SUPREME COURT OF NEW JERSEY

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

J.L. and C.H.,

Defendants.

IN THE MATTER OF

L.G.L.,

Minor, and

L.L.,

Intervenor-Minor-Petitioner

Docket No. 092333

App. Div. Docket No. A-4093-24

CIVIL ACTION

IN SUPPORT OF PETITION FOR CERTIFICATION FROM A FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

Sat Below:

Hon. Ronald Susswein, J.A.D.
Hon. Mark K. Chase, J.A.D.
Hon. Lorraine M. Augostini, J.A.D.

---

# BRIEF OF PROPOSED *AMICI CURIAE*, ADVOCATES FOR CHILDREN OF NEW JERSEY, CHILDREN'S RIGHTS, JUVENILE LAW CENTER, LEGAL AID SOCIETY, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, NATIONAL NETWORK FOR FOSTERING SIBLING CONNECTIONS, IN SUPPORT OF PETITION FOR CERTIFICATION

---

**On the Brief:**
Talha Iqbal,
Clinical Legal Intern

Abigail Cyrenne,
Clinical Legal Intern

**Randi Mandelbaum**
**Rutgers Law School**
**Child Advocacy Clinic**
123 Washington Street
Newark, New Jersey 07102
973-353-3196
Bar No. 034852002
**Attorney for Proposed Amici Curiae**

## TABLE OF CONTENTS

**Page**

**TABLE OF CONTENTS** ..... ii

**TABLE OF AUTHORITIES** ..... iii

**PRELIMINARY STATEMENT** ..... 1

**STATEMENT OF FACTS AND PROCEDURAL HISTORY** ..... 3

**ARGUMENT** ..... 3

**I. CERTIFICATION SHOULD BE GRANTED BECAUSE WHETHER A SIBLING HAS THE RIGHT TO INTERVENE IN A TPR PROCEEDING CONCERNING THEIR SIBLING AND HOW SIBLINGS CAN PRESERVE THEIR RELATIONSHIPS POST-ADOPTION ARE ISSUES OF FIRST IMPRESSION** ..... 3

**II. CERTIFICATION SHOULD BE GRANTED BECAUSE THE APPELLATE DIVISION'S DECISION CONTRADICTS FEDERAL AND NEW JERSEY LAW AND POLICY ON PRESERVING SIBLING RIGHTS AND MAINTAINING THE SIBLING RELATIONSHIP** ..... 7

**A. New Jersey Law and Federal Law Recognize and Promote the Maintenance of the Sibling Relationship** ..... 8

**B. Siblings Who Were or Are in Foster Care Have Standing and the Right to Intervene in a TPR Proceeding to Protect Their Legally-Recognized Sibling Relationship** ..... 11

**C. Leah Clearly Meets the Requirements of Rule 4:33-1** ..... 13

**D. Even If a Right to Intervene Does not Exist, the Lower Courts Should Have Used Their Discretion to Permit Intervention under Rule 4:33-2** ..... 18

**CONCLUSION** ..... 20

## TABLE OF AUTHORITIES

**CASES** **PAGE(S)**

ACLU of N.J., Inc. v. Cnty. of Hudson,
352 N.J. Super. 44 (App. Div. 2002) .....14

Atlantic Employers Insurance Co. v. Tots & Toddlers Pre-School Day Care Center, Inc.,
239 N.J. Super. 276 (App. Div. 1990) .....11, 15

B.C. v. N.J. Div. of Child Prot. & Permanency,
450 N.J. Super. 197 (App. Div. 2017) .....7, 11, 12

Brody v. Spang,
957 F.2d 1108 (3d Cir. 1992).....15

In re D.C.,
203 N.J. 545 (2010) ..... 4, 7, 8, 16

In re Guardianship of J.N.H.,
172 N.J. 440 (2002) .....5, 8

In re Guardianship of K.H.O.,
161 N.J. 337 (1999) .....16

L.v.G.,
203 N.J. Super. 385 (Ch. Div. 1985) .....8

M.M. v. Dep't of Child. and Fams.,
479 N.J. Super. 471 (App. Div. 2024) ..... 18, 19

