2023 UT App 157

THE UTAH COURT OF APPEALS

STATE OF UTAH, IN THE INTEREST OF J.T. AND A.T.,
PERSONS UNDER EIGHTEEN YEARS OF AGE.

F.R.,
Appellant,
v.
STATE OF UTAH,
Appellee.

Opinion
No. 20220623-CA
Filed December 21, 2023

First District Juvenile Court, Brigham City Department
The Honorable Bryan Galloway
Nos. 1051672 and 1210454

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Martha Pierce, Guardian ad Litem

JUDGE JOHN D. LUTHY authored this Opinion, in which JUDGES DAVID N. MORTENSEN and RYAN M. HARRIS concurred.

LUTHY, Judge:

¶1 After minor children J.T. and A.T. were removed from the custody of their mother (Mother), their grandmother, F.R. (Grandmother), moved to intervene in the child welfare proceeding. The juvenile court ultimately denied Grandmother's motion, and she appeals. We conclude that Grandmother should have been allowed to intervene but only as a limited-purpose party based on her statutory right to request preferential consideration for temporary placement of the children. We

therefore reverse the juvenile court's ruling on Grandmother's intervention motion and remand this matter for proceedings consistent with this opinion.

BACKGROUND

¶2 J.T. and A.T. share the same mother but have different fathers. J.T.'s father passed away before the proceedings commenced. In 2021, J.T. turned eleven and A.T. turned eight. As of the time of the events relevant to this appeal, A.T.'s father was subject to an order that prohibited him from contacting A.T.

¶3 Grandmother is the children's maternal grandmother. In September 2021, she filed a petition in the district court for the appointment of a guardian for J.T. In her petition, Grandmother alleged that Mother was "unwilling or unable to exercise her parental rights," and Grandmother requested that she, Grandmother, be appointed as J.T.'s guardian.

¶4 The district court ordered Mother and Grandmother to mediation. The mediation resulted in a stipulation, filed in January 2022, under which Mother and Grandmother agreed for J.T., Mother, and Grandmother to each be evaluated by a therapist and to then "abide by the appointed therapist's recommendations as a temporary order" until final resolution of the guardianship case. Under the stipulation, Mother and Grandmother were "required to cooperate in good faith and follow through with the requests made by the appointed therapist."

¶5 Thereafter, the Division of Child and Family Services (DCFS) received repeated referrals raising concerns that J.T. and A.T. were being abused and neglected by Mother. In response to those referrals, in May 2022 (while the guardianship action remained pending in the district court), DCFS filed a petition in juvenile court alleging that J.T. and A.T. were "abused, neglected,

and/or dependent children." The children were then removed from Mother's custody and placed in the temporary custody of DCFS.

¶6 At the ensuing shelter hearing, a temporary placement for the children was discussed. Mother and A.T.'s father objected to Grandmother as a temporary placement option. The juvenile court considered their objections and ordered DCFS to "conduct a reasonable search to determine whether there [were other] relatives of the children or friends of the parents of the children who [were] willing and appropriate to be considered for placement of the children." The juvenile court was "reluctant to have the children placed with [Grandmother] based on . . . accusations that [had] been made and the history involved in this case," and it stated that it did "not believe that a kinship placement [was] appropriate if the children [were] going to be kept together."[1] Nonetheless, the juvenile court left the temporary placement decision "up to the discretion of [DCFS]."

¶7 Shortly after the shelter hearing, DCFS held a kinship meeting and considered all the placement options that had been identified, including placement with Grandmother. DCFS decided to place both children with A.T.'s paternal aunt and uncle.

¶8 Grandmother then filed a Motion to Intervene and for Kinship Placement in the child welfare proceeding. In support of her motion, Grandmother argued that she had a right to intervene

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1. Grandmother was apparently the only kinship placement option for keeping the children together: she appears to have been the only maternal relative to express an interest in placement, and, in light of J.T. and A.T. having different fathers, any paternal kinship placement for one child would not have been a kinship placement for the other.

under rule 24(a)(2) of the Utah Rules of Civil Procedure.[2] That rule requires, among other things, that the movant "claim[] an interest relating to the property or transaction that is the subject of the action" and that the movant be "so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." Utah R. Civ. P. 24(a)(2). Grandmother claimed to have three interests that relate to the subject of this child welfare action, each of which, she asserted, might be impaired or impeded by resolution of the action: (1) an interest related to potential grandparent visitation, (2) an interest related to her petition for guardianship of J.T., and (3) an interest related to her right to preferential consideration as a temporary kinship placement for the children.

