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FILED

DEC 07 2020

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0476

IN THE MATTER OF:

L.M.W.,

A Youth in Need of Care**APPELLANT/INTERVENOR'S  
RESPONSE TO STATE'S MOTION  
TO DISMISS APPEAL**

The undersigned attorney, Gregory M. Worcester, on behalf of Appellant/Intervenor, Nina DiGiovanni, respectfully requests that this Court deny the State of Montana's motion to dismiss her appeal. Though Ms. DiGiovanni was not a party to the case from which she appeals, she has standing to assert an appeal irrespective of the dismissal of the underlying case.

**ARGUMENT****I. Ms. DiGiovanni has standing to appeal the District Court's ruling.**

Ms. DiGiovanni was L.M.W.'s primary caretaker for nearly a year before the underlying Dependent Neglect (DN) case was initiated. During that time, Ms. DiGiovanni provided for the physical needs of L.M.W. by supplying food, shelter, and clothing, as well as providing L.M.W. with necessary care, education, and discipline. The relationship between Ms. DiGiovanni consisted of interaction, companionship, interplay,

and mutuality that fulfilled L.M.W.'s psychological needs for a parent. Further, Ms. DiGiovanni met L.M.W.'s need for continuity of care by providing stability in residence and activities outside of the home. For these reasons, Ms. DiGiovanni has an extremely personal stake in the outcome of this case. To have the District Court's ruling permanently remove her from this crucial role in L.M.W.'s life is manifestly unfair.

**II. The fact that Ms. DiGiovanni was not a party to the underlying DN case is not dispositive.**

The State is correct in its assertion that Ms. DiGiovanni was not a party to the District Court DN case. This is solely because her court-appointed attorney did not advise her that she could have made herself a party as an intervenor. Considering the role that Ms. DiGiovanni played in L.M.W.'s life prior to the case, she certainly should have been made aware that she had a procedural option to become a party to the case.

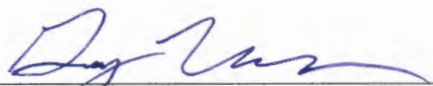
In the argument for their motion, the State did not identify a case in which it was held that a District Court case must have been appealed to this Court in order for this Court to grant a party status as an intervenor. This is because such a case does not exist. The State also did not identify where within the Montana Rules of Appellate Procedure it is stated that an intervenor is not a permissible party without an appellant. This is because this stipulation is not in the Rules.

While proceeding pro se, Ms. DiGiovanni did identify herself as an Appellant, when she in fact is an Intervenor. This Court should not allow this case to be dismissed without Ms. DiGiovanni's role in L.M.W.'s life being properly adjudicated because of her inartful pleading.

To support their assertion that only a party to the original district court case may appeal, the State offers Rule 2 of the Montana Rules of Appellate Procedure and a case that significantly predates that rule. There are several provisions within Rule 2 that suggest that the State's position is incorrect. Rule 2(1)(f), defining the role of an intervenor, states that an intervenor can be "granted leave to enter a proceeding before this court, despite not being named originally as a party." Mont. R. App. P. 2(1)(f). Further, subsection (1)(a) and (1)(b) decline to define "Appellant" and "Appellee" in absolute terms. Rather, these subsections describe the roles that these parties would "usually" play in a proceeding before this Court. Mont. R. App. P. 2(1)(a)-(b). Lastly, Rule 2 specifically delineates that a party filing an amicus curiae brief may only do so "in a pending proceeding. . ." Mont. R. App. P. 2(2). No similar requirement is listed in the Rule 2 definition of an intervenor.

Based on the foregoing, Ms. DiGiovanni respectfully requests that this Court, rather than dismissing her appeal, allow her case to move forward and change her party status from Appellant to Intervenor.

Respectfully submitted this 7<sup>th</sup> day of December, 2020.

  
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Gregory M. Worcester, Attorney

## CERTIFICATE OF SERVICE

I, Gregory Micheal Worcester, certify that I have served a true and accurate copy of the foregoing Appellant/Intervenor's Response to State's Motion to Dismiss Appeal to the following on December 7, 2020:

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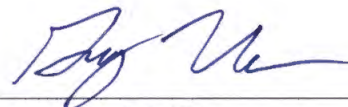
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