Meehan v. K.D. Partners, L.P.,
317 N.J. Super. 563 (App. Div. 1998) .....11

N.J. Dep't of Env't Prot. v. Exxon Mobil Corp.,
453 N.J. Super. 272 (App. Div. 2018) ..... 14, 15

N.J. Div. of Child Prot. & Permanency v. D.P.-Z.,
483 N.J. Super. 549 (App Div. 2026) .....5, 6
N.J. Div. of Child Prot. & Permanency v. G.S.,
447 N.J. Super. 539 (App. Div. 2016) .....16
N.J. Div. of Child Prot. & Permanency v. J.L.,
485 N.J. Super. 155 (App. Div. 2026) ..... 7, 12, 14, 15, 17, 18, 20
N.J. Div. of Youth & Fam. Servs. v. M.M.,
189 N.J. 261 (2007) .....9
N.J. Div. of Youth & Fam. Servs. v. S.S.,
187 N.J. 556 (2006) ..... 4, 5, 8
R.K. v. A.J.B.,
284 N.J. Super. 687 (Ch. Div. 1995) .....13
State v. Lavrik,
472 N.J. Super. 192 (App. Div. 2022) .....11

**STATUTES**

42 U.S.C. § 671(a)(31).....8
Colo. Rev. Stat. § 19-7-203 (2025).....9
Minn. Stat. § 260C.008 (2025) .....9
N.J.S.A. 30:4C-15.1 .....10
N.J.S.A. 9:2-7.1..... 10, 12
N.J.S.A. 9:6B-2.2(b) to (e).....5, 9
N.J.S.A. 9:6B-4..... 9, 10, 12
Or. Rev. Stat. §§ 418.606–.608 (2025) .....9
P.L. 2023, c. 1, § 2.....9

**SECONDARY SOURCES**

Adam McCormick, Siblings in Foster Care: An Overview of Research, Policy, and Practice,
4 J. of Pub. Child Welfare 198 (2010) ..... 6

Shanta Trivedi, The Harm of Child Removal,
43 N.Y.U. Rev. L. & Soc. Change 523 (2019) ..... 6

**COURT RULES**

R. 4:33-1 ..... 11, 13

## PRELIMINARY STATEMENT

This case presents an important and unresolved question concerning the protections afforded to siblings in New Jersey's child welfare system: whether a child may intervene in a termination of parental rights ("TPR") proceeding involving her sibling when the proceeding threatens their legally recognized sibling relationship. A TPR not only determines the ongoing legal rights of a child's parents but also whether the child will proceed toward adoption, which can sever a child's relationships with family members, including their siblings. Thus, the consequences for the child's existing family relationships are profound. The Appellate Division found that there was no right to intervene, and in doing so created new law that was contrary to existing law, with the potential for severe consequences extending well beyond these two sisters, Leah (D.O.B.: 5/23/2016) and Lexi (D.O.B.: 11/26/2022). Unless reviewed, the Appellate Division's decision will allow procedural obstacles to undermine relationships that are mandated by federal and state law.

For decades, this Court and New Jersey's legislature have recognized that the sibling bond is uniquely important to children, especially for children removed from their families. Despite these well-established laws, the Appellate Division treated the absence of an express statutory reference concerning the right to standing and intervention as support for the proposition that siblings cannot invoke applicable intervention rules. The decision below ignores statutes enacted to expand protections

for siblings, while at the same time restricting the procedural means available to protect those same relationships.

This case squarely presents these concerns on a well-developed record. Here, Leah and Lexi lived together prior to entering the child welfare system and for approximately nine months while in foster care. Even after their separation, they continued regular contact. When concerns arose regarding whether their relationship would continue after Lexi's anticipated adoption, Leah's Law Guardian retained an expert to evaluate the sibling bond. The expert concluded that the sisters shared a "mutually responsive and emotionally protective sibling bond" and that continued contact was "developmentally essential." The trial court likewise recognized the importance of the sisters' relationship. Nevertheless, the trial court denied Leah the opportunity to intervene and independently participate in the proceedings determining Lexi's permanency. The fact that Lexi's current resource family might support sibling visits does not change the question presented. A caregiver's willingness is voluntary and revocable, resource parents change, and adoptive parents will make their own decisions about contact.