¶9 The juvenile court acknowledged that Grandmother has "some statutory rights . . . through the child welfare proceeding," including "the right to be given preferential treatment as it relates to placement." But it found that none of Grandmother's rights "would be compromised if she is not allowed to intervene as a party," and it therefore denied Grandmother's request to intervene. It also denied her request to be the children's temporary kinship placement. Grandmother appeals the denial of her request to intervene in the child welfare proceeding.

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2. Grandmother's motion cited both subsections 24(a)(1) and 24(a)(2) in support of her argument that she has a right to intervene, but her reply memorandum below and briefing on appeal clarify that she relies only on subsection 24(a)(2) to support her argument for intervention as of right. Grandmother's motion also requested permissive intervention under subsection 24(b), but that issue is not before us on appeal.

ISSUES AND STANDARDS OF REVIEW

¶10 On appeal, Grandmother again contends that she has three interests related to this child welfare proceeding, that "her ability to pursue each of these interests was impaired or impeded by prior and prospective rulings in the child welfare case," and that "[e]ach of these three distinct interests is thus sufficient to support her right to intervene under [r]ule 24(a)(2)."

¶11 As to Grandmother's first two claimed interests—namely, her interest related to grandparent visitation and her interest related to her guardianship petition—we resolve this appeal under rule 24 and examine whether the claimed interests qualify under rule 24(a)(2) as "interest[s] relating to the property or transaction that is the subject of the [child welfare] action." Utah R. Civ. P. 24(a)(2). "Whether the intervenor has claimed an interest relating to the property or transaction which is the subject of the action" is an issue that "we review for correctness." *Supernova Media, Inc. v. Pia Anderson Dorius Reynard & Moss, LLC*, 2013 UT 7, ¶ 16, 297 P.3d 599 (cleaned up).

¶12 As to Grandmother's claimed interest related to her right to preferential consideration as a temporary kinship placement in the child welfare action, we resolve the issue through application of a controlling line of Utah Supreme Court cases—*In re guardianship of A.T.I.G.*, 2012 UT 88, 293 P.3d 276; *State v. Brown*, 2014 UT 48, 342 P.3d 239; and *F.L. v. Court of Appeals*, 2022 UT 32, 515 P.3d 421. "Our interpretation of case law . . . presents a question of law reviewed for correctness." *State v. Morgan*, 2001 UT 87, ¶ 1, 34 P.3d 767.

ANALYSIS

I. Intervention as of Right Under Rule 24(a)(2)

A. Legally Protectable Interest

¶13 To the extent that Grandmother based her motion to intervene on rule 24(a)(2) of the Utah Rules of Civil Procedure,[3] she was required to show (1) that her motion was timely, (2) that she "claims an interest relating to the property or transaction that is the subject of the action," (3) that the disposition "of the action may as a practical matter impair or impede [her] ability to protect [that] interest," and (4) that "existing parties" do not "adequately represent that interest." Utah R. Civ. P. 24(a)(2); *see also Supernova Media, Inc. v. Pia Anderson Dorius Reynard & Moss, LLC*, 2013 UT 7, ¶ 22, 297 P.3d 599. With respect to Grandmother's first two interests that she claims form the basis of her right to intervene, we conclude that the interests do not qualify under rule 24(a)(2) as interests "relating to the property or transaction that is the subject of the action" and, thus, that she is not entitled to intervene based on those claimed interests.

¶14 We begin our analysis by recounting the relevant history of rule 24(a)(2). As of 1982, rule 24(a)(2) required a showing that the applicant "is or may be *bound* by a judgment in the action." Utah R. Civ. P. 24(a)(2) (1982) (emphasis added). Not surprisingly, therefore, the Utah Supreme Court held in 1982 that a "party seeking intervention must *demonstrate a direct interest in* the subject

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3. When a proceeding in juvenile court "involves neglect, abuse, dependency, termination of parental rights, adoption, status offenses or truancy, the Utah Rules of Civil Procedure shall apply unless inconsistent with" the Utah Rules of Juvenile Procedure. Utah R. Juv. P. 2(a). We do not see inconsistency between rule 24(a)(2) of the Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure.

matter of the litigation such that the intervenor's rights may be affected, for good or for ill." *Lima v. Chambers*, 657 P.2d 279, 282 (Utah 1982) (emphasis added), *superseded by rule*, Utah R. Civ. P. 24(a)(2) (1987), *as recognized in Supernova Media,* 2013 UT 7, ¶ 39. The court further explained:

> The required interest does not include a mere, consequential, remote or conjectural possibility of being in some manner affected by the result of the original action. It must be such *a direct claim* upon the subject matter of the action that the intervenor will either gain or lose *by direct operation of the judgment* to be rendered.

