Case No. S230899

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BARRY S. JAMESON,

Appellant,

v.

TADDESE DESTA,

Respondent.

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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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

RULES OF COURT

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page

BRIEF OF *AMICI CURIAE* FAMILY VIOLENCE APPELLATE PROJECT AND 30 ORGANIZATIONS AND INDIVIDUALS REPRESENTING SURVIVORS OF DOMESTIC VIOLENCE IN SUPPORT OF PETITIONER BARRY JAMESON

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

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[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

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[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*

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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]

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[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 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

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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

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[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

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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