed as a Receipt of Report Hearing." (Respondent's MJN, Exh. 1, p. 4.) The second December 29, 2017, minute order listed the hearing as a Non-Appearance Progress Report Hearing, indicated no parties were present, and included the order, "Pursuant to the order of the Court, the 02/27/2018 Receipt of Report Hearing is advanced to this date and vacated." (Respondent's MJN, Exh. 1, p. 5.)

Jurisdiction/Disposition Report

DCFS filed a jurisdiction/disposition report with the juvenile court on March 5, 2018. (1CT 203.) Both Christopher and I.L. were now residing with the MA, who previously adopted the children's maternal half-siblings. (1CT 203, 224-225.)

DCFS interviewed Mother, who reported marrying Father two months after they met. (1CT 232.) She reported Father was serving a seven year sentence. (1CT 232-233.)

The report documented Father had three older children who were previously dependents of the juvenile court. (1CT 201.) DCFS again reported Father failed to reunify with them and stated the younger two were currently receiving permanent placement services with a plan of legal guardianship. (1CT 207.) DCFS provided the juvenile court with a letter Father wrote to the social worker requesting paternity testing. (1CT 266.) In his letter, Father referenced a letter he received from DCFS and inquired as to whether it was necessary for him to appear in court on March 9, 2018, and if it were possible to handle the matter over the telephone. (1CT 266.) DCFS referenced Father's

requests and the letter he sent DCFS in its jurisdiction/disposition report. (1CT 210, 240.) DCFS recommended that the court not offer Father reunification services with respect to I.L. based on his failure to reunify with his older children.[10] (1CT 245.) DCFS also recommended that the court not offer Mother reunification services based on her failure to reunify with her older children. (1CT 245.)

Notice of the jurisdiction/disposition hearing was sent to Father at Sierra Conservation Center by certified mail and listed his inmate number as BE4882. (1CT 252-256.) The notice listed both children on it and documented DCFS also sent him a copy of the section 300 petition. (1CT 254.) The envelope containing Father's letter also indicated his inmate number as BE4882. (1CT 268.)

Order for Prisoner's Appearance

On February 15, 2018, the juvenile court issued an Order For Prisoner's Appearance at Hearing Affecting Parental Rights. (Respondent's MJN, Exh. 2, pp. 6-7.)

March 5, 2018, Hearing

I.L.'s case was on calendar on March 5, 2018, for an appearance progress hearing. (Respondent's MJN, Exh. 3, pp. 8-9.) The minute order includes the statement, "Father not transported for arraignment; he has been ordered to court on

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[10] At this point in the proceedings, another man had been identified as Christopher's father. (1CT 3, 17, 21, 233; Opinion, pp. 1178, 1180.)

3/9/18. Matter off calendar." (Respondent's RJN, Exh. 3, pp. 8-9; capitalizations omitted.)

Jurisdiction/Disposition Hearing

The juvenile court conducted the combined jurisdiction/disposition hearing as to both children on March 9, 2018. (2RT 1-8.) The court sustained the section 300 petition, declared the children dependents of the court, and removed them from parental custody. (2RT 1-6.) The court stated that Father was currently incarcerated and had been noticed, but had not made contact with DCFS. (2RT 6.) The court denied Mother and Father reunification services and set a hearing pursuant to section 366.26. (2RT 6-7; 2CT 360.)

I.L.'s March 9, 2018, minute order included a clerk's certificate of mailing documenting the minute order and a notice of intent to file a petition for extraordinary writ were mailed to Father at Sierra Conservation Center and listed his inmate number as "#BEU4882," as opposed to "BE4882," the number indicated on DCFS's previous notice and father's envelope. (1CT 252-256, 268; Father's Motion for Judicial Notice [Father's MJN], Exh. 1.[11])

Christopher's March 9, 2018, minute order included a clerk's certificate of mailing documenting the minute order and a notice of intent to file a petition for extraordinary writ were mailed to Mother and the man identified as Christopher's father. (2CT 364.)

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[11] Father filed a Motion for Judicial Notice with the Court of Appeal that was granted.

Section 366.26 Report

DCFS filed a section 366.26 report with the juvenile court on July 11, 2018. (2CT 366.) I.L. and Christopher continued to reside with the MA, who was committed to adopting them if parental rights were terminated. (2CT 377.) None of the named parents had had any contact with the children, DCFS, or the caregivers. (2CT 378.)

DCFS reported I.L.'s birth certificate listed Father as her father and that Christopher's did not list a father. (2CT 374-375.) DCFS reported Father remained incarcerated and would be eligible for parole in March 2021. (2CT 379.) DCFS noticed Father of the section 366.26 hearing and its recommendation to terminate parental rights with respect to both children by first-class mail and was making efforts to personally serve him. (2CT 379, 399-403.)

July 17, 2018, Hearing

The case was on calendar on July 17, 2018, for a section 366.26 hearing as to both children. (3RT 1-4.) The court found Father to be I.L.'s presumed father and another man to be Christopher's alleged father. (3RT 2.) The court continued the hearing for Father to be personally served. (3RT 3.)

September 6, 2018, Hearing

The case was on calendar on September 6, 2018, for a status review hearing. (3RT 5.) The juvenile court referenced that Father was in state prison (3RT 5), ordered that he be transported to court on October 29, 2018, and asked an attorney named to reach out to Father as a friend of the court (3RT 6).

October 29, 2018, Hearing

The case was on calendar on October 29, 2018, for an arraignment hearing. (Respondent's MJN, Exh. 4, p. 10.) Father appeared telephonically from his place of incarceration and the hearing was continued to the existing section 366.26 date of November 15, 2018. (Respondent's MJN, Exh. 4, p. 10.)

November 15, 2018, Last-Minute Information For The Court Report

Father was personally served for the section 366.26 hearing with respect to I.L. (2CT 559, 564.) DCFS had submitted an Order for Prisoner's Appearance with respect to Father. (2CT 559.)

November 15, 2018, Hearing

The case was on calendar on November 15, 2018, for a section 366.26, hearing as to both children. (2CT 584; 3RT 7-11.) Attorney Ashley Wu confirmed she was available for appointment on behalf of Father. (3RT 8.) The juvenile court said Father reported he was incarcerated at Gadillan Conservation Camp. (3RT 8-9.) The court stated Father indicated he signed I.L.'s birth certificate and found him to be her presumed father. (3RT 8-9.)

County counsel referenced Father's telephonic appearance on October 29, 2018, and that Attorney Wu was specially appointed to represent him. (3RT 10.) The court said Attorney Wu had made a general appearance that day (November 15, 2018) and found notice proper as to Father. (3RT 10.) Attorney Wu told the court that Father was asking to participate in the section 366.26 hearing telephonically and that he objected to the

termination of parental rights. (3RT 10.) The court continued the hearing to December 19, 2018. (3RT 10.)

December 19, 2018, Hearing

The case was on calendar on December 19, 2018, for a section 366.26, hearing as to both children. (3RT 12-20.) Father was present telephonically and confirmed he could hear the court. (3RT 12.) The court stated that Attorney Wu was representing Father and identified him as I.L.'s father. (3RT 12-13.) The court found notice proper and admitted DCFS's reports into evidence. (3RT 13.) County counsel and children's counsel submitted on DCFS's recommendation that the court terminate parental rights. (3RT 13-14.) Father's counsel stated, "Father objects. Two requests from father. He would like a D.N.A. test for [Christopher]. And he would prefer legal guardianship. Submitted, your honor." (3RT 14.)

The juvenile court responded that Father had not previously requested paternity testing with respect to Christopher, but nonetheless continued his matter. (3RT 15.) The court proceeded with respect to I.L., found her adoptable, and terminated parental rights to free her for adoption. (3RT 17.)

After the court made its findings and orders, it stated, "Counsel for the parents are either relieved 60 days from today's date or upon timely note [sic] of appeal, whichever comes first." (3RT 17.) The court also stated, "I'm advising [Father], who is on the phone, and [] [mother], who is not present in court, that having terminated their parental rights, each parent is entitled

to a free copy of the transcript for appellate purposes. ¶ But they must file their notice of appellate [sic] within 60 days." (3RT 18.)

The juvenile court concluded the hearing by stating, "[Father], we're putting you on hold so that your attorney can speak with you." (3RT 20.)

