ELECTRONICALLY FILED
Pulaski County Circuit Court
Terri Hollingsworth, Circuit/County Clerk
2021-Dec-07 14:54:45
60CV-21-1653
C06D06 : 16 Pages

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
6TH DIVISION

GULFSIIDE CASINO PARTNERSHIP **APPELLANT**

VS. **NO. 60CV-21-1653**

ARKANSAS RACING COMMISSION, ET AL. **APPELLEE**

RESPONSE TO CHOCTAW NATION OF OKLAHOMA'S MOTION TO INTERVENE AND INCORPORATED BRIEF

Comes Now Legends Resort and Casino, LLC ("Legends"), by and through its counsel, for its Response to Choctaw Nation of Oklahoma's ("Choctaw Nation's") Motion to Intervene and Incorporated Brief, does state:

INTRODUCTION

1. Filing its Motion to Intervene over eight months after another unqualified applicant – Gulfside Casino Partnership ("Gulfside") – filed its Petition, Choctaw Nation regurgitates Gulfside's deeply flawed argument over Legends' casino gaming experience and requests intervention because it operates a casino some 100 miles away from Pope County that might lose business when a casino opens in Pope County. The Choctaw Nations' motion makes little pretense to cover its true, sole interest in this matter: delay. At this point, the Choctaw Nation's standing to intervene is no different than Gulfside's standing to bring this APA appeal. Neither are qualified applicants, and neither ever will be. They have no legally recognizable interest in whether a casino commences operation in Pope County (Amendment 100 already decided that question.) Nor do they have any legally recognizable interest in who the ARC selects to operate the Pope County casino. This case should be dismissed for lack of subject-matter jurisdiction, and the Choctaw Nation's Motion to Intervene should be denied as moot.

2. Legends objects to Choctaw Nation being granted intervention in this matter. The

Choctaw Nation's filings are a transparent attempt to halt the casino licensure process to protect its business interests. Legends requests that the Choctaw Nation's motion be denied for the following reasons (more fully explained below).

3. As a threshold matter, this Court lacks subject matter jurisdiction over the allegations and claims presented by Gulfside in this matter. As explained below and in detail in Legends' Amended Motion to Dismiss filed on November 12, 2021, no law required any hearing regarding Legends' qualifications. Thus, an "adjudication" did not occur. As this Court lacks jurisdiction, intervention is unnecessary and improper. Simply stated, without subject matter jurisdiction, this Court does not have authority to grant intervention or enter any orders other than simply dismissing the case. *See Centerpoint Energy, Inc. v. Miller County Circuit Court*, 372 Ark. 343, 276 S.W.3d 231 (2008) (the Arkansas Supreme Court issued a writ of prohibition and mandamus requiring the circuit court to dismiss the case for lack of subject matter jurisdiction, finding that without subject matter jurisdiction the circuit court did not have authority to stay litigation it had no jurisdiction over in the first place). Thus, Legends' Amended Motion to Dismiss, particularly regarding subject matter jurisdiction, should be addressed and ruled upon first.

4. Second, the Choctaw Nation has no legal interest in this matter. The Choctaw Nation's only asserted interest is the potential loss of revenue at a casino located some 100 miles from Pope County. As such, the Choctaw Nation's issue in this matter is not with the ARC's decision as to **who** may operate the casino. The Choctaw Nation's issue is simply that there will be a Pope County casino. Amendment 100 decided that question, not the ARC. The Choctaw Nation's participation in this litigation will do nothing to stop a casino from being located in Pope County. The Choctaw Nation can do nothing to change that, regardless of its desire to keep a

competitor from operating some 100 miles away. Simply put, the Choctaw Nation has no more interest in this matter than any other unqualified applicant (e.g., Gulfside); any other casino operator; or any one of the myriad of businesses whose revenue may be impacted (positively or negatively) by a Pope County casino. Choctaw Nation, having received neither a letter nor resolution of support from the County Judge or Quorum Court of Pope County, Arkansas, is not (and was not) qualified to hold a casino gaming license. In June 2019, the ARC rejected the Choctaw Nation's May 2019 casino license application. The Choctaw Nation did not appeal the ARC's rejection of its application.

