

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ALYSSA F., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CHRISTINA R. et al.,

Defendants and Appellants.

D041179

(Super. Ct. No. SJ10747B)

APPEALS from a judgment and orders of the Superior Court of San Diego County, Peter E. Riddle, Judge. (Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.) Reversed and vacated with directions.

Pedro F. and Christina R. each separately appeal a judgment terminating their parental rights to their daughter, Alyssa F., under the Welfare and Institutions Code.¹

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

Pedro asserts the judgment should be reversed on the grounds that (1) the court had no subject matter jurisdiction because the case was subject to the Uniform Child Custody Jurisdiction and Enforcement Act (hereafter the Act);² (2) his due process rights were violated when he did not receive notice in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 (hereafter the Hague Service Convention or the Convention)); (3) he did not receive proper notice of most of the hearings; and (4) he was improperly denied the right to be represented by counsel at the section 366.26 hearing. Christina asserts the judgment must be reversed because (1) Pedro was not served in compliance with the Hague Service Convention; (2) the court exceeded its jurisdiction by making a true finding on the petition; and (3) she had a beneficial relationship with Alyssa within the meaning of section 366.26, subdivision (c)(1)(A). Each parent joins in the arguments of the other. Because we conclude the record is insufficiently developed to enable this court to determine whether the trial court had continuing subject matter jurisdiction under the Act as of January 2001, and because Pedro was not served in accordance with the Hague Service Convention, we reverse and vacate the jurisdictional and dispositional orders and all subsequent orders, including the

² Pedro contends the Uniform Child Custody Jurisdiction Act is the governing law. However, in 2000, California codified the Uniform Child Custody Jurisdiction and Enforcement Act in Family Code section 3400 et. seq. and repealed the act to which Pedro refers. (*In re C. T.* (2002) 100 Cal.App.4th 101, 106.) We presume Pedro

judgment terminating parental rights. We direct the court to hold a special hearing to determine whether it had subject matter jurisdiction as of January 2001.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2000, Christina, Pedro, and three-year-old Alyssa were living together in Tijuana, Mexico. That month, Christina discovered Alyssa had been sexually abused. Believing Pedro and a friend of his were responsible, she filed charges against them with the Tijuana police. She also brought Alyssa to San Diego County and told an Agency social worker that Alyssa had been sexually molested by Pedro and by a friend of his.³ Christina identified Pedro as Alyssa's biological father.

The Women's Resource Center was going to give Christina and Alyssa a safe place to stay in the United States. However, an employee of that facility told a social worker she believed Christina intended to return to Tijuana with Alyssa because Christina thought she had not obtained concrete evidence the abuse had occurred, and because she did not want Pedro's family to be angry with her. The Agency removed Alyssa from Christina's custody and filed a section 300 petition on her behalf, asserting the child was in danger because she had been exposed to violent confrontations in the family home and had been sexually abused, and because Christina used methamphetamine.⁴

intended to argue the court had no jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

³ Christina and Alyssa are United States citizens.

⁴ The Agency alleged Alyssa was at risk from domestic violence because Christina had reported that Pedro had physically abused her. The Agency alleged Alyssa was at

Christina provided an address for Pedro in Tijuana. The court sent Pedro, by first-class mail, a copy of the minute order from the detention hearing, which contained the date of the jurisdictional hearing. The Agency left a message for Pedro, presumably by telephone, regarding the jurisdictional hearing. Although it is not clear from the record, we assume this message included the date and time of that hearing. In January 2001, the court made a true finding on each count in the petition. The same month, the court held the dispositional hearing, removed Alyssa from her parents' custody, and ordered reunification services for Christina. At the April 2002 12-month review hearing, the court terminated reunification services and scheduled a section 366.26 hearing. Pedro did not appear at any of the hearings.

At the September 2002 section 366.26 hearing, the court found Alyssa was adoptable. Finding none of the section 366.26, subdivision (c)(1) exceptions applied, the court terminated the parental rights of both Christina and Pedro.