February 26, 2019, Hearing

Christopher's case was on calendar on February 26, 2019, for a section 366.26 hearing. (3RT 21-22.) Paternity testing established Father was Christopher's biological father. (2CT 608-609; 3RT 22.) The court continued the matter for DCFS to personally serve Father notice of the section 366.26 hearing. (3RT 22-23.)

May 28, 2019, Hearing

At the May 28, 2019, continued section 366.26, hearing, the court again continued the case and ordered a statewide removal order so Father could attend the hearing. (3RT 25.)

June 26, 2019, Hearing

Christopher's case was next on calendar on June 26, 2019, for the continued section 366.26 hearing. (3CT 814.) Father appeared telephonically. (3CT 814.) The juvenile court continued the case for DCFS to investigate amending Christopher's birth certificate by adding the child's proper name to it. (3CT 814.)

September 5, 2019, Hearing

Father appeared telephonically for the September 5, 2019, continued section 366.26 hearing. (3RT 31-32; 3CT 861.)

County counsel referenced that paternity testing indicated Father was Christopher's biological father. (3RT 32.) The court

found Father to be the child's alleged father. (3RT 32.) The court continued the hearing for DCFS to obtain the child's amended birth certificate. (3RT 32.) The court stated that the recommendation was adoption and asked if anyone wished to be heard. (3RT 33.) No one responded and the court made its findings. (3RT 33.)

The juvenile court ended the September 5, 2019, hearing by telling Father the matter was concluded and his attorney would set up a court call for the next scheduled hearing. (3RT 34.) Father responded, "All right. ¶ Then December of this year?" (3RT 34.) The court answered in the affirmative and Father responded "all right" and thanked the court. (3RT 34.)

The juvenile court again continued the December 5, 2019, hearing for receipt of Christopher's birth certificate. (3RT 35-36.)

March 5, 2020, Status Review Report

Christopher continued to reside with the MA, referred to her as "mommy," and was thriving in her care. (3CT 878.) Adoption with the MA remained the child's permanent plan. (3CT 879.) The parents had not contacted DCFS or visited with the child. (3CT 878.)

March 5, 2020, Hearing

The juvenile court conducted the section 366.26 hearing with respect to Christopher on March 5, 2020. (3CT 920-922; 4RT 1-6.) Father appeared telephonically. (4RT 1-2.) The court asked Father if he could hear them. (4RT 1.) Father responded, "Yes." (4RT 1.) The court then admitted DCFS's reports into evidence and asked the parties if they wished to be heard or present evidence. (4RT 2.) Father's counsel told the court,

"Please note the father's objection to termination of his parental rights." (4RT 3.)

The juvenile court terminated parental rights and freed Christopher for adoption. (4RT 3-4.)

On April 1, 2020, Father filed a notice of appeal from the findings and orders terminating his parental rights as to Christopher. (3CT 926-927.)

Proceedings in the Court of Appeal

On appeal, Father contended that the juvenile court erred by failing to find that he was Christopher's presumed father, that the juvenile court violated Penal Code section 2625 when it conducted the combined jurisdiction/disposition hearing without Father or counsel for Father present, that his trial counsel provided ineffective assistance of counsel by not bringing the error to the juvenile court's attention, and that the errors were structural. (Appellant's Opening Brief [AOB] 19-38; Reply Brief 13-36.) Father also filed a Motion on June 25, 2020 – 18 months after his parental rights as to I.L. were terminated – requesting that the Court of Appeal "extend his notice of appeal to apply to both [I.L. and Christopher] and/or a motion for constructive notice of appeal pursuant to *In re Benoit* (1973) 10 Cal.3d 72.[]" (Opinion, pp. 1172, 1182, internal quotations omitted, internal brackets in original.)

Division One of the Second District Court of Appeal held that although the juvenile court erred in not finding Father to be Christopher's presumed father and violated Penal Code section 2625 when it conducted the combined jurisdiction/disposition hearing without Father or counsel for Father present, the errors

did not warrant automatic reversal. (Opinion, pp. 1172, 1182-1183.) Division One explained, "The errors identified were not prejudicial under the applicable harmless error analysis articulated in *People v. Watson* (1956) 46 Cal.2d 818 [299 P.2d 243]. Nor are they prejudicial under the more stringent 'harmless beyond a reasonable doubt' standard articulated in *Chapman v. California* (1967) 386 U.S. 18, 24 [17 L. Ed. 2d 705, 87 S. Ct. 824] (*Chapman*)." (Opinion, p. 1183.)

Division One expressly "decline[d] Father's invitation to expand current law and deem reversible per se an error in dependency proceedings that is amenable to harmless error analysis." (Opinion, p. 1177.) Division One cited to this Court's decision in *In re James F.* (2008) 42 Cal.4th 901, which, among other things, distinguished the rights and protections afforded in dependency proceedings as opposed to criminal proceedings and "rejected that 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." (Opinion, p. 1185, internal quotations and citations omitted.)

Division One stated that in *In re James F.*, this Court cited to United States Supreme Court authority and explained that "generally, an error is structural when it defies analysis by harmless-error standards and cannot be quantitatively assessed in the context of *other evidence presented* in order to determine whether it was harmless beyond a reasonable doubt" and that "the structural error doctrine is used when assessing the effect of

the error is difficult." (Opinion, p. 1185, internal quotations, brackets, and citations omitted, italics in original.) Division One further explained, "*James F.* concluded that prejudice was not irrelevant in the dependency context, because the welfare of the child is at issue and delay in the resolution of the proceedings is inherently prejudicial to the child, and applied a harmless error analysis." (*Id.* at p. 1186, internal quotations and citations omitted.)

Division One referenced that subsequent case law has cited *In re James F.* for the proposition that "harmless error analysis applies in juvenile dependency proceedings even where the error is of constitutional dimension." (Opinion, p. 1186, internal quotations and citation omitted.) Division One stated, "Rather than categorically deeming errors of a certain type 'structural' and thus reversible per se, a reviewing court should first consider whether an error in dependency proceedings is amenable to a harmless error analysis[.]" (*Id.* at p. 1186.) Division One held that in the instant case, "the circumstances of Father's situation and the nature of the errors identified [were] such that [it] could assess whether the court's Penal Code section 2625 error and/or Father being denied counsel at the jurisdiction/[disposition] hearing prejudiced him at the subsequent permanency planning hearings, based not on guesswork or speculation, but on the undisputed facts before [it]." (*Id.* at p. 1186, citations omitted.)

Division One rejected Father's argument on appeal that had he been deemed a presumed father at the time of the jurisdiction/disposition hearing and the juvenile court had

complied with Penal Code section 2625 and he or his counsel had been present at the hearing, the juvenile court may have offered him reunification services and changed the trajectory of the proceedings. Indeed, Father did not even attempt to argue how the juvenile court could have concluded that offering him services would have been in Christopher's best interest and did not argue the bypass provision under section 361.5, subdivision (b), was inapplicable. (Opinion, p. 1190.)

Division One further stated that even if Father had had counsel to argue on his behalf at the disposition hearing, there was no reasonable probability that providing reunification services would not have been detrimental to Christopher. (Opinion, p. 1190.) Division One explained that Father was not eligible for parole until approximately three years after Christopher was detained, well outside the maximum reunification period. (*Id*. at pp. 1190-1191.) Division One recognized that, "[a]s such, any services the court might [have] order[ed] could not have successfully reunified Father with Christopher within the statutory timeframes" and avoided proceeding to a permanency hearing. (*Id*. at p. 1191.)

Therefore, as Division One explained, ordering reunification services would have only delayed establishing a permanent home for Christopher, because reunification was "doomed to fail[.]" (Opinion, p. 1191.) Division One explained this would have been detrimental to Christopher. (*Ibid*.) Division One rejected Father's argument that it was improper to consider the duration of his incarceration in assessing whether

ordering reunification services would be detrimental to the child. Section 361.5, subdivision (e), expressly provides that a court may consider whether imprisonment would make reunification impossible within the statutory timelines, and that in the instant case, Father's imprisonment would have made reunification impossible. (*Id*. at p. 1192.)

Division One further referenced that Father had never met Christopher and admitted having no relationship with the child, noted Father's lengthy criminal history and his recent violent conviction, and considered the fact that Father lost custody of his three other children. (Opinion, p. 1191.)

