

SUPREME COURT COPY

Case No. S230899

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BARRY S. JAMESON,

Appellant,

v.

TADDESE DESTA,

Respondent.

SUPREME COURT
FILED

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Deputy

After a Decision by the Court of Appeal, Fourth Appellate District,
Division One

Case No. D066793

Affirming a Judgment of the Superior Court of San Diego County

The Honorable Joel M. Pressman, Judge Presiding

Superior Court No. GIS9465

**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND
BRIEF OF *AMICI CURIAE* FAMILY VIOLENCE APPELLATE
PROJECT AND 30 ORGANIZATIONS AND INDIVIDUALS
REPRESENTING SURVIVORS OF FAMILY VIOLENCE IN
SUPPORT OF PETITIONER BARRY JAMESON**

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APPLICATION TO FILE *AMICUS* BRIEF

Pursuant to rule 8.520(f) of the California Rules of Court, Family Violence Appellate Project (FVAP) and 30 other legal services and other organizations and individuals serving survivors of family violence respectfully request leave to file the following brief in support of petitioner Barry Jameson.¹ The individual statements of interest of the *amici* are contained in the Appendix to this brief.

Amici and their clients have a strong interest in this Court's review of the Court of Appeal's decision in *Jameson v. Desta* (2015) 241 Cal.App.4th 491 (hereafter *Jameson*). In *Jameson*, the Court of Appeal ruled that California Government Code section 68086, subdivision (b) "does not mandate that a trial court provide indigent litigants with court reporter services where no official court reporter is provided by the court." (*Id.* at pp. 502-503.) Rather, *Jameson* held that every litigant, including indigent or *pro se* parties, must arrange and pay for the services of a private court reporter where the trial court does not provide one. (*Id.*) Yet a majority of California's 58 counties do not provide a court reporter in family law cases. (See, e.g., San Diego County Bar Assn., 1st Ann. Rep. on the State of the Judiciary in San Diego County (2013), *available online* at <http://voiceofsandiego.org/wp-content/uploads/2013/06/CFAC-Annual-Report-6-7-2013RS.pdf> (as of Jul. 22, 2016), p. 7 ["Court reporters have been altogether eliminated in civil, family, and probate court matters in over 30 counties statewide . . ."].)

¹ No counsel for a party authored this brief in whole or in part. No party or party's counsel financially supported this brief, and no one other than *amici* and their counsel contributed financially to this brief.

Because the appellant in *Jameson*, like the overwhelming majority of *amici*'s clients, could not pay for a private court reporter, and because his appeal turned on evidentiary issues and oral rulings by the trial court, the Court of Appeal determined that it could not consider the merits of his arguments without a reporter's transcript and overruled them on appeal. If this holding stands, indigent family violence litigants—the vast majority of whom are *pro se*—in courts that do not provide a court reporter will be denied a meaningful, or in many cases any, right to appeal.

For these reasons, *amici* have a substantial interest in this matter.

Dated: July 27, 2016

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INTRODUCTION

The lack of a reporter’s transcript denies survivors of family violence meaningful—or *any*—access to the right of appeal in an overwhelming number of cases. The issues before this Court accordingly are of grave importance to *amici*. As a practical matter, family violence determinations nearly always involve disputed facts about the nature, facts and circumstances of the abuse; indeed, trial courts are required by statute to make factual findings in such cases. But, as the Court of Appeal held in the petitioner’s case, an issue involving disputed facts *cannot be reviewed on appeal* under California law without a reporter’s transcript. This leaves survivors of family violence—who in the great majority of cases are not represented by counsel and cannot afford to pay for a private court reporter—without a right of appeal in cases where their lives and safety, and the lives and safety of their children, are at stake.

Further, and contrary to the argument of the respondent here, the “alternative” of using an agreed or settled statement is no alternative at all for these litigants. Family violence litigants appear before a trial court at a time of intense personal crisis, typically without a lawyer, often with limited or no ability to understand English, and without even the knowledge that they must (if they could) take detailed notes to enable them to prepare and negotiate an agreed or settled statement. Moreover, the suggestion that a family violence survivor should negotiate an agreed statement about the facts and circumstances of the abuse with the abuser is nothing short of

absurd. The notion that a family violence survivor should navigate the legal and factual complexities of a settled statement is hardly more realistic.

This Court and the Court of Appeal have recognized in previous cases that a reporter's transcript is required when critical family rights issues, including termination of parental rights, are involved.² The right to keep oneself or one's children safe from family violence is no less critical. In sum, family violence litigants *must* have a reporter's transcript; their circumstances demonstrate why the ruling below should be reversed.

ARGUMENT

I. The Lack of Court Reporters in Matters Involving Family Violence Creates Serious, and Often Insurmountable, Obstacles for Family Law Appellants

This Court's consideration of the *Jameson* case is of particular importance to family violence litigants. Given the highly factual nature of the issues in family violence cases, coupled with the unique and severe challenges faced by these typically unrepresented litigants, denial of a reporter's transcript in practice equates to denial of any meaningful access to an appeal in many, if not most, of these cases.