The Appellate Division decision's reach is why this case warrants review. J.L. is a published opinion that binds trial courts statewide, and its reasoning is not confined to guardianship. It holds that the rights the CPBRA and the Siblings' Bill of Rights give to children in placement with respect to their siblings impart no

cognizable legal interest or ability to intervene, and that the Legislature's silence about intervention and standing shows an intent to exclude it. As the petition explains that logic can potentially be invoked to shrink existing siblings' rights, by potentially keeping siblings out of child placement, abuse or neglect, custody and visitation, kinship legal guardianship, and TPR matters alike. It would also leave statutory rights without a forum: a sibling is entitled to have her wishes "provided to the court," N.J.S.A. 9:6B-4(r), yet under the opinion she has no mechanism to participate in the proceeding before that court.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

*Amici r*elies on the facts and procedural history as recited by Petitioner.

## ARGUMENT

### I. CERTIFICATION SHOULD BE GRANTED BECAUSE WHETHER A SIBLING HAS THE RIGHT TO INTERVENE IN A TPR PROCEEDING CONCERNING THEIR SIBLING AND HOW SIBLINGS CAN PRESERVE THEIR RELATIONSHIPS POST-ADOPTION ARE ISSUES OF FIRST IMPRESSION.

This Court has never addressed whether a sibling has a right to intervene in a TPR proceeding involving another sibling to protect their sibling relationship. The absence of controlling authority on this issue is particularly significant because the Appellate Division's published decision establishes statewide precedent governing the rights of siblings in TPR proceedings. The questions are thus not limited to Leah's and Lexi's circumstances. The decision impacts how children who have been in foster care can access and avail themselves of New Jersey's Grandparent and

Sibling Visitation Statute ("GSVS"). Accordingly, the Court's resolution of this issue will determine the procedural framework and legal rights applicable to similarly situated siblings in future child welfare proceedings.

Rule 2:12-4 provides for certification where an appeal presents "a question of general public importance which has not been but should be settled by the Supreme Court[.]" The questions presented here satisfy that standard. Whether and under what circumstances a sibling may intervene in a TPR implicates New Jersey's intervention rules, its statutory protections for sibling relationships, and the irreparable consequences of a termination of parental rights and adoption.

Although this Court has previously considered questions concerning post-adoption sibling contact it has declined to resolve them where no justiciable controversy existed. See N.J. Div. of Youth & Fam. Servs. v. S.S., 187 N.J. 556, 563-64 (2006). It was not until In re D.C. that this Court formulated standards governing sibling visitation before and after adoption. 203 N.J. 545, 551 (2010). In D.C., the Court held that visitation between siblings could be ordered post-adoption under an avoidance of harm standard. Id. at 574. However, neither D.C., nor any other case, provides guidance on how to enforce legal protections afforded to siblings or how they impact the interpretation of existing procedural rules, such as the right of intervention. The D.C. decision also does not explain how a sibling can assert rights found in the Siblings' Bill of Rights, which did not exist when it was

decided. The limited treatment of sibling associational rights in this Court's precedent, coupled with the Legislature's substantial expansion of those rights since D.C., warrant clarification on how those protections operate within existing procedural rules.

The sibling relationship is not a peripheral interest. New Jersey case law and the New Jersey Legislature, through the recently enacted Siblings' Bill of Rights, expressly recognize the importance of sibling relationships, especially of children who have been involved with New Jersey's child-welfare system. See S.S., 187 N.J. at 560-61 (recognizing the distinctive emotional support provided by sibling relationships and their particular significance to children removed from their homes); In re Guardianship of J.N.H., 172 N.J. 440, 478-79 (2002) (directing the Family Part to, in reconsidering a TPR judgment, examine the effect of permanently terminating the child's connections with his siblings); D.C., 203 N.J. at 551 (finding that the sibling relationship is longer lasting and more influential than any other); N.J. Div. of Child Prot. & Permanency v. D.P.-Z., 483 N.J. Super. 549, 577-79 (App Div. 2026) (recognizing the Legislature's declaration of the importance of the Siblings' Bill of Rights and preserving relationships for children involved in the welfare system); N.J.S.A. 9:6B-2.2(b) to (e) (declaring that maintaining sibling relationships improves child welfare outcomes and that DCF should support those relationships).