DISCUSSION

I

Subject Matter Jurisdiction

A. The Trial Court had Temporary Emergency Jurisdiction

The parents assert the judgment terminating parental rights must be reversed because the juvenile court had no subject matter jurisdiction over the case under the Act.

risk from Christina's drug use because Christina tested positive for drugs after Ana F., Christina's youngest daughter, was born.

The Act is the exclusive method of determining subject matter jurisdiction in custody cases and governs juvenile dependency proceedings. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 310.) The Act applies to international custody disputes. (*Ibid.*)

Family Code sections 3421 through 3424 govern jurisdiction under the Act. Under Family Code section 3424, subdivision (a), "[a] court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse."

The parents assert Family Code section 3424, subdivision (a) is inapplicable because the Agency never established "an authentic, exigent need for jurisdiction." There are only two prerequisites to the juvenile court taking jurisdiction over a child under Family Code section 3424, subdivision (a): (1) the child must be present in this state; (2) and there must be a need to protect the child from immediate harm. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1174.) Here, Alyssa was present in California. Further, she was at risk of immediate harm. Alyssa said Pedro and his adult male friend had forced her to orally copulate them, ejaculated in her face, touched her vaginal area, and penetrated her from behind. When asked if Pedro had done anything to her, she responded "yes," stuck out her tongue, and said, "Daddy said not to bite just to go like this with the tongue." She did not want to stay alone with Pedro and would "scream and cry and go wild" whenever she was left alone with him. The doctor who performed a sexual abuse examination on Alyssa found a labial abrasion and an anal fissure that could have resulted from molestation. The doctor stated that although the physical findings

were non-specific, when combined with Alyssa's recent behavioral change,⁵ the findings were "completely consistent" with allegations of sexual abuse.

Christina also admitted Pedro had been physically abusing her for the last eight years. He has broken her nose and hit her with objects. At the time of Alyssa's removal, Christina had visible bruises from being abused. She feared for her and Alyssa's lives because of Pedro's actions. Physical and sexual abuse are sufficient grounds for a court to assert emergency jurisdiction. (*In re Nada R.*, *supra*, 89 Cal.App.4th at p. 1174.)

The parents argue that the fact that the Agency did not immediately remove Alyssa from Christina's custody establishes that there was no emergency. However, there was no need to remove Alyssa from Christina immediately, because Christina told the Agency she wanted to find a safe place to live in the United States, away from Pedro. Once the Agency learned Christina intended to return to Pedro's home in Mexico with Alyssa, the situation became urgent because Alyssa would be threatened with abuse if forced to live with Pedro. We conclude that the court had emergency jurisdiction over Alyssa under Family Code section 3424, subdivision (a) at the time of the detention.

B. The Case Must be Remanded for a Determination Regarding Whether the Juvenile Court had Continuing Subject Matter Jurisdiction as of January 2001

The parents assert that even assuming the court had emergency jurisdiction over Alyssa at the time of the detention hearing, there was no emergency that justified holding

⁵ Alyssa's behavior had been erratic. She refused to allow Christina to dress or bathe her or change her clothing. She removed her dolls' clothing and rubbed the dolls together.

a jurisdictional hearing and consequently, the court did not have continuing subject matter jurisdiction over Alyssa under the Act. We sought additional briefing from the parties as to who bears the burden on appeal to demonstrate subject matter jurisdiction. The Agency asserts the parents have the burden, whereas the parents assert the Agency has the burden. Generally, an appellant bears the burden of showing error on appeal by providing an adequate record. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

However, the question of subject matter jurisdiction is fundamental; subject matter jurisdiction is necessary before a court can determine a case. (*Marlow v. Campbell* (1992) 7 Cal.App.4th 921, 928.) If the superior court lacks subject matter jurisdiction, the judgment is void. (*Ibid.*) "Unlike personal jurisdiction, subject matter jurisdiction cannot be conferred on a court by consent of the parties, waiver, or estoppel. A judgment rendered by a court that does not have subject matter jurisdiction . . . may be attacked anywhere, directly or collaterally, by parties or by strangers. [Citation]" (*Ibid.*)