Id. (emphasis added) (cleaned up).

¶15 Rule 24(a)(2) was later amended—effective January 1, 1987—to eliminate the requirement to show that the applicant would be "bound" by a judgment in the action. Utah R. Civ. P. 24(a)(2) (1987). The amended rule instead allowed for intervention when "the disposition of the action may as a practical matter impair or impede [the applicant's] ability to protect that interest." *Id.* The amended rule also changed the requirement to demonstrate an interest in the subject of the action to a requirement to "claim[] an interest relating to" the subject of the dispute. *Id.* These changes mandated intervention on "more liberal terms" than under the pre-1987 rule.[4] *Chatterton v. Walker*, 938 P.2d 255, 258 (Utah 1997).

¶16 Notwithstanding the 1987 amendment, both this court and the Utah Supreme Court rearticulated the old standard in subsequent cases where the difference between the old and new

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4. Rule 24(a)(2) has been further amended since 1987, but the amendments since 1987 have been stylistic, not substantive. *Compare* Utah R. Civ. P. 24(a)(2) (1987), *with id.* R. 24(a)(2) (2023).

standards was not determinative. *See In re E.H.*, 2006 UT 36, ¶¶ 51–52, 137 P.3d 809 (stating in a case where "the parties stipulated that the [intervenor] had the necessary interest," that "[t]o justify intervention, the party seeking intervention must *demonstrate a direct interest* in the subject matter of the litigation" (emphasis added)); *Interstate Land Corp. v. Patterson*, 797 P.2d 1101, 1108 (Utah Ct. App. 1990) (stating that "[t]he applicant's interest in the subject matter of the dispute must be *a direct claim* upon the subject matter of the action such that *the applicant will either gain or lose by direct operation of the judgment to be rendered*" but concluding that the applicants had "no direct *or remote* interest in the subject matter of the dispute" (emphasis added)).

¶17 In *Supernova Media, Inc. v. Pia Anderson Dorius Reynard & Moss, LLC*, 2013 UT 7, 297 P.3d 599, however, the Utah Supreme Court emphasized the effect of the 1987 amendment. In that case, the party opposing intervention argued that the applicant had "not established a direct, substantial, and legally protectable interest in the . . . matter."[5] 2013 UT 7, ¶ 35 (cleaned up). The

5. The party opposing intervention was apparently relying on the standard employed by a number of federal circuit courts under rule 24(a)(2) of the Federal Rules of Civil Procedure. *See, e.g.*, *Coalition of Ariz./N.M. Counties for Stable Econ. Growth v. Department of Interior*, 100 F.3d 837, 840 (10th Cir. 1996) (requiring that the applicant's "interest in the proceedings be direct, substantial, and legally protectable" (cleaned up)); *United States v. South Fla. Water Mgmt. Dist.*, 922 F.2d 704, 709 (11th Cir. 1991) (applying the "direct, substantial, legally protectable interest" standard). *But see, e.g.*, *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997) (reaffirming a prior rejection of "the notion that [r]ule 24(a)(2) requires a specific legal or equitable interest" (cleaned up)). While not "dispositive," "interpretations of the Federal Rules of Civil Procedure are persuasive where the (continued…)

supreme court responded to this argument by explaining that the party opposing intervention had "misstate[d] the standard: [the applicant] is only required to *claim* an interest *relating to* the property or transaction which is the subject of the action. [It] is not required to 'establish' an interest, and the interest need not be 'direct' or 'substantial.'" *Id.* (cleaned up). Notably, while the supreme court disavowed the suggestion that our current rule 24(a)(2) requires an applicant for intervention to demonstrate either a direct or a substantial interest in the subject of the action, it did not disclaim the notion that the applicant's claimed interest must be a legally protectable one. *See id. See generally Lima*, 657 P.2d at 282 (holding that a party seeking intervention must show that its "*rights* may be affected, for good or for ill" (emphasis added)). Indeed, in *In re United Effort Plan Trust*, 2013 UT 5, 296 P.3d 742, which the supreme court had decided less than three weeks before it issued *Supernova Media*, the court held that an applicant's interest in the proceeding must be an interest capable of supporting a legally cognizable claim or defense. *See id.* ¶¶ 37–38.