As explained by Division One: "Given our conclusion that the termination of reunification services for Christopher was inevitable, Father has presented no basis on which to conclude that the challenged errors could have somehow affected the juvenile court's subsequent decision at the permanency planning hearing to terminate his parental rights."[12] (Opinion, p. 1192.) Division One held that because Father could not "establish a reasonable probability that the challenged errors affected the court's termination of Father's parental rights as to

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[12] Division One further stated that Father's ineffective assistance of counsel arguments were not based on any ineffective representation during the permanency hearings, other than his counsel should have made special appearances at those hearings to rebut forfeiture arguments with respect to the errors during the jurisdiction/disposition stage of the proceedings. (Opinion, p. 1192.) Thus, Father's claims of ineffective assistance of counsel did not impact its holding that the identified errors were harmless. (*Id*. at p. 1193.)

Christopher[,]" the errors were therefore harmless under *Watson*, which it said was the applicable framework for assessing prejudice in the case, and that even if the more stringent *Chapman* framework were applicable, the errors were also harmless beyond a reasonable doubt based on the undisputed facts and the provisions of section 361.5 addressed in the Opinion.[13] (*Id*. at p. 1193.) Division One affirmed the juvenile court's order terminating Father's parental rights as to Christopher in all respects. (*Id*. at p. 1195.)

Actions in the Supreme Court

Father filed a Petition for Review in the California Supreme Court, which this Court granted on February 17, 2021.

Issue Presented.

Is it structural error, and thus reversible per se, for a juvenile court to proceed with jurisdiction and disposition hearings without an incarcerated parent's presence and without appointing the parent an attorney?

Discussion

I. Standard of Review.

Questions of law that do not involve resolution of disputed facts are subject to de novo review. (*Jose O. v. Superior Court* (2008) 169 Cal.App.4th 703, 706.)

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[13] Division One denied Father's motion to extend his appeal to I.L. because Father made it clear that he would raise the same arguments with respect to her that he raised regarding Christopher and that because his arguments as to Christopher did not merit reversal, "permitting Father to extend his appeal to I.L. would serve no purpose, even assuming [it] ha[d] the ability and inclination to grant it." (Opinion, p. 1195.)

II. This Court Has Previously Applied The Harmless Error Analysis To Errors In Dependency Proceedings And Its Analyses And Reasoning In Those Cases Is Applicable To The Case At Bar. This Standard Appropriately Respects A Parent's Interest In Parenting His or Her Child While Also Protecting The Child's Equally Important Rights.

The issue in the case at bar concerns what standard should be applied in assessing a juvenile court's error with respect to Penal Code section 2625 during a combined jurisdiction/disposition hearing.

Penal Code section 2625, subdivision (d), states, "Upon receipt by the court of a statement from the prisoner or the prisoner's attorney indicating the prisoner's desire to be present during the court's proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner's production before the court. A proceeding may not be held under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 366.26 of the Welfare and Institutions Code and a petition to adjudge the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions Code may not be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent, or other person in charge of the institution, or a designated representative stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding." (Pen. Code, §2625, subd. (d).)

In California, parents have a statutory right to the appointment of counsel in dependency proceedings in certain circumstances. Section 317, subdivision (a)(1), states, "When it appears to the court that a parent or guardian of the child desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section." (§ 317, subd. (a)(1).)

Section 317, subdivision (b), states, "When it appears to the court that a parent or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section." (§ 317, subd. (b).)

A. This Court's Decision In *In re James F.*, *supra*, 42 Cal.4th 901, Is Directly On Point And Its Reasoning Is Sound. Division One's Holding That The Error In The Instant Case Is Subject To A Harmless Error Analysis Is Further Supported By This Court's Decision In *In re Celine R.* (2003) 31 Cal.4th 45.

Significantly, this is not the first time this Court has addressed the applicability of structural error to dependency proceedings. This Court most recently addressed this issue in *In re James F.*, *supra*, 42 Cal.4th 901.

The father in *In re James F.* had an extensive criminal history and had been admitted to Patton State Hospital after being found incompetent to stand trial. (*In re James F.*, *supra*, 42

Cal.4th at p. 905.) The issue in that case was whether a juvenile court's error in the procedure used to appoint a guardian ad litem (GAL) for a parent in a dependency proceeding required automatic reversal or was subject to harmless error review. (*Id.* at pp. 904-905.) This Court concluded such a due process error is trial error and amenable to harmless error analysis. (*Id.* at pp. 905, 915, 918-919.) This Court further referenced that "most structural defects defy analysis by 'harmless error' standards" and that "most structural defects that can be quantitatively assessed in the context of other evidence presented in order to determine whether they were harmless beyond a reasonable doubt are generally not structural defects." (*Ibid.*, internal quotations, brackets and citations omitted.)

In *In re James F.*, this Court acknowledged "there are also a very few constitutional errors that the United States Supreme Court has categorized as structural, not because they defy harmless error analysis, but because prejudice is irrelevant and reversal deemed essential to vindicate the particular constitutional right at issue." (*In re James F.*, *supra*, 42 Cal.4th at p. 917, citation omitted.)

However, in *In re James F.*, this Court explained the United States Supreme Court had not applied structural error outside the context of criminal proceedings and said it could not agree "that prejudice is irrelevant in a dependency proceeding when the welfare of the child is at issue and delay in resolution of the proceeding is inherently prejudicial to the child." (*In re James F.*, *supra*, 42 Cal.4th at p. 917.)

This Court explained that "the ultimate consideration in a dependency proceeding is the welfare of the child [citation], a factor having no clear analogy in a criminal proceeding." (*In re James F.*, *supra*, 42 Cal.4th at p. 915.) This Court further stated, "These 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. [Citations.]" (*Id.* at pp. 915-916.)

In *In re James F.*, this Court also rejected the argument that treating the error in that case as structural "would give juvenile courts an added incentive to avoid the error in the future[.]" (*In James F.*, *supra*, 42 Cal.4th at p. 918.) This Court explained, "We assume that juvenile courts make every effort to follow required procedures, and we question whether treating a procedural error as a structural defect requiring automatic reversal would significantly decrease the frequency of such errors. Moreover, the price that would be paid for this added incentive, in the form of needless reversals of dependency judgments, is unacceptably high in light of the strong public interest in prompt resolution of these cases so that the children may receive loving and secure home environments as soon as reasonably possible." (*Ibid.*, citation omitted.)

This Court similarly rejected the argument in *In re James F.* that the juvenile court's error undermined the integrity of the dependency proceeding. (*In re James F.*, *supra*, 42 Cal.4th

at p. 918.) This Court explained, "Due to his mental condition and incarceration, [the father] was never ready to assume custody of his young son, James F. His contacts with James during the first two months of James's life and their biweekly visits between July and November of 2004 during [the father's] confinement at Patton State Hospital, when James was only one year old, "could not have created the type of bond and parent-child relationship necessary to force this child to forgo adoption." (*Id*. at p. 918, internal citation omitted.) This Court concluded, "If 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." (*In re James F.*, *supra*, 42 Cal.4th at p. 918.)

This Court's reasoning in *In re James F.*, *supra*, 42 Cal.4th 901, is sound and equally applicable to the case at bar. As was the case in *In re James F.*, the undisputed facts of the instant case are unquestionably amenable to a harmless error analysis, and therefore not structural in nature. (Opinion, at p. 1177.) As was the case in *In re James F.*, determining prejudice in the instant case "does not necessarily require 'a speculative inquiry into what might have occurred in an alternate universe.'" (*In re James F.*, *supra*, 42 Cal.4th at p. 914, quoting *United States v. Gonzalez-Lopez* (2006) 548 U.S. 140; Opinion, p. 1177.) And, as was the case in *In re James F.*, prejudice cannot be deemed irrelevant when Christopher's interests and welfare are at stake. (*In re James F.*, *supra*, 42 Cal.4th at p. 917.)

As Division One recognized, the length of Father's incarceration established that reunification was simply impossible, that offering services would have been unquestionably detrimental to Christopher and contrary to his best interests, and that the error in not complying with Penal Code section 2625 at the combined jurisdiction/disposition hearing did not prejudice father or impact the trajectory of the proceedings. (Opinion, pp. 1189-1192.) Division One explained that not even the most competent counsel could have changed this. (Opinion, p. 1190.) Father has never identified *how* his presence and/or representation by counsel at the outset of the proceedings could have possibly altered the trajectory of the case and resulted in the preservation of his parental rights.