When the issue of subject matter jurisdiction is raised for the first time on appeal, the appellate court must address the issue regardless of the state of the record presented. This is because subject matter jurisdiction implicates the very power of the lower court to act. (*In re Marriage of Oddino* (1997) 16 Cal.4th 67, 73; *Consolidated Theatres, Inc. v. Theatrical Stage Employees Union* (1968) 69 Cal.2d 713, 721.) As one court noted, "while it is unfortunate that [the party] did not raise this issue earlier . . . we are compelled to consider its merits if, in fact, it questions the trial court's fundamental, subject matter jurisdiction." (*Keiffer v. Bechtel Corp.* (1998) 65 Cal.App.4th 893, 896.)

Thus, we turn to the merits of whether the trial court had continuing subject matter jurisdiction under the Act.

The Act was never "'contemplated to be a vehicle for a state to attain modification jurisdiction on an ongoing basis or for an indefinite period of time.' [Citation.]" (*In re C. T., supra*, 100 Cal.App.4th at p. 112.) Thus, an order taking jurisdiction over a child based on the emergency jurisdiction provisions of the Act must be limited in time and for a specific period. (*Id.* at p. 107.) However, after determining an emergency exists, the Agency argues the California court may address the merits of a dependency petition if: (1) California is the child's home state (Fam. Code, § 3421, subd. (a)(1)); (2) the child does not have a home state as defined by Family Code, section 3402, subdivision (g), or a state that is the child's home state has declined to take jurisdiction and the child and one parent has a connection with California, and sufficient evidence about the child is available in California (Fam. Code, § 3421, subd. (a)(2)); or (3) the order taking emergency jurisdiction provides it becomes a final custody determination and there is no existing custody order, the state that has jurisdiction over the child has not entered a custody order, or no custody proceedings are initiated in the state that has jurisdiction (Fam. Code, § 3424, subd. (b)). We examine each of these provisions to determine whether the court had continuing subject matter jurisdiction over Alyssa under any of them.

Under Family Code section 3421, subdivision (a)(1), a California court has jurisdiction to make an initial child custody determination if this state is the home state of the child on the date of the commencement of the proceedings. The Family Code defines

"home state" as "the state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement of the child custody proceeding. . . . A period of temporary absence of any of the mentioned persons is part of the period." (Fam. Code, § 3402, subd. (g).)

The record shows Alyssa is a United States citizen who was residing in Mexico. However, the record does not reveal when she began living in Mexico. It is possible that Alyssa was living in the United States in August 2002, because that month the Agency removed her newborn sibling, Ana, from Christina's custody. Further, Alyssa has another sibling who is living in San Diego with his paternal grandfather. Because the record does not establish where Alyssa resided during the six months before the petition was filed, we cannot conclude that California is Alyssa's home state under Family Code section 3421, subdivision (a)(1), and that the court thus had continuing jurisdiction over Alyssa under this provision.

The Agency asserts the court had jurisdiction under Family Code section 3421, subdivision (a)(2), which provides that a California court has jurisdiction to make an initial custody determination if:

"A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is a more appropriate forum under section 3427 or 3428, and both of the following are true: [¶] (A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships."

The Agency contends California had continuing subject matter jurisdiction under this section because Alyssa and Christina had significant connections here. However, to reach the "significant connection" analysis, we must first conclude that another state does not have jurisdiction or that Alyssa's home state is not California and a court of her home state has declined to exercise jurisdiction. As discussed above, the record in this case is insufficiently developed for us to determine which state is Alyssa's home state. Consequently, we cannot determine whether another state had home state jurisdiction but declined to exercise it, and therefore cannot determine whether the court had continuing jurisdiction over Alyssa under Family Code section 3421, subdivision (a)(2).

