

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN LAS VEGAS, LLC, D/B/A WYNN
LAS VEGAS,

Appellant,

vs.

YVONNE O'CONNELL, AN
INDIVIDUAL,

Respondent.

No. 70583

FILED

APR 01 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION

This is an appeal from a judgment on a jury verdict in a personal injury action. Caesars Entertainment Corporation (Caesars) has filed a motion for leave to file a brief of amicus curiae in support of appellant addressing issues of premises liability and constructive notice that both entities deal with. Respondent opposes the motion on the ground that Caesars does not offer anything substantive that appellant's brief does not already provide for this court. Having considered the motion and opposition, we deny the motion.

The literal definition of an "amicus curiae" is "friend of the court," not "friend of one of the parties," although it has become accepted that amicus curiae may assume an adversarial role. *Ryan v. Commodity Futures Trading Comm'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 is 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 has further explained that the "classic role" of amicus 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. *Miller-Wohl Co. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). Consequently, consistent with this case law, the appearance of Caesars as amicus curiae is not appropriate in this matter. Appellant is represented by competent counsel, Caesars does not explain how it has unique information or a perspective unique from appellant's, and it does not appear that Caesars' proposed brief "add[s] something distinctive to the presentation of the issues." 16AA Charles Alan Wright et al., *Federal Practice & Procedure* § 3975, at 313 (4th ed. 2008). Accordingly, the motion for leave to file a brief of amicus curiae is denied. NRAP 29. The clerk shall return, unfiled, the brief of amicus curiae received via e-flex on March 7, 2019.

It is so ORDERED.

_____, J.

cc: Semenza Kircher Rickard
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Lemons, Grundy & Eisenberg