Father's only real attempt to articulate prejudice is in this Court. For the first time, Father asserts in his Opening Brief on the Merits that his trial counsel would have explored that possibility that Christopher and I.L. could have been placed with Father's relatives who were caring for Father's older children and/or his rights for reunification services or visitation. (Opening Brief on the Merits [BM] 44.) Father's argument completely ignores the uncontroverted evidence that his parents, who were caring for his older children, were considered for placement and said they could not care for I.L. and Christopher. (1CT 207.) Furthermore, in the letter attached to the jurisdiction/disposition report, Father asked that the paternal grandmother be permitted to visit the children. (Opinion, p. 1180.) He did not request that the children be placed with her. (*Ibid*.) Father also ignores that

after he appeared and was represented by counsel, he never expressed any opposition to the children's placement with the MA, other than to request that the plan be legal guardianship as opposed to adoption. (3RT 14.) Thus, father's belated attempt to establish prejudice fails. Significantly, the children were placed with a maternal relative who had adopted their older maternal siblings. (1CT 224-225.)

In addition, as Division One explained, reunification was never an option based on the length of father's incarceration. (Opinion, pp. 1190-1192.) Finally, as was the case in *In re James F.*, any visits Christopher could have had with Father at his place of incarceration could not have fostered a parental relationship significant enough to outweigh the strong statutory preference for adoption. (§ 366.26, subd.(c)(1)(B)(i); *In re James F.*, *supra*, 42 Cal.4th at p. 918.) Besides, Father had no contact at all with Christopher or the MA for the duration of the proceedings. (2CT 376, 378, 495; 3CT 728, 878; Opinion, p. 1189.)

The juvenile court should not have proceeded with the combined jurisdiction/disposition hearing without Father's presence, or a signed waiver of appearance and counsel should have been appointed for him. (Opinion, pp. 1180-1181.) However, as Division One recognized, the length of Father's incarceration alone established that it would have simply been *impossible* for him to reunify with Christopher, a child he had never met due to his criminal conduct and the length of his

incarceration. (Opinion, pp. 1190-1192.) Not even the most seasoned and talented trial counsel could have changed this.[14]

Father references this Court's acknowledgement in *In re James F.* that "the United States Supreme Court has held that erroneous deprivation of a criminal defendant's Sixth Amendment right to counsel of choice was a structural error requiring reversal of the conviction without inquiry into prejudice" because it was "impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings" and that "many counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all." (*In re James F.*, *supra*, 42 Cal.4th at p. 914, quoting *United States v. Gonzalez-Lopez*, *supra*, 548 U.S. 140, internal quotations omitted; BM 22.) However, Father again fails to acknowledge that this Court also recognized in *In re James F.* that juvenile dependency proceedings differ in significant ways from criminal proceedings that affect whether error requires automatic reversal of the resulting judgment and that "[p]lea bargaining and other negotiated dispositions play a significant role in criminal

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[14] Division One did not have to determine whether trial counsel not bringing a section 388 petition to challenge the juvenile court's ruling at the jurisdiction/disposition hearing constituted ineffective assistance of counsel "as there was no prejudice from the due process violations in connection with the jurisdiction/disposition hearing that such a petition would have raised[.]" (Opinion, p. 1193, fn. 7.)

proceedings, but not in dependency proceedings." (*Id.* at p. 915.) This is in addition to the fact that in criminal proceedings, it is only the rights of the defendant at stake. In dependency proceedings, juvenile courts and reviewing courts must not only consider the rights of parents, but also and equally important, the rights of a child. (*Ibid.*)

This Court also recognized the fundamental differences between criminal proceedings and dependency proceedings in *In re Celine R.*, *supra*, 31 Cal.4th 45, 59. There, this Court held that the failure to appoint separate counsel for siblings in dependency proceedings was subject to harmless error analysis. (*Id.* at p. 59.) This Court explained, "In a criminal case, reversal of a criminal judgment is virtually always in the defendant's best interest. The situation in a dependency case is often different. Reversal of an order of adoption, for example, might be contrary to the child's best interest because it would delay and might even prevent the adoption. After reunification efforts have failed, it is not only important to seek an appropriate permanent solution—usually adoption when possible—it is also important to implement that solution reasonably promptly to minimize the time during which the child is in legal limbo. A child has a compelling right to a stable, permanent placement that allows a caretaker to make a full emotional commitment to the child. Courts should strive to give the child this stable, permanent placement, and this full emotional commitment, as promptly as reasonably possible consistent with protecting the parties' rights and making a reasoned decision. The delay an appellate reversal causes might

be contrary to, rather than in, the child's best interests. Thus, a reviewing court should not mechanically set aside an adoption order because of error in not giving that child separate counsel; the error must be prejudicial under the proper standard before reversal is appropriate." (*Ibid.*, internal citation omitted.)

In the instant case, there was no plea bargain or tactical decision that could have altered the trajectory of the proceedings. The sheer length of Father's incarceration not only provided a valid basis to bypass reunification services, in addition to his failure to reunify with his older children and his recent violent criminal conviction, but it also far exceeded the mandatory statutory timelines governing reunification. (§ 361.5, subd. (a)(4)(A);), 366.21, subds. (e), (f), (g), 366.22, 366.24 [for children under the age of three at the time of the initial detention, reunification services are provided for six months and may be extended for up to two years from the initial detention time if it is likely the child will reunify within that timeframe]; Opinion, pp. 1189-1192.) The evidence was that Father would not be eligible for parole until March 2021. (2CT 379.) This was over three years *after* Christopher was detained at his birth. (1RT 1-5.)

Thus, even if Father had been present at the jurisdiction/disposition hearing, counsel had been appointed, and the juvenile court had ordered reunification services despite the applicability of at least three bypass provisions, the outcome would have been the same. (2CT 379; 1RT 1-5; Opinion, pp. 1189-1190-1192.) Although there may be a case in which an error in proceeding without the presence of the incarcerated

parent or his or her counsel during the jurisdictional hearing could be difficult to assess, this is not that case.

And if the error were difficult or impossible to assess or required guesswork and speculation, it would not be harmless. This was precisely the case in *In re J.P.* (2017) 15 Cal.App.5th 789, 797-798, in which Division Five of the Second District Court of Appeal applied a harmless error analysis to a trial court's failure to appoint counsel, found the error prejudicial, reversed the juvenile court's order, and remanded the case for new hearing. The *In re J.P.* Court cited to this Court's decisions in *In re Celine R.*, *supra*, 31 Cal.4th 45 and *In re James F.*, *supra*, 42 Cal.4th 901, and agreed with this Court's position that prejudice is not irrelevant in dependency proceedings when the welfare of a child is at issue. (*Id*. at pp. 797-801).

It is true that Justice Baker's concurring opinion expressed concern about cases in which the error resulting from the deprivation of counsel might be difficult to assess, but the concurring opinion did not advocate that error in the appointment of counsel should be considered structural error. (*In re J.P.*, *supra*, 15 Cal.App.5th at pp. 803-804.) In fact, the concurring opinion expressly disavowed such a position in the sentence immediately preceding the passage Father quotes in his Opening Brief on the Merits. (BM 44.)

In concurring, Justice Baker stated, "Our Supreme Court has said we should not import the structural error doctrine 'wholesale, or unthinkingly' into the dependency context. That is right, and I do not advocate for a wholesale importation of the

doctrine. But for cases in which there is an egregious deprivation of the foundational right to counsel, we should do more thinking. When a counterfactual inquiry appears too difficult to responsibly undertake, or a counterfactual conclusion relies on inferences that really amount to guesswork, the bias should be in favor of reversal." (*Id.* at p. 804, internal citation omitted.)

In concurring, Justice Baker "agree[d] there can be cases at the margins where the consequences of error are so apparent as to permit a fairly reliable counterfactual assessment whether harm results from the wrongful absence of appointed counsel." (*In re J.P.*, *supra*, 15 Cal.App. at p. 803) Justice Baker was concerned about the cases in which the wrongful absence of appointed counsel would be more difficult to assess. (*Ibid.*) Prejudice in the instant case is easy to assess and there clearly was none.

