

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAIDE, L.L.C. A NEVADA LIMITED
LIABILITY COMPANY, D/B/A
GENTLE SPRING CARE HOME;
SOKHENA K. HUCH, AN
INDIVIDUAL; AND MIKI N. TON, AN
INDIVIDUAL,

Appellants,

vs.

CORINNE R. DILEO, AS SPECIAL
ADMINISTRATOR FOR THE
ESTATE OF THOMAS DILEO;
THOMAS DILEO, JR., AS
STATUTORY HEIR TO THOMAS
DILEO; AND CINDY DILEO, AS
STATUTORY HEIR TO THOMAS
DILEO,

Respondents.

Case No. 81804

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REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE
MOTION FOR LEAVE TO FILE AMICUS BRIEF OF
THE NEVADA JUSTICE ASSOCIATION
(First Request)

The Nevada Justice Association (“NJA”), a proposed *amicus curiae*, is a non-profit organization of independent lawyers in the State of Nevada. NJA is represented in this matter by Micah S. Echols, Esq. of Claggett & Sykes; and A. J. Sharp, Esq. of Sharp Law Center, and hereby files this reply in support of its motion pursuant to NRAP 26(b)(1)(A) for an extension of time of 30 days from the

Court's Order to file it motion for leave to file an amicus brief and the proposed amicus brief.

I. INTRODUCTION

Appellants Maide, L.L.C., *et al.* ("Defendants")¹ present three bases for opposing NJA's Motion for Extension of Time, neither of which has any substance or merit.

First, Defendants assert that NJA's Motion should be denied because the Answering Brief that NJA seeks to support was "untimely filed[.]" and therefore any Amicus Brief filed by NJA would "support a brief that does not warrant oral argument." However, the timing of Plaintiff's Answering Brief has been placed before this Court in Plaintiffs' Motion for Extension of Time, and NJA's Motion for

¹ In compliance with NRAP 28, this Reply Brief "keep[s] to a minimum reference to parties by such designations as 'appellant' and 'respondent[.]'" instead using "the designations used in the lower court[.]" *i.e.*, "Defendants" and "Plaintiffs." *See* Nev. R. App. 28(d).

Defendants' Opposition to NJA's Motion for Extension of Time inexplicably disregards NRAP 28 and uses the discouraged terms "Appellants," "Appellees," and "Respondents" instead of terms that would "promote[] clarity[.]" *Id.*

Therefore, in quoting that Opposition, this Reply Brief substitutes the terms "[Defendants]" (in brackets) for references to "Appellants" and "[Plaintiffs]" (in brackets) for references to "Appellees" or "Respondents."

Extension of Time (and its proposed Motion for Leave) will doubtless be addressed in this Court's ruling on Plaintiffs' pending Motion.

Defendants also assert that NJA's Motion should be denied because NJA "proposes to argue issues either not before the Court or already sufficiently briefed by [Plaintiffs][.]" However, the issue NJA proposes to brief is before the Court, as it is by definition necessary to Defendants' Appeal and is thus addressed in detail in Plaintiffs' Answering Brief.

Finally, while the issue of "interpretation of NRS 597.995" has indeed been briefed by the parties, NJA would not presume (as Defendants do) that this Court considers the issue to be "fully addressed" such that "[a]dditional discussion by NJA would add nothing to this Court's understanding of the matter."

To the contrary, NJA (as it has historically done as an amicus) seeks to bring perspectives to these issues that may not be within the fact-specific concern or even the knowledge of Plaintiffs. Explaining those different perspectives and persuading this Court that NJA's participation as an amicus curiae will add value is, of course, the very purpose of the Motion for Leave that NJA proposes. *See Nev. R. App. P. 29(c)*. It has nothing to do with the Motion for Extension of Time.

Because the bases for Defendants' Opposition are neither accurate nor applicable, NJA respectfully requests that its Motion for Extension of Time be granted, such that NJA may properly and effectively move this Court for leave to file an amicus brief.

