

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Appellant ,

v.

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST;
LINDA LAMOTHE; AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Respondents .

Supreme Court No.: 73039

District Court Case No.: A-16-747800-C

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**APPELLANTS' MOTION FOR
LEAVE TO FILE RESPONSE TO
AMICUS BRIEF** Clerk of Supreme Court

Appeal

From the Eighth Judicial District Court, Clark County
Honorable Timothy Williams, Judge

Appellants' Motion for Leave to File Response to Amicus Brief

(Docket 73039)

RICHARD HASKIN

Nevada Bar No. 11592

**GIBBS, GIDEN, LOCHER, TURNER,
SENET, & WITTBRODT, LLP**

1140 N. Town Center Drive

Las Vegas, Nevada 89144

(702) 836-9800

Attorneys for Appellants

I. INTRODUCTION

Appellants TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (the "Lytles") file the instant Motion to provide the Lytles with an opportunity to specifically respond to the Amici Curiae Brief filed by Amici Curiae SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST and JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST and JOLIN G. ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL and JULIE MARIE SANDOVAL GEGEN, AS TRUSTEES OF THE RAYNALDO G. and EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and DENNIS A. GEGEN AND JULIE S. GEGEN, HUSBAND and WIFE, AS JOINT TENANTS (collectively, "Amici Curiae"). The proposed Response to Amicus Brief is attached hereto as Exhibit A.

II. BRIEF STATEMENT OF RELEVANT FACTS AND PROCEDURE

The Lytles filed their Opening Brief on January 24, 2018. After granting both sets of Respondents an extension, Respondents filed two distinct Answering Briefs on March 9, 2018, and March 13, 2018. The Answering Briefs total 56 pages.

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Pursuant to the stipulation of the parties, Amici Curiae filed an Amicus Brief on March 19, 2018. The Amicus Brief is 17 pages, has over 4,000 words, and contains several unique arguments not raised by either set of Respondents in their two (2) Answering Briefs.

The Lytles filed a Reply Brief addressing the arguments set forth in the two Answering Briefs on April 30, 2018. The Lytles were not able to address the arguments raised in the Amicus Brief therein due to the page and word limitations on briefing imposed by NRAP 32. The proposed Response to Amicus Brief is 24 pages, contains 5,741 words and is specifically tailored to address and refute arguments uniquely contained in the Amicus Brief. For example, Amici Curiae exhaust considerable pages discussing statutory construction and interpretation of various provisions of Chapter 116. This argument is not addressed by either group of Respondents in their respective Answering Briefs. Amici Curiae also argue the Original Covenants, Conditions and Restrictions do not define each lot within the community as belonging to association, that the Lytles are judicially estopped from arguing as they do, and that the various judgments obtained by the Lytles throughout countless years of litigation are somehow akin to default judgments. These unique arguments require distinct rebuttal.

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III. ARGUMENT

Pursuant to NRAP 29, amicus curiae may file a brief “only by leave of the court granted on motion or at the court’s request or if accompanied by written consent of all parties.” In the present case, the parties to this appeal agreed to permit the filing of the Amicus Curiae Brief.

The Nevada Rules of Appellate Procedure provide no specific method for responding to an amicus curiae brief. Typically, where a third-party presents no new questions of law or fact, that third party can contribute to a discussion of the issues via an amicus brief. *Hairr v. First Jud. Dist. Ct.*, 368 P.3d 1198, 1203 (2016); *see also Bush v. Viterna*, 740 F.2d 350, 358-59 (5th Cir. 1984).

Here, while the underlying legal issue is the same, *i.e.* whether the Lytles may record abstracts of judgments against units within a homeowners’ association related to a judgment obtained against that association, Amici Curiae raise unique arguments not contained in the Answering Briefs filed by either set of Respondents. The Lytles were unable to address those arguments within their Reply Brief, which addressed 56 pages of Answering Briefs. Simply stated, to address the arguments raised by Amici Curiae and those raised by both sets of Respondents within one Reply Brief would have forced the Lytles to exceed this Court’s page limitations and *muddied the proverbial waters*. For ease of reference and to ensure compliance with NRAP 32, a distinct answering brief is both required and preferred.

Just as Amici Curiae were provided, with the opportunity to submit a brief, albeit through courteous agreement, the Lytles should be afforded with an opportunity to address the arguments set forth in the Amicus Brief.

IV. CONCLUSION

For the reasons set forth herein and in the Lytles' respectfully request that this Court permit the Lytles to file the Response to Amicus Brief, attached hereto as Exhibit A.

DATED this 19th day of June, 2018.

GIBBS, GIDEN, LOCHER, TURNER, SENET &
WITTBRODT, LLP

By: 

Richard E. Haskin
Nevada Bar No. 11592
1140 N. Town Center Drive, Suite 300
Las Vegas, NV 89144
(702) 836-9800
rhaskin@gibbsgiden.com
Attorneys for Appellants

Certificate of Service

1. Electronic Service:

I hereby certify that on this date, the 8th day of June 2018, I submitted the foregoing **APPELLANTS' RESPONSE TO AMICUS BRIEF (Docket 73039)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

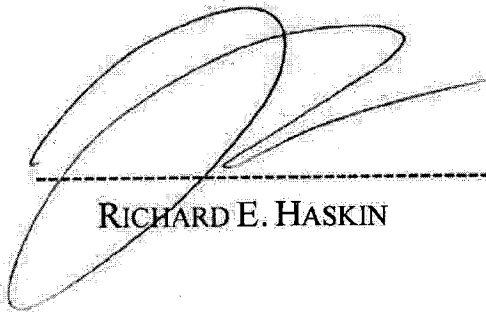
Daniel T. Foley, Esq.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101

Christina H. Wang, Esq.
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113

2. Traditional Service:

Daniel T. Foley, Esq.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101

Christina H. Wang, Esq.
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113



RICHARD E. HASKIN