The case at bar exemplifies why the structural error doctrine should not be imported into the dependency context. Reunification was simply never an option as Father's period of incarceration far exceeded any of the reunification periods. (§ 361.5, subd. (a)(3)(A) & (4)(A).) This was especially true because, based on Christopher's young age, Father would have only been entitled to six months of services if the juvenile court had not bypassed them. (§ 361.5, subd. (a)(1)(B); *Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1026-1027.) As Division One explained, the termination of reunification services was "inevitable[.]" (Opinion, p. 1192.) As Division One further explained, for this same reason, Father would not have been able

to establish a relationship with Christopher, whom he had never met due to his incarceration, significant enough to establish a statutory exception to adoption. (*Ibid.*)

Deeming the error in the instant case as structural, and therefore reversible per se, would only serve as a windfall to Father and further delay and deny Christopher the permanence and stability he is entitled to and that Father was indisputably never in a position to provide. It would also encourage parents, as Father has done in the case at bar, to wait years to bring the issue to the juvenile court's attention in an attempt to avoid or challenge an order terminating parental rights despite the fact that the parent would not have had a defense to such an order but for the error.

Father's frustration with the juvenile court is understandable, but it does not warrant reversal in the absence of prejudice when a young child's welfare is at stake. (BM 31, 45.) As this Court recognized in *In re James F.*, treating an error as structural to give juvenile courts an incentive to avoid error in the future is unpersuasive because it is assumed that juvenile court's make every effort to follow required procedures, and the price to be paid for such an incentive is "unacceptably high in light of the strong public interest in prompt resolution of these cases so that the children may receive loving and secure home environments as soon as reasonably possible." (*In re James F.*, *supra*, 42 Cal.4th at p. 918, citation omitted.)

The same is true in the case at bar – requiring Christopher to pay the price for the juvenile court's error at this late stage in

the proceedings to effectively "punish" the juvenile court despite Father having never met the child and remaining incarcerated since before the child was born and throughout the duration of the proceedings (Opinion, pp. 1178, 1191), would also be an "unacceptably high" price for the child to pay when no different outcome would have resulted if Father had participated in the hearing and counsel had been appointed. Father's position otherwise completely ignores and disregards the interests of his young son, the subject of the proceedings. (BM 45.)

And, although the error in the instant case differs from *In re James F.* in the respect that counsel was not appointed early in the proceedings, as opposed to a flaw in the procedures used to appoint a GAL, the cases are identical in that "the result achieved here was certainly correct, and therefore just." (*In re James F.*, *supra*, 42 Cal.4th at p. 918.) The *In re James F.* father was precluded from establishing the beneficial parent-child relationship necessary to establish a statutory exception to adoption necessary to prevent the termination of his parental rights not due to the procedural error in the appointment of the GAL, but by virtue of his mental health needs and incarceration at Patton State Hospital. (*Id.* at p. 918.) In the instant case, Father similarly was unable to establish a defense to an order terminating parental rights not due to the error during the combined jurisdiction/disposition hearing, but by virtue of his criminal conduct and lengthy incarceration, which resulted in his never meeting the child, much less parenting him or developing a

bond with him significant enough to defeat the legislative preference for adoption. (Opinion, pp. 1189-1190, 1192-1193.)

For these reasons, Division One's decision to "decline Father's invitation to expand current law and deem reversible per se an error in dependency proceedings that is amenable to harmless error analysis" was sound. (Opinion, at p. 1177.) This Court's decision in *In re James F.*, *supra*, 43 Cal.4th 901 is directly applicable to the case at bar, properly balances the competing policy concerns and interests of father and Christopher, and supports Division One's determination that the juvenile court's error with respect to Penal Code section 2625 at the combined jurisdiction/disposition hearing was not structural and therefore not reversible per se.

B. This Court's Decision In *In re Jesusa V.* (2004) 32 Cal.4th 588, Further Supports Division One's Holding That Error With Respect To Penal Code Section 2625 Is Not Structural And Should Be Reviewed Under The Harmless Error Standard. This Is Also Consistent With Existing Case Law.

This Court reviewed error with respect to a juvenile court's compliance with Penal Code Section 2625 in *In re Jesusa V.*, *supra*, 32 Cal.4th 588. This Court held in *In re Jesusa V.* that violation of Penal Code section 2625, subdivision (d), was not jurisdictional and therefore not reversible per se. (*Id.* at p. 625.)

In *In re Jesusa V.*, this Court not only addressed competing claims of paternity and whether an incarcerated biological parent has a right to attend a paternity hearing, it also held that a Court of Appeal erred in finding that a juvenile court acted in excess of its jurisdiction by proceeding with a jurisdictional hearing in the

incarcerated parent's absence. (*In re Jesusa V.*, *supra*, 32 Cal.4th at pp. 599-622.) This Court agreed that Penal Code section 2625 required both the prisoner and the prisoner's attorney to be present at the jurisdictional hearing, but disagreed that the violation of Penal Code section 2625 deprived the juvenile court of jurisdiction to adjudicate the petition, applied a harmless error analysis, and found the incarcerated biological father was not prejudiced. (*Id*. at p. 622.)

In *In re Jesusa V.*, this Court explained that the father's right to be present was statutory and that it had "regularly applied a harmless[]error analysis when a defendant has been involuntarily absent from a criminal trial." (*In re Jesusa V.*, *supra*, 32 Cal.4th at pp. 624-625.) This Court further stated, "Our conclusion is bolstered by the strong countervailing interest, expressed by the Legislature itself, that dependency actions be resolved expeditiously. [Citations.] That goal would be thwarted if the proceeding had to be redone without any showing the new proceeding would have a different outcome." (*Id*. at p. 625.) This Court applied the *Watson* harmless error test and found the father in that case was not prejudiced. (*Ibid*.)

Although the instant case is admittedly distinguishable in that Father was neither present nor represented by counsel during the combined jurisdiction/disposition hearing, *In re Jesusa V.* establishes that errors with respect to Penal Code section 2625 are not structural and should be reviewed under the harmless error standard. (*In re Jesusa V.*, *supra*, 32 Cal.4th at pp. 624-625.) Significantly, both Father's right to be present at

the hearing and his right to counsel were statutory. (§ 317, subd. (b); Pen. Code, § 2625, subd. (d).) And again, as Division One recognized, "[E]ven errors of a constitutional dimension can be subject to a harmless error analysis in dependency proceedings, given the unique nature of such proceedings, unless it is impossible to assess prejudice without engaging in speculation. [Citations.]" (Opinion, p. 1177.) And as Division One explained, the error in the instant case was clearly harmless regardless of whether it is reviewed under the *Watson* standard, or the more stringent *Chapman* standard. (*Id.* at p. 1193.)

The *In re Jesusa V.* decision also recognizes that the strong public policy interest in resolving dependency cases in an expeditious manner would be thwarted if proceedings had to be redone without a showing of prejudice. (*In re Jesusa V.*, *supra,* 32 Cal.4th at p. 625.)

As discussed, the undisputed facts in the present case firmly establish that the identified errors with respect to Penal Code section 2625 are amenable to a harmless error analysis, and Father plainly was not prejudiced by them. Deeming the error structural renders prejudice irrelevant, to the detriment of Christopher who is the subject and focus of the proceedings.

Father glosses over the fact that although there was error with respect to Penal Code section 2625 at the jurisdiction/disposition stage of the proceedings, he participated in and was represented by counsel during the subsequent proceedings, including the hearing at which parental rights were terminated. (Opinion, pp. 1181-1182, 1192.) Thus, the case did

not proceed to permanency without Father ever being present or having the opportunity to participate in the proceedings and attempt to establish a defense to the termination of his parental rights.

Significantly, the case at bar is not the first time an error almost identical to the one that occurred in the instant case was found to be harmless. In *In re Marcos G.* (2010) 182 Cal.App.4th 369, in which Division Three of the Second Appellate District held that a juvenile court did not abuse its discretion when it denied a father's section 388 petition requesting that the court return the case to the disposition stage, find that father to be a presumed father, release the child to the father, take the section 366.26 hearing off calendar, and vacate the prior notice findings regarding the father. (*Id.* at p. 390.) In that case, the father was also incarcerated at the time of the jurisdiction/disposition hearing and argued the juvenile court erred when proceeded with the jurisdiction and disposition hearing in his absence and without counsel being appointed. (*Id.* at pp. 389-390.)

The *In re Marcos G.* Court held, "We find no abuse of discretion in the trial court's declining to grant [the father's] petition. As discussed below, clearly it would not be in [the child's] best interests to grant [the father's] request and undo most of the case and there was no prejudicial error in the court's proceeding [] with adjudication and disposition without [the father] and appointed counsel being at the hearing." (*In re Marcos G.*, *supra*, 182 Cal.App.4th at p. 390.) The Court referenced that the paternal grandmother was not a placement

option and that the child was bonded to and had been living with his foster parents for 20 months by the time the father appeared in the proceedings and over two years by the time father filed his section 388 petition. (*Ibid*.) The Court also noted that although father was visiting with the child on a weekly basis, the child and father were nothing more than friendly visitors. (*Ibid*.)

