RECORD IMPOUNDED

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1540-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANDREW N. LAVRIK,

Defendant-Respondent.

APPROVED FOR PUBLICATION

May 9, 2022

APPELLATE DIVISION

Argued December 7, 2021 – Decided May 9, 2022

Before Judges Messano, Accurso and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 19-05-0566.

Michael J. Confusione argued the cause for appellants J.B. and C.B. (Hegge & Confusione, LLC, attorneys; Michael J. Confusione, of counsel and on the briefs).

Blaine D. Benson argued the cause for respondent Andrew N. Lavrik (Law Offices of Brian J. Neary, attorneys; Brian J. Neary, of counsel and on the brief; Lois De Julio, on the brief).

Carol M. Henderson, Assistant Attorney General, argued the cause for amicus curiae Office of the Attorney General (Matthew J. Platkin, Acting Attorney General, attorney; Carol M. Henderson, of counsel and on the brief).

Daniel S. Rockoff, Assistant Deputy Public Defender, argued the cause for amicus curiae Office of the Public Defender (Joseph E. Krakora, Public Defender, attorney; Daniel S. Rockoff, of counsel and on the brief).

Dyanne Veloz Lluch argued the cause for amicus curiae New Jersey Crime Victims' Law Center (New Jersey Crime Victims' Law Center, attorneys; Richard D. Pompelio, Dyanne Veloz Lluch and Kianna Luscher, on the brief).

The opinion of the court was delivered by

ROSE, J.A.D.

In this case of first impression, we consider whether a victim in a criminal matter has standing to appeal from a trial court order granting defendant's motion for a civil reservation, where the victim neither moved to intervene before the trial court nor this court, and the parties to the underlying action have not appealed. Because the victim was aggrieved by the court's order, and the civil reservation was neither raised during plea negotiations nor made a condition of defendant's guilty plea, we conclude the victim has standing to appeal.

Our decision, however, is not without caveats. We now hold, as we noted nearly twenty years ago in State v. Tsilimidos, 364 N.J. Super. 454, 456 n.1 (App. Div. 2003), the victim should have moved to intervene for leave to appeal

and file a brief before this court. Similar to the reasons stated in Tsilimidos, however, we would have granted the victim's motion and considered her brief on the merits. See ibid. Accordingly, the victim's procedural missteps were not fatal in this case.

As for the merits of the victim's claims, we conclude the trial court's decision was procedurally and substantively flawed. Because it is unclear from the record evidence whether defendant faced a "precarious financial situation" absent a civil reservation, we part company with the trial court's decision that defendant satisfied the requisite "good cause" standard for entry of the civil reservation order.

Moreover, defendant's admission to the pretrial intervention (PTI) program was conditioned on his guilty plea. Until defendant completes – or is terminated from – the PTI program, his guilty plea is considered "inactive" under the PTI statute and the applicable Attorney General guidelines. Thus, the order under review was premature.

We therefore vacate the order under review and remand for further proceedings consistent with this opinion.

I.

We summarize the pertinent facts and procedural history from the limited record before us. In May 2019, defendant Andrew N. Lavrik, an ice skating coach affiliated with the United States Figure Skating Association (USFSA), was charged in a three-count Bergen County indictment with two counts of fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3(b) (counts one and two), and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(1) (count three), against J.B., his sixteen-year-old student.[1] Defendant applied for PTI with the State's consent, but thereafter was denied admission. See R. 3:28-1(d)(1) (providing "a person who is charged with a crime, or crimes, for which there is a presumption of incarceration or a mandatory minimum period of parole ineligibility" is ineligible for PTI without the prosecutor's consent). The trial court rejected defendant's ensuing appeal in November 2019.

Following further negotiations with the State, on November 10, 2020, defendant pled guilty to count three, in exchange for admission to PTI. See R. 3:28-5(b)(2)(i) (requiring a guilty plea as a condition to PTI admission for first- and second-degree charges). The State also agreed defendant would be

[1] We use initials to protect the privacy of the victim. See R. 1:38-3(c)(12). The indictment was not included in the record on appeal. We glean the charges from the plea form, which was provided.

sentenced as a third-degree offender "if PTI [wa]s terminated for any reason," and any disposition of charges filed in New York "involving J.B. w[ould] not result in a violation of the New Jersey PTI."

At the plea hearing, defendant's retained attorney elicited a terse factual basis for defendant's guilty plea. In sum, defendant admitted between August 1, 2018 and November 30, 2018, he had assumed responsibility for J.B., and "knowingly engage[d] in a verbal conversation with [her] that was sexual in nature," which would impair or debauch her morals. Following argument on the length of the proposed term, the judge imposed a three-year period of PTI, with a "self-executing" reduction to two years provided defendant was "fully compliant" with the program's conditions. The court did not rule out defendant's ability to seek an earlier termination.