A. Overview of Family Law Litigation in California

Family law cases make up a substantial portion of California's state court dockets. Nearly 400,000 new family law matters were filed in

² See *Crespo v. Super. Ct.* (1974) 41 Cal.App.3d 115, 119 (hereafter *Crespo*) (transcripts must be provided to indigent litigants at public expense in proceedings to terminate parental rights, so as not to "permit[] the indigent parents' inability to afford transcripts to preclude effective utilization of the right to appellate review"); *In re Christina P.* (1985) 175 Cal.App.3d 115, 137 (hereafter *Christina P.*) (reversing termination of parental rights in favor of petitioner foster parents where "the absence of a reporter's transcript has deprived the [respondents] of a potentially meritorious claim").

California in the fiscal year ending in 2014, compared with about 835,000 other new civil matters.³ By one recent estimate, more than three-quarters of family law cases filed in California involve at least one self-represented party.⁴ In the case of domestic violence restraining orders filed in California, this figure increases to 90 percent.⁵

Further, family law cases require a significant level of judicial involvement. In a 2006 report, the Judicial Council estimated that “although family and juvenile cases represent 7.5 percent of total filings, they account for nearly one-third of the trial courts’ judicial workload” (*Elkins v. Super. Ct.* (2007) 41 Cal.4th 1337, 1368 (hereafter *Elkins*) [citing Judicial Council of Cal., Ann. Rep. (2006) p. 26].) That level of judicial involvement flows from, among other things, the highly factual, contentious, and emotionally charged nature of family law cases. Moreover, custody and visitation cases are often litigated over a span of many years. Judges often serve on the family law bench for only a year or two, and separable issues in one case may be heard before two or more judges, or even in two or more separate courtrooms.⁶ Thus, having

³ Judicial Council of Cal., 2015 Court Statistics Rep.: Statewide Caseload Trends, 2004-2005 Through 2013-2014 (2015) (hereafter *JC Report*), available at <http://www.courts.ca.gov/documents/2015-Court-Statistics-Report.pdf> (as of Jul. 22, 2016), pp. 70, 77. The 400,000 figure does not include juvenile delinquency and dependency proceedings. The 835,000 figure include limited, unlimited and small claims cases. (See *id.*)

⁴ Elkins Fam. Law Task Force, Final Rep. & Recommendations (Apr. 2010), available at <http://www.courts.ca.gov/documents/elkins-finalreport.pdf> (as of Jul. 22, 2016), at p. 7.

⁵ Hough, Description of Cal. Courts’ Programs for Self-Represented Litigants (Jun. 2003), available at <http://www.courts.ca.gov/partners/documents/harvard.pdf> (as of Jul. 22, 2016), at pp. 47-48.

⁶ Many counties have separate domestic violence departments that hear certain aspects of a case, such as restraining orders, while the family law

transcripts from prior custody or visitation hearings provides the trial court with a detailed history of the parties' prior evidence and the court's prior findings, against which the court may assess the appropriateness of existing custody and visitation arrangements and whether alterations to such arrangements are warranted. (See *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 256 [a court may modify a final judicial custody determination only if the parent seeking modification demonstrates a significant change of circumstances] [citations omitted].)

All of these characteristics of family law cases underscore the critical role played by a reporter's transcript in providing a reliable and complete record of trial court proceedings.

B. Family Violence Cases, by Their Nature, Require Fact-Intensive Rulings

According to the Rules of Court, “[i]f an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include a record of these oral proceedings.” (Cal. Rules of Court, rule 8.120(b).) And as *Jameson* makes clear, an appellant cannot raise, and the appellate court cannot consider, any evidentiary issues presented to the trial court in oral proceedings unless those proceedings have been memorialized by a reporter's transcript.⁷ (*Jameson, supra*, 241 Cal.App.4th at p. 504 [quoting *Hodges v. Mark*

department may hear other aspects of the same case, such as custody, support, and marital dissolution.

⁷ Although neither *Jameson* nor *Hodges* expressly considers this, it remains technically possible from a procedural standpoint for civil litigants to rely upon a settled or agreed statement in lieu of a reporter's transcript as a record of oral proceedings. (Cal. Rules of Court, rules 8.134, 8.137.) As explained in more detail in section I.C of this brief, however, neither presents a tenable option for family violence litigants.

(1996) 49 Cal.App.4th 651, 657 (hereafter *Hodges*), review den'd., (Jan. 15, 1997) 1997 Cal. LEXIS 89].)

By their very nature, family law cases, and family violence cases in particular, require courts to make determinations that are both fact-intensive and highly subjective. Contentious issues about the facts and circumstances of what happened—including the actions of the abuser and the survivor—are at the heart of these proceedings. For instance, courts must engage in a statutory seven-factor analysis in order to award custody to a perpetrator of family violence. (Fam. Code, § 3044 (b).) Similarly, in order to issue a domestic violence restraining order, trial courts must make highly specific factual findings regarding whether the conduct alleged occurred, whether it constituted “a past act or acts of abuse” as defined by law, and whether the evidentiary record contains “reasonable proof” of such abuse. (Fam. Code, § 6300.)

