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In the Matter of Peter D. Brumlik,

An Alleged Incapacitated Person

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-002734-22

ON APPEAL FROM
SUPERIOR COURT, PROBATE
DIVISION, SOMERSET COUNTY

**CERTIFICATION IN SUPPORT OF
AMICI CURIAE MOTION**

I, Thomas F. Coleman, of full age and fully familiar with the facts herein, certify as follows:

1. Concurrently with this motion, local counsel has filed a motion for permission for me to appear *pro hac vice* in this appeal.

2. I am familiar with the organizations that are seeking permission to appear as *amici curie* in this appeal in support of Peter D. Brumlik.

3. I am also familiar with the information contained in the following Statement of Interest of these organizations in this case. This information should assist the Appellate Division in ruling on this motion.

Statement of Interest of *Amici Curiae*

4. While this appeal directly involves a single litigant – a young man with autism – the precedent it sets will indirectly affect thousands of adults with autism and other developmental disabilities who may one day find themselves involuntarily entangled in a guardianship proceeding. The errors and abuses of judicial discretion that occurred in the case of Peter Brumlik should be corrected by the Appellate Division, not only to give Peter the justice he deserves, but also to reduce the risk that other adults with developmental disabilities will experience similar injustices in the future.

5. “According to the most recent data from the Centers for Disease Control and Prevention (CDC), the national rate of children identified with Autism Spectrum Disorder is 1 in 36 children. This statistic is based on their evaluation of health and educational records of 8-year-old children in 2020 in 11 states, including New Jersey. New Jersey now has the third highest rate of autism in the nation: 1 in 34 children, or 2.9% of 8-year-old children.” “Autism Prevalence Rates,” Autism New Jersey. <https://autismnj.org/understanding-autism/prevalence-rates/>

6. The Office of the Ombudsman for Individuals with Intellectual or Developmental Disabilities and their Families estimates that about 122,000 New Jerseyans have autism. “Annual Report for 2021.” <https://nj.gov/treasury/njombudsman/documents/2021-Annual-Report.pdf>

7. The CDC also reports that ten percent of adults in New Jersey have a cognitive disability which seriously affects their ability to concentrate, remember, or make decisions. “Disability Impacts New Jersey,” CDC Website. <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/new-jersey.html>
This is the population most at risk of losing their rights in a guardianship proceeding.

8. The Division of Developmental Disabilities has reported that as of 2022, more than 25,000 adults with developmental disabilities were receiving DDD-funded services in the community.

[https://www.nj.gov/human services/DDD/assets/documents/Statistics/Community-Standard-County age-20221215.PDF](https://www.nj.gov/human%20services/DDD/assets/documents/Statistics/Community-Standard-County%20age-20221215.PDF)

9. An article published by the New Jersey Council on Developmental Disabilities cautions that people with developmental disabilities: “may be pushed into guardianship and stripped of fundamental civil rights and their bodily autonomy in ways that are completely inappropriate and in situations that do not call for it.” <https://njcdd.org/disability-in-focus/recognizing-abuse-of-people-with-disabilities/>

10. The organizations seeking permission to enter this appeal as *amici curie* support the positions taken by appellant, but primarily are arguing for the rights of this broad class of adults with developmental disabilities who may one day find themselves defending against a guardianship petition. In evaluating the merits of this appeal, the Appellate Division will benefit from having such class-based advocacy.

11. As it evaluates the merits of this appeal, the Appellate Division should keep in mind an observation made by the New Jersey Supreme Court nearly 30 years ago: “Our decision, therefore, affects not only M.R. but also other developmentally-disabled people. Specifically, the decision will affect the extent to which developmentally-disabled people are free to make decisions about their lives.” Matter of M.R., 135 N.J. 155, 166 (N.J. 1994). The same concern should apply today.

12. **Spectrum Institute.** Spectrum Institute is a nonprofit organization engaging in research, education, and advocacy on a wide range of issues affecting the rights of adults with developmental disabilities. It promotes improvements in the administration of justice in guardianship proceedings, judicial compliance with the Americans with Disabilities Act, the use of less restrictive alternatives to guardianship, protection of the constitutional rights of adults with developmental disabilities, freedom from abuse, and access to effective and appropriate mental health services for this

population. All of these issue areas are being raised by appellant and are addressed by this *amici curiae* brief. <https://spectruminstitute.org/>

13. **Easterseals New Jersey.** Easterseals is a national 501(c)3 nonprofit organization. Founded in 1948, Easterseals New Jersey provides a variety of direct services, advocacy, and education annually to more than 9,000 New Jersey residents with special needs. The organization believes that adults with developmental disabilities deserve the opportunity to increase their independence, achieve their goals, and exercise their right of self-determination. Restrictions on their constitutional rights should be limited to situations where, after conducting an evidentiary hearing with due process protections, a court has found an adult to be incapacitated and that no less restrictive alternatives to guardianship are available.