The Agency alternatively contends California became Alyssa's home state under Family Code section 3424, subdivision (b), which provides:

"If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child."

Here, no other state had entered a child custody determination and no child custody proceedings were commenced in a court of a state having jurisdiction. Because no party appealed from the jurisdictional or dispositional hearings, the child custody determination made by the juvenile court would, under normal circumstances, become a final determination and California would be Alyssa's home state. However, as discussed

below, the jurisdictional and dispositional orders are void because Pedro was not properly notified of the proceedings under the requirements of the Hague Convention.

Consequently, those orders cannot be deemed to be a final custody determination and we cannot conclude California became Alyssa's home state under Family Code section 3424, subdivision (b).

When a record is undeveloped on the issue of continuing subject matter jurisdiction under the Act, we remand the matter for the juvenile court to determine the issue. (*In re Nada R.*, *supra*, 89 Cal.App.4th at pp. 1175-1176.) On remand, the court may not consider Alyssa's current circumstances; rather, the court must consider whether it had subject matter jurisdiction as of January 2001. (*Weller v. Weller* (Wyo. 1998) 960 P.2d 493, 496.) To do otherwise "would undermine the legislative function, the purposes behind the [Act's] jurisdictional requirements, and the basic doctrine of subject matter jurisdiction." (*Ibid.*) Because factual findings are needed to determine whether the trial court had continuing subject matter jurisdiction, we remand for the trial court to hold a hearing on the issue. We also reverse and vacate the jurisdictional finding, the dispositional order, and all other orders including the judgment terminating parental rights.⁶ Therefore, we need not reach any of the other issues raised by the parties except whether Pedro was properly served under the Hague Service Convention.

⁶ As is discussed below, if the trial court determines on remand that it had continuing subject matter jurisdiction, and Pedro either fails to set a hearing within 30 days from the date this opinion is filed to begin the process of establishing himself as a biological or presumed father, or if he fails to establish himself as a biological or presumed father, these findings and orders shall be reinstated.

II

Personal Jurisdiction

A. Pedro Has Made a General Appearance in this Court

Pedro asserts the judgment must be reversed because he was not served in accordance with the Hague Service Convention.⁷

Preliminarily, we address the Agency's assertion that Pedro waived his right to raise the issue of defects in service because he appeared in the trial court through counsel and never made this objection. A person waives any defects in service by making a general appearance. (*Zaragoza v. Superior Court* (1996) 49 Cal.App.4th 720, 725.) However, Pedro never personally appeared in the juvenile court.⁸ He was represented by counsel in the trial court only because the court, sua sponte, appointed him counsel. He was not present in court when the court appointed counsel for him, and there is no indication he sought trial counsel. He never spoke with his appointed counsel. The court cannot obtain personal jurisdiction by appointing counsel in absentia.

⁷ Christina also argues the judgment must be reversed because Pedro was not served in compliance with the Hague Service Convention. Christina has no standing to assert this issue because she was not aggrieved by the court's failure to properly serve Pedro. (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703.) However, because Pedro has appealed and indisputably has standing to challenge whether he received proper notice, we reach the merits of the argument. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 425.)

⁸ The Agency asserts Pedro appeared because he spoke to a social worker. However, the Agency provides no authority that this confers personal jurisdiction.

Although Pedro did not appear below, he appeared in this court by requesting counsel to represent him on appeal. A party may appear only for the purpose of contesting improper notice, but in order to avoid waiving the argument that the court lacks personal jurisdiction, he or she must specially appear for that purpose only and "must keep out for all purposes except to make that objection." (*Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1688.) A party who challenges issues other than personal jurisdiction on appeal makes a general appearance. (*Chaplin v. Superior Court* (1927) 81 Cal.App. 367, 379-380.) In contrast to what occurred in the trial court, Pedro personally requested counsel in this court. In addition, Pedro raises issues other than personal jurisdiction in his brief, and also joins Christina's brief, which raises issues other than personal jurisdiction. Since both briefs raise issues other than personal jurisdiction, Pedro has generally appeared in this court.