Cueto v. Dozier (2015) 241 Cal.App.4th 550 (hereafter *Cueto*), demonstrates the significance of disputed factual issues—and the critical role of a reporter’s transcript in resolving factual disputes—in family violence appeals. In *Cueto*, to support her request for renewal of a domestic violence restraining order, the petitioner presented evidence of the history of her abuse, as well as more recent alleged interactions with her abuser in violation of the restraining order. Her abuser gave contradictory testimony on both points. The trial court denied the renewal request in error, construing the disputed facts in favor of the abuser, while at the same time admonishing him that, notwithstanding the denial of the renewal request, he did not have “free rein to contact her, drive by her house, or anything of the sort.” (*Id.* at p. 558.) Because the transcript included the complete testimony underlying these factual findings and reproduced the

trial court's admonitions verbatim, the Court of Appeal was able to determine that the trial court's denial of the renewal was an abuse of discretion. (See *id.* at pp. 562-563.)

As *Cueto* illustrates, given the fact-intensive nature of family law cases, having a clear record of the oral proceedings before the trial court is essential to enable the Court of Appeal to weigh conflicting evidence and resolve factual disputes on appeal. Had the record in *Cueto* lacked excerpts from a reporter's transcript, the petitioner likely would have been unable to support an appeal based on arguments regarding the sufficiency of the evidence presented below or the propriety of the judge's consideration of this evidence—or, indeed, to pursue an appeal at all.

C. Agreed or Settled Statements Are Not Viable Substitutes for a Reporter's Transcript in Family Violence and Other Family Law Cases

For self-represented litigants, and *pro se* family violence litigants in particular, the respondent's proposed "perfectly acceptable alternative" of an agreed or settled statement is no alternative at all. (Respondent's Answering Brief (RAB), p. 49.) Family violence survivors are in no position to prepare such statements.

A family violence proceeding is a time of intense crisis for survivors of family violence. Family law cases present a series of opportunities for abusers to continue assaults on and threats to survivors through the repeated interaction and physical proximity that litigation requires. A report to the National Institute of Justice on domestic violence courts found that stakeholders consider the physical safety of victims who are attending court

to be a major concern.⁸ Survivors of domestic violence must attend family court proceedings, even when their safety cannot be assured in the courthouse or while they are arriving and departing.

Moreover, “[r]esearch shows that women are often at the highest risk of severe abuse or death when they attempt to leave their abusers.”⁹ A California study of domestic homicide cases found that 45 percent of women were killed when they were recently separated or in the process of separating from their abuser.¹⁰ Thus, family law litigants in abusive relationships are at increased risk of violence from the abuser during the period when they are appearing in court.¹¹ Indeed, simply being present in court, in the same room as one’s abuser, poses a significant challenge to the family violence survivor’s ability to focus on the proceedings, let alone to do so in the detail necessary to create an agreed or settled statement.¹²

⁸ Labriola, Bradley, O’Sullivan, Rempel & Moore, Center for Ct. Innovation, *A Nat. Portrait of Domestic Violence Cts.*, Nat. Inst. of J. (2009), at p. vi.

⁹ *Hernandez v. Ashcroft* (9th Cir. 2004) 345 F.3d 824, 837 (questioned on other grounds) (citing Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome* (1993) 21 Hofstra L. Rev. 1191, 1212).

¹⁰ Fukuroda, *Cal. Women’s Law Center, Murder at Home: An Examination of Legal and Community Responses to Intimate Femicide in Cal.* (2005), at p. 11.

¹¹ Indeed, researchers have increasingly recognized in recent years that litigation itself can be a form of abuse used by the abuser to continue coercive control over the victim. For survivors of domestic abuse, litigation “open[s] the door to further harassment under the guise of procedural equity.” (Miller & Smolter, *Paper Abuse: Documenting New Abuse Tactics* (2012) vol. 17, no. 5, *Domestic Violence Rep.* 65 at p. 75.) Cf. *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 336 (acknowledging that “litigation strategies and tactics” may, along with other findings, provide grounds to renew a restraining order).

¹² Post-traumatic stress disorder (PTSD) is highly prevalent among women who experience intimate partner violence, with a mean rate of 63.8 percent. Golding, *Intimate Partner Violence as a Risk Factor for Mental Disorders: A Meta-Analysis J. of Fam. Violence* (1999) vol. 14, no. 2 at

The process of preparing an agreed statement presents a series of insurmountable hurdles for family violence litigants in California. Agreed statements are a joint submission prepared by the parties to function in whole or in part as the record of a civil action on appeal. The agreed statement must explain the nature of the action, the basis of the reviewing court's jurisdiction, how the superior court decided the points to be raised on appeal, and the facts necessary to decide the appeal. (Cal. Rules of Court, rule 8.134(a)(1).) Most critically, the preparation of an agreed statement requires a survivor of family violence to collaborate with his or her abuser in order to reach an agreement on how to characterize the facts of the abuse. An agreed statement is simply not a realistic option given the adversarial and emotional nature of family violence cases and the dynamics of power and control inherent in the parties' relationship.¹³ This dynamic of imbalance applies at least as much if an unrepresented domestic violence survivor attempts to negotiate an agreed statement with a lawyer representing the abuser.