¶18 In that case, a set of applicants for intervention claimed an interest in the subject of the action "arising from a 'sacred priesthood charge, pursuant to scripture and belief' and grounded in the 'tenets of [the applicants'] faith.'" *Id.* ¶ 37. Another set of applicants similarly claimed an interest in the subject of the action "stemming from a 'priesthood stewardship.'" *Id.* Although the court did "not question the importance of these interests in the abstract," it concluded that they were not the kind of interests that triggered rule 24(a)(2). *Id.* In reaching this conclusion, the court observed that "rule 24(c) of the Utah Rules of Civil Procedure provides helpful context for evaluating rule 24(a)(2)'s 'interest' requirement," and it explained as follows:

Utah Rules of Civil Procedure are substantially similar." *Noor v. State*, 2019 UT 3, ¶ 47 n.57, 435 P.3d 221 (cleaned up).

> Under 24(c), a party moving for intervention must file an accompanying pleading setting forth the *claim or defense* for which intervention is sought. And rule 8 of the Utah Rules of Civil Procedure, in turn, sets forth the requirements for pleading claims and defenses, requiring for the assertion of a claim: (1) a statement of the claim showing that the party is entitled to relief; and (2) a demand for judgment for specified relief.

Id. ¶ 38 (cleaned up). The court then held that because the applicants there had "asserted no such claim" and "[t]heir purported 'interests' [were] abstract ones, disconnected from any 'demand for judgment for specified relief,'" they "lacked an interest in the subject matter of the dispute sufficient to sustain their intervention under rule 24(a)(2)." *Id.* In sum then, *In re United Effort Plan Trust* stands for the proposition that only a legally protectable interest (not an abstract one) qualifies as an interest related to the subject matter of the action under rule 24(a)(2) because only on the basis of a legally protectable interest can one state a cognizable claim for specified relief.

¶19 Representative cases leading up to *In re United Effort Plan Trust* demonstrate that its holding was not an innovation but, rather, a more explicit articulation of a principle the court had applied over time. For example, in *In re adoption of I.K.*, 2009 UT 70, 220 P.3d 464, the court held that an unmarried natural father who had "failed to timely establish his parental rights" under applicable state law had "no interest in the [adoption] proceeding [for his natural daughter] that would endow him with standing to intervene under rule 24." *See id.* ¶ 26. And applying the same principle with a contrasting result, the court held in *In re Discipline of Alex*, 2004 UT 81, 99 P.3d 865, that a landlord did have "a cognizable interest . . . sufficient to justify its intervention" in an attorney discipline action because the district court in the disciplinary action had ordered a representative of the Utah State

Bar to "recover, attach, remove and possess any and all property" left by the attorney in the landlord's building and the landlord in its motion for intervention had also asserted a contingent right in the attorney's personal property "pursuant to [an] order of restitution entered in [an] unlawful detainer action" against the attorney. *Id.* ¶¶ 5, 25–28 (cleaned up). Accordingly, for an interest to qualify under rule 24(a)(2) as an interest related to the subject matter of an action, it must be a legally protectable interest, one on the basis of which the applicant for intervention articulates a demand for specified relief.[6] *See In re United Effort Plan Trust*, 2013 UT 5, ¶ 38.

B. Grandmother's First Two Claimed Interests

¶20 Under the foregoing standard, we now examine Grandmother's first two interests that she contends entitle her to intervention as of right under rule 24(a)(2).

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6. There is a long-recognized companion to the rule we identify here, which companion rule is that a legal liability that may be enlarged or diminished by resolution of an action also qualifies under rule 24(a)(2) as an interest related to the subject of the action. *See, e.g.*, *Chatterton v. Walker*, 938 P.2d 255, 257–62 (Utah 1997) (holding that "an insurer who provides uninsured motorist protection" has a right to "intervene in an action to determine the liability of an uninsured motorist" and "raise all defenses to the allegations of the uninsured motorist's negligence—both affirmative and negative—which the defendant could have raised had the defendant appeared" because the insurer is contractually obligated to reimburse its insured for the amount of the judgment (cleaned up)).

1. Interest Related to Grandparent Visitation

¶21 Grandmother claims an interest related to her potential pursuit of grandparent visitation rights under section 30-5-2(1) of the Utah Code. That section provides:

> In accordance with the provisions and requirements of this section: (a) a grandparent has standing to bring an action requesting visitation in district court by petition; and (b) a grandparent may file a petition for visitation rights in the juvenile court or district court where a divorce proceeding or other proceeding involving custody and visitation issues is pending.

Utah Code § 30-5-2(1). Grandmother has not filed a petition for visitation under this section, and she does not argue that resolution of this child welfare proceeding may impair or impede her right to file such a petition. Indeed, if Grandmother wishes to petition for visitation under the provisions and requirements of section 30-5-2, she is—and will remain—free to do so regardless of the resolution of this action.