Social science research also notes the harm and trauma that separation between siblings can cause. One author, reviewing social science literature, found that "while the conversation is usually focused on separating children from their parents, it is important to be cognizant of additional trauma caused by separation from other family members." Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. Rev. L. & Soc. Change 523, 533 (2019). Another article found that "[s]eparating siblings who have been removed from their parents only seems to intensify the pain, grief, and trauma that they have already experienced when they were initially removed from their parents" and can be "considered a form of revictimization." Adam McCormick, *Siblings in Foster Care: An Overview of Research, Policy, and Practice*, 4 J. of Pub. Child Welfare 198, 207 (2010).

Certification is also warranted under Rule 2:12-4 because the opinion conflicts with three other decisions as well as the Sibling Bill of Rights. In D.P.-Z., decided this year, the Appellate Division held that a child in placement had a presumptive right to sibling visitation under the CPBRA and the Siblings' Bill of Rights, had made a prima facie showing of resulting harm from the denial of visitation, and that the trial court erred in finding best interest evaluations and a plenary hearing unwarranted. D.P.-Z., 483 N.J. Super. at 556, 576-81. The decision below treated those same statutory rights as conferring no cognizable legal interest or standing. New Jersey Div. of Child Prot. & Permanency v. J.L., 485 N.J. Super.

155, 169-70 (App. Div. 2026). D.C. held that the Division's duty to nurture sibling relationships continues through termination, 203 N.J. at 563-64, and that a foster family's disinclination to support sibling visits is "not even a relevant factor," id. at 565-66. Further, the Appellate Division recognized in B.C. v. New Jersey Division of Child Protection & Permanency, 450 N.J. Super. 197, 201, 210 (App. Div. 2017), that grandparent caregivers may assert their separate rights in child protection litigation under N.J.S.A. 9:2-7.1, and that statute gives siblings the same right, N.J.S.A. 9:2-7.1(a).

## II. CERTIFICATION SHOULD BE GRANTED BECAUSE THE APPELLATE DIVISION'S DECISION CONTRADICTS FEDERAL AND NEW JERSEY LAW AND POLICY ON PRESERVING SIBLING RIGHTS AND MAINTAINING THE SIBLING RELATIONSHIP.

The Appellate Division's decision cannot be reconciled with New Jersey's explicit and longstanding protections of the sibling relationship, particularly where the State's child welfare system is involved. First, New Jersey's law, in tandem with federal law, promotes the maintenance of the sibling relationship. Considering these laws and policies, siblings have standing and the right to intervene in their siblings' TPRs to protect this legally recognized interest, and Leah meets the requirements to intervene. Finally, should this court find that siblings do not have a right to intervene, permissive intervention should have been considered, given New Jersey's strong laws preserving the sibling relationship and its policies of being flexible in matters concerning children and the sibling relationship.

### A. New Jersey Law and Federal Law Recognize and Promote the Maintenance of the Sibling Relationship.

In 2008, Congress enacted the Fostering Connections to Success and Increasing Adoptions Act ("Fostering Connections") that requires states to make reasonable efforts to place siblings removed from their homes in the same foster care, kinship guardianship, or adoptive placement, unless joint placement would be contrary to the safety or well-being of any sibling. See 42 U.S.C. § 671(a)(31). When siblings cannot be placed together, states must make reasonable efforts to provide frequent visitation or other ongoing interaction, including while children are in adoptive placements, unless such contact is contrary to a sibling's safety or well-being. Id. § 671(a)(31)(B).