Preparing a settled statement, a "condensed narrative of the oral proceedings" that can function as a stand-in for a reporter's transcript, is

p. 99. Survivors of abuse with PTSD can be reminded of the abuse or even re-traumatized when they are forced to be in proximity to their abusers.

¹³ As the Legislature recognized in amending the Domestic Violence Prevention Act on September 26, 2014, the scope of "[d]omestic violence is not limited to actual and threatened physical acts of violence, but also includes sexual abuse, stalking, psychological and emotional abuse, financial control, property control, and other behaviors by the abuser that are designed to exert coercive control and power over the victim." (Assem. Bill No. 2089 (2013-2014 Reg. Sess.)) A "woman's experience with domestic violence is defined by the coercion and deprivation of liberty as much as it is by the violence." (Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law* (2009) 42 U.C. Davis L. Rev. 1110, 1119.)

similarly unrealistic in family violence cases. (Cal. Rules of Court, rule 8.137(b)(1).) Prepared by the appellant, subject to the appellee's objections, and certified by the trial court, settled statements define and limit the issues that the appellant may raise on appeal. (*Id.*, rule 8.137(b)(2).) Notably, settled statements are permitted at the trial court's discretion, and only upon a showing that "the statement can be settled without significantly burdening opposing parties or the court" and "the designated oral proceedings were not reported or cannot be transcribed," among other things. (*Id.*, rules 8.137(a)(2)(A), (B).) The fact that an appellant cannot obtain a settled statement as a matter of right, even where the underlying proceeding was not transcribed by a court reporter, severely compromises the utility of a settled statement as an alternative to a reporter's transcript.

Further, settled statements can provide a meaningful remedy only if litigants know they exist. But self-represented litigants are typically not even aware of the potential need to prepare a settled statement, and what that process entails, at the time of their hearing or trial. (The trial court in *Jameson*, for instance, does not appear to have suggested one.) In many cases, family violence litigants must play the role of counsel, witness, and parent simultaneously. They are highly unlikely to maintain the detailed record of court proceedings necessary to prepare a settled statement, and they are similarly unlikely to have the support of someone who could accompany them to court and help them do so. Moreover, these litigants often lack the sophisticated legal skills required to produce a complete, procedurally compliant statement. As this Court noted in *Elkins*, the tenet that self-represented litigants should be subject to the same standards as

represented parties is unrealistic in the context of family law cases. (See *Elkins, supra*, 41 Cal.4th at p. 1366.)

Finally, language barriers and limited access to interpreters in family violence cases often further complicate the process of preparing an agreed or settled statement for family violence litigants in California. Indeed, nearly one-fifth of the state's population is considered to be "Limited English Proficient"—a rate approaching two and a half times the national average.¹⁴

For all of these reasons, agreed and settled statements cannot and do not provide a practicable alternative for family violence litigants in California who cannot afford private court reporter fees.

II. The Unavailability of Court Reporters Denies Meaningful Access to Justice for Family Violence Litigants

This Court held in *Serrano v. Priest* (1971) 5 Cal.3d 584, that wealth is a suspect classification when it impacts access to fundamental rights. California law confers a statutory right to appeal. (Code Civ. Proc., § 904.1(a)(1) & (a)(6).) Once granted, the right to appeal cannot be denied or impaired by the litigant's lack of financial resources. (See *Rinaldi v. Yeager* (1966) 384 U.S. 305, 310-311 [although the states are not required to establish a right to appeal, it is "fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts"]; *Lindsey v. Normet* (1972) 405 U.S. 56, 77 ["When an appeal is afforded . . . it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating

¹⁴ Zong & Batalova, Migration Policy Inst., The Limited English Proficient Population in the U.S., Migration Information Source (Jul. 8, 2015), available at <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states> (as of Jul. 22, 2015), fig. 2.

the Equal Protection Clause.”]; *C.S. v. W.O.* (2014) 230 Cal.App.4th 23, 30 [“[R]estricting an indigent’s access to the courts because of his poverty . . . contravenes the fundamental notions of equality and fairness which since the earliest days of the common law have found expression in the right to proceed in forma pauperis.”] [citations omitted]; Gov. Code § 68630(a) [“[O]ur legal system cannot provide ‘equal justice under law’ unless all persons have access to the courts without regard to their economic means.”].)

The Court of Appeal’s opinion in *Jameson* disregards this mandate by conditioning meaningful—or in some cases *any*—access to an appeal on a litigant’s ability to pay for a private court reporter. Denying indigent family violence litigants the ability to appeal or respond to an appeal because they cannot afford court reporter fees raises significant due process and access-to-justice concerns.

A long line of appellate authority recognizes the “grave issues of due process as well as equal protection” in the absence of a transcribed record of proceedings in family law cases. (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 18 fn. 3 (hereafter *Obrecht*).) More than forty years ago, in *Crespo*, the Court of Appeal acknowledged that legal determinations that implicate fundamental family rights require a reporter’s transcript. (*Crespo, supra*, 41 Cal.App.3d at p. 119.) Consequently, it held that due process required the provision of a reporter’s transcript to indigent litigants at public expense in proceedings to terminate parental rights, so as not to “permit[] the indigent parents’ inability to afford transcripts to preclude effective utilization of the right to appellate review.” (*Id.*; see also, *Christina P., supra*, 175 Cal.App.3d at p. 137 [reversing termination of parental rights in favor of petitioner foster parents where “the absence of a

reporter's transcript has deprived the [respondents] of a potentially meritorious claim").)