The *In re Marcos G*. Court held that the father had not only failed to demonstrate it would be in his child's best interest to send the case back to the disposition stage, but that the father had also not demonstrated prejudice. (*In re Marcos G*., *supra*, 182 Cal.App.4th at p. 390.) The Court explained the record did not "show facts that would have caused the trial court to not adjudicate [the child] a dependent child and take custody from [the father and the mother] if [the father] had received required notices and been transported to the [jurisdiction and disposition] hearing. [The father] was incarcerated and could not care for [the child] at that point, [the child's] mother was not able to appropriately care for him because of her substance abuse and domestic violence relationship with the father of her other children, and [the father's] relatives were not permitted to take him into their homes." (*Id*. at p. 391.) The same is true in the case at bar.

III. The United States Supreme Court's Decision *In Lassiter v. Dep't of Social Services* (1981) 452 U.S. 18, Supports Division One's Holding That The Error In The Instant Case Is Properly Reviewed Under The Harmless Error Standard.

In *Lassiter v. Dep't of Social Services*, *supra*, 452 U.S. 18, the United States Supreme Court addressed whether a trial court

denied a mother due process by not appointing counsel for her at a termination of parental rights hearing. (*Id*. at p. 32.) The Supreme Court held that the Constitution did not require the appointment of counsel for indigent parents in every parental rights termination proceeding, but that there might be cases in which the appointment of counsel is necessary to meet due process standards because of the complexity of the case and the competing interests of the parent and the State. (*Id*. at pp. 31-33.)

The *Lassiter* Court concluded the trial court did not err in not appointing counsel for the mother in that case because, among other things, the petition to terminate parental rights did not include any allegations upon which criminal charges could be based, no expert witnesses testified, the case did not present any "troublesome points of law," and the presence of counsel for the mother could not have made a determinative difference. (*Id*. at pp. 32-33.)

Thus, in determining whether due process requires the appointment of counsel in termination of parental rights cases, the United States Supreme Court focused on whether not providing counsel was prejudicial. (*Lassiter v. Dep't of Social Services*, *supra*, 452 U.S. at pp. 32-33.) Therefore, even assuming, *arguendo*, that a parent has a constitutional right to counsel in dependency proceedings, including at hearings other than termination of parental rights hearings, any error in not appointing counsel early in the proceedings is properly reviewed

under the harmless error standard, if amendable to such an analysis.

In the instant case, Father *was* represented by counsel at the hearings following the combined jurisdiction/disposition hearing, including the hearing at which parental rights were terminated. (Opinion, at pp. 1181-1182, 1192.) And again, Father has never articulated how having had counsel at the jurisdiction/disposition hearing would have altered the trajectory of the proceedings and provided him a defense to the termination of his parental rights at the permanency hearing, in light of the period of Father's incarceration and his inability to develop any relationship, much less a significant and beneficial relationship, with his young child due to his incarceration. (Opinion, pp. 1192-1193; § 366.26, subd. (c)(1)(B)(i)-(vi).)

IV. The Cases Father Cites To In Support Of His Position Are Distinguishable And/Or Do Not Support His Position That The Error In The Instant Case Was Structural.

The cases father cites to in support of his position in the instant case are distinguishable and/or do not support his position that the error in the matter at bar was structural, and therefore, reversible per se.

A. Father's Reliance On Cases Involving A Lack Of Notice Of The Proceedings Is Misplaced.

Father cites to dependency cases in which the complete lack of notice has been deemed structural error. (BM 22-23.) However, those cases are distinguishable because Father *did* receive notice in the instant case. (Opinion, p. 1187.) Furthermore, those cases predate *In re James F.*, in which this

Court recognized the significant differences between criminal and dependency proceedings and questioned whether structural error should ever be applied dependency proceedings. (*In re James F.*, *supra*, 42 Cal.4th at pp. 915-916.)

And although the issue in *In re James F.* was error in the process used for appointing a GAL, this Court specifically stated in concluding that such error was a form of trial error amenable to harmless error analysis, "If 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." (*In re James F.*, *supra*, 42 Cal.4th at p. 918, citation omitted; see also *In re AI.J.* (2019) 44 Cal.App.5th 652, 673[15] [a reviewing court applied harmless error analysis to a case in which an incarcerated father was not provided adequate notice of the jurisdiction and disposition hearing]; *In re Daniel F.* (2021) 64 Cal.App.5th 701, 716 and *In re R.A.* (2021) 61 Cal.App.5th 826, 839 [alleged failure to conduct adequate due diligence searches for a missing parent and to provide notice to the parent of the jurisdiction/disposition and subsequent hearings in motions filed pursuant to section 388 reviewed under harmless error analysis in determining whether the parent was entitled to an evidentiary hearing].)

Furthermore, as Division One explained, the instant case is distinguishable from cases involving a complete failure to provide notice to a parent not only because Father does not dispute that he received notice, but because "[t]he record also reflects [Father]

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[15] This case is also referred to as *In re A.J.*

received notice of all hearings, and participated, with counsel, in the hearings resulting in the termination of parental rights from which he now appeals. Cases involving a complete lack of notice present unique concerns, none of which is present here." (Opinion, p. 1187, citations omitted.)

B. Father Is Incorrect When He Asserts That Other Errors In the Dependency Context Have Been Deemed Structural.

Father also appears to assert that other errors in dependency proceedings, including denying a parent a contested hearing on an issue on which the child protective services agency bears the burden of proof, have been deemed structural error. (BM 20.) He is wrong. As a preliminary matter, the cases on which father relies – *In re Kelly D.* (2000) 82 Cal.App.4th 433, *In re Josiah S.* (2002) 102 Cal.App.4th 403, and *In re James Q.* (2000) 81 Cal.App.4th 255 – predate *In re James F.*, *supra*, 42 Cal.4th 901. Furthermore, the cases do not address the applicable standard of review in assessing such errors, much less hold they are structural and/or would have compelled the reversal of an order terminating parental rights at a later stage in the proceedings. The cases Father cites to simply hold that the parents were entitled to the contested hearings they requested. (*In re Kelly D.*, *supra*, 82 Cal.App.4th at pp. 439-440, *In re Josiah S.*, *supra*, 102 Cal.App.4th at pp. 417-418; and *In re James Q.*, *supra*, 81 Cal.App.4th at p. 268.)

In fact, *In re Kelly D.*, *supra*, 82 Cal.App.4th 433 and *In re James Q.*, *supra*, 81 Cal.App.4th 255 support the application of the harmless error test. The reviewing courts in those cases cited

to Section 13 of Article VI of the California Constitution and found there had been a "miscarriage of justice." (*In re Kelly D.*, *supra*, 82 Cal.App.4th at p. 440; *In re James Q.*, *supra*, 81 Cal.App.4th at p. 268.) The reviewing court in *In re Kelly D.*, even appeared to qualify its finding of a "miscarriage of justice" by adding "under the circumstances here." (*In re Kelly D.*, *supra*, 82 Cal.App.4th at p. 440.)

In *In re Celine R.*, *supra*, 31 Cal.4th at pp. 59-60, this Court referenced cases that included general references to a "miscarriage of justice," said that the cases had "not stated the exact harmless error test[,]" cited to Section 13 of Article VI of the California Constitution, and stated, "The California Constitution prohibits a court from setting aside a judgment unless the error has resulted in a 'miscarriage of justice.' We have interpreted that language as permitting reversal only if the reviewing court finds it reasonably probable the result would have been more favorable to the appealing party but for the error. We believe it appropriate to apply the same test in dependency matters." (Internal citations omitted.) Thus, Father is mistaken when he asserts the errors in *In re Kelly D.*, *supra*, 82 Cal.App.4th 433, *In re Josiah S.*, *supra*, 102 Cal.App.4th 403, and *In re James Q.*, *supra*, 81 Cal.App.4th 255 were deemed structural. (BM 20.) Furthermore, Father fails to recognize that the Court of Appeal in *In re Andrea L.* (1998) 64 Cal.App.4th 1377, 1387, explicitly applied a harmless error analysis in reviewing a juvenile court's error in failing to conduct a contested hearing.