At the end of the hearing, defense counsel orally moved for a civil reservation under Rule 3:9-2, to prohibit "the plea as entered at this point" from admission in evidence "in any civil proceeding." Counsel acknowledged the "unusual" timing of the application, which he "generally" requested at sentencing. Counsel claimed the "PTI order may, in essence, be a final order in this case if [defendant] successfully completes PTI," and the application "has to be made at the time of the final order."

Arguing defendant failed to give advance notice of his application, the prosecutor countered the State could not consent to entry of the order because the victim was entitled to be heard. Although the court was inclined to grant the motion, the judge adjourned the matter, thereby permitting the State to file a response and notice the victim.

J.B.'s mother, C.B., was present on the December 21, 2020 return date for the virtual hearing. Over defendant's objection, the trial court permitted C.B. to state her daughter's "feelings and wishes" because J.B. was a minor when the crime occurred. However, C.B. and J.B. did not move to intervene in the trial court proceeding.[2] C.B.'s statements are reflected in the transcript of proceedings as "unidentified speaker."

At the outset of the hearing, the trial court cited our decision in State v. McIntyre-Caufield, 455 N.J. Super. 1, 11 (App. Div. 2018), where we reversed a trial judge's decision denying the defendant's application for a civil reservation. In McIntyre-Caufield, we reiterated two examples of good cause under Rule 3:9-2: (1) "to remove an obstacle to a defendant's pleading guilty to

[2] This court's electronic filing system indicates C.B. and J.B. had intervened in the trial court, but there is no support in the record provided on appeal for that notation.

a criminal charge"; and (2) "where the civil consequences of a plea may wreak devastating financial havoc on a defendant." Id. at 8-9 (internal quotation marks omitted).

Claiming defendant had no liability insurance for a potential civil lawsuit and faced disciplinary hearings from the United States Center for SafeSport,[3] defense counsel in the present matter argued defendant satisfied the "potential for devastating financial havoc" test under McIntyre-Caulfield. Counsel further argued the potential for "dismissal" and "expungement" of the charge "punctuate[d] the reason for the good cause" in this case.

The prosecutor countered defendant failed to establish good cause, having submitted no proof of the potential for financial devastation. In response to the court's inquiry, the prosecutor stated she did not know whether the victim had instituted a civil suit. The prosecutor also stated defendant could not coach without insurance and that the State had received certain documents at the outset of the prosecution reflecting coverage. According to the prosecutor, defendant's

[3] SafeSport is a national, non-profit organization, authorized under the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, Pub. L. 115-126, 132 Stat. 318 (2018), "to help abuse prevention, education, and accountability take root in every sport" and "to end[] sexual, physical, and emotional abuse on behalf of athletes everywhere." Our Story: Mission and Vision, U.S. Ctr. for SafeSport, https://uscenterforsafesport.org/about/our-story/ (last visited Apr. 29, 2022).

"guilty plea . . . in contemplation of PTI, doesn't make that guilty plea any less of an admission."

At the conclusion of argument, the trial court reserved decision and thereafter ruled from the bench, granting defendant's motion. The court initially noted defendant's application for a civil reservation was first raised at the conclusion of the plea hearing and was not part of his plea negotiations with the State. Thus, the first prong of the McIntyre-Caulfield test was not present in this case. Turning to the second factor, the court found because defendant pled guilty to "intentional conduct," it was "highly unlikely" an existing insurance policy, if any, "would cover criminal acts or intentional acts." According to the court, defendant "most certainly would be exposed to significant personal liability above and beyond whatever existing insurance policy may be in effect." The court concluded, similar to the defendant in McIntyre-Caulfield, defendant in this matter faced "the potential for devastating financial loss." The court entered a memorializing order on February 3, 2021, barring "any and all statements made by [d]efendant Lavrik during court proceedings" from admission in evidence "in any civil proceeding pursuant to R[ule] 3:9-2."

The following month, represented by counsel, J.B. and C.B. appealed from the trial court's order. As stated, the victim did not move to intervene

before the trial court or this court or move for leave to file an interlocutory appeal and a brief. Nor does the victim's merits brief on appeal address standing. In a single point heading, the victim asserts the trial court erroneously granted defendant's motion.

Defendant, represented by his plea counsel, seeks dismissal of the appeal countering, as a non-party to this criminal matter, the victim lacks standing. Alternatively, defendant contends the trial court's decision should not be disturbed.

The Bergen County Prosecutor's Office (BCPO) filed correspondence with this court, declining to participate in the appeal because "the civil reservation was not part of the underlying plea negotiation for this defendant's criminal disposition." The BCPO also noted the State had objected to defendant's application partly for that reason.