14. **The Arc of New Jersey.** The Arc of New Jersey is the state's leading advocacy and service organization for children and adults with intellectual and developmental disabilities and their families and caregivers. The Arc believes that: (1) adults with intellectual and developmental disabilities are equal before the law; (2) such adults have a right of self-determination; (3) they should be empowered with supports to assist them in making informed decisions and choices; and that (4) less restrictive means of decision-making supports (e.g., health-care proxies, advance directives, supported decision-making, powers of attorney, etc.) should be tried and found to be ineffective before court intervention imposes restrictions on the rights of such adults. These principles were violated by the conditional order of dismissal in this case.

15. **American Academy of Developmental Medicine and Dentistry (AADMD).** AADMD is a nonprofit organization that provides a forum for interdisciplinary healthcare professionals who offer clinical care to people with intellectual & developmental disabilities (IDD) and who seek to

improve the quality of healthcare for individuals with IDD. The Academy works collaboratively with advocacy organizations and associations to improve policies and systems of care for this patient population. Professional membership in AADMD is open to physicians, dentists, optometrists, podiatrists and advanced practice nurse practitioners who work with this patient population or who are interested in learning more about the unique aspects of this field. <https://www.aadmd.org/>

16. **Autistic Self Advocacy Network.** The Autistic Self Advocacy Network (ASAN) is a nonprofit organization run by and for autistic people. ASAN works to empower autistic people across the world to take control of their own lives. Its members and supporters include autistic adults and youth, cross-disability advocates, and non-autistic family members, professionals, educators, and friends. ASAN believes the right to make choices is an important civil right. ASAN promotes supported decision-making as an alternative to guardianship. ASAN is especially interested in this appeal because it involves a young autistic man who had a supported decision-making arrangement in place, but nonetheless had his liberty unnecessarily restricted. If this can happen to Peter Brumlik, it can happen to thousands of other autistic adults in New Jersey. <https://autisticadvocacy.org/>

17. **Quality Trust for Individuals with Disabilities, Inc.** Quality Trust is an independent nonprofit advocacy and monitoring organization based in the District of Columbia. Its mission is to help people with developmental disabilities in the District of Columbia and beyond to solve problems, achieve personal goals, and meaningfully contribute within their community. Quality Trust operates the Jenny Hatch Justice Project (JHJP), which provides free legal services to people who want to avoid or exit guardianship. It received a grant from the federal Administration on Community Living (ACL) to establish a National Resource Center on Supported Decision-Making (NRC-SDM). NRC-SDM provides state by state information on guardianship and supported decision-making laws,

as well as resources for researchers, advocates, people with disabilities, and family members.
<https://www.dcqualitytrust.org/>

18. **Mental Health Advocacy Services.** Mental Health Advocacy Services (MHAS) works to protect and advance the legal rights of low-income adults and children with mental health disabilities and empower them to assert those rights in order to maximize their autonomy, achieve equity, and secure the resources they need to thrive. Peter Brumlik is such an adult. MHAS is concerned that if a high-functioning autistic adult such as Peter can have his liberties restricted, the risk of losing autonomy is much greater for others with mental health disabilities who lack the stamina, intellect, and resources to defend their rights. MHAS is especially concerned with judicial mandates for mental health therapy being imposed on adults with disabilities who have not been adjudicated to lack capacity to make medical decisions. <https://www.mhas-la.org/history-and-mission>

19. **New Jersey State Office of the Public Defender.** New Jersey State Office of the Public Defender (SOPD) provides legal representation to individuals who cannot afford counsel in a variety of court proceedings that place liberty at risk. Through its Division of Mental Health Advocacy (an), the office provides representation to individuals in proceedings involving mental health issues. Each year, the office represents about 300 clients with mental and developmental disabilities in adult guardianship proceedings. SOPD is concerned with the ruling below which placed restrictions on the liberty of Peter Brumlik based on vague “concerns” about his mental health and without affording him essential due process protections. The office views this appeal as an opportunity for the Appellate Division to affirm the medical decision-making rights, free speech rights, and associational rights of adults who have not been declared incapacitated and to affirm the procedural safeguards that must be used before a court infringes on such rights. <https://www.nj.gov/defender/>

