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COUNSEL FOR PLAINTIFF AND APPELLEE

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0707

IN THE MATTER OF:

R.J.F.,

A Youth in Need of Care.

**ATTORNEY GENERAL'S RESPONSE TO MOTION
FOR LEAVE TO FILE AMICUS CURIAE**

Through their counsel of record, J.A. and B.A. (Foster Parents) have moved this Court for leave to file an amicus curiae brief in support of affirming the district court's order dismissing Montana Thirteenth Judicial District Court, Yellowstone County Cause No. DN-23-0294. The Department of Public Health and Human Services, Child and Family Services Division (Department), objects to this Court granting Foster Parents leave to file an amicus curiae brief because Foster Parents are already parties to R.J.F.'s appeal. However, given that Foster Parents' deadline to respond to R.F.'s (Mother's) opening brief was on March 2, 2026, the

Department does not object to this Court construing Foster Parents' proposed amicus curiae brief as their response brief to Mother's opening brief.

RELVANT BACKGROUND

In May 2019, this Court reversed the district court's order terminating Mother's parental rights issued in Montana Thirteenth Judicial District Court, Yellowstone County Cause No. DN-16-407. *In re R.J.F.*, 2019 MT 113, ¶ 1, 395 Mont. 454, 443 P.3d 387. Following remand, Mother and Foster Parents entered into a Joint Stipulated Parenting Plan (JSPP), which was adopted by the district court in DR-20-0801 in August 2020. (Doc. 42 at 16-17.) The JSPP awarded Foster Parents shared legal custody and primary physical custody of R.J.F. (*Id.* at 9-10, 16-17.)

In December 2023, the Department removed R.J.F. from Mother's care based on concerns of abuse and neglect, and placed R.J.F. with Foster Parents. (Doc. 2 at 2-3, 9-10.) In its initial petition, the Department listed Foster Parents as parties to DN-23-0294. (*Id.* at 2.) Foster Parents were also represented by counsel, had notice of the proceedings, and the opportunity to be heard at hearings held while DN-23-0294 was pending. (*See generally* Register of Actions; Docs. 6, 7, 16, 19, 24, 26, 30, 32, 37, 43, 47, 48.) And notably, although Mother ultimately

objected to Foster Parents constituting R.J.F.’s “parents,” Mother never objected to Foster Parents remaining parties to the proceeding. (*See* Doc. 45 at 3.)

In November 2023, Foster Parents moved to dismiss R.J.F.’s case pursuant to Mont. Code Ann. § 41-3-438(3)(d). (Doc. 32.) After a hearing, the district court, over Mother’s objection, dismissed R.J.F.’s case outright, resuming custody of R.J.F. between Mother and Foster Parents as outlined in the JSPP. (4/16/25 Tr. at 34-37; Doc. 50 at 2-3.) The district court issued its written order dismissing R.J.F.’s case on August 18, 2025. (Doc. 50.)

In October 2025, Mother petitioned this Court to allow her to file an out-of-time appeal. After this Court granted Mother’s petition, Foster Parents, through their counsel of record, filed an objection to Mother’s petition. In response, this Court maintained its previous order granting Mother’s out-of-time appeal. On appeal, Mother raises issues regarding the legality of the JSPP, whether Foster Parents were parties to DN-23-0294, and whether the district court erred when it dismissed DN-23-0294. (*See* Mother’s Br. at 20-39.)

ARGUMENT

The Montana Rules of Appellate Procedure govern proceedings before this Court. M. R. App. P. 1(2). Pursuant to M. R. App. P. 2(1), the Appellant, Appellee, Petitioner, Respondent, Relator, and Intervenor are parties to a proceeding before

this Court. *Barbier v. Burns*, 2025 MT 271, ¶ 39, 425 Mont. 91, 579 P.3d 1005.

This Court has concluded that a person who was not a party in the district court proceedings does not constitute a party on appeal. *Barbier*, ¶ 39. In contrast, an amicus curiae is “[o]ne *who is not a party*, but who, upon invitation or leave of the supreme court granted on motion, files a brief in a pending proceeding because of a strong interest in the subject matter.” M. R. App. P. 2(2) (emphasis added).

The record supports that Foster Parents were parties to DN-23-0294. Foster Parents were listed as parties in the Department’s initial petition and remained, without objection, parties for the remainder of DN-23-0294. Throughout DN-23-0294, Foster Parents were provided notice of hearings, afforded the opportunity to be heard, and represented by counsel. And significantly, the order that Mother appeals was issued in response to Foster Parents’ motion to dismiss. Because Foster Parents were parties to the underlying 2023 dependent neglect case, Foster Parents are parties on appeal.

Additionally, Foster Parents are listed as parties on the docket for *In re R.J.F.*, DA 25-0707. The instant motion for leave to file an amicus brief is the second pleading Foster Parents have filed in DA 25-0707, and they have been served both Mother’s opening brief and the Department’s response brief. Accordingly, because Foster Parents constitute parties, Foster Parents cannot be considered amicus curiae.

Finally, the Department anticipates that Mother will object to Foster Parents' motion because, in her opening brief, she challenges whether Foster Parents were properly considered parties to DN-23-0294. However, Mother's assertions on appeal that Foster Parents (1) cannot legally qualify as intervenors, (2) could not have a parental interest adjudicated to them while the 2016 DN case was pending, and (3) cannot legally constitute R.J.F.'s parents do not alter Foster Parents' party status on appeal. (Mother's Br. at 20-31.) In other words, even if this Court ultimately agrees with Mother on appeal that Foster Parents did not constitute parties to DN-23-0294, that does not equate to Foster Parents not being parties to the instant appeal.

Indeed, Mother's direct challenges to Foster Parents' status as parties to the underlying 2023 dependent neglect case, the legality of the JSPP which involves Foster Parents and Mother, and the district court's dismissal order prompted by Foster Parents motion to dismiss support that Foster Parents are entitled to be heard in this matter by filing a response brief to Mother's appeal. Although Foster Parents should have filed a response brief to Mother's appeal instead of seeking leave to file an amicus brief by the March 2, 2026 deadline, Foster Parents' decision should not deny them the ability to respond to Mother's brief.

Accordingly, in the interest of not delaying the instant appeal, the Department does not object to this Court construing Foster Parents' amicus brief

as their response brief to Mother's appeal. However, if this Court concludes that Foster Parents do not constitute parties before it reviews Mother's challenges to their party status raised on appeal, the Department then does not object to this Court granting Foster Parents' leave to file their amicus brief so that they are still afforded the ability to be heard.

Respectfully submitted this 6th day of March, 2026.

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By: /s/ Cori Losing
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this response is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,059 words, excluding caption, signatures, certificate of compliance, certificate of service, and any exhibits.

 /s/ Cori Losing
CORI LOSING

CERTIFICATE OF SERVICE

I, Cori Danielle Losing, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 03-06-2026:

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Electronically signed by LaRay Jenks on behalf of Cori Danielle Losing
Dated: 03-06-2026