Neither the victim nor defendant requested oral argument. After full briefing, we listed the matter for argument and invited the Office of the Attorney General of New Jersey (Attorney General), the New Jersey Crime Victims' Law Center (Law Center), and the Office of the Public Defender (Public Defender) to appear as amici curiae. All three offices accepted our invitation, filed briefs, and appeared at oral argument.

The Attorney General generally asserts the Victim's Rights Amendment (VRA), N.J. Const., art I, ¶ 22, and the Crime Victim's Bill of Rights (CVBR), N.J.S.A. 52:4B-34 to -38, confer victims standing to appeal from civil reservation orders, but that right is circumscribed by the prosecutor's duty to ensure the public's interest is served in those cases where "the successful negotiation of a plea agreement [is] contingent on the issuance of the civil reservation." The Attorney General emphasizes the victim's right to be consulted about plea negotiations does not confer the right to enforce or veto a plea agreement. Acknowledging only the financial circumstances factor under McIntyre-Caulfield is relevant here, the Attorney General takes no position on the merits of the trial court's decision.

Citing the Court's decision in State v. Tedesco, 214 N.J. 177 (2013), the Law Center argues the victim has standing to challenge the trial court's order. Referencing the history of the CVBR and the victim's right to be treated with fairness, compassion, and respect under the VRA, the Law Center claims the trial court's reasoning was flawed and the order violates the victim's rights in this case.

The Public Defender urges us to dismiss the victim's appeal on procedural grounds, arguing the victim lacks standing because the parties did not appeal

from the court's order, and she failed to move for leave to appeal from the trial court's interlocutory order. Alternatively, the Public Defender claims the status of defendant's guilty plea is "inactive" pursuant to N.J.S.A. 2C:43-12(g)(3) and N.J.S.A. 2C:43-13(b) while defendant remains under supervisory treatment. Citing the applicable Attorney General guidelines, the Public Defender contends "the guilty plea has no force or effect, unless PTI is violated." The Public Defender further asserts the trial court's decision was substantively sound.

II.

We first address the issue of standing, recognizing "[s]tanding is a threshold requirement for justiciability." Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 421 (1991); see also Jen Elec., Inc. v. Cnty. of Essex, 197 N.J. 627, 645 (2009) (reiterating the general principle that the absence of standing "precludes a court from entertaining any of the substantive issues presented for determination"); In re Adoption of Baby T., 160 N.J. 332, 340 (1999) (internal quotation marks omitted) ("Standing refers to the plaintiff's ability or entitlement to maintain an action before the court."). Standing "neither depends on nor determines the merits of a plaintiff's claim." Watkins, 124 N.J. at 417.

New Jersey courts liberally grant litigants standing to sue. Jen Elec., Inc., 197 N.J. at 645. Unlike the federal system, our Supreme Court defines standing broadly and does not restrict New Jersey courts to the rigid "case or controversy" requirement under Article III, § 2 of the United States Constitution. See Salorio v. Glaser, 82 N.J. 482, 490 (1980). Thus, standing generally will be found where the party seeking relief has a sufficient personal stake in the controversy to assure adverseness, and the controversy is capable of resolution by the court. See Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 436-37 (App. Div. 2011); State v. A.L., 440 N.J. Super. 400, 418 (App. Div. 2015) (internal quotation marks omitted) (holding "a party aggrieved by a judgment may appeal therefrom"). "A litigant with a financial interest in the outcome of the litigation will ordinarily have standing." Courier-Post Newspaper v. Cnty. of Camden, 413 N.J. Super. 372, 381 (App. Div. 2010); see also In re Camden Cnty., 170 N.J. 439, 449 (2002). Moreover, we have held the right to appeal is not always conditioned on participation as a party in the prior proceeding. N.J. Dep't of Env'tl Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 299 (App. Div. 2018).

"The civil reservation practice derives from the ability to offer a party's own statement against him." Maida v. Kuskin, 221 N.J. 112, 125 (2015). Guilty pleas in criminal proceedings are admissible in related civil cases as statements

of a party-opponent under N.J.R.E. 803(b)(1) (providing a "party-opponent's own statement" is "not excluded by the hearsay rule," when "offered against [the] party-opponent"). Thus, in the absence of a civil reservation, "[t]he admission of the fact of a criminal or quasi-criminal conviction and any statements made by a defendant at the time of a guilty plea" may be admitted in a civil proceeding stemming from related criminal proceedings. Maida, 221 N.J. at 125; see also Eaton v. Eaton, 119 N.J. 628, 643-44 (1990) (recognizing, under former Evidence Rule 63(7), "evidence of a defendant's guilty plea is admissible as an admission in a civil action"); State v. LaResca, 267 N.J. Super. 411, 418 n.4 (App. Div. 1993) ("A plea of guilty is an admission and is therefore admissible against a defendant in a subsequent civil proceeding.").