Many survivors and children of survivors in family law cases involving domestic violence have already suffered grave physical abuse, and face a high risk of further physical abuse, up to and including abuse that is life-threatening. According to the Bureau of Justice Statistics, in 2008, among homicide victims with a known relationship to the offender, 45 percent of female victims and 10.4 percent of male homicide victims in the U.S. were killed by an intimate partner.¹⁵

The severity of the potential consequences in family violence cases is comparable to that in other cases where litigants are statutorily entitled to a court reporter: felony criminal court proceedings, juvenile court proceedings, and proceedings where a party is withdrawing consent to a step-parent adoption. (See Code Civ. Proc., §§ 269, 274(a); Welf. & Inst. Code, §§ 347, 677; Fam. Code, § 9005(d).) The interest of a family violence litigant in appealing, for example, the denial of protection from an abuser or the loss of child custody and concomitant grant of custody to the abuser are every bit as acute as the parents' due process interests in *Crespo* and *Christina P.*

More recently, the Court of Appeal has recognized that the same constitutional concerns are present in a broad spectrum of family law cases. In *Obrecht*, a marriage dissolution case, the respondent challenged the trial court's personal jurisdiction over him under the minimum contacts doctrine, while the petitioner cited evidence that the respondent had entered

¹⁵ Bur. of J. Statistics, Homicide Trends in the United States, 1980-2008 (Nov. 2011), available at <http://www.bjs.gov/content/pub/pdf/htus8008.pdf> (as of Jul. 26, 2016), p. 18.

a general appearance before the trial court to contest an award of spousal support. (*Obrecht, supra*, 245 Cal.App.4th at p. 7.) Because the support order hearing had not been transcribed, the Court of Appeal found that respondent failed to meet his burden of proving that his appearance at the support hearing was not a general appearance. (*Id.* at p. 8.) In so holding, the Court of Appeal expressed serious concern about the impact of the trial court's policy not to provide court reporters:

As illustrated by this case, the absence of a verbatim record can preclude effective appellate review, cloaking the trial court's actions in an impregnable presumption of correctness regardless of what may have actually transpired. Such a regime can raise grave issues of due process as well as equal protection in light of its disparate impact on litigants with limited financial means. . . . [T]he right to effective appellate review . . . cannot be permitted to depend entirely on the means of the parties.

(*Id.* at p. 9, fn. 3.)

This same rationale unquestionably extends to family violence litigants, whose cases involve challenges to their fundamental rights of life and liberty for themselves and their children. The public policy in favor of protecting people from domestic abuse has been codified across the Family Code. (See, e.g., Fam. Code, § 3011(b) [trial court should consider “[a]ny history of abuse” when making child custody determinations]; Fam. Code, § 3020(a) [“the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child”]; Fam. Code, § 3044(a) [a history of domestic violence gives rise to a rebuttable presumption that awarding custody to the abuser “is detrimental to the best interest of the child”]; Fam. Code, § 6220 [“[t]he purpose of this division is to prevent acts of domestic violence, abuse, and sexual abuse”].) To deprive indigent survivors of family violence of a reporter's transcript would adversely and disproportionately impact their right of access to

appellate courts. That result is contrary to the Legislature's expressed intent to protect these litigants from domestic abuse.

A. Even Without Access to a Free Transcript, the Right to Have a Court Reporter Present Would Be a Meaningful Right

The respondent asserts that a right to have a court reporter present, without an attendant waiver of the fee to purchase the transcript, would be a meaningless right.¹⁶ (See RAB, pp. 22, 31.) He is wrong. The presence of a court reporter and the creation of a reporter's transcript is the essential and indispensable first step in creating access to an appeal for low-income appellants by preserving the record of oral proceedings.

If a hearing or trial is not transcribed, there is no possibility of obtaining a transcript on appeal. Thus, the right to appeal, and to representation on appeal, is completely foreclosed with respect to the fact-based issues that predominate in these cases. Conversely, if the hearing or trial has been transcribed, appellate counsel can advance or seek funds from various sources to obtain a copy of part or all of the transcript.

B. The Access Issues Presented by *Jameson* Cannot Be Ignored Due to Limitations on Trial Court Resources or the Possibility of Legislative Action

The respondent wrongly argues that the issue of limited court financial resources can or should be addressed by denying indigent appellants the right to a court reporter free of charge. (RAB, pp. 45-48.) But courts have the discretion to make decisions about when a court

¹⁶ Contrary to the respondent's argument, *Crespo* does not provide otherwise. (RAB, p. 22.) Rather, *Crespo* demonstrates the absolute necessity of a court reporter's presence in an action to terminate parental rights as a general matter in order to preserve the option that transcripts be made available to indigent parties at government expense "where such transcripts are necessary to appellate review." (*Crespo, supra*, 41 Cal.App.3d at p. 119.)

reporter should be provided at no cost to the litigant. This case presents an opportunity for this Court to provide guidance on the exercise of that discretion.

