2008

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Opinion by Kennard, J., expressing the unanimous view of the Court.

Issue

Is a juvenile court's error in the procedure used to appoint a guardian ad litem for an incompetent parent in a dependency proceeding subject to automatic reversal of the termination of the parent's parental rights or is it subject to harmless error review?

Facts

On September 11, 2003, the Los Angeles County Department of Children and Family Services (the "Department") removed two-month old James F. from the home of his parents, Cynthia F. and Marcus M., and placed him in a foster home.[1] The Department's petition alleged that James F. was at risk of "serious physical harm or illness" from his mother's substance abuse and inability to care for him.[2] After a detention hearing on September 16, 2003, the juvenile court placed James into the Department's custody.[3]

The Department later amended its petition, alleging that Marcus had emotional and mental problems including bipolar disorder, an extensive criminal history, and was incompetent to stand trial.[4] The matter was set for a contested jurisdictional hearing, which was postponed because Marcus was in custody on a charge of robbery.[5] Before the hearing, the superior court appointed Marcus's parents conservators of his person.[6]

At the hearing on December 16, 2003, an available attorney was appointed as a guardian ad litem for Marcus.[7] It was explained to him that the guardian ad litem was his "second lawyer."[8] At the hearing, Marcus looked to his relatives for cues as to how to answer the court's questions.[9]

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[1] In re James F., 174 P.3d 180, 182 (Cal. 2008).
[2] *Id.*
[3] *Id.*
[4] *Id.* at 182–83.
[5] *Id.* at 183.
[6] *Id.*
[7] *Id.*
[8] *Id.* at 184.
[9] *Id.*

The guardian ad litem waived Marcus's trial rights and agreed to submit the matter on the Department's reports.[10] At the conclusion of the hearing, the court declared James a dependent of the court.[11] On December 19, 2003, he was placed in the home of his maternal grandparents.[12]

In a report filed on May 5, 2004, the Department recommended termination of Marcus's reunification services.[13] The report noted that Marcus, who had been transported to a mental hospital for treatment for mental and emotional problems and substance abuse, was not complying with the reunification plan.[14] At a review hearing held on July 14, 2004, at which the guardian ad litem for Marcus submitted the matter on the Department's reports in his absence, the court terminated the reunification services.[15] On December 7, 2005, at a permanency planning hearing, the court selected adoption as the permanent plan for James F.[16]

The Court of Appeal concluded that automatic reversal of the order terminating Marcus's parental rights was required because the juvenile court appointed a guardian ad litem "without advising [Marcus] of the purpose or consequences of the appointment."[17] The Supreme Court of California granted review.[18]

Analysis

In a dependency case, the Court noted, the juvenile court must appoint a guardian ad litem to represent a mentally incompetent parent.[19] Before appointing a guardian ad litem, the court must hold an informal hearing at which the purpose and reasons for the appointment are explained to the parent and where the parent has the opportunity to object or consent to the appointment.[20] The parties stipulated in this case that the procedures used to appoint a guardian for Marcus did not satisfy due process.[21]

The Court noted that the Courts of Appeal are divided as to whether a juvenile court's error in the procedure used to appoint a guardian ad litem automatically requires reversal or is subject to harmless error analysis.[22] Some courts have concluded that a juvenile court's order appointing a guardian ad litem and terminating parental rights must be reversed only if the error was not "harmless beyond a reasonable doubt."[23] Other courts

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10 *Id.* at 183.
11 *Id.*.
12 *Id.* at 184.
13 *Id.*
14 *Id.*
15 *Id.* at 185.
16 *Id.*
17 *Id.*
18 *Id.*.
19 *Id.*
20 *Id.* at 186.
21 *Id.*
22 *Id.*
23 *Id.* at 186–87 (citing In re Sara D., 104 Cal. Rptr. 2d 909 (Ct. App. 2001); In re Jessica G., 113

concluded that a procedural error that violates a parent's due process rights is structural and requires immediate reversal.[24]

The Court of Appeal in the present case said that the error was structural because it "stripped [Marcus] of his right to participate in litigation involving his entitlement to the companionship, care and custody of his son without affording him the process he was due."[25] The dissent argued that the error was not structural, requiring immediate reversal, because "an appellate court could accurately determine whether the parent actually suffered prejudice" and because of the "strong public interest in the expeditious resolution of dependency actions."[26]

The Court reviewed the United States Supreme Court's distinction between constitutional "trial errors" in criminal trials whose prejudicial effect can be assessed, from "structural" errors that compromise basic protections such as the right to counsel and therefore defy harmless error analysis.[27] The Court noted that the rights and protections afforded parents in a dependency proceeding are not the same as those afforded to the accused in a criminal proceeding.[28] These differences, the Court said, place into question whether the "structural error doctrine" in criminal proceedings should be "imported wholesale, or unthinkingly," into dependency cases.[29]

The Court agreed with the Court of Appeal that, under harmless error analysis, Marcus suffered no actual prejudice.[30] The Court reasoned that all the evidence showed that Marcus was incompetent and that he needed a guardian ad litem.[31] The Court also said that Marcus would have consented to the appointment if the purpose and reasons for the appointment were correctly explained to him.[32] The Court also disagreed with the Court of Appeal's conclusion that the error was structural.[33]

Holding

The Court held that a juvenile court's error in the procedure to appoint a guardian ad litem for an incompetent parent in a dependency proceeding is trial error subject to harmless error analysis rather than a structural error requiring automatic reversal of the order appointing the guardian ad litem

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Cal. Rptr. 2d 714 (Ct. App. 2001); In re Daniel S., 9 Cal. Rptr. 3d 646 (Ct. App. 2004)).

24 *Id.* at 187 (citing In re C.G., 27 Cal. Rptr. 3d 872 (Ct. App. 2005)).

25 *Id.* at 188 (internal quotations omitted) (citation omitted).

26 *Id.*

27 *Id.* at 188–89 (citing Az. v. Fulminante, 499 U.S. 279 (1991); U.S. v. Gonzalez-Lopez, 548 U.S. 140 (2006)).

28 *Id.* at 189.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.* at 190.

33 *Id.* at 190–91.

and terminating parental rights without regard to prejudice.[34]

Legal Significance

As a result of this decision, a California juvenile court's procedural error when appointing guardian ad litems to mentally incompetent parents in dependency cases, such as the failure to explain to the parent the purpose and reasons for the appointment, will subsequently be subjected to harmless error analysis rather than automatic reversal.

Further, because the Court based its determination of the relevant standard of review by contrasting the levels of protections afforded to parents in a dependency proceeding and the accused in a criminal proceeding, this decision also signifies that procedural error in proceedings where an individual's afforded protections are less than those provided in a criminal proceeding will also be reviewed under harmless error analysis.

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[34] *Id.* at 189, 191.