¶22 Instead, Grandmother's argument is that if she files a petition for visitation under section 30-5-2, the visitation she might be granted could be impaired because of the placement decisions made in this action:

> The minor children have been placed in a home 90 miles away from [Grandmother's] home (they previously lived in the same city); one of the minor children has been placed in a home with a family to whom he is not a relative; and [Grandmother's] access to visitation with the children has been severely restricted since the date of removal.

¶23 But Grandmother has no legally protectable right to have the children placed close to her home or to have them placed with a relative. And she fails to articulate any legally protectable right that is being violated by other allegedly severe but unidentified restrictions that have been placed on her access to visitation with the children. Accordingly, we affirm the juvenile court's denial of Grandmother's intervention motion to the extent that it was based on her claimed interests related to grandparent visitation.

2. Interest Related to the Guardianship Proceeding

¶24 Grandmother also claims an interest related to the guardianship action she commenced in district court. Grandmother bases this interest on the "signed stipulation in [the guardianship] action [that grants Grandmother] certain rights in relation to the guardianship action."[7] Under the stipulation,

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7. In her motion to intervene, Grandmother also asserted that she had "a right" to intervene "for the purpose of asking [the juvenile] court to grant [her] custody and guardianship over [J.T.]," and in support, she pointed to her guardianship action generally and to the principle that the "next of kin, such as a grandmother, do have some dormant or inchoate right or interest in the custody and welfare of children who become parentless, so that they may come forward and assert their claim." *In re H.J.*, 1999 UT App 238, ¶ 32, 986 P.2d 115 (cleaned up). As to a grandparent's inchoate right or interest in the custody and welfare of grandchildren, Grandmother failed to recognize that such a right "matures only upon the death or termination of the rights of the parents." *Jones v. Jones*, 2013 UT App 174, ¶ 12, 307 P.3d 598 (cleaned up), *aff'd*, 2015 UT 84, 359 P.3d 603. Because Mother had neither passed away nor had her rights terminated, Grandmother's inherent inchoate right had not yet matured into a legally protectable one that could form the basis for intervention as of right under rule 24(a)(2).

(continued…)

Mother and Grandmother agreed to an individual evaluation of J.T., Mother, and Grandmother and to "abide by the therapist's recommendations as a temporary order" until final resolution of the guardianship case. Yet in her motion and arguments below, Grandmother never articulated a specified claim for relief based on this stipulation. And she does not identify one on appeal.

¶25 Moreover, we are not convinced that the stipulation gives Grandmother protectable legal rights on which she could base a cognizable claim for relief in this child welfare action. Grandmother's rights under the stipulation are rights as against Mother, and Mother's duty to perform is cabined by the

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As to intervention as of right based on the guardianship action generally, Grandmother's motion offered no analysis, cited no case law, and did not clarify whether intervention was being sought under rule 24(a)(1) or 24(a)(2). In her reply memorandum and at oral argument, Grandmother did not elaborate on intervention based on the guardianship action generally and, instead, focused on her claimed interest arising specifically from the stipulation in the guardianship action. And in its ruling on the motion, the juvenile court did not address intervention as of right based on the guardianship action generally. "In order to preserve an issue for appeal, it must be specifically raised such that the issue is sufficiently raised to a level of consciousness before the trial court so as to give the trial court an opportunity to address the claimed error, and if appropriate, correct it." *State v. Noor*, 2012 UT App 187, ¶ 5, 283 P.3d 543 (cleaned up), *cert. denied*, 288 P.3d 1045 (Utah 2012). "The mere mention of an issue without introducing supporting evidence or relevant legal authority does not preserve that issue for appeal." *Id.* (cleaned up). Accordingly, we conclude that Grandmother did not preserve, and we therefore do not address, the issue of her intervention as of right under rule 24(b)(2) based on the pendency of her guardianship action generally.

"require[ment] to cooperate in good faith." Thus, for example, we cannot say that Grandmother has a legally protectable right to Mother's facilitation of a therapist's evaluation of J.T. when J.T. has been removed from Mother's custody. *Cf. Kilgore Pavement Maint., LLC v. West Jordan City*, 2011 UT App 165, ¶ 9, 257 P.3d 460 ("Under the contractual defense of impossibility, an obligation is deemed discharged if an unforeseen event occurs after formation of the contract and without fault of the obligated party, which event makes performance of the obligation impossible or highly impracticable." (cleaned up)).