The respondent is also incorrect when stating that this issue can or should be left to the Legislature. The Legislature has not addressed these issues, and there is no guarantee that it can or will do so. Moreover, this is an issue of meaningful access to justice that directly concerns the courts. No case law suggests that deference to the Legislature is appropriate in these circumstances.

CONCLUSION

For the reasons set forth herein, *amici* respectfully request that this Court reverse the Court of Appeal's ruling.

Dated: July 27, 2016

ERIN D. SMITH
NANCY K. D. LEMON
FAMILY VIOLENCE APPELLATE
PROJECT

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the number of words contained in the foregoing *amicus curiae* brief, including footnotes but excluding the Table of Contents, Table of Authorities, the Application for Leave to File *Amici Curiae* Brief, the Appendix, and this Certificate, is 4,388 words, as calculated using the word count feature of the program used to prepare this brief.

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APPENDIX

INTEREST OF INDIVIDUAL *AMICI CURIAE*

Family Violence Appellate Project (FVAP) was founded in 2012 to represent low- and moderate-income litigants in family law and civil cases involving family violence. FVAP's mission is to ensure the safety and well-being of family violence survivors and their children by helping them to obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of family violence survivors and their children, and is a State Bar-funded Support Center supporting domestic violence legal services organizations statewide. Since its inception, FVAP has screened over 700 requests for assistance; has represented appellants and respondents in 27 appeals; and has filed *amicus* briefs in five cases that raised significant issues of statewide concern for family violence survivors. This and other work has, to date, resulted in 20 published decisions interpreting the Domestic Violence Prevention Act and other California Family Code sections designed to protect survivors of domestic violence and their children.

Bay Area Legal Aid is the largest nonprofit law firm serving the seven Bay Area counties in Northern California and represents thousands of domestic violence survivors each year in family law, immigration, public benefits, consumer, youth, housing, and health care matters.

Since 1974, **Bet Tzedek** (Hebrew for "House of Justice") has advocated for low-income and vulnerable individuals throughout Southern California. Consistent with this mandate, Bet Tzedek provides free legal assistance to all eligible low-income residents, regardless of their racial, religious, or ethnic background. Bet Tzedek attorneys, advocates, and support staff, along with our vast network of volunteer and pro bono attorneys, consistently rely upon the courts, including the courts of appeal,

to secure justice for low-income individuals and families. Bet Tzedek provides direct representation services, and also offers self-help clinics so that low-income individuals can represent themselves. In each of our practice areas, including consumer protection, elder law, employment rights, housing, and public benefits, Bet Tzedek attorneys rely on court reporters' transcripts to clarify existing proceedings and appeal adverse decisions. A court reporter's transcript is also necessary to ensure meaningful access to the courts for the self-represented litigants whom Bet Tzedek assists.

The **California Partnership to End Domestic Violence** is California's recognized domestic violence coalition, representing over 1,000 advocates, organizations and allied groups, united in their commitment to safety and justice for victims.

California Protective Parents Association (CPPA) strives to protect children from incest and family violence through research, education and advocacy. CPPA seeks to improve and reform family court to ensure that children are not placed at risk because of unsafe custody and visitation decisions.

The **California Women's Law Center (CWLC)** is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women.

For 50 years, **Central California Legal Services, Inc. (CCLS)** has served as a vanguard of equity by fighting social injustice through the education and representation of low-income residents. By maintaining a focus on its clients' legal needs and the integrity of its services, an expert

staff serves thousands of eligible clients in the counties of Fresno, Tulare, Kings, Merced, Tuolumne, and Mariposa, and senior citizens in Madera County. Today, CCLS employs a staff of over sixty individuals with offices in the cities of Fresno, Merced, and Visalia.

Child Abuse Forensic Institute is a nonprofit resource and referral organization created to assist litigants in family violence cases in California.

The **Domestic Abuse Center** is a San Fernando Valley-based nonprofit, non-shelter, domestic violence program whose mission is to support survivors of domestic violence and their children to live violence-free lives. It provides advocacy, court preparation, support, and accompaniment to clients in all court systems. The Domestic Abuse Center also works to train and inform in the police, criminal court personnel (both prosecution and defense), and institutions in Los Angeles in the field of domestic violence.

The **Domestic Violence Legal Empowerment and Appeals Project** (DV LEAP) provides a stronger voice for justice by helping overturn unjust trial outcomes, advancing legal protections for victims and their children through expert appellate advocacy, training lawyers, psychologists, and judges on the best practices, and spearheading domestic violence litigation in the U.S. Supreme Court. DV LEAP also works to ensure that federal and state courts understand the realities of domestic violence and the law when deciding cases with significant implications for domestic violence litigants.

Professor **Margaret Drew** is associate professor of law at the University of Massachusetts Law School. Professor Drew has a decades-long history of representing women who have experienced violence. She

researches and writes in the field of gender violence, particularly on issues of intimate partner abuse. Professor Drew often represents victims of violence in their appeals of trial court decisions. Professor Drew appreciates the power of a client's ability to appeal and has an extensive history of pro bono appellate work. She recognizes that without an accurate record of lower court proceedings, litigants are effectively denied their due process rights of appeal.