Civil reservations are authorized under Rule 3:9-2, which provides: "For good cause shown the court may, in accepting a plea of guilty, order that such plea not be evidential in any civil proceeding." Because the victim is "directly affected" by the defendant's request for a civil reservation, we have recognized the defendant's obligation to notice the victim, via the prosecutor, of the intention to so move. State v. Faunce, 244 N.J. Super. 499, 502-03 (App. Div. 1990). "The purpose of the rule is to avoid an unnecessary criminal trial of a defendant who fears that a civil claimant will later use [the defendant's] plea of

guilty as a devastating admission of civil liability." Stone v. Police Dep't of Keyport, 191 N.J. Super. 554, 558 (App. Div. 1983).

Our Supreme Court has not expressly considered whether a crime victim has standing to challenge a civil reservation order. As stated, we have done so in dicta. Tsilimidos, 364 N.J. Super. at 456 n.1. We also have upheld the State's right to appeal from a civil reservation addendum to the judgment of conviction in a death by auto case, recognizing "[t]he potential plaintiff was not a party" to the criminal matter. Faunce, 244 N.J. Super. at 501. However, the Legislature and the Court have addressed the evolving rights of crime victims, including standing to assert certain rights. We briefly trace that history.

Enacted in 1985, the Legislature codified "specific rights," affording "full recognition and protection" to crime victims and witnesses under the CVBR. N.J.S.A. 52:4B-35. The Legislature found "[t]hese rights are among the most fundamental and important in assuring public confidence in the criminal justice system." Ibid. Six years later, in 1991, New Jersey voters passed the VRA, which provides:

> A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the

> Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature.
>
> [(Emphasis added).]

Nearly a decade later, in 2012, the Legislature enacted "Alex DeCroce's Law," L. 2012, c. 27, which amended and supplemented the rights of crime victims and witnesses. Pertinent to this appeal, the Legislature added paragraph (r) to N.J.S.A. 52:4B-36, affording crime victims the right:

> To appear in any court before which a proceeding implicating the rights of the victim is being held, with standing to file a motion or present argument on a motion filed to enforce any right conferred herein or by [the VRA], and to receive an adjudicative decision by the court on any such motion.
>
> [(Emphasis added).]

According to the Assembly Committee Statement, the 2012 "bill g[ave] victims standing to enforce the rights afforded by the '[CVBR].'" A. Appropriations Comm. Statement to A. 2380, at 2 (May 21, 2012); see also Tedesco, 214 N.J. at 184 (recognizing the CVBR "grants victims standing to file a motion to enforce those rights"). In essence, N.J.S.A. 52:4B-36(r) confers standing to enforce the procedural rights granted under the VRA and the remaining seventeen paragraphs of N.J.S.A. 52:4B-36.

In pertinent part, N.J.S.A. 52:4B-36 affords crime victims and witnesses the following rights:

> (a) To be treated with dignity and compassion by the criminal justice system;
>
> (b) To be informed about the criminal justice process;
>
> (c) To be free from intimidation, harassment or abuse . . .;
>
> (d) To have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible;
>
> (e) To make at least one telephone call . . .;
>
> (f) To medical assistance reasonably related to the incident . . .;
>
> (g) To be notified in a timely manner, if practicable, if presence in court is not needed or if any scheduled court proceeding has been adjourned or cancelled;
>
> (h) To be informed about available remedies, financial assistance and social services;
>
> (i) To be compensated for loss sustained . . .;
>
> (j) To be provided a secure, but not necessarily separate, waiting area during court proceedings;
>
> (k) To be advised of case progress and final disposition and to confer with the prosecutor's representative . . .;
>
> (l) To the prompt return of property when no longer needed as evidence;

(m) To submit a written statement . . . about the impact of the crime to a representative of the prosecuting agency[,] which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed, whether the prosecutor will consent to a request by the defendant to enter into a pre-trial program, and whether the prosecutor will make or agree to a negotiated plea;

(n) To make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime.

This statement is to be made in addition to the statement permitted for inclusion in the presentence report by N.J.S.[A.] 2C:44-6;[4]

(o) To have the opportunity to consult with the prosecuting authority prior to the conclusion of any plea negotiations, and to have the prosecutor advise the court of the consultation and the victim's position regarding the plea agreement, provided however that nothing herein shall be construed to alter or limit the authority or discretion of the prosecutor to enter into any plea agreement which the prosecutor deems appropriate;

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[4] Pursuant to N.J.S.A. 2C:44-6(b), the presentence report must include,

> in any case where the victim chooses to provide one, a statement by the victim of the offense for which the defendant is being sentenced. The statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss to include loss of earnings or ability to work suffered by the victim and the effect of the crime upon the victim's family.