¶26 Because Grandmother has failed to point us to a legally protectable right that she has under the stipulation and on the basis of which she seeks some specified relief in this child welfare action, we affirm the juvenile court's denial of her intervention motion to the extent that it was based on her claimed interest related to the stipulation in the guardianship proceeding.[8]

II. Intervention as a Limited-Purpose Party

¶27 Grandmother's final argument is that her statutory right to preferential consideration as a temporary kinship placement for the children provides an interest that supports her intervention as

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8. We acknowledge that Grandmother has made an argument on appeal regarding the sufficiency of the juvenile court's findings related to her rule 24(a)(2) arguments and that the juvenile court did not address Grandmother's rule 24(a)(2) arguments in the way that we have here. However, we need not address Grandmother's inadequacy-of-the-findings argument or the juvenile court's rule 24(a)(2) analysis because our review is de novo and "we may affirm on any legal ground or theory apparent on the record, as long as we do not reweigh the evidence in light of the new legal theory or alternate ground." *State v. Malloy*, 2019 UT App 55, ¶ 9, 441 P.3d 756 (cleaned up), *aff'd*, 2021 UT 61, 498 P.3d 358.

of right under rule 24(a)(2). As we have noted already, however, we do not address under rule 24(a)(2) Grandmother's statutory right to preferential consideration as a temporary kinship placement. Instead, we address intervention based on that statutory right under a controlling line of Utah Supreme Court cases—*In re guardianship of A.T.I.G.*, 2012 UT 88, 293 P.3d 276; *State v. Brown*, 2014 UT 48, 342 P.3d 239; and *F.L. v. Court of Appeals*, 2022 UT 32, 515 P.3d 421.

A. Relevant Supreme Court Precedent

¶28 We begin by reviewing the identified cases. In *In re guardianship of A.T.I.G.*, the mother of a child was "diagnosed with terminal lung cancer." 2012 UT 88, ¶ 6. "[I]n anticipation of her death, [the mother] prepared a testamentary appointment of guardianship and conservatorship of [her child] in favor of [the child's maternal grandparents]." *Id.* The child's biological father, who was never married to the mother, was not named on the child's birth certificate, and he had not signed a voluntary declaration of paternity at the time of the child's birth. *Id.* ¶ 3. Nor was the father notified of the mother's testamentary appointment of guardianship. *Id.* ¶ 6. After the mother's passing and funeral, the grandparents took the child home and filed a petition for confirmation of their appointment as guardians, and the district court confirmed their appointment. *Id.* ¶ 7. When the father learned that the grandparents had been appointed and confirmed as the child's guardians, he filed an objection. *Id.* ¶¶ 8, 19. The district court denied the objection, and the father appealed. *Id.* ¶¶ 9, 11–12.

¶29 On appeal, the grandparents argued that because the father "never formally filed a motion to intervene in [the] case, he lacked standing to object to the guardianship appointment" and "standing to bring [the] appeal." *Id.* ¶ 17 (cleaned up). The supreme court disagreed, explaining that because section 75-5-203 of the Utah Code "permits '[a]ny person interested in the welfare

of a minor' to file a written objection to a guardianship appointment," "the statute confers intervenor status on any person who files an objection pursuant to it." *Id.* ¶ 18. Accordingly, the court concluded, "when [the father] filed his objection, [he] received statutory intervenor status." *Id.* ¶ 19.

¶30 A few years later, in *State v. Brown*, 2014 UT 48, 342 P.3d 239, the supreme court reached a similar conclusion and elaborated on its reasoning. There, it granted intervention with "limited-party status" to a victim in a criminal proceeding. *See id.* ¶¶ 13–20. The defendant had been charged with sex crimes (and later pleaded guilty to one of them), and the victim "sought to intervene by filing a notice of a claim for restitution." *Id.* ¶¶ 1, 5. "The district court rejected [the] filing on the ground that [the victim] was not a proper party and thus lacked standing to file pleadings." *Id.* ¶ 1. The victim appealed. *Id.* ¶ 2.

¶31 On appeal, the supreme court acknowledged that "[t]he traditional parties to a criminal proceeding are the prosecution and the defense, and a crime victim is not that kind of party; a victim is not entitled to participate at all stages of the proceedings or for all purposes." *Id.* ¶ 16. The court noted, however, that "[o]ur crime victims bill of rights recognizes the right of a victim to 'seek restitution or reparations.'" *Id.* ¶ 18 (quoting Utah Code § 77-37-3(1)(e)). It then explained that "the right to 'seek' connotes a proactive right to 'go in search of,' or to 'try to acquire or gain,'" and that "the anticipated mode of *seeking* restitution is . . . by a direct filing by the victim." *Id.* (cleaned up). Reasoning that "[n]on-parties have no standing to file motions or to otherwise request relief," the court concluded that the provisions of the code allowing a victim to seek restitution through a direct filing "recognize a victim's status as a limited-purpose party." *Id.* ¶ 19.