Even before the Fostering Connections Act was enacted, New Jersey law recognized how critical the sibling relationship was. See S.S., 187 N.J. at 560-61; L. v. G., 203 N.J. Super. 385, 395, 398 (Ch. Div. 1985). Moreover, D.C. made clear that the Legislature deliberately declined to treat TPR as a point at which the State's obligation to preserve sibling relationships disappears. See id. at 563-65. In fact, this Court has repeatedly treated the preservation of sibling bonds as relevant to a child's welfare in a TPR. See In re Guardianship of J.N.H., 172 N.J. at 478 (stating that consideration of the effect of permanently terminating a child's connection to his siblings was "part and parcel" of the inquiry and recognizing the potential long-term consequences of severing that relationship); N.J. Div. of Youth & Fam. Servs. v.

M.M., 189 N.J. 261, 288 (2007) (holding continued sibling contact was "[i]ntegral" to the Court's analysis of whether termination would do more harm than good).

In 2023, New Jersey enacted the Siblings' Bill of Rights, sparking a movement that resulted in a limited group of states enacting legislation specifically addressing sibling relationships in foster care and other out-of-home placements. See, e.g., Minn. Stat. § 260C.008 (2025); Or. Rev. Stat. §§ 418.606-.608 (2025); Colo. Rev. Stat. § 19-7-203 (2025). New Jersey's Siblings' Bill of Rights, rooted in the firsthand experiences of two dozen New Jersey youths in the child welfare system (P.L. 2023, c. 1, § 2), expressly requires the State to keep siblings together whenever possible and to continue supporting these relationships outside of the home. Importantly, the Sibling Bill of Rights extends to siblings "who are not in resource family care or who have not been adopted." N.J.S.A. 9:6B-2.2(d). Consistent with this intent, the legislation provides siblings with the right to: (1) regular visitation and virtual contact between face-to-face visits, N.J.S.A. 9:6B-4(f); (2) mandatory placement as near as possible to their siblings (where joint placement was impossible), id. at -4(q); (3) being promptly informed of changes in their siblings' placement and permanency goals, id. at -4(t); (4) active involvement in birthdays, holidays, graduations, and other meaningful milestones, id. at -4(u); (5) protection from withholding visits, calls, or virtual contact as a behavioral consequence, id. at -4(v); and (6) updated sibling contact information annually at least, id. at -4(w).

The Siblings' Bill of Rights expressly recognizes sibling interests in maintaining their relationships and provides for sibling participation in permanency planning "whenever appropriate." N.J.S.A. 9:6B-4(r). Participating siblings' recommendations and wishes must also be documented in the case record and provided to the court. Ibid. The statute does not confine sibling protections to visitation after a permanency decision has already been made. Rather, it expressly contemplates that siblings are permitted to participate in the permanency-planning process and any hearings concerning another sibling. Ibid. The Appellate Division's application of "expressio unius est exclusio alterius" ignores the Legislature's intent to provide siblings a flexible method for preserving their relationships, including through intervention into a sibling's TPR, and in doing so, impedes the preservation of the sibling relationship.

In addition, the fourth prong of the best interest test for TPRs asks whether "termination will do more harm than good." N.J.S.A. 30:4C-15.1. Given the risk that the sibling relationship may not be maintained post-TPR and/or post-adoption, it is incumbent upon the court to hear evidence and assess the significance of this relationship.

New Jersey's GSVS provides further evidence that the Legislature recognizes siblings as individuals with independent legal interests in maintaining familial relationships, contrary to the Appellate Division's conclusion. N.J.S.A. 9:2-7.1

expressly permits "any sibling of a child residing in this State" to apply to the Superior Court for visitation and directs the court to consider "[t]he relationship between the child and the applicant." N.J.S.A. 9:2-7.1(a), (b)(1). In other words, the Legislature expressly identifies the sibling relationship as an interest relevant to judicial decision-making. The statutory scheme does not treat a sibling's interest in maintaining the relationship as merely emotional or collateral; it provides siblings with an avenue for invoking judicial protection of that relationship.

### B. Siblings Who Were or Are in Foster Care Have Standing and the Right to Intervene in a TPR Proceeding to Protect Their Legally-Recognized Sibling Relationship.

