

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 73971

Electronically Filed
Aug 30 2018 08:36 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CITY OF RENO,

Appellant,

v.

JODY YTURBIDE,

Respondent.

Appeal From Order Denying Petition for Judicial Review
District Court Case No. CV17-00065
Second Judicial District Court of Nevada

**NOTICE OF CLARIFICATION OF APPELLANT'S POSITION
REGARDING THE BRIEF OF AMICUS CURIAE
NEVADA JUSTICE ASSOCIATION**

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PLEASE TAKE NOTICE that appellant City of Reno (the “City”) hereby provides clarification of its position and opposition to the Brief of Amicus Curiae Nevada Justice Association (“Amicus Brief”).

On July 13, 2018, the Nevada Justice Association (“NJA”) filed a “Proposed Amicus Curiae Nevada Justice Association’s Motion to Extend Time to File Motion for Leave to File Amicus Brief in Support of Respondent” (the “Motion to Extend Time”). On July 30, 2018, NJA filed a “Proposed Amicus Curiae Nevada Justice Association’s Motion for Leave to File Amicus Brief in Support of Respondent” (the “Motion for Leave”).

On July 30, 2018, this Court filed an Order indicating “[w]e take no action on proposed amicus curiae Nevada Justice Association’s motion for an extension of time to file a motion for leave to file an amicus brief. The motion for leave to file an amicus brief was inadvertently filed on July 30, 2018.” Due to this Order, the City believed that the Court had not yet ruled on the Motion to Extend Time. Also due to this Order, the City believed that the Court was disregarding the Motion for Leave until the Motion to Extend Time was addressed. With no ruling on the Motion to Extend Time, and with the Motion for Leave having been inadvertently filed with the Court, the City believed it to be premature to file an opposition to the Motion for Leave.

Procedurally, the City assumed that only after the Motion to Extend Time had been ruled upon, and the extension granted, could the NJA then file its Motion for Leave. Only when such events occurred did the City plan to file an opposition to the Motion for Leave.

On August 23, 2018, this Court entered an order that stated: “Cause appearing, we grant the unopposed motion of Nevada Justice Association to file a brief of amicus curiae in support of respondent.” The clerk subsequently filed the Amicus Brief.

By this Notice, the City hereby clarifies the record regarding its position on the Amicus Brief. The City *does oppose* the Amicus Brief and would have filed an opposition to the Motion for Leave but for this Court’s July 30, 2018 Order. The City opposes the Amicus Brief because the NJA has a conflicting interest in the instant appeal.

The NJA states in its Amicus Brief:

And candidly, the Nevada Justice Association’s members have an interest here as well. It is no secret that most injured workers cannot afford to hire attorneys and pay them hourly like insurance companies can. Workers’ compensation is a highly specialized area of the law requiring application of complex legal rules that are, in some instances, finely nuanced. The business model of attorneys practicing workers’ compensation law universally relies in part on a contingent fee on lump sum PPD awards. The ruling argued for by Appellant in this case could

make it more difficult for the most disadvantaged and needy injured workers to hire counsel to help them navigate complex legal waters.

(Amicus Brief at 17.)

As acknowledged by the NJA, its interest and that of its members is pecuniary. Namely, NJA attorneys collect their contingency fees from their injured worker clients out of the permanent partial disability (“PPD”) awards paid to the injured worker. The NJA’s interest is contrary to and conflicts with the interest of the injured workers that the NJA members represent. The policy and purpose behind workers’ compensation statutes capping lump sum PPD awards is to ensure that severely injured workers have long-term income to compensate for their impaired earning capacity. NJA’s position, which seeks to treat lump-sum PPD awards like personal injury recoveries, conflicts with that policy and purpose.

Because the NJA’s interest in this is solely pecuniary, the City opposes the granting of the Motion for Leave. The Amicus Brief will not assist this Court to decide any issue on appeal because the position NJA asserts is not consistent with the policy and purpose behind the statute that caps lump-sum PPD awards. As such, the City respectfully submits that the Amicus Brief should not be considered. *See Dow Chem. Co. v. Mahlum*, 115 Nev. 13, 15 n.1, 973 P.2d 842, 843 n.1 (1999); *Powers v. United Servs. Auto. Ass’n*, 115 Nev. 38, 41 n.2, 979 P.2d 1286, 1288 n.2. (1999).

Notwithstanding the above, the City has addressed the substantive issues raised in the Amicus Brief in its Reply Brief filed on August 9, 2018.

Dated this 29th day of August, 2018.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP; that on August 29, 2018, the foregoing was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system.

Dated: August 29, 2018.

/s/ Angela Shoults
Employee of McDonald Carano LLP