¶32 Most recently, in *F.L. v. Court of Appeals*, 2022 UT 32, 515 P.3d 421, the supreme court again addressed the right of a crime victim to intervene in a criminal proceeding as a limited-purpose

party. The defendant in that case was also charged with sex crimes, and he requested "that the district court conduct an in camera review of [the alleged victim's] therapy and counseling records and release specific categories of information relevant to his defense." *Id.* ¶ 1. The court granted the request, conducted the review, and issued orders quoting relevant excerpts from the records. *Id.* The court then sealed the records, the case proceeded to trial, and the defendant was convicted of one count of sexual abuse of a child. *Id.* He then appealed, challenging "the adequacy of the district court's in camera review." *Id.* ¶ 2.

¶33 The appeal came to this court, and we initially "unsealed [the] records and classified them as private, which allowed [the defendant's] attorney to make extensive use of those records in his opening brief on appeal." *Id.* The victim, however, asked this court to reseal her records, and we responded by ordering the records resealed and instructing the defendant "to file a revised brief without references to the records." *Id.* The defendant complied but argued that "the sealing order violated his rights." *Id.* ¶ 3. The victim "then moved to intervene in [the] appeal as a limited-purpose party to assert her privacy interests." *Id.* We did not grant intervention, but we did allow her to file an amicus brief. *Id.* ¶ 4. She then filed a petition for extraordinary relief in the supreme court, seeking an order allowing her to intervene as a limited-purpose party. *Id.* ¶¶ 4–5.

¶34 The supreme court held that the victim was entitled to limited-purpose party status "under the reasoning of *State v. Brown* and as provided in Utah Rule of Evidence 506." *Id.* ¶ 35. The court determined that "[t]he reasoning of *State v. Brown* can be distilled into this general rule: if the law gives crime victims the ability to proactively assert a right or seek a remedy, then they may enforce those specific rights as limited-purpose parties in criminal proceedings." *Id.* ¶ 37. Therefore, the question was "whether the law [gave the victim] the right to proactively assert her privacy interests in her privileged mental health records." *Id.*

The court declared that it did because under rule 506, "a patient has a privilege to refuse to disclose and to prevent any other person from disclosing information that is communicated in confidence to a mental health therapist for the purpose of diagnosing or treating the patient" and "the privilege may be *claimed* by the patient." *Id.* ¶ 38 (cleaned up). The court emphasized that, "[s]imilar to the phrase 'seek restitution' in *Brown*, the phrase 'claim the privilege' [in rule 506] connotes a proactive right." *Id.* Because rule 506 gave the victim a proactive right to "assert that privilege and directly oppose [the defendant's] attempts to gain access to her records," the court concluded that the victim "possess[ed] the status of a limited-purpose party." *Id.* ¶ 39 (cleaned up).

¶35 The court in *F.L.* also expressly addressed intervention under rule 24 of the Utah Rules of Civil Procedure. *See id.* ¶ 37 n.36. It observed that the defendant and the victim had spent "much of their briefing arguing over whether [the victim] should be allowed to intervene through Utah Rule of Civil Procedure 24, which [the victim] argue[d] should apply to [the] criminal proceedings under Utah Rule of Civil Procedure 81(e)." *Id.* The State, on the other hand, argued that the victim did "not need to satisfy the requirements of rule 24 to become a limited-purpose party under *Brown*." *Id.* Importantly, the court "[chose] the narrower option and resolve[d] [the] case based on *Brown* and Utah Rule of Evidence 506 rather than rule 24," emphasizing that (1) it had previously "held that the traditional parties to a criminal proceeding are the prosecution and the defense, and a victim is not entitled to participate at all stages of the proceedings or for all purposes"; (2) "rule 24 allows a person to become a full-fledged party to the proceeding in every respect"; and (3) it was "concerned with the broad consequences of applying rule 24 to allow intervention in criminal proceedings." *Id.* (cleaned up).