II. LEGAL ARGUMENT

A. CONTRARY TO DEFENDANTS' ASSERTIONS, THE TIMING OF PLAINTIFFS' ANSWERING BRIEF HAS NO EFFECT ON NJA'S MOTION FOR EXTENSION OF TIME.

Defendants assert that

while NJA's filings are timely made, the Brief NJA seeks to support was not. Instead, [Plaintiffs] filed their Answering Brief a full two weeks past the deadline. Furthermore, it seems that [Plaintiffs] failed to obtain an extension to file that Brief, as would have been provided if they had made a simple phone call to the Court as [Defendants] did. []

Opposition, 7 (internal citation omitted).²

On that basis, Defendants assert:

Even if the Court opts not to take the serious step of treating [Plaintiffs]' failure as a confession of error, at least, [Plaintiffs] should not be able to provide oral argument in this matter. And because NJA seeks to file

² Despite the requirement of NRAP 27(d)(1)(D) that the pages of any document "relating to motions" (*e.g.*, an Opposition) "shall be consecutively numbered at the bottom[,]," Defendants' Opposition has no page numbers after Page 1. The Opposition page numbers cited herein have therefore been manually derived by NJA's counsel.

an amicus brief in support of [Plaintiffs]' flawed [sic] Answering Brief, by extension, NJA should likewise not be allowed to argue in this matter. Accordingly, NJA does not stand on secure footing in requesting this Court grant it an extension to file a Motion for Leave to File an Amicus Brief.

Opposition, 8.

This argument is of course baseless, and in fact may soon be moot. Plaintiffs have now filed a Motion for Extension of Time regarding their Answering Brief, in which they represent that a 14-day extension was timely requested from and granted by the Clerk of this Court (and submit a sworn Declaration from a member of their counsel's staff averring such). *See Respondents' Motion to Extend Time [] for Filing the Answering Brief*, Document 21-10295. Should Plaintiffs' Motion to Extend Time be granted (such that the Answering Brief is timely), Defendants' argument regarding the "untimely" Answering Brief will be moot.

Moreover, even absent Plaintiffs' requested extension of time, the timing of the Answering Brief has no effect on NJA's Motion for Extension of Time or, indeed, on NJA's proposed amicus brief. If Plaintiffs' pending Motion to Extend Time is granted (or, alternatively, if that extension is denied but this Court nonetheless elects to consider the Answering Brief and argument), NJA's proposed extension of time, its proposed Motion for Leave, and (if leave were granted) its

proposed amicus brief will simply proceed in a parallel track as ordered by this Court, per NRAP 29(f).

If, on the other hand, this Court ultimately declines to consider the Answering Brief, NJA's proposed extension of time (and/or its proposed Motion for Leave and/or its proposed amicus brief) would simply be rendered moot at that juncture. As such a decision by this Court would constitute an "appropriate disposition of the appeal[.]" all related proceedings (including those involving NJA) would cease. *See* Nev. R. App. P. 31(d)(2).

Thus, there is no basis for the timing of the Answering Brief to have any effect on NJA's Motion for Extension of Time.

B. CONTRARY TO DEFENDANTS' ASSERTION, WHETHER THE HEIRS IN THIS ACTION ARE BOUND BY THE DECEDENT'S SIGNATURE IS AT ISSUE IN THIS APPEAL.

Defendant assert:

[Defendants] did not raise the issue of whether heirs in wrongful death, medical malpractice nursing home cases are bound by the signature of the decedent to arbitrate in their Opening Brief. Why then should NJA be permitted to hold forth on that subject as they propose in the instant Motion? Such gratuitous opinions are irrelevant to this matter and so would not assist the court. Instead, it would merely give the NJA an opportunity to express unsolicited opinions on matters this court has not been asked to decide.

Opposition, 10.