B. Pedro was not Properly Served Under the Hague Service Convention

The fact that Pedro has generally appeared in this court does not retroactively cure the defects in service. (*Bank of America v. Carr* (1956) 138 Cal.App.2d 727, 735.) The effect of the general appearance in this court is that, on remand, the trial court will have personal jurisdiction over Pedro without further service being required. (*Id.* at p. 739.) However, Pedro's general appearance here does not impact the merits of his argument that he is entitled to new jurisdictional and dispositional hearings because he was improperly served; it simply means that if we conclude service was in fact improper, the court will have personal jurisdiction over Pedro to conduct a new jurisdictional hearing and other proceedings.

The Hague Service Convention was "intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad." (*Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988) 486 U.S. 694, 698.) It applies "in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." (*Id.* at p. 699; Hague Service Convention, *supra*, 20 U.S.T. 361, Art. 1.) Because juvenile dependency matters are civil in nature (*In re Patricia T.* (2001) 91 Cal.App.4th 400, 464; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1247), the Convention applies to cases brought under section 300. Both the United States and Mexico are signatories to the Convention. (*Volkswagenwerk Aktiengesellschaft v. Schlunk, supra*, 486 U.S. at p. 698; *NSM Music, Inc. v. Alvarez* (N.D. Ill. 2003) ___ F.Supp. ___ [2003 WL 685338, *1].)

Failure to properly serve a party who resides outside the country under the Hague Service Convention renders all subsequent proceedings void as to that person. (*Honda Motor Co. v. Superior Court* (1992) 10 Cal.App.4th 1043, 1048.) This is true even when the party indisputably had notice of the action. (*Id.* at p. 1049; *Floveyor International, Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 794.)

Articles 2 through 6 of the Hague Service Convention establish a system whereby each participating country designates a "Central Authority" that receives and either rejects or executes requests for service of process. (*Balcom v. Hiller* (1996) 46 Cal.App.4th 1758, 1764.) Pedro asserts all documents in this matter were improperly served because neither the Agency nor the court sent them to the designated authority in

Mexico for service. Although neither the court nor the Agency sent documents to the Central Authority, the failure to do so does not necessarily void the judgment, because the Convention recognizes methods of service other than that set forth in Articles 2 through 6. (*Balcom v. Hiller, supra*, 46 Cal.App.4th at p. 1764.)

Article 10 of the Hague Service Convention provides:

"Provided the State of destination does not object, the present Convention shall not interfere with - [¶] (a) the freedom to send judicial documents, by postal channels, directly to persons abroad, [¶] (b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination, [¶] (c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination." (Hague Service Convention, *supra*, 20 U.S.T. 361, Art. 10.)

The Agency contends service in this case is valid under Article 10(a) because the court sent Pedro notice of the jurisdictional and dispositional hearing by first-class mail. "[N]o single provision in the Hague [Service] Convention has received as much judicial attention as Article 10(a)." *Randolph v. Hendry* (S.D. W.Va. 1999) 50 F.Supp.2d 572, 576.) The courts of this country disagree as to whether the word "send" is a synonym for "service of process," or has a different meaning from the word "service." (*Id.* at pp. 576-577 and citations therein.) This disagreement extends to the courts of this state. (Compare *Honda Motor Co. v. Superior Court, supra*, 10 Cal.App.4th at p. 1049, *Suzuki Motor Co. v. Superior Court* (1988) 200 Cal.App.3d 1476, 1481-1484 with *Shoei Kako Co. v. Superior Court* (1973) 33 Cal.App.3d 808, 821-822.) The courts in California that have most recently addressed the issue have held that "send" is *not* equal to service of

process. (*Honda Motor Co. v. Superior Court, supra*, 10 Cal.App.4th at p. 1049, *Suzuki Motor Co. v. Superior Court, supra*, 200 Cal.App.3d at pp. 1481-1484.)