The myriad of laws recognizing the rights of siblings informs the application of the standing and intervention rules, which do not categorically exclude siblings or any other class of persons, from seeking intervention. Rather, the intervention statute directs that, "[u]pon timely application," an applicant who satisfies its substantive requirements "shall be permitted to intervene." R. 4:33-1. New Jersey courts have accordingly construed intervention as of right liberally. See Atlantic Employers Insurance Co. v. Tots & Toddlers Pre-School Day Care Center, Inc., 239 N.J. Super. 276, 280 (App. Div. 1990) (holding that the rule governing intervention as of right "should be liberally construed"); Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998) (reiterating the same); State v. Lavrik, 472 N.J. Super. 192, 211-12 (App. Div. 2022).

While resource parents are expressly prohibited from intervening, pursuant to N.J.S.A. 9:6-8.19a, N.J.S.A. 30:4C-12.2 and R. 5:12-4(i), the same cannot be said for grandparents and other family members. In B.C., 450 N.J. Super. at 197, the Appellate Division acknowledged that although an FD action ordinarily provides a convenient vehicle for asserting visitation rights, intervention in the pending child-protection matter remained an available alternative under the ordinary intervention rules. Id. at 207-09. Moreover, while the Appellate Division held that "standing and the right to intervene are two distinct legal principles," the Appellate Division erroneously found that Leah did not have standing. J.L., 485 N.J. Super. at 167. The court likened the rights of children under the Siblings' Bill of Rights to the "notice and right-to-be-heard" provisions for resource parents and reasoned that a sibling has no cognizable stake simply because a TPR focuses on parents' rights and the child's best interests. Ibid. But the standing threshold in New Jersey is "fairly low," requiring a sufficient stake, real adverseness, and a substantial likelihood of harm. Id. at 166. Further, resource parents are expressly excluded from party status by statute, see N.J.S.A. 9:6-8.19a; N.J.S.A. 9:3-45.2; N.J.S.A. 30:4C-12.2; N.J. Div. of Youth & Fam. Servs. v. D.P., 422 N.J. Super. 583, 586-87, 599 (App. Div. 2011); while siblings are excluded by none, and the Legislature has given them independent rights. N.J.S.A. 9:2-7.1; N.J.S.A. 9:6B-4.

In R.K. v. A.J.B., grandparents were permitted to intervene and "present relevant evidence" in an adoption hearing to help determine whether adoption was in the child's best interests. 284 N.J. Super. 687, 695 (Ch. Div. 1995). The Appellate Division found reliance on this case "misplaced because the court did not find that the grandparents had standing to be heard in the adoption proceeding." J.L., 485 N.J. Super. at 167. However, this is not an accurate reading of the case. The court in R.K. v. A.J.B. actually found that "in considering whether standing should be afforded to others, the court should look to the type of proofs the opponent of the adoption wishes to offer, as well as the opponent's relationship to the child and the person or persons who seek or support the adoption." 284 N.J. Super. at 693. As will be shown below in the analysis of how Leah meets the requirements of Rule 4:33-1, Leah more than meets the requirements for standing.

### C. Leah Clearly Meets the Requirements of Rule 4:33-1.

Rule 4:33-1 requires a proposed intervenor to demonstrate that she: (1) claims an interest relating to the property or transaction that is the subject of the action; (2) is so situated that disposition of the action may, as a practical matter, impair or impede her ability to protect that interest; (3) is not adequately represented by the existing parties; and (4) has filed a timely application to intervene. R. 4:33-1.

Leah clearly satisfied the requirements of intervention as of right and should have been allowed to intervene in Lexi's TPR proceeding. Because Rule 4:33-1 is

not discretionary, the lower courts were required to permit Leah to intervene once those requirements were established. See N.J. Dep't of Env't Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 286 (App. Div. 2018) (explaining that the Intervention Rule "is not discretionary" and that a court must approve intervention when its criteria are satisfied).