> (p) To be present at any judicial proceeding involving a crime or any juvenile proceeding involving a criminal offense, except as otherwise provided [the VRA]; [and]
>
> (q) To be notified of any release or escape of the defendant[.]
>
> [(Emphasis added).]

One year after the 2012 revisions to the CVBR were enacted, the Supreme Court decided Tedesco. In that case, the murder victim's mother (acknowledged as the victim by the Court), represented by the Law Center, moved to compel the defendant's presence at sentencing. 214 N.J. at 183. Thereafter, the State joined the motion. Ibid. The trial judge granted the victim's motion and in doing so, determined she had standing under N.J.S.A. 52:4B-36(r) of the CVBR, and the VRA's mandate that crime victims be treated with "fairness, compassion and respect." Id. at 184-85.

The State and the victim opposed the defendant's ensuing appeal. Id. at 188. We upheld the judge's order, and the Court affirmed. Id. at 182-83. Declining to "devote much time to defendant's standing claim," the Court stated:

> No one can question the State's standing in this matter. The trial and appellate courts thus properly proceeded to address the merits. As we do likewise, we will consider the arguments of the parties, the victim, and all of the amici. The victim's arguments should be heard and evaluated, if not as a party with standing, then as an amicus under Rule 1:13-9. The . . . Law

> Center that represents the victim has appeared as amicus before the Court in the past. We are satisfied that the victim's participation in this case "will assist in the resolution of an issue of public importance." Ibid.
>
> [Id. at 188.]

Relevant here, the Court in Tedesco considered the history of the CVBR and the "series of changes in the law[,]" which "steadily strengthened the rights of victims to participate in criminal proceedings." Id. at 195. The Court concluded: "There can be little doubt that from the standpoint of the victims, who are to be treated with fairness, compassion, respect, and dignity, their statements at sentencing will carry more meaning if they are heard not only by the judge but the defendant as well." Id. at 196. Thus, the Court considered the merits of the victim's contentions. Id. at 195-97. Notably, the victim in Tedesco did not challenge the defendant's sentence but rather his appearance at the sentencing proceeding. As such, the defendant's substantive rights were not implicated by the victim's application.[5]

[5] Courts in other jurisdictions have reached similar conclusions. See e.g., U.S. v. Aguirre-Gonzales, 597 F.3d 46, 53 (1st Cir. 2010) (recognizing "the baseline rule is that crime victims, as non-parties, may not appeal a defendant's criminal sentence"); Cooper v. Dist. Ct., 133 P.3d 692, 702-03 (Alaska Ct. App. 2006) (concluding "American courts are unanimous" in holding a victim who "is dissatisfied with the sentencing judge's substantive decision," may not "seek appellate review of that decision"); see also People v. Subramanyan, 246 Cal.

Analogously, in the present matter, the victim does not contest the validity of the plea agreement, defendant's admission to PTI, the supervisory term imposed, or the alternate sentence should he be terminated from the program. Instead, the victim challenges the consequences of the court's order, which directly affect her interests in any related civil proceeding.

Contrary to the Public Defender's assertion, the victim's appeal in the present matter does not implicate the prosecutor's "exclusive jurisdiction" over the "criminal business" of this state under N.J.S.A. 2A:158-4 (providing, "[t]he criminal business of the State shall be prosecuted by the Attorney General and the county prosecutors"). Indeed, the BCPO declined to participate in the victim's appeal because the civil reservation was not part of the plea negotiations in this matter. Therefore, were we to dismiss the victim's appeal for lack of standing, she would be left without recourse to contest the court's order.

Moreover, by its plain meaning, a civil reservation is not "criminal business." Rather, civil reservations impact the financial interests of crime victims and defendants as potential litigants in related civil proceedings. Because the victim had "a financial interest in the outcome of the litigation,"

App. 4th Supp. 1, 4-7 (Cal. App. Dep't Super. Ct. 2016) (holding victims' bill of rights does not confer the right to initiate criminal prosecution or appeal, especially where the State declined to participate).

Courier-Post, 413 N.J. Super. at 381, and the civil reservation in this matter was not a condition of defendant's plea agreement, the victim – not the State – was "aggrieved" by entry of the civil reservation order, A.L., 440 N.J. Super. at 418. Although we recognize civil reservations are not expressly referenced in the VRA or CVBR, the victim's standing in this case finds support in the overarching principles embodied within both enactments – to ensure the criminal justice system treats crime victims fairly. See Tedesco, 214 N.J. at 188. We therefore conclude the victim had standing to appeal.

Our holding is limited, however, to the circumstances presented in this matter, i.e., where the civil reservation was not a condition of the plea agreement. As the Attorney General correctly asserts, although paragraph (o) of N.J.S.A. 52:4B-36 recognizes the victim's right to be consulted about plea negotiations, that right must yield to the prosecutor's authority and discretion "to enter into any plea agreement which the prosecutor deems appropriate." Accordingly, had the civil reservation been contemplated during plea negotiations by, for example, an express condition of the plea agreement or the prosecutor's agreement to refrain from taking a position on the defendant's application, the victim would not have standing to contest the entry of the court's

order. Stated another way, the victim cannot interfere with the prosecutor's discretion to negotiate plea agreements.