This court has not addressed the issue whether the word "send" in Article 10(a) is synonymous with service of process. However, we need not reach that issue here, because regardless of what the drafters of the Hague Service Convention meant by the word "send" in Article 10(a), service in Mexico must also be valid under California law. (*Volkswagenwerk Aktiengesellschaft v. Schlunk, supra*, 486 U.S. at p. 701; *Kott v. Superior Court* (1996) 45 Cal.App.4th 1126, 1133.)

The controlling provision of California law is former section 337.⁹ That section provided that because Pedro was not present at the detention hearing, he had to receive notice of the jurisdictional and dispositional hearings personally or by certified mail, return receipt requested. (Former § 337, subs. (a), (b).) Neither service by first-class mail nor the social worker leaving Pedro a telephone message constituted adequate service under California law.

Moreover, service had to be accomplished in a manner not objected to by Mexico. (*Honda Motor Co., v. Superior Court, supra*, 10 Cal.App.4th at pp. 1046-1047.) The Agency has not established that Mexico allows for service of process by regular mail or by telephone. "To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents

⁹ Section 337 was repealed and the Legislature enacted section 291 in 2002. (Stats. 2002, ch. 416, §§ 1, 6.)

coming from abroad, for service within its territory, the present Convention shall not affect such provisions." (Hague Service Convention, *supra*, 20 U. S. T. 361, Art. 19.)

Mexico apparently does not prohibit service on a person by registered mail.¹⁰ (*NSM Music, Inc. v. Alvarez, supra*, ___ F.Supp.2d. at p. ___ [2003 WL 685338, *2].)

However, service of process by ordinary mail does not perfect service in Mexico. (*Hein*

¹⁰ Service of process may be accomplished in Mexico by: "(a). Service by international registered mail, return receipt requested. [¶] . . . [¶] (b). Service by agents, generally a Mexican attorney [¶] There is no provision in Mexican law specifically prohibiting service by agent, if enforcement of a judgment in Mexico courts is not anticipated. Personal service is accomplished by this method, wherein the Mexican attorney serves the document and executes an Affidavit of Service before a U.S. consul or vice-consul at the American Embassy or nearest consulate. . . . [¶] (c). Service by Letters Rogatory [¶] If enforcement of a judgment in Mexican courts is anticipated, service of process by letters rogatory is the exclusive method to follow, since the Mexican courts will not recognize service by international registered mail or by agent. [¶] (d). Service by International Convention/Treaty [¶] 1. The United States and Mexico are parties to the Inter-American Convention on Letters Rogatory, signed at Panama on January 30, 1975. . . . [¶] 2. Mexico acceded to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents on May 30, 2000. The Convention entered into force for Mexico on June 1, 2000. Under this Convention, requests for service are sent directly by the requester to the foreign central authority for service. In its instruments of accession to the Convention, Mexico declared the General Direction of Legal Affairs of the Ministry of Foreign Affairs (la Dirección General de Asuntos Jurídicos de la Secretaría de Relaciones Exteriores) as the Central Authority to receive requests for service of judicial and extrajudicial documents coming from other Contracting States and which will in turn forward them to the competent judicial authority for its compliance. Documents to be served in Mexico must be translated into Spanish." (Fellas & Townsend, *Selected Materials in International Litigation & Arbitration* (Continued) Practising Law Inst. Litigation Administrative Prac. Course Handbook Series (Mar. 17-18, 2003) 689 PLI/Lit 13, *220-224.) This information is also available on the U. S. State Department's web site at <<http://www.travel.state.gov/mexicoja.htm>> (see "International Judicial Assistance-- Mexico"). (*Casa de Cambio Delgado, Inc. v. Casa de Cambio Puebla, S.A. de C.V.* (N.Y. Sup. 2003) 2003 N.Y. Slip.op. 23557 [2003 WL 21146878, *4].) Although the State Department web site is not authority and lacks the force of law, it reflects the State Department's advice to practitioners about service of process in Mexico. (*Ibid.*)

v. Cuprum, S.A. de C.V. (N.D. N.Y. 2001) 136 F.Supp. 63, 71.) The parties have not cited, and we have not located, any authority that Mexican law allows service of process by telephone. Service by first class mail on Pedro did not perfect service in Mexico. Because the Agency did not serve Pedro in compliance with California law or Mexican law, the jurisdictional and dispositional orders are void. (*Honda Motor Co. v. Superior Court, supra*, 10 Cal.App.4th at p. 1048.)

A new jurisdictional hearing is necessary only if Pedro establishes himself as a presumed or biological father.¹¹ An alleged father is entitled to notice so that he may change his paternity status, but he has no standing to challenge other orders. (*In re O. S., supra*, 102 Cal.App.4th at pp. 1406, 1408; *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 596; *In re Joseph G.* (2000) 83 Cal.App.4th 712, 715-716.) Because a speedy resolution of these issues is of paramount importance, Pedro must set a hearing within 30 days from the date this opinion is filed to begin the process of establishing paternity. If he establishes paternity and the court determines it had continuing subject matter jurisdiction under the Act as of January 2001, the court shall hold a new jurisdictional hearing.

¹¹ The court terminated Pedro's rights as if he were a presumed father. However, the court never declared Pedro to be a presumed father. The Agency repeatedly refers to him as an alleged father and asserts that he had not taken steps to establish himself as a biological father. At the time Pedro's counsel was relieved because Pedro had made no contact with him, Pedro was still an alleged father. There is no indication Pedro appeared in the trial court after his counsel was relieved. Since Pedro had the burden to establish himself as a presumed father (*In re O. S.* (2002) 102 Cal.App.4th 1402, 1410), and did not do so, the court's termination of his parental rights as a presumed father was an error.

III

Christina's Rights on Remand

Because we cannot determine whether the court had continuing subject matter jurisdiction under the Act, and because Pedro was improperly served under the Hague Service Convention, we must reverse the judgment terminating both parents' parental rights. (*In re DeJohn B.* (2000) 84 Cal.App.4th 100, 110; Cal. Rules of Court, rule 1463(a).) However, Christina has identified no independent error that affected her ability to participate in the proceedings. She did in fact participate, and she received reunification services. Therefore, this reversal does not entitle her to participate in a new jurisdictional and dispositional hearing, or to receive additional reunification services. (See, e.g., *In re DeJohn B.*, *supra*, 84 Cal.App.4th at p. 110.) She may, however, be heard on the issue whether the court had subject matter jurisdiction as of January 2001. Further, if Pedro establishes himself as a presumed or biological father and, at some point, the court orders another section 366.26 hearing, Christina may challenge Alyssa's adoptability or raise any applicable exceptions under section 366.26, subdivision (c)(1) during that hearing. She may also file appropriate section 388 petitions.

IV

Conclusion

The finding that Alyssa is a person described by section 300 and the order declaring her a dependent and removing her from her parents' custody must be vacated. Consequently, all orders that follow, including the judgment terminating parental rights must also be vacated.

On remand, the court must hold a special hearing to determine whether it had continuing subject matter jurisdiction under the Act as of January 2001. If the court determines it had continuing subject matter jurisdiction and Pedro either fails to set a hearing to begin the process of establishing himself as a biological or presumed father within 30 days from the date this opinion is filed, or fails to establish himself as a biological or presumed father, the jurisdictional finding, dispositional order and all other orders, including the judgment terminating parental rights, shall be reinstated in full. If Pedro establishes himself as a presumed or biological father, the court must hold a new hearing to determine whether Alyssa is a person described by section 300. If the court finds it did not have continuing subject matter jurisdiction, the matter shall be transferred to the appropriate jurisdiction.