B. Right to Preferential Consideration as a Kinship Placement

¶36 As with the father in *In re guardianship of A.T.I.G.* and the victims in *Brown* and *F.L.*, the law gives Grandmother the ability to proactively assert a right or seek a remedy in the action into which she seeks to intervene. Specifically, section 80-3-302 of the Utah Code, which addresses shelter hearings in child welfare proceedings, provides that when considering the temporary placement of children removed from a parent's custody, "[DCFS] and the juvenile court shall give preferential consideration to a relative's or a friend's *request* for placement of the child, if the placement is in the best interest of the child." Utah Code § 80-3-302(7)(a)(i) (emphasis added). Furthermore, the preceding code section, which also addresses shelter hearings, requires the juvenile court conducting the hearing to "hear relevant evidence presented by the child, the child's parent or guardian, *the requesting party, or the requesting party's counsel*." *Id.* § 80-3-301(5)(b)(ii) (emphasis added). Just as the law's recognition of the rights to "file" an objection, "seek" restitution, and "claim" privacy protections each indicate an ability to proactively assert a right or seek a remedy and, thus, confer limited-purpose intervenor status on persons who exercise those rights, section 80-3-302's recognition of a relative's or a friend's right to "request" preferential consideration for child placement likewise indicates an ability to proactively assert a right or seek a remedy and, thus, confers limited-purpose intervenor status on relatives or friends when they request such preferential consideration. *See In re guardianship of A.T.I.G.*, 2012 UT 88, ¶ 19, 293 P.3d 276 (holding that "*when he filed his objection*, [the father] received statutory intervenor status" (emphasis added)); *State v. Brown*, 2014 UT 48, ¶ 19, 342 P.3d 239 ("Non-parties have no standing to file motions or to otherwise request relief. Such rights are conferred only on parties.").

¶37 Persons who gain this type of statutory or rule-based intervenor status, however, become only "limited-purpose

parties" who may participate in the action solely to "enforce those specific rights" that the law upon which their intervention is based affords "the ability to proactively assert." *Id.* Hence, Grandmother's limited-purpose party status allows her to request preferential consideration for temporary kinship placement, *see* Utah Code § 80-3-302(7)(a)(i), provide relevant testimony and other relevant evidence on the issue of temporary placement during the shelter hearing, *see id.* § 80-3-301(5)(b)(ii), and be provided information that is anticipated to be reported or requested during the portion of the shelter hearing that she is entitled to participate in as a party, *see id.* § 80-3-107(1)(a).

¶38 Grandmother contends that to the extent section 80-3-302(7)(a)(i) does "create some right of limited-purpose intervention," that right should "not preempt" rule 24 of the Utah Rules of Civil Procedure. As reflected in this opinion, we agree with Grandmother to some extent: we do not see inherent inconsistency between rule 24(a)(2) and the Utah Rules of Juvenile Procedure, *see supra* note 3, and we have therefore analyzed under rule 24(a)(2) Grandmother's claimed interests that are not of the sort that would give rise to limited-purpose party status, *see supra* ¶¶ 13–26.

¶39 On the other hand, we note that quite like criminal proceedings where "the prosecution and the defense" are the "traditional parties" and others, including victims, are "not entitled to participate at all stages of the proceedings or for all purposes," *F.L.*, 2022 UT 32, ¶ 37 n.36, the traditional parties in DCFS-initiated child welfare proceedings are the State (in the interest of the children) and the parents or guardians of the children, and other parties are not entitled to participate for all purposes or at all stages of the proceedings. Given these similarities, we are concerned, as was the supreme court with respect to criminal proceedings, "with the broad consequences of applying rule 24 to allow intervention" in child welfare proceedings in instances where the "narrower option" of limited-

purpose intervention is available. *Id.* For this reason, we follow the supreme court's lead and resolve the portion of this case stemming from Grandmother's claimed interest in preferential kinship placement under *In re guardianship of A.T.I.G.*, *Brown*, *F.L.*, and Utah Code section 80-3-302(7)(a)(i).[9]

¶40 Based on the foregoing, we hold that when Grandmother requested preferential consideration as a temporary kinship placement for the children, she acquired limited-purpose statutory intervenor status. The juvenile court thus erred by not recognizing Grandmother as a limited-purpose party.

CONCLUSION

¶41 The juvenile court was correct when it declined to grant Grandmother's request to intervene in this child welfare matter under rule 24(a)(2) of the Utah Rules of Civil Procedure based on her claimed interests related to grandparent visitation and the stipulation in the guardianship action in district court. The court erred, however, when it did not recognize Grandmother's status as a limited-purpose party. We therefore reverse in part the juvenile court's denial of Grandmother's motion to intervene and remand for further proceedings consistent with this opinion.

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9. Because of the concerns expressed here, we invite the Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure to consider whether an intervention rule separate from rule 24 of the Utah Rules of Civil Procedure and specifically tailored to juvenile court proceedings may be merited in the Rules of Juvenile Procedure.