20. **Center for Estate Administration Reform.** The Center for Estate Administration Reform (CEAR) is a nonprofit organization promoting accountability in adult guardianship proceedings, not only to preserve the estates of seniors and adults with developmental disabilities, but to protect their fundamental constitutional rights from unjust encroachment by the state. What initially sparked CEAR's interest the case of Peter Brumlik was the court-authorized depletion of Peter's special needs trust fund during the course of the guardianship proceeding. At the beginning of the litigation, the balance of the fund was nearly \$400,000. By the time the order of dismissal was entered, the balance was zero. Peter lost assets that should have been used to help support him financially in the future due to court-authorized payments from the fund to pay for the fees of a guardian ad litem, capacity assessment experts, and attorney fees. In effect, Peter was required to subsidize legal proceedings that restricted his liberty without due process of law. CEAR hopes that through this appeal, a semblance of accountability will be provided to check future violations of rights in the adult guardianship system in New Jersey.

21. **Alternatives to Guardianship Project.** Alternatives to Guardianship is a project of Hulme Resources Inc., a nonprofit corporation providing consulting services to teens and young adults with developmental disabilities and their families. The Alternatives to Guardianship Project helps people with developmental disabilities avoid unnecessary guardianships by using safe and legal alternatives. It encourages and assists parents, educators, judges, lawyers, physicians, and other professionals to implement such alternatives whenever feasible. The project has published a variety of reports on medical decision-making options for such adults – options that do not rely on court intervention. <https://alternativestoguardianship.com/whats-new.html> An appellate ruling favorable to Peter Brumlik in this case would not only protect the medical rights of adults with developmental

disabilities in New Jersey, but if it is published it would be a precedent that could be cited as a secondary authority to guide trial and appellate courts in other states.

Criteria for Plenary Review and Publication of Opinion

The brief of amici curiae should assist this Court in writing a published opinion to give superior courts, appointed counsel, and guardians ad litem in future adult guardianship cases to adhere to statutory mandates and constitutional requirements. Such guidance is generally lacking, especially with respect to the use of supported decision-making and powers of attorney as alternatives to guardianship, as well as how attorneys and judges should respond when an adult with a developmental disability alleges abuse by a petitioner or proposed guardian.

This Court should issue a formal opinion addressing the issues raised by appellant and by amici curiae, regardless of whether a brief is filed opposing the relief requested by appellant.

The failure of Peter's mother (petitioner below) to file a brief on appeal would not make the appeal moot. Even if the conditions were to be stricken by an order of summary reversal by this Court, the issues involved in this appeal could occur again to Peter since the dismissal is without prejudice. The mother could file another guardianship petition in the future. The same issues could arise in the new proceeding. These issues also could affect similarly situated persons in pending or future guardianship proceedings in the state. The issues are of significant public importance to warrant plenary review on appeal. Also, because appeals involving the rights of adults with developmental disabilities in guardianship proceedings are rare, the issues are likely to evade appellate review for many years.

Because the issues are "of significant public importance and is capable of repetition, yet evading review. See *Cain v. New Jersey State Parole Board*, 78 N.J. 253 , 255, 394 A.2d 327

(1978),” they should be addressed by the appellate court. *Twp. of Montclair v. County of Essex* (N.J. Super. 1996) 288 N.J. Super. 568, 571 fn. 1.

The brief of amici curiae will assist this Court to issue a published opinion reversing the conditional order of dismissal. The criteria for publication are met in this case: (See (d)1, 2, 6, 8 of Rule 1:36-2)

(d) Guidelines for Publication. An opinion in appropriate form, excluding letter opinions and transcripts of oral opinions, shall be published where the decision (1) involves a substantial question under the United States or New Jersey Constitution, or (2) determines a new and important question of law, . . . (6) is of continuing public interest and importance, . . . (8) although not otherwise meriting publication, constitutes a significant and nonduplicative contribution to legal literature by providing an historical review of the law, or describing legislative history, or containing a collection of cases that should be of substantial aid to the bench and bar.

I certify that the forgoing statements made by me are true. I understand that, if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: August 3, 2023



Thomas F. Coleman