First, Leah has a legally cognizable interest relating to the TPR action as required under prong one. Rule 4:33-1 only requires that an interest relates to the subject of the action. It does not require that the intervenor possess the same constitutional rights as or exact interests of an existing party as the Appellate Division suggested. See ACLU of N.J., Inc. v. Cnty. of Hudson, 352 N.J. Super. 44, 70 (App. Div. 2002) (explaining that the Intervention Rule "simply requires" the movant to claim an interest relating to the subject of the action). Leah demonstrated to the court that she had a real and actionable interest in Lexi's TPR because her sibling bond with Lexi was and continues to be "developmentally essential," that she would suffer irreparable harm if it was not preserved, and the TPR proceeding could cause the relationship to end. See J.L., 485 N.J. Super. at 162 (quoting Dr. Elizabeth Stilwell's evaluation of Leah's sibling bond to Lexi).

Under the second prong, Leah only needs to prove that as a practical matter not permitting her to intervene would impede her ability to protect her sibling relationship. The inquiry turns on the practical effect of the pending proceeding, not

on whether some avenue of relief remains available afterward. See Brody v. Spang, 957 F.2d 1108, 1123 (3d Cir. 1992) (holding that an applicant need not establish that a later action would be barred or that intervention is the only available avenue of relief); Exxon Mobil Corp., 453 N.J. Super. at 288-89. Indeed, New Jersey courts have found the second prong is satisfied even when alternative future actions remained available, where the pending case could significantly weaken the intervenor's ability to obtain effective relief later. Atl. Emps. Ins. Co., 239 N.J. Super. at 280-81.

The Appellate Division found that Leah did not meet the second prong because she could pursue relief through a future FD action. However, upon review, even though there is the availability of a future FD action under the GSVS, Leah's ability to protect her sibling relationship was still impeded. The Appellate Division failed to consider numerous significant factors including: (1) Leah's need to develop the record at the TPR and demonstrate that the sibling relationship is strong and must be preserved to avoid harm; (2) Leah's limited ability to access counsel at a later FD; (3) Leah's lack of funds to pay an expert at later proceedings; (4) evidence of the sibling relationship becoming stale over time; and (5) the harm to both siblings from the passage of time, including the loss of chances to bond and establish memories. These factors practically limit Leah's ability to obtain relief at a future date and render the Appellate Division's proposed remedy insufficient.

The fact that Lexi's current resource family may support sibling contact also does not preclude the finding that Leah has met the second prong of R. 4:33-1. A caregiver's present willingness is a courtesy, not a legal right. It is voluntary, subject to change, revocable, and not legally enforceable. In re Guardianship of K.H.O., 161 N.J. 337, 362 (1999). This Court has already held that a foster family's disinclination to support sibling visitation is "not even a relevant factor" in whether visitation must occur, D.C., 203 N.J. at 565-66; the converse follows, that a caregiver's willingness cannot supply what the law should guarantee.

Moving to the third prong, Leah demonstrated that her interest was not adequately represented by Lexi. The lower courts erred in holding that Leah's interest in the sibling relationship could be represented by Lexi. Not only does this framework undermine the principle that each stakeholder is best situated to represent their own interests, but it is also factually inaccurate. See N.J. Div. of Child Prot. & Permanency v. G.S., 447 N.J. Super. 539, 561 n.9 (App. Div. 2016). Lexi and Leah had separate Law Guardians for a reason. A review of the record illustrates that a conflict of interest ultimately caused the attorney who had represented both girls to withdraw from their case. Leah and Lexi thereafter received separate representation, and their cases were reassigned to a different judge. During the TPR, Lexi herself took no position on Leah's intervention motion, even while Lexi's father supported it. While the sisters' interests were closely related, they were not legally

interchangeable. Lexi's Law Guardian was obligated to advocate for Lexi's interests, an obligation that did not extend to independently representing Leah's interest in preserving their relationship.

The Appellate Division principally relied on Lexi's Law Guardian's statement that he intended to advocate for continued sibling visitation and on his ability to call Dr. Stilwell at trial. J.L., 485 N.J. Super. at 170-71. However, this was not something that Leah could rely upon, and, in actuality, Lexi's Law Guardian did not call Dr. Stilwell as an expert witness as Leah would have done with the assistance of her Law Guardian. The fact that Lexi's counsel favored continued visits at a moment in time did not mean he would advance Leah's distinct legal interests, decide what evidence Leah should present, cross-examine witnesses on Leah's behalf, or preserve Leah's claims. Moreover, the possibility that Lexi's Law Guardian might introduce some of the same evidence Leah wished to present does not establish adequate representation of Leah's separate statutory interest, and the Appellate Division's reliance on Lexi's Law Guardian's statement should not have been a basis for deciding whether to grant Leah's motion to intervene.

Under the fourth and final prong, Leah filed a timely application to intervene. Leah did not become concerned that her relationship with her sister would not be preserved until November 2024 when Lexi was removed from her grandmother who supported contact. On or after November 2024, evidence was presented that the

resource parent with whom Lexi was then placed did not support sibling contact. This fact created a potential conflict between the sisters, resulting in the girls' attorney withdrawing on January 23, 2025. The Appellate Division did not consider that Leah and Lexi were then provided with new, separate representation and assigned a different judge in the middle of their case. Upon learning of Lexi's permanency plan, Leah's new counsel promptly hired Dr. Stilwell to evaluate the siblings' bond. Petr.'s Br. 18. And upon receiving Dr. Stilwell's report in May 2025, Leah's counsel immediately filed the motion to intervene. Id. The Appellate Division should have considered these facts in its analysis of whether the motion was timely. J.L., 485 N.J. Super. at 171-72.

As demonstrated above, Leah overwhelmingly satisfied all four requirements to intervene in Lexi's TPR proceeding. Because Rule 4:33-1 is mandatory once its requirements are met, the lower courts should have permitted Leah to intervene.

### D. Even If a Right to Intervene Does not Exist, the Lower Courts Should Have Used Their Discretion to Permit Intervention under Rule 4:33-2.

Even if Leah did not satisfy every requirement of Rule 4:33-1, the lower courts possessed discretion to allow her intervention under Rule 4:33-2, which permits intervention upon a timely application when the applicant's claim or defense and the underlying action share a common question of law or fact. M.M. v. Dep't of Child. and Fams., 479 N.J. Super. 471, 489 (App. Div. 2024). In exercising that discretion,

courts must consider whether intervention would unduly delay or prejudice the adjudication of the original parties' rights. Id. (quoting B.C., 450 N.J. Super. at 208). In M.M., the Appellate Division identified several considerations relevant to that inquiry, including the promptness of the application, the potential for undue delay, the possibility of eliminating subsequent litigation, and whether intervention would unnecessarily complicate the existing proceedings. Id. at 490. These factors weighed heavily in favor of intervention.

As established above, Leah's application was reasonably prompt given the circumstances causing her need for intervention. Lexi's permanency goal changed dramatically with her placement change in November 2024, when she was moved from her paternal grandmother, who supported continued sibling contact, back to her former resource home. Only at a later unknown date did Leah learn that her relationship with Lexi was in jeopardy. She responded by hiring an outside expert to conduct an evaluation and filing for intervention. She did not sit on a known interest while the litigation proceeded.

Additionally, Leah's application presented questions of fact directly connected to Lexi's permanency proceedings, which should have allowed her to claim an interest relating to the TPR action. Given the factual similarities between them, permitting Leah's involvement in Lexi's TPR proceeding would have reduced delay in the long run and prevented needless, duplicative litigation at a later FD

action. Specifically, it would have allowed the Family Part, while the relevant witnesses, visitation history, and expert evaluation were already before it, to develop a fuller record concerning the sibling relationship. By contrast, requiring Leah to wait for a later FD proceeding would necessitate another Family Part judge to reconstruct much of that same factual history, including the sisters' joint placement, separation, visitation history, strength of their bond, and the impact of no contact.

The decision to refuse intervention is even more surprising considering that the trial court itself acknowledged both the existence of the sibling relationship and that its continuation was in the sisters' best interests. J.L., 485 N.J. Super. at 162. The significance of the sibling bond was thus already an issue implicated in the guardianship litigation.

## CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to grant the petition for certification.

Dated: October 29. 2026

Respectfully submitted,

Randi Mandelbaum

Randi Mandelbaum

Attorney for proposed *amicus curiae*