5. Third, this matter is moot. The casino license has been awarded to "the only qualified applicant for the Pope County casino license," i.e. Legends and Cherokee Nation Businesses, LLC ("CNB"). *Cherokee Nation Businesses, LLC v. Gulfside Casino Partnership*, 2021 Ark. 17, 8, 614 S.W.3d 811. Legends is a party to this action, but CNB is not. The Choctaw Nation attacks the award of a casino gaming license to Legends. But Legends has already received a casino gaming license (which has not been subject of any "adjudication" as defined by the Administrative Procedures Act), and the ARC also included Legends' sole owner Cherokee Nation Businesses, LLC ("CNB") on the license. Thus, even if successful in challenging Legends' ability to hold the license, a ruling would have no impact on non-party CNB's ability to construct and operate a casino in Pope County, Arkansas.

6. Fourth, Choctaw Nation has failed to exhaust its administrative remedies. Despite attacking the decision of the ARC, the Choctaw Nation has not at any time submitted these issues to the ARC.

7. Lastly, assuming arguendo this Court finds it has subject matter jurisdiction over Gulfside's claims, Choctaw Nation's flawed arguments are already presented by Gulfside, and

thus intervention is inappropriate. Choctaw Nation and Gulfside are both equally unqualified applicants. They both share the same interest: to delay as long as possible the day that any other entity operates a casino in Pope County. Further, the Choctaw Nation simply reiterates Gulfside's fatally flawed arguments. It has not submitted any arguments that are unique from those submitted by Gulfside, nor has it identified any interest separate from Gulfside.

8. Legends includes by reference its Motion to Dismiss and Amended Motion to Dismiss, and Replies in support thereof, as if set forth word for word herein pursuant to Ark. R. Civ. P. 10(c).

ARGUMENT

I. This Court Lacks Subject Matter Jurisdiction Of Gulfside's Claim And Thus Intervention Is Improper

9. As explained more fully in Legends' Amended Motion to Dismiss, this case does not arise out of an "Adjudication" as defined by the APA. Ark. Code Ann. § 25-15-212(a). That is because the ARC was not "required by law to make its determination" about the challenged decision only "after notice and hearing." Ark. Code Ann. § 25-15-202(6). The Casino Gaming Rules contemplate appeals from denial of applications for casino gaming licenses. *See* Casino Gaming Rule 2.13.12(c). However, the Casino Gaming Rules do not require notice and hearing regarding an administrative decision concerning another applicant's qualifications (and as explained below, such would not convey subject matter jurisdiction anyways). That is, no APA adjudication occurred from which an APA appeal can be lodged. Instead, Gulfside has brought before the Court day-to-day decision-making by an executive branch agency.

10. Gulfside has never pointed this Court to any authority for the proposition that the determination on Legends' experience was "required by law" to be preceded by "notice and hearing." Ark. Code Ann. § 25-15-202(6). Despite this subject-matter jurisdiction defect having

been pointed out eight months ago in this litigation, the Choctaw Nation also fails to identify any authority for the proposition either. This failure commands but one result in this litigation: dismissal with prejudice.

11. It should be noted that the law requiring notice and a hearing cannot be an agency rule. "A state agency's internal rule cannot independently establish subject-matter jurisdiction in the judicial branch." *Arkansas Department of Finance and Administration v. Carpenter Farms Medical Group, LLC*, 2020 Ark. 213, 13, 601 S.W.3d 111, 120. Thus, Gulfside and the Choctaw Nation must identify another source of law that requires notice and a hearing. Nothing required the ARC to make its determination on Legends' qualifications after notice and hearing. And if notice and hearing were not required, then an adjudication did not occur. *Fatpipe, Inc. v. State*, 2012 Ark. 248, 5-6, 410 S.W.3d 574, 577 (2012).

12. Similarly, neither the Choctaw Nation nor Gulfside were qualified applicants on July 30, 2020 when the ARC rejected Gulfside's argument regarding Legends' experience. No law requires a commission to hold an APA adjudication on a matter upon the request of an entity that has zero interest in such matter, particularly when the Arkansas Supreme Court has found the entity unqualified to hold the Pope County casino gaming license.

13. "If the agency has not conducted an adjudication, then there is no reviewable agency action under section 212." *Arkansas Dept' of Finance and Administration v. Naturalis Health, LLC*, 2018 Ark. 224, at 7, 549 S.W.3d 901, 906. Although the ARC issued an order, it was not required to do so by law. And if not required to do so, then the definitions of "order" and "adjudication" are not satisfied.

14. Without an APA adjudication, this Court lacks subject matter jurisdiction. Without subject matter jