

IN THE SUPREME COURT OF THE STATE OF NEVADA

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No. 73039

Electronically Filed  
Jun 22 2018 04:13 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

Appellant,

vs.

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

Respondents.

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

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**Respondents' Response to Appellant's Motion for Leave  
to File Response to Amicus Brief**

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Daniel T. Foley, Esq.  
Nevada Bar No. 1078  
FOLEY & OAKES, PC  
626 So. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Tel.: (702) 384-2070  
Fax: (702) 384-2128  
dan@foleyoakes.com  
*Attorneys for Respondents*

Comes now Respondents MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE BOULDEN TRUST; LINDA LAMOTHE; AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST (“Respondents Boulden and Lamothe”) by and through their attorneys Foley & Oakes, PC and hereby Respond to Appellants’ TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST’s (the “Lyttles”) Motion for Leave to File Response to Amicus Brief.

### **INTRODUCTION**

Respondents Boulden and Lamothe oppose the Lyttles’ Motion for Leave to File Response to Amicus Brief because the Lyttles have not presented “good cause” for their Motion nor have they shown a reasonable excuse for their delay in bringing this Motion.

### **FACTS**

The Lyttles filed their Opening Brief on January 24, 2018. Extensions were granted to each set of Respondents. Respondents Boulden and Lamothe filed an Answering Brief on March 9, 2018. Respondents Robert and Yvonne Dismar filed an Answering Brief on March 13, 2018. Amicus Curiae filed an Amicus Brief on March 19, 2018. Following two stipulations/joint motions for extension of time, the Lyttles filed a Reply Brief on April 27, 2018.

**THE LYTLES HAVE NOT ALLEGED OR SHOWN GOOD CAUSE OR  
PROVIDED ANY EXCUSE FOR THEIR DELAY**

The Lytles had sufficient time (45 days) in which to respond to the Amicus Brief prior to April 27, 2018 when they filed their Reply Brief. The Lytles used only 4,547 words of their 7,000 allotment. *See* NRAP 32(a)(7)(A)(ii). Certainly, there were almost 2,500 words available to address the Amicus Brief in the Reply Brief. Further, if the length was truly the issue, the Rules provide a mechanism for exceeding those limits. *See* NRAP 32(a)(7)(D) (motion for permission to exceed page limit and type-volume limitation). The Lytles made a choice to not respond to the Amicus Brief and to not file a motion to exceed the page limits. Apparently regretting that decision two months later, they filed the instant Motion.

The Lytles' Reply Brief was the proper place to respond to the Amicus Brief. The only instance where a separate response to an amicus brief is discussed in the Rules is when an amicus curiae is granted additional time to file its brief. *See* NRAP 29(f) ("The court may grant leave for later filing, specifying the time within which an opposing party may answer."). The Amicus Curiae here were not granted additional time to file – their Amicus Brief was filed within seven days of the Respondents Brief, consistent with NRAP 26(a) and NRAP 29(f) – thus no separate reply is contemplated by the Rules. Indeed, while NRAP 28 allows an appellant to file a reply brief to the respondent's answering brief, it also states that "unless the court permits, no further briefs may be filed." NRAP 28.

In other words, the time and place to reply to the Amicus Brief was with the Respondents' Reply Brief as part of the same document on April 27, 2018. Therefore, any further response or reply to the Amicus Brief is late. NRAP 26(b)(1)(A) allows the Court to extend the time to respond to the Amicus Brief only "for good cause." The Lytles have not demonstrated good cause.

The Lytles provide two explanations for not responding to the Amicus Brief in the Reply Brief on April 27, 2018: i) the Amicus Brief raised issues not addressed by the Respondents; and ii) the Lytles did not have sufficient space within the page and word limitations imposed by NRAP 32.

The first reason does not satisfy good cause. It simply acknowledges that the Amicus Brief does more than just recite the same arguments and citations as the Respondents, which is the purpose of an Amicus Brief. But it does not explain why the Lytles waited until now to seek permission to respond to those arguments.

The second reason also does not provide good cause. The Lytles had sufficient space remaining to Reply to the Amicus Brief and if they believed they did not, the Lytles could have requested additional space. The Lytles did not seek leave to exceed the page limit and type-volume limitation, as the Rules allow, prior to the due date for the Reply Brief. *See* NRAP 32(a)(7)(D). Missing that deadline is fatal to the Motion. *See* NRAP 32(a)(7)(D)(ii) ("A motion seeking an

enlargement of the page limit or type-volume limitation for a brief *shall be filed on or before the brief's due date...*" (emphasis added)). This is critical because the heart of the Lytles' Motion is an untimely request to exceed page and type-volume limits of their Reply Brief. There is absolutely no justification for filing this Motion now, as opposed to prior to the due date for the Reply Brief on April 27, 2018. The Lytles had their chance and they chose not to take it. The Lytles' inability to change their strategy at this point may be regretful; however, the Motion should be denied.

Dated this 22<sup>nd</sup> Day of June, 2018

FOLEY & OAKES, PC

/s/ Daniel T. Foley

Daniel T. Foley, Esq.

Nevada Bar No. 1078

626 So. 8<sup>th</sup> Street

Las Vegas, Nevada 89101

Attorneys for Respondents

### **CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an employee of Foley & Oakes, PC, and that on the 22<sup>nd</sup> day of June, 2018, I served the following document(s):

**Respondents' Response to Appellant's Motion for Leave  
to File Response to Amicus Brief**

I served the above-named document(s) by the following means to the person  
s as listed below:

[ x ] **By Electronic Transmission through the ECF System:**

Richard E. Haskin, Esq. GIBBS, GIDEN, LOCHER, TURNER, SENET & WHITTBRODT, LLP 1140 N. Town Center Drive, Suite 300 Las Vegas, NV 89144 Attorneys for Trudi Lee Lytle and John Allen, as Trustees	Christina Wang, Esq. FIDELITY NATIONAL LAW GROUP 1701 Village Center Circle, #110 Las Vegas, Nevada 89134 Attorneys for Counterdefendants/Cross- Claimants Robert Dizman and Yvonne Dizman
Kevin B. Christensen, Esq. Wesley Smith, Esq. Laura J. Wolff, Esq. CHRISTENSEN JAMES & MARTIN 7440 West Sahara Avenue Las Vegas, Nevada 89117 Attorneys for September Trust, Zobrist Trust, Sandoval Trust and Dennis and Julie Gegen	

I declare under the penalty of perjury that the foregoing is true and correct.

/s/ Liz Gould

An employee of FOLEY & OAKES, PC