The **Harriett Buhai Center for Family Law** is among the largest and few nonprofit firms exclusively dedicated to providing comprehensive free family law assistance to very low-income persons, including victims of domestic violence in California. The Center has also long been extensively involved in the law regarding fee waivers, commenting on proposed legislation and court rules, and litigating the proper application of the legislation and rules.

The **Impact Fund** is a nonprofit legal foundation that provides strategic leadership and support for litigation to achieve economic and social justice. The Impact Fund provides funding for impact litigation, offers innovative training and support, and serves as counsel in impact litigation across the country. The Impact Fund has served as counsel in a number of major class actions, including cases challenging employment discrimination, wage-and-hour violations, lack of access for those with disabilities, and violations of fair housing laws. A key component of civil rights enforcement is meaningful access to the courts, particularly the courts of appeal.

The **Law Foundation of Silicon Valley** advances the rights of underrepresented individuals and families in our diverse community through legal services, strategic advocacy, and educational outreach. The

Law Foundation, Santa Clara County's largest legal services provider, has served people with mental health disabilities, children, individuals in housing crises, and a variety of other residents in its 40 years of existence. The Law Foundation serves as an umbrella organization for five programs serving distinct client populations: Fair Housing Law Project; Health Legal Services; Legal Advocates for Children and Youth; Mental Health Advocacy Project; and the Public Interest Law Firm.

The Law Foundation sees firsthand the importance of providing court reporters in family violence cases. The Law Foundation provides legal services to both adults and children involved in the Santa Clara County family and juvenile court systems. We are fortunate to practice in a county where court reports are provided in both venues. Our attorneys frequently utilize court transcripts to clarify actions within the existing trial court proceeding, as well as to determine the merits of seeking appellate relief. Our clients would have less meaningful access to all forms of relief without having transcripts readily available. We feel strongly that clients across the state should have the same access to justice as the residents of our county.

Legal Aid Foundation of Los Angeles (LAFLA) has been the frontline law firm providing civil legal services to poor and low-income people in Los Angeles County for over 85 years. With six neighborhood offices, three Domestic Violence Clinics and four Self-Help Legal Access Centers, LAFLA serves diverse communities and is the first place thousands of poor people turn to when they need legal assistance for a crisis that threatens their shelter, health, and livelihood. LAFLA's Supporting Families Working Group advocates provide direct legal and case management services to survivors of domestic violence/intimate partner

abuse and their families, including direct representation at the trial and appellate court levels.

The mission of **Legal Aid Society of Orange County** and **Community Legal Services in Southeast Los Angeles County** is to provide civil legal services to low-income individuals and to promote equal access to the justice system through advocacy, legal counseling, innovative self-help services, in-depth legal representation, economic development, and community education.

The **Legal Aid Society of San Mateo County**'s mission is to help disadvantaged and vulnerable persons improve their lives through equal access to justice. Legal Aid provides individual representation, community education, systemic advocacy, and strategic collaborative approaches to address legal issues and resolve problems in important areas of basic need including health, housing, income, and freedom from violence. Legal Aid is an integral part of San Mateo County's safety net and has a history of successfully collaborating with community agencies, local governments, health care providers, and pro bono attorneys to provide coordinated services to low-income residents.

Legal Services of Northern California (LSNC) is a nonprofit legal aid organization which provides free legal services to thousands of clients annually, striving to deliver quality legal services that empower the poor to identify and defeat the causes and effects of poverty within their community. LSNC's eight offices and various programs regularly represent low income clients in civil matters in California courts including Unlawful Detainers, writs of mandate, and debt collection matters. These matters often involve representing family violence survivors and involve issues that arise from incidents of family violence. LSNC's clients in these

matters cannot afford to pay for private court reporters for court hearings and trials. Court policies of not providing court reporters in civil cases prevent all low-income litigants, including LSNC's clients, from obtaining an official record of court proceedings. This inability to obtain an official record of court proceedings substantially impairs the ability of low-income clients, and LSNC, on behalf of its low-income clients, to successfully appeal trial court decisions.

Founded in 1973, the **Los Angeles Center for Law and Justice** (LACLJ) has provided legal advocacy to low-income and primarily immigrant and Latino populations in Los Angeles for over 40 years. Over time, the agency has evolved to focus on direct services on behalf of domestic violence survivors, including those who are teens and young adults. In 2003, the agency launched the only teen-centered legal services program in Los Angeles for teenage and young adults struggling with abuse and difficult co-parenting matters. LACLJ also provides free legal representation to low-income families in high-conflict custody disputes, a large percentage of which involve domestic violence. In 2013, LACLJ formalized a program of providing immigration services to victims of interpersonal violence and unaccompanied minors.

The **National Association of Women Lawyers** (NAWL) is the oldest women's bar association in the United States and the leading national voluntary organization devoted to the interests of women lawyers and women's rights. Founded in 1899, NAWL has a long history of serving as an educational forum and an active voice for the concerns of women. As part of its mission, NAWL promotes the interests of women and families by participation as *amicus curiae* in cases of interest. NAWL supports women's constitutional rights to liberty and equality under the

Due Process and Equal Protection Clauses and seeks for those rights to be protected. Women's due process rights, particularly in family court, are severely curtailed if no record is made of proceedings in which they participate or have an interest. All litigants have the right for testimony to be preserved. Without accurate recordings and transcriptions, litigants are impermissibly limited in their ability to challenge lower courts' practices, policies, and decisions.

