

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58913

FILED

MAY 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Malone*
DEPUTY CLERK

ORDER DENYING MOTION

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Three organizations (the Justice Institute, Proving Innocence, and the Worldwide Women's Criminal Justice Network) have filed motions requesting leave to file a joint amicus curiae brief supporting appellant and reversal of the district court's judgment. These organizations indicate that they are nonprofit public interest organizations "that are specifically interested in post-conviction cases involving an Appellant claiming actual innocence." They assert that an amicus brief is desirable for three reasons: (1) it will assist in a case of general public interest; (2) it will supplement the efforts of counsel, who is a civil practitioner representing appellant on a pro bono basis, by providing more extensive arguments and case law that are not in appellant's brief; and (3) it will draw the court's attention to law that escaped consideration in appellant's brief. The motions are opposed, primarily on the basis that the organizations are not impartial but also on the basis that their interests are adequately represented in the case and that the amicus brief is unnecessary.

The literal definition of an “amicus curiae” is friend of the court, not friend of one of the parties; however, it has become accepted that amicus curiae may assume an adversarial role. Ryan v. Commodity Futures Trading Com’n, 125 F.3d 1062, 1063 (7th Cir. 1997). Nevertheless, there must remain some limitations on permitting amicus curiae to participate in an appeal. See id. Accordingly, the Seventh Circuit has explained that participation by amicus curiae would normally be appropriate:

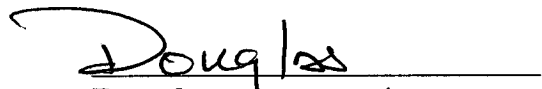
when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case . . . , or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.

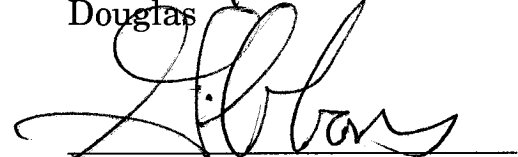
Id. The Ninth Circuit’s opinion in Miller-Wohl Co. v. Com’r of Labor and Industry, 694 F.2d 203 (9th Cir. 1982), cited by the moving parties, appears consistent with this position. The Ninth Circuit explained that an amicus curiae is not a party but that its “classic role” is to assist in cases of general public interest and to supplement the efforts of counsel by drawing the court’s attention to law that might have escaped consideration. Id. at 204.

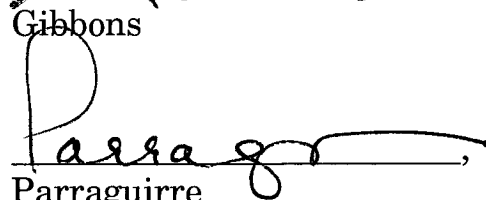
Consistent with this case law and our review of the other authority presented by the parties, we conclude that the appearance of the Justice Institute, Proving Innocence, and the Worldwide Women’s Criminal Justice Network as amici curiae is not appropriate in this matter. The issues addressed in the proposed amicus brief are addressed in the 129-page opening brief and it does not appear that the amicus “add[s] something distinctive to the presentation of the issues;” rather, it

appears that the amicus is “serving as a mere conduit for the views of one of the parties.” 16AA Charles Alan Wright et al., Federal Practice and Procedure § 3975, at 313 (4th ed. 2008). Accordingly, we deny the motions received on March 12, 2012, and April 5, 2012, and direct the clerk of this court to return the proposed amicus brief received on March 13, 2012.

It is so ORDERED.

 _____, J.
Douglas

 _____, J.
Gibbons

 _____, J.
Parraguirre

cc: Gallian Wilcox Welker Olson & Beckstrom, LC
Attorney General/Carson City
Clark County District Attorney
Dustin L. Dingman