In re Andrew M. (2020) 46 Cal.App.5th 859, is also not helpful to Father's position. (BM 20, 35.) Father relies on a footnote stating it would have been structural error if the parent in that case had never received a copy of the section 300 petition. (*In re Andrew M.*, *supra*, 46 Cal.App.5th at p. 867, fn.4.; BM 20, 35; Opinion, p. 1187.) However, because lack of notice was not at issue in the case, the Court of Appeal's footnote was simply dicta. (*In re Andrew M.*, *supra*, 46 Cal.App.5th at p. 867, fn.4; Opinion, p. 1187.) Significantly, the issue in *In re Andrew M.* is similar to the case at bar – the failure to appoint counsel for an incarcerated parent during the jurisdiction/disposition stage of the proceedings. (*Id.* at p. 864.) In that case, Division Three of the Second Appellate District did not hold that the error was structural, but rather, applied a harmless error analysis and found that the error was not harmless. (*In re Andrew M.*, *supra*, 46 Cal.App.5th at p. 867; Opinion, p. 1187.) Thus, the case supports Division One's holding that such error is subject to a harmless error analysis. (Opinion, pp. 1185-1187.)

The fact that such error is subject to and amendable to a harmless error analysis is further supported by *In re AI.J.*, *supra*, 44 Cal.App.5th 652, in which Division Five of the Second Appellate District held that the failure to give an incarcerated father adequate notice of the jurisdiction and disposition hearing was prejudicial error. The father in that case *was* released from custody during the underlying proceedings and made efforts to establish a relationship with his children and participate in services. (*Id.* at p. 673.) The *In re AI.J.* Court found the errors

with respect to the jurisdiction/disposition hearing were not harmless. The Court stated, "On these facts, it is arguably more likely than not that father would have been given reunification services and successfully completed such services." (*Ibid.*) In the instant case, Father remained incarcerated during the entire duration of the proceedings. (Opinion, pp. 1190-1191.) Over 26 months passed between the detention hearing (1CT 198) and the hearing at which the juvenile court terminated parental rights with respect to Christopher (3CT 920-922). Furthermore, the evidence was that Father would not be eligible for parole until March 2021. (2CT 379.) This was over three years after Christopher was detained. (1RT 1-5.) Thus, reunification was never an option and Father's period of incarceration far exceeded the reunification period. This supports the conclusion that such error is amenable to a harmless error analysis and therefore not structural.

In re Andrew M., *supra*, 46 Cal.App.5th 859 also did not, as Father asserts, hold that the length of a father's incarceration could not be considered in assessing prejudice. (BM 35.) And to the extent it can be interpreted as such, it is wrong and runs afoul of the principles this Court expressed in *In re James F.*, *supra*, 42 Cal.4th 901. Father's incarceration in the instant case is every bit as relevant as the father's incarceration in *In re James F.* was in assessing prejudice and is directly relevant to such an assessment. (*Id.* at p. 918.) Christopher's childhood and his need for, and entitlement to, a safe and stable home, did not come to a grinding halt when Father was incarcerated. As this

Court explained in *In re James F.*, prejudice cannot be deemed irrelevant when the welfare and interests of a child are at stake. (*In re James F.*, *supra*, 42 Cal.4th at p. 917.) In the same vein, one cannot ignore issues and circumstances, including a parent's lengthy incarceration and inability to even remotely parent or reunify with his child, that directly establish whether an error resulted in prejudice. Incarceration is no exception. As this Court stated in *In re James F.*, "[T]he ultimate consideration in a dependency proceeding is the welfare of the child[.]" (*Id.* at p. 915, citation omitted.) And, as aptly stated in *In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038, "The reality is that childhood is brief; it does not wait until a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it."

Father is also wrong when he asserts that *In re M.M.* (2015) 236 Cal.App.4th 955 suggested it was structural error to not produce an incarcerated parent for testimony. (BM 21.) *In re M.M.* involved a case in which a juvenile court proceeded with a jurisdiction/disposition hearing in the incarcerated mother's absence and over her counsel's objection. (*Id.* at p. 960.)

Division Seven of the Second District Court of Appeal held the error in proceeding in the mother's absence was not harmless because the mother denied allegations that she was soliciting for prostitution and that if her oral testimony were believed, there was "no doubt the result of the challenged proceedings would have been more favorable to her." (*In re M.M.*, *supra*, 236

Cal.App.4th. at p. 964.) The *In re M.M.* Court explained, "On this record, we cannot conclude the juvenile court's error in proceeding in violation of [the mother's] right to be present at the hearing was harmless." (*Ibid*.) The *In re M.M.* Court specifically recognized that the error was not reversible per se, applied a harmless error analysis, and found the error was not harmless. (*Id*. at pp. 963-964.) Thus, *In re M.M.* supports a finding that errors with respect to Penal Code section 2625 are not structural, but rather, properly subject to a harmless error analysis. (*Ibid*.)

The cases Father cites to in support of his position that structural error has been applied in civil cases are not helpful because civil cases do not implicate the same public policy interests as dependency cases.[16] (BM 19.) Furthermore, they do not support application of the structural error doctrine in the instant case.

In *Guardianship of Waite* (1939) 14 Cal.2d 727, 729-730, this Court criticized a trial court for not permitting the appellant to testify, but did not find structural error. Rather, it held the lower court's finding of the appellant's incompetency was "not supported by any substantial evidence." (*Id*. at p. 731.) In *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 292-293, the reviewing court found the party was denied a right to a fair hearing and the errors were reversible per se. In that case, the trial judge walked out of the courtroom in midtrial and curtailed

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[16] The citation Father provides for *Caldwell v. Caldwell* is incorrect so it is unknown whether that case addressed structural error. (BM 4, 19.)

the parties' rights to present evidence. (*Id*. at pp. 292-293.) In *In re Severson and Werson, PC v. Sephry-Fard* (2019) 37 Cal.App.5th 938, 950-951, the reviewing court held that a trial court's failure to afford a party proper notice and the opportunity to be heard prior to the issuance of a restraining order was structural error. In doing so, the reviewing court said that the errors were such that it was impossible for the trial court or appellate court to assess them. (*Id*. at p. 951.)

In the instant case, the error *is* amenable to a harmless error analysis because, based on undisputed facts, the errors were unquestionably harmless for all the reasons previously stated and as articulated by Division One. (Opinion at pp. 1177, 1187-1193.) This was not the situation in the civil cases Father cites to in support of his position. (BM 19.) Furthermore, the civil cases and the dependency cases Father cites to certainly do not stand for the proposition that an error can be deemed structural several months or even years down the line and used to unravel potentially years of proceedings.

C. This Court's Holding In *In re A.R.* (2021) 11 Cal.5th 234, Does Not Support Father's Position That The Error In The Instant Case Was Structural.

Father asserts that in *In re A.R.*, *supra*, 11 Cal.5th 234, this Court "without using the term 'structural error' effectively held that the loss of the right to appeal was structural error requiring that the appeal be reinstated upon an appropriate showing that did not require any showing that the appeal was potentially or actually meritorious [citation]." (BM 23-24.)

Father is not entirely correct in his assertion that this Court found the error structural.

In *In re A.R.*, *supra*, 11 Cal.5th 234, this Court recently addressed whether a parent has the right to challenge her counsel's failure to timely file a notice of appeal from an order terminating parental rights. (*Id.* at pp. 244-245.) This Court explained that in California, the Legislature has enacted several protections to guard against an erroneous order terminating parental rights. (*Id.* at p. 245.) This Court further explained that the first protection was the statutory right to court-appointed counsel in parental rights termination proceedings even when it may not be constitutionally required. (*Id.* at pp. 245-246.) This Court identified the issue "concern[ed] what happens when denial of the first protection – the right to competent counsel – threatens the second protection, the right to appeal." (*Id.* at p. 246.) In that case, the mother directed her court-appointed counsel to file an appeal five days after the juvenile court ruled against her. (*Id.* at p. 244.) However, the attorney did not file the notice of appeal until four days after the 60-day deadline had passed. (*Ibid.*)

This Court reversed the Court of Appeal's judgment dismissing the mother's appeal "as untimely, notwithstanding her efforts to demonstrate that the untimeliness of her notice of appeal was the result of incompetent performance by her attorney." (*In re A.R.*, *supra*, 11 Cal.5th at pp. 257-258.) This Court stated, "We today hold that when their court-appointed attorneys have failed to timely file a notice of appeal of an order

terminating parental rights, parents whose rights have been terminated may seek relief based on the denial of the statutory right to the assistance of competent counsel. To succeed in such a claim, parents must show that they would have filed a timely appeal absent attorney error and that they diligently sought relief from default within a reasonable timeframe, considering the child's unusually strong interest in finality." (*Id.* at pp. 257-258, internal quotations and citations omitted.)

This Court further addressed how error in such a case was to be assessed and explained, "To ascertain prejudice, we focus on whether the parent would have taken a timely appeal, without requiring the parent to shoulder the further burden of demonstrating the appeal was likely to be successful." (*In re A.R.*, *supra*, 11 Cal.5th at pp. 252-253.) This Court further stated, "The final, and crucial, element of any successful claim to relief based on incompetent representation is the claimant's promptness and diligence in pursuing the appeal." (*Id.* at p. 253.) This Court noted the importance of promptness and diligence in pursuing an appeal in criminal cases "applie[d] with even greater force in the dependency context, where the costs of delay are particularly acute." (*Ibid.*) In *In re A.R.*, the notice of appeal was filed just four days late and the mother "promptly sought relief from default along with her timely filed brief on the merits, thus minimizing the risks of delay." (*Ibid.*)

Thus, this Court did not apply structural error in *In re A.R.*, but rather, determined the prejudice was to be assessed with respect to whether but-for the incompetent representation,

the parent would have noticed a timely appeal, and held that a claimant was required to demonstrate promptness and diligence in pursuing the appeal. (*In re A.R.*, *supra*, 11 Cal.5th at pp. 252-253.) The mother in *In re A.R.* was able to demonstrate actual prejudice – i.e. the loss of her right to pursue an appeal. Furthermore, offering the mother effective relief did not result in a windfall to her, nor did it unduly burden the child's interest in permanence and stability, as the mother was diligent in pursuing her appeal and the notice of appeal was filed only four days late. (*Id.* at p. 253.)

In the instant case, Father has been unable to demonstrate *any* prejudice from the errors at the combined jurisdiction/disposition hearing or that he lost any rights he would have otherwise had but-for the errors, much less that he acted diligently. Deeming the error that occurred early in the instant proceedings as structural and reversible per se, and unraveling years of proceedings despite the errors having no prejudicial impact, would simply result in a windfall to Father and to the clear detriment of young Christopher.

In sum, this Court's recent decision in *In re A.R.*, *supra*, 11 Cal.5th 234, does not support Father's position that the error in the case at bar was structural.

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V. Public Policy Interests, Including the Interests Of The Child Who Is the Subject Of The Juvenile Court Proceedings, Dictate That When A Juvenile Court's Error In Proceeding With The Jurisdiction/Disposition Hearing Without The Incarcerated Parent's Presence And Without Appointing The Parent An Attorney Is Amenable To A Harmless Error Analysis, That Is The Standard That Should Be Applied. Finding Such Error To Be Structural, Without Regards To Prejudice, Would Fail To Recognize And Balance The Child's Often Competing And Equally Important Interests In Stability And Permanence.

The juvenile court should have complied with Penal Code section 2625. (Opinion, pp. 1184-1185.) However, DCFS cannot agree with Father's position that the error was structural. (See BM, generally.) Young Christopher has never had a parent able or willing to care for him and provide for his needs. Mother was not involved and Father was incarcerated shortly after Christopher was conceived. (Opinion, pp. 1178, 1189-1190; 2CT 378-379, 495; 3CT 728, 826, 878.) Father's position that this Court should deem the error that occurred at the jurisdiction/disposition hearing structural, and therefore reversible per se, without regard to prejudice, completely ignores young Christopher's interests. Father also ignores that he was *never* in a position to care for his young son due to his own actions that resulted in his incarceration, not because of the trial error during the combined jurisdiction/disposition hearing.

As Father acknowledged during the underlying appellate proceedings (Opinion, p. 1188, fn. 5), jurisdiction in the instant case was proper regardless of the errors. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491["it is necessary only for the court to find

that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child"].) The jurisdictional and dispositional findings concerning mother have never been disputed. (Opinion, pp. 1178-1181.)

Deeming the error in the instant case as structural and without regard to prejudice, would have the unintended consequence of encouraging a parent to wait until after the termination of parental rights to bring mistakes that occurred early in the proceedings to the Court's attention so as to "wait out" the period of incarceration and "re-start the clock" after the proceedings have proceeded to permanency. This is precisely what has occurred in the instant case.

Father appeared, was represented by counsel, and actively participated in multiple proceedings for well over a year following the jurisdiction/disposition hearing, remained incarcerated throughout the duration of the case, and raised the error for the first time on appeal from the order terminating his parental rights. (Opinion, pp. 1181-1182; Respondent's MJN, Exh. 4, p. 10; 3RT 10, 12, 31, 34; 4RT 1; 3CT 814, 861.) This runs afoul of the public policy interests this Court recently expressed in *In re A.R.* with respect to the requirement that a parent be diligent in pursuing his or her appellate rights due to the child's unusually strong interest in finality. (*In re A.R.*, *supra*, 11 Cal.5th at p. 258.)

The child's need for permanency and finality is also reflected in the fact that reviewing courts, including this Court, have previously followed case law from non-dependency

proceedings and found parents in dependency cases waive all jurisdictional objections by participating in subsequent proceedings. (*In re Gilberto M.* (1992) 6 Cal.App.4th 1194, 1198-1200, fn. 7; *In re B.G.* (1974) 11 Cal.3d 679, 688-689.) Significantly, *In re Gilberto M.*, *supra*, 6 Cal.App.4th at pp. 1199-1200, also involved a father who challenged an order terminating his parental rights on the grounds that he was not provided notice, appointed counsel, or transported to court for prior hearings in violation of Penal Code section 2625. Yet, the Court of Appeal found that he had waived the right to assert error by participating in subsequent proceedings.[17] (*Id.* at p. 1200, fn. 7.)

Thus, while the error in proceeding with the combined jurisdiction/disposition hearing without Father's presence and/or a signed waiver of appearance and in not appointing counsel was regrettable and should not have occurred, prejudice should not be deemed irrelevant and Christopher's interests cannot be disregarded. Applying the harmless error standard in dependency proceedings when the error is amenable to such analysis is sound public policy and properly balances both the parent's and the child's significant interests. As this Court explained in *In re Jasmon O.* (1994) 8 Cal.4th 398, "Children are

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[17] In the case at bar, Division One did not address DCFS's position that Father waived any challenge to the juvenile court's compliance with Penal Code section 2625 by not raising the issue prior to his counsel making a general appearance and by not filing a motion challenging the juvenile court's jurisdiction and/or its compliance with Penal Code section 2625. (Respondent's Brief, pp. 31-35; Opinion, p. 1183, fn. 4.)

not simply chattels belonging to the parent, but have fundamental interests of their own that may diverge from the interests of the parent. [Citation.]" (*Id*. at p. 419.)

As this Court aptly recognized in *In re Marilyn H.* (1993) 5 Cal.4th 295, 310, "Childhood does not wait for a parent to become adequate. [Citation.]" Thus, prejudice in dependency proceedings should not be deemed irrelevant.

Conclusion

In sum, this Court should follow its precedent, and like Division One, "decline Father's invitation to expand current law and deem reversible per se an error in dependency proceedings that is amenable to harmless error analysis." (Opinion, p. 1177.) This Court has said it best when it has expressed that prejudice cannot be irrelevant when the interests of a young child are at stake. (*In re James F.*, *supra*, 42 Cal.4th at p. 917.) Accordingly, this Court should affirm Division One's decision in the instant case.

DATED: July 13, 2021

Respectfully submitted,

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The text of this brief consists of 13,975 words as counted by the Microsoft Office Word 2016 program used to generate this brief.

DATED: July 13, 2021

Respectfully submitted,

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Declaration Of Service

STATE OF CALIFORNIA, County of Los Angeles:

ARLENE MEZA states: I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012.

On July 13, 2021, I served the attached **ANSWER BRIEF ON THE MERITS IN THE MATTER OF C.L., SUPREME COURT NO. S265910, 2d JUVENILE NO. B305225, LASC NO. 17CCJP02800,** to the persons and/or representative of the court as addressed below.

BY ELECTRONIC SERVICE. I served via TrueFiling, and no error was reported, a copy of the document(s) identified above:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on July 13, 2021, at Los Angeles, California.

/s/ Arlene Meza
ARLENE MEZA

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S265910**
Lower Court Case Number: **B305225**

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