However, the issue Defendants claim is “not before the Court[,]” *i.e.*, “whether heirs in wrongful death, medical malpractice nursing home cases are bound by the signature of the decedent to arbitrate[,]” is by definition at issue in this Appeal. Defendants, in their own words, now seek review of the “District Court’s Order granting [Plaintiffs]’ Motion for Rehearing and denying [Defendants]’ Motion to Compel Arbitration[.]” *App. 00284-85* (Notice of Appeal). That Order denied Defendants’ Motion to Compel with respect to both the Estate and the heirs. *App. 00281*.

In addition, the District Court’s original Order (which was subsequently vacated) when the Motion for Rehearing was granted, based denial of the Motion to Compel regarding the heirs on the finding that the heirs could not be compelled to arbitrate this wrongful death case based upon the signature of the decedent. *App. 00160-62; see also App. 00281* (vacating original Order).

In other words, Defendants seek to reverse the District Court’s operative Order denying the Motion to Compel in its entirety, which by definition would impose the decedent’s signature on the arbitration agreement upon the heirs (such that the heirs would then be compelled to arbitrate based solely upon that signature).

It is therefore absurd to assert, as Defendants do, that this issue is not before this Court. For precisely this reason, this issue is argued in detail by Plaintiffs in the Answering Brief. *Answering Brief*, 56-61.

C. NJA’S PROPOSED MOTION FOR LEAVE WILL ESTABLISH THAT, CONTRARY TO DEFENDANTS’ ASSERTION, THE ISSUE OF THE INTERPRETATION OF NRS 597.995 HAS NOT BEEN “FULLY ADDRESSED” BY THE PARTIES.

Defendants also assert that NJA’s Motion should be denied because NJA “proposes to argue issues . . . already sufficiently briefed by [Plaintiffs][.]” Opposition, 5. However, while the issue of “interpretation of NRS 597.995” has indeed been briefed by the parties, NJA would not presume (as Defendants do) that this Court considers the issue to be “fully addressed” in the Opening Brief and the Answering Brief such that “[a]dditional discussion by NJA would add nothing to this Court’s understanding of the matter.” *Id.* at 10-11.

To the contrary, as this Court’s Rules provide, the entire purpose of the Motion for Leave that NJA seeks to file is to persuade this Court that NJA brings perspective to these issues that may not be within the fact-specific concern or even the knowledge of Plaintiffs or Defendants. *See Nev. R. App. P. 29(c)* (providing that Motion for Leave to file amicus brief must “state [] the movant’s interest; and [] the reasons why an amicus brief is desirable[]”).

Thus, Defendants' assertion that the issue of the interpretation of the statute has been "sufficiently briefed" or "fully addressed" puts the cart before the horse. If NJA is able to persuade this Court in a Motion for Leave pursuant to NRAP 29(c) that NJA brings something valuable to this Appeal that the parties do not, then this Court may grant leave for an amicus brief. If NJA cannot so persuade this Court, then this Court may deny such leave. But that question has no bearing on NJA's current Motion for Extension of Time, which is instead subject only to this Court's discretion under NRAP 29(f).

III. CONCLUSION

Defendants' Opposition asserts several issues are either inaccurate or have no bearing on NJA's Motion (or both). The timing of the Answering Brief has no effect on NJA's proposed participation, as the amicus procedure simply runs in a parallel track determined by this Court's assessment of that Brief.

In addition, the issue of heirs being bound by the signature of the decedent is by definition at issue in this Appeal, as Defendants seek to reverse the District Court's Order and thereby compel the heirs to arbitrate based solely upon that signature. Finally, whether NJA's proposed amicus brief will assist this Court is an issue to be addressed in the proposed Motion for Leave, not in the Motion for Extension of Time.

NJA therefore respectfully requests that this Court grant its Motion for Extension of Time, permitting NJA to file its Motion for Leave (with its proposed amicus brief) 30 days after this Court's Order.

Dated this 14th day of April 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing, **REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR LEAVE TO FILE AMICUS BRIEF OF THE NEVADA JUSTICE ASSOCIATION (First Request)**, was filed electronically with the Nevada Supreme Court on the 14th day of April 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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