DISPOSITION

The jurisdictional and dispositional orders, all subsequent orders, and the judgment terminating Pedro's and Christina's parental rights are reversed and vacated. The court is directed to hold a special hearing to determine whether it had continuing subject matter jurisdiction over the matter as of January 2001 under the Uniform Child Custody Jurisdiction and Enforcement Act. After determining whether it had subject matter jurisdiction as of January 2001, the court shall proceed in accordance with the directions set forth in this opinion.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

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STATE OF CALIFORNIA

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D041179

(Super. Ct. No. SJ10747B)

ORDER MODIFYING OPINION
AND DENYING PETITIONS FOR
REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed on September 19, 2003, be modified as follows:

1. On page 12, the text of footnote 6 is deleted and the following is inserted in its place so that footnote 6 now reads:

As is discussed below, if the trial court determines on remand that it had continuing subject matter jurisdiction, and Pedro either fails to set a hearing to begin the process of establishing himself as a biological or presumed father within 30 days after the court

determines it has subject matter jurisdiction, or if he fails to establish himself as a biological or presumed father, these findings and orders shall be reinstated.

2. On page 19, the first full paragraph, line 5, the sentence beginning with the words "Because a" and ending on line 8 of the same paragraph with the word and punctuation "paternity." is deleted and the following is inserted in its place so that the sentence now reads:

Because a speedy resolution of these issues is of paramount importance, Pedro must set a hearing to begin the process of establishing paternity within 30 days after the court determines it has subject matter jurisdiction.

3. On page 21, first full paragraph, line 5, the words "from the date this opinion is filed," are deleted and the words "after the court determines it has subject matter jurisdiction," are inserted in their place so that the sentence now reads:

If the court determines it had continuing subject matter jurisdiction and Pedro either fails to set a hearing to begin the process of establishing himself as a biological or presumed father within 30 days after the court determines it has subject matter jurisdiction, or fails to establish himself as a biological or presumed father, the jurisdictional finding, dispositional order and all other orders, including the judgment terminating parental rights, shall be reinstated in full.

4. On page 21, the last paragraph, the last sentence beginning with the words "After determining" and ending on page 22 with the words and punctuation "in this opinion." is deleted and the following is inserted in its place.

If the court determines it had continuing subject matter jurisdiction and Pedro either fails to set a hearing to begin the process of establishing himself as a biological or presumed father within 30 days after the court determines it has subject matter jurisdiction, or fails to establish himself as a biological or presumed father, the

jurisdictional finding, dispositional order and all other orders, including the judgment terminating parental rights, shall be reinstated in full. If Pedro establishes himself as a presumed or biological father, the court must hold a new hearing to determine whether Alyssa is a person described by section 300. If the court finds it did not have continuing subject matter jurisdiction, the matter shall be transferred to the appropriate jurisdiction.

Father's petition for rehearing is denied as moot in light of this modification.

Mother's petition for rehearing was filed late; however, we have considered it on its merits and deny it as moot in light of this modification.

There is no change in the judgment.

BENKE, Acting P. J.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ALYSSA F., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CHRISTINA R. et al.,

Defendants and Appellants.

D041179

(Super. Ct. No. SJ10747B)

ORDER CERTIFYING OPINION
FOR PARTIAL PUBLICATION

THE COURT:

The opinion filed on September 19, 2003, and modified on October 14, 2003, is ordered certified for publication as to the introductory and Factual and Procedural Background sections, part II.B of the Discussion section, and the Disposition section. Parts I, II.A, III, and IV, are not included in the order of publication.

The attorneys of record are:

Michael D. Randall and Roni Keller, under appointments by the Court of Appeal,
for Defendants and Appellants.

John J. Sansone, County Counsel, Susan Strom, Chief Deputy County Counsel,
and Gary C. Seiser, Deputy County Counsel, for Plaintiff and Respondent.

Linda M. Fabian, under appointment by the Court of Appeal, for Minor.

BENKE, Acting P. J.

Copies to: All parties