The **National Center for Lesbian Rights** (NCLR) is a non-profit legal organization committed to advancing the rights of lesbian, gay, bisexual, and transgender (LGBT) people and their families. NCLR has litigated cases on behalf of LGBT parents across the country, including many cases involving low-income survivors of domestic violence through our Family Protection Project, which focuses on the family law needs of low-income LGBT parents and their children. Despite the fact that LGBT people experience domestic violence at the same or higher rates than the population at large, there is widespread misunderstanding about domestic violence in the LGBT community. The need for a transcript is essential to these litigants' ability to appeal.

The **National Housing Law Project** (NHLP) works to advance housing justice for poor people and communities. NHLP achieves this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation's supply of decent affordable housing. NHLP is a leading national expert on the housing needs of survivors of sexual assault, domestic violence, teen dating violence, and stalking. NHLP provides training, technical assistance, and resources to U.S. Department of Justice (DOJ)-Office on Violence Against Women grantees, as well as to DOJ and

the U.S. Department of Housing and Urban Development directly. NHLP advises other state and national advocates on issues at the intersection of domestic violence and housing.

Since 1986, the **Pro Bono Project of Silicon Valley** has provided legal services to indigent individuals in Santa Clara County, many of whom have experienced domestic violence.

The **Public Interest Law Project** is a state support center for public interest law programs focusing on affordable housing and public benefits. The victims of domestic violence are among the people most vulnerable to the loss of housing and basic income support, and the denial of a petition for renewal of protective orders to domestic violence survivors can lead directly to the loss of housing and critical income.

Rape Counseling Services of Fresno is the only 24-hour response rape crisis center in Fresno County and serves primarily low-income and Latina survivors of sexual violence. Its mission is to end sexual violence and empower survivors while supporting safe, consensual relationships for all people.

The **San Diego Volunteer Lawyer Program, Inc.** (SDVLP) was established in 1983 as a private, not for profit, charitable law firm that provides pro bono legal assistance to indigent residents of San Diego County. One of SDVLP's priority areas of service is legal assistance to survivors of domestic violence.

Professor **Wendy M. Seiden** is a Clinical Professor of Law at Chapman University Fowler School of Law and Assistant Director of the Bette & Wylie Aitken Family Protection Clinic. Professor Seiden has worked in the field of family violence for 25 years. Professor Seiden spent 12 years representing children of all ages in child welfare and high conflict

custody cases before beginning to teach full-time. Professor Seiden currently teaches the Protection Order Section of the Bette & Wylie Aitken Family Protection Clinic.

Professor **Jane Stoever** is a faculty member at the University of California, Irvine School of Law (UCI). She has extensive experience representing abuse survivors, teaching domestic violence law clinics, and engaging in scholarship in the areas of domestic violence law, family law, and feminist legal theory. As the Director of the Domestic Violence Clinic at UCI, Professor Stoever and her students represent abuse survivors in civil, criminal, and immigration cases as they seek to increase their clients' safety and autonomy. Professor Stoever is also the Director of the UCI Initiative to End Family Violence, which unites faculty from 21 departments at UCI and community partners in research and clinical interventions in family violence. She also co-chairs the Orange County Domestic Violence Death Review Team. Professor Stoever previously taught at Georgetown University Law Center, American University Washington College of Law, and Seattle University School of Law.

The **UC Davis Family Protection and Legal Assistance Clinic** provides free civil legal assistance to survivors of domestic and sexual violence in Yolo County.

The **Women's Law Project**, based in Philadelphia, has been a national leader in the field of women's rights since 1974. The Women's Law Project has worked for fair and accessible procedures in child custody, child support, and protection from abuse actions; championed the rights of sexual assault survivors; challenged sex discrimination in employment, education, athletics, and insurance; advanced the rights of lesbian and gay

parents; protected reproductive freedom; and advocated on behalf of impoverished women.

The **YWCA Glendale**'s Domestic Violence Program has been helping abused men, women, and their children for over 35 years to live independent lives free from violence by providing emergency shelter, domestic violence education, individual counseling, legal advocacy, and support groups.

PROOF OF SERVICE

I, Elizabeth Joy Crandall-Whittom, am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105.

On July 27, 2016, I served the document listed below on the interested parties in this action as follows:

**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE*
BRIEF AND BRIEF OF *AMICI CURIAE* FAMILY
VIOLENCE APPELLATE PROJECT AND 30
ORGANIZATIONS AND INDIVIDUALS
REPRESENTING SURVIVORS OF FAMILY VIOLENCE
IN SUPPORT OF PETITIONER BARRY JAMESON**

BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(c)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 425 Market Street, San Francisco, California 94105 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is (are) placed at Morrison & Foerster LLP for collection.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 27, 2016, at San Francisco, California.

Elizabeth Joy Crandall-Whittom
(typed)


(signature)