

Case No. 77668

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANETTE BYRNE, as Trustee of the UOFM Trust
Appellant,

Electronically Filed
Jan 13 2021 02:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.

SUNRIDGE BUILDERS, INC.; LANDS WEST BUILDERS, INC.; *et al.*

Respondents,

**RESPONDENT LANDS WEST BUILDERS, INC.'S OPPOSITION TO
THE NEVADA JUSTICE ASSOCIATION'S MOTION FOR LEAVE TO
FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT'S
PETITION FOR REHEARING**

Eighth Judicial District Court
The Honorable Richard Scotti, District Court Judge
District Court Case No. A-16-742143-D

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**RESPONDENT LANDS WEST BUILDERS, INC.’S OPPOSITION TO THE
NEVADA JUSTICE ASSOCIATION’S MOTION FOR LEAVE TO FILE
BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT’S PETITION
FOR REHEARING**

The Court should deny Nevada Justice Association’s (hereinafter “NJA”) Motion for Leave to File Brief of *Amicus Curiae* in Support of Appellant’s Petition for Rehearing (hereinafter “Motion”) because its brief provides nothing substantive beyond the arguments already addressed by Byrne and as such is an improper extension of Byrne’s brief. NJA’s Motion is also untimely under NRAP 40.

I. NJA’S MOTION IS UNTIMELY

NJA’s Motion should only be considered when and if this Court determines that an answer to Byrne’s Petition is appropriate. “No answer to a petition for rehearing...shall be filed unless requested by the court.” NRAP 40(d). NJA seeks to submit a brief “in support of” Byrne’s Petition for Rehearing. However, this Court has yet to request an answer to Byrne’s Petition. Therefore, NJA’s Motion is untimely and should not be considered.

II. THE ARGUMENTS SET FORTH IN NJA’S PROPOSED BRIEF ARE REDUNDANT TO THOSE ADVANCED BY BYRNE AND THEREFORE AN IMPROPER EXTENTION OF BYRNE’S PETITION

The arguments set forth in NJA’s proposed brief are redundant to those already in Byrne’s Petition for Rehearing and will therefore not benefit the Court.

The vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect

merely extending the length of the litigant's brief. Such *amicus* briefs should not be allowed. They are an abuse. The term '*amicus curiae*' means friend of the court, not friend of a party.

Ryan v. Commodity Futures Trading Commission, 125 F.3d 1062, 1063 (7th Cir. 1997); accord *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999). Here too, the proposed amicus brief would merely “duplicate the arguments made in the [appellant’s] brief,” and “in effect merely extending the length of the [appellant’s] brief,” so leave should be denied.

NJA offered the following explanation as to why its proposed brief “will assist the Court”:

The accompanying amicus curiae brief addresses the primary issues in this case: the interpretation, impact, and reconciliation of AB 125, including 21(6), and the Chapter 40 process.

(Motion, pg. 2).

However, these issues are generally addressed in Byrne’s Petition for Rehearing. A proposed amicus brief that does not provide any legal analysis beyond the arguments raised in the parties' briefs and that is not necessary for the Court's determination of the legal issues at hand should not be allowed. *See Wheelabrator Baltimore, L.P. v. Mayor & City Council of Baltimore*, 449 F. Supp. 3d 549, 555 (D. Md. 2020) (denying motion to appear as *amici* in district court based on finding that the “proposed *amici* briefs do not provide any legal analysis beyond the arguments raised in the parties' briefs and are not necessary for the

Court's determination of the legal issues at hand.”). NJA’s proposed brief adds nothing to assist the Court’s analysis. In fact, NJA’s proposed brief appears to track the exact same arguments as Byrne.

For example, throughout its brief, Byrne makes the argument that this Court erred in finding that AB 125 § 21(6) is not ambiguous. (Petition for Rehearing at pgs. 1, 3, 7-9, 14, and 18).¹ Like Byrne’s arguments in this regard, Section IV-A of NJA’s brief is entitled: “The Finding that § 21(6) is Unambiguous Conflicts with Nevada Law.” (NJA’s Proposed Brief at pg. ii and 4-5).

In an effort to make its point regarding ambiguity, Byrne argues that “Interpretations of § 21(6) Given by District Court Judges Are Relevant to the Issue of Ambiguity.” (Petition for Rehearing at pgs. 17-18). Similarly, NJA argues that “...reasonable minds have differed regarding § 21(6)’s interpretation” by referring to the same district court decisions as Byrne, which it included as exhibits to its Proposed brief (in the same order cited by Byrne). (NJA’s Proposed Brief at pg. 5, n. 4) NJA is clearly parroting Byrne’s argument in this regard.

NJA also reiterates the same argument that Byrne made in its brief with respect to how the § 21(6) grace period should be interpreted and applied. Section

¹ In a recent unpublished decision, this Court found “...information presented in [an] amicus brief as to the complexities of the statutory scheme...would have been more appropriately raised to the district court in the first instance.” *Select Portfolio Servicing, Inc. v. Dunmire*, 456 P.3d 255 (Nev. 2020) (Unpublished Disposition).

IV-C of Byrne’s brief is entitled: “This Court Overlooked the Fact That the Issue on Appeal Was Whether § 21(6) Extended the Statute of Repose.” (Petition for Rehearing at pg. ii). In this section, Byrne advances the same argument as it did in its Opening Brief: “the grace period established an extension of the 6-year statute of repose...” (Petition for Rehearing at pg. 15). Section IV-C of NJA’s proposed brief once again echoes Byrne’s argument: “The Byrne Decision Erroneously Treats §21(6) Differently Than the Statute of Repose.” (NJA’s Proposed Brief, pg. ii).

NJA’s proposed brief simply repeats arguments set forth in Byrne’s Petition and is therefore not beneficial to the Court. “Such amicus briefs should not be allowed. They are an abuse.” *Ryan*, 125 F.3d at 1063. The Court should therefore deny NJA’s request to appear as *amicus curiae* in support of Byrne.

III. CONCLUSION

Based on the foregoing, Respondent Lands West Builders respectfully requests that the Court deny NJA’s Motion for Leave to File Brief of *Amicus*

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Curiae in Support of Appellant's Petition for Rehearing

DATED: January 13, 2021

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ *Brian K. Walters*

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14; or

☐ [] This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ [X] Proportionately spaced, has a typeface of 14 points or more and contains 1017 words (not including disclosure statement, table of contents, table of authorities, required certificate of service and compliance with rules, and any addendum containing statutes, rules, or regulations); or

☐ [] Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

☐ [] Does not exceed 10 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the

best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 13th day of January 2021.

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to NRAP 25(c), on January 13, 2021, I caused service of a true and correct copy of the above and foregoing **RESPONDENT LANDS WEST BUILDERS, INC.'S OPPOSITION TO THE NEVADA JUSTICE ASSOCIATION'S MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING** was served on the following by the Supreme Court Electronic filing system:

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