III.

This case presents two additional procedural issues: the non-party victim's failure to move to intervene before this court; and her failure to move for leave to appeal from the trial court's interlocutory order.

Initially, before the trial court, the State opposed defendant's civil reservation application. During oral argument on the return date of the motion, defendant claimed he had no insurance coverage for any potential civil lawsuit. The State countered defendant failed to demonstrate good cause because the feasibility of a civil reservation did not impact plea negotiations and defendant "submitted nothing to substantiate any type of financial devastation" were plaintiff to institute a civil lawsuit. See McIntyre-Caufield, 455 N.J. Super. at 8-9.

C.B. interjected, informing the court that defendant was insured under a $2 million policy "just for sexual abuse coverage." C.B. further questioned the veracity of defendant's alleged financial hardship when she had paid him $100,000 per annum for J.B.'s lessons. Although the trial court gave C.B. wide latitude to express her grievance, the judge asked C.B. to refrain from

interrupting, noting the prosecutor advanced the position of the State and victim "very strongly."

Had C.B. wished to be heard further, J.B. and C.B. should have filed a motion to intervene as of right in the trial court. See R. 4:33-1. "Intervention as of right is appropriate where a party not named in the litigation": (1) claims an interest relating to the subject of the action; (2) shows that disposition of the action may impair or impede his ability to protect that interest; (3) demonstrates that the interest is not adequately represented by the parties to the action; and (4) "files a 'timely' application to intervene." N.J. Div. of Youth & Fam. Servs. v. D.P., 422 N.J. Super. 583, 590 (App. Div. 2011) (quoting R. 4:33-1). "We have construed this rule liberally." Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998). Because the State's opposition to defendant's application aligned with the victim's wishes, however, C.B. and J.B. understandably did not move to intervene before the trial court.

Regardless, neither the VRA nor the CVBR "authorize victims' appearances as of right in the Appellate Division." Tsilimidos, 364 N.J. Super. at 456 n.1. Accordingly, C.B. and J.B. should have moved to intervene and to file a brief before this court. Ibid.; see also CFG Health Sys., L.L.C. v. Cnty. of Essex, 411 N.J. Super. 378, 385 (App. Div. 2010) (reiterating we "have

recognized the appropriateness of granting a party affected by a judgment leave to intervene to pursue an appeal if a party with a similar interest who actively litigated the case in the trial court has elected not to appeal"); Exxon Mobil Corp., 453 N.J. Super. at 297.

Secondly, only final judgments may be appealed as of right. R. 2:2-3. "To have the finality required to create appellate jurisdiction, an order must not only completely dispose of all pleaded claims as to all parties, but all its dispositions must also be final." Grow Co. v. Chokshi, 403 N.J. Super. 443, 460 (App. Div. 2008). If devoid of the required finality, an order is interlocutory and appellate review is available only by leave granted under Rule 2:2-4 and Rule 2:5-6(a). Interlocutory review is "limited to those exceptional cases warranting appellate intervention, [and] the sole discretion to permit an interlocutory appeal has been lodged with the appellate courts." Grow Co., 403 N.J. Super. at 458.

Here, the February 3, 2021 order is not final. As the Public Defender correctly asserts, a final judgment will be entered after defendant successfully completes, or is terminated from, the PTI program. Accordingly, the victim was required to move for leave to appeal from the February 3 order.

We have nonetheless overlooked both procedural deficiencies in view of the standing issue presented here. Because the victim is the aggrieved party on defendant's civil reservation application, we likely would have granted her motion to intervene and her motion for leave to appeal from the interlocutory February 3, 2021 order. See Tsilimidos, 364 N.J. Super. at 456 n.1.

IV.

We turn to the merits of the victim's contentions. As she did before the trial court, the victim primarily argues defendant failed to demonstrate good cause for entry of the civil reservation. Unlike the situation in McIntyre-Caulfield, the victim in the present matter argues defendant's insurance carrier did not disclaim coverage. See 455 N.J. Super. at 4. Defendant counters that the court's decision is reasonably based on the insurance documentation submitted in support of his motion, and the court properly applied the second prong of the McIntyre-Caulfield test.

We defer to "factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). Whether a civil reservation is supported by good cause is a legal question subject to de novo review. McIntyre-Caulfield, 455 N.J. Super. at 5. The burden of establishing

good cause is on the defendant. See Maida, 221 N.J. at 124 (comparing the civil reservation procedure under Rule 3:9-2 with the procedure in municipal court, wherein "[t]he order is entered as a matter of course unless the prosecutor or the victim objects"); see also R. 7:6-2(a)(1).

In McIntyre-Caulfield, we considered the defendant's appeal of the trial court's denial of her civil reservation application. In that case, an infant died while in the care of the owner of an in-home daycare business. 455 N.J. Super. at 4. The parents of the infant retained civil counsel, who notified the defendant to direct his letter of representation to her insurance carrier. Id. at 5. Shortly thereafter, the defendant was charged with second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(2). Id. at 4-5. The defendant's insurance company disclaimed coverage for all civil liability. Id. at 4.

Similar to the present matter, the defendant in McIntyre-Caulfield pled guilty to second-degree child endangerment as a condition of her admission to PTI. Id. at 5. Unlike the present matter, the plea forms reflected the defendant's attorney would seek a civil reservation. Id. at 7. During the plea hearing, the prosecutor informed the court "the State submitted on the issue." Ibid. The victim's parents later objected to the reservation and the court denied the defendant's request. Id. at 7-8.

On appeal, we reversed, reasoning: "The existence of a good faith fear – that a civil claimant will later use the guilty plea as an admission of liability in a civil case – triggers the rule." Id. at 9. We were satisfied the defendant "demonstrated the precarious financial situation" she faced in view of her insurance carrier's disclaimer of coverage and "repeated refusal to defend [her] in the eventual civil action." Id. at 10.

Here, by contrast, the record is devoid of any evidence suggesting a civil lawsuit was imminent when the civil reservation order was entered. Unlike the parents in McIntyre-Caulfield, the record before the trial court did not reveal the victim notified defendant she was represented by counsel in civil proceedings or notified defendant to contact his carrier. Further, defendant only provided the trial court with two uncertified certificates of coverage, listing the USFSA as the named insured. One certificate apparently afforded coverage to defendant "caused by the negligence of the named insured" and the other applied while defendant was "acting in his/her capacity as a skating coach" during the time frame stated in the indictment.[6]

[6] Certificates of insurance do not create or bind coverage. A standard certificate of insurance only evidences the existence of the policies to which it refers; it does not alter the terms of an indemnity agreement or the parties' contract, nor does it alter or amend the terms of the policies to which it refers. It is not an

Inexplicably, however, the record also contains undated documentation from the United States Figure Skating Insurance Program, stating:

> The United States Figure Skating Coaches General Liability Insurance Program provides liability insurance coverage to registered member coaches against claims of bodily injury liability, property damage liability and the associated costs of defending such claims. Coverage is provided up to $1,000,000 per occurrence with a general policy aggregate of $5,000,000.

This document expressly states: "Coverage Includes . . . Sexual Abuse and Molestation" with an "Aggregate Sub-limit" of "$2,000,000."

Nonetheless, the trial court concluded, without citation to the record evidence, any insurance policy ostensibly providing coverage "may not cover the conduct in this case" in view of defendant's "intentional conduct." While defendant's personal carrier, if any, may indeed deny coverage, the victim maintains defendant, as a member of the USFSA, was covered against sexual

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insurance policy. See 1 Robert B. Hille et al., New Appleman on Insurance Law Library Edition § 3.03A(2) (Jeffrey E. Thomas & Francis J. Mootz III eds., 2022) (discussing how a standard certificate is considered "'a worthless document,' which does 'no more than certify that insurance existed on the day the certificate was issued'" (quoting Bradley Real Estate Tr. v. Plummer & Rowe Ins. Agency, 609 A.2d 1233, 1235 (N.H. 1992))); see also Wells v. Wilbur B. Driver Co., 121 N.J. Super. 185, 197 (Law Div. 1972) (asserting a certificate of insurance is not a policy or contract of insurance and does not create a contractual relationship between the insurer and certificate holder).

abuse allegations. In the absence of evidence denying coverage and documentation suggesting otherwise, we disagree with the court's determination that defendant demonstrated he was facing a "precarious financial situation" absent a civil reservation. See McIntyre-Caulfield, 455 N.J. Super. at 10. Thus, on this record, it is unclear whether defendant demonstrated good cause for entry of the February 3, 2021 order.

V.

Lastly, we consider the effect of defendant's guilty plea as a condition of PTI on the practical application of the civil reservation order. Pursuant to N.J.S.A. 2C:43-13(b), a guilty plea entered as a condition of admission to PTI "shall be held in an inactive status pending termination of the supervisory treatment," under subsection (d) (successful completion of the program, resulting in dismissal of the charges) or (e) (dismissal from the program, thereby reactivating the charges); see also N.J.S.A. 2C:43-12(g)(3). "Therefore, the guilty plea has no force or effect, unless PTI is violated. It is neither a judgment of conviction nor an adjudication. If a defendant successfully completes the program, the charges are dismissed." Attorney General, Uniform Guidelines on the Pretrial Intervention Program (March 1, 2016) (Directive 2016-2); see also

R. 3:28-7(b) (addressing the available dispositions following conclusion of the court-ordered PTI term).

It is therefore axiomatic should defendant successfully complete PTI, the child endangerment charge will be dismissed and, as such, the fact that defendant pled guilty and any statements pertaining to his guilty plea are not evidentiary in a civil proceeding – irrespective of the civil reservation order. See Maida, 221 N.J. at 125; Eaton, 119 N.J. at 643-44; LaResca, 267 N.J. Super. at 418 n.4. Because defendant's inactive guilty plea in this PTI matter is non-evidentiary in any civil action pending unsuccessful termination from supervisory treatment, the court's order was premature.

We recognize the Rules of Court do not address the effect of an inactive plea on a civil reservation order. Further, Rule 3:9-2 instructs the trial court to enter the order "in accepting a plea of guilty." However, in those cases, where PTI is not a condition of defendant's guilty plea, the civil reservation generally is ordered at sentencing and included in the judgment of conviction. See Faunce, 244 N.J. Super. at 500-01. That procedure permits the court to consider the victim's impact statement, see N.J.S.A. 52:4B-36; N.J.S.A. 2C:44-6(b), and the defendant's financial circumstances and other good cause at the time the civil

reservation is considered. Thus, the sentencing judge is then in a better position to decide whether a civil reservation should be entered.

In those cases where the judge determines the defendant has not satisfied his burden, the defendant should be allowed to rescind the guilty plea – if the civil reservation was a condition thereof. That, of course, is not the case here. Only the financial consequences of defendant's civil reservation application are at play. In our view, delaying the decision until sentencing affords the judge a better picture of defendant's then-present financial circumstances.

Because defendant was not yet – and may never be – sentenced on the present charges, the trial court should have delayed consideration of defendant's application until the completion of his PTI term. Should defendant successfully complete PTI, the endangerment charge will be dismissed, thereby mooting defendant's application for a civil reservation. On the other hand, if defendant is unsuccessfully terminated from the program, a judgment of conviction will be entered on the charge, and defendant may renew his application, with notice to the victim, prior to sentencing. That process will enable the court to determine whether defendant can establish "good cause," including whether he faces the potential for devastating financial loss, where the civil reservation was not part of plea negotiations. Conversely, in those cases where the civil reservation is

part of the plea agreement and necessary "to remove an obstacle to a defendant's pleading guilty to a criminal charge," State v. Haulaway, Inc., 257 N.J. Super. 506, 508 (App. Div. 1992), the order should be stayed pending the conclusion of the defendant's PTI term.

We recognize our prior decision in McIntyre-Caulfield disagreed with the trial court's finding that the defendant's request was premature because she had not yet completed her three-year PTI term. 455 N.J. Super. at 10-11. We cited the defendant's speedy trial rights, faded witness memories in the criminal and civil actions, and financial and emotional costs to the litigants. Id. at 11. While we are sensitive to these concerns, a defendant's inactive guilty plea nonetheless is non-evidential while the plea remains inactive. Indeed, our trial courts liberally grant stays in civil matters, pending sentencing of a defendant, where the defendant's Fifth Amendment rights are implicated. See Whippany Paper Bd. Co. v. Alfano, 176 N.J. Super. 363, 373-74 (App. Div. 1980); see also Byrd v. Manning, 253 N.J. Super. 307, 317 (App. Div. 1992). We therefore discern no disadvantage in delaying consideration of defendant's application until he completes PTI under the circumstances presented here – or staying the court's order unless and until a defendant is terminated from PTI when the civil

reservation removes an impediment in plea negotiations and is incorporated in the plea agreement.

* * * *

In conclusion, we are constrained to vacate and remand the civil reservation order in this matter under court rules that are far from the model of clarity. We shall serve a copy of this opinion on the Supreme Court's Committee on Criminal Practice for its consideration of possible amendments to Rule 3:9-2 or Rule 3:28-7(b).

On remand, the trial court may enter a civil reservation order only if: (1) defendant is unsuccessfully terminated from the PTI program and a judgment of conviction is entered for a child endangerment conviction; and (2) defendant presents evidence supporting a good cause determination. We express no view on the merits of defendant's renewed application, if any.

We emphasize the victim's standing to appeal from an adverse civil reservation order is limited to those cases in which the civil reservation is not contemplated in plea negotiations. Moreover, crime victims must move to intervene in the trial court if their interests are not aligned with the State; regardless, they must so move in this court. If the trial court order is

interlocutory, the victim must also move for leave to appeal and for leave to file an appellate brief.

To the extent we have not addressed a particular argument, it is because either our disposition makes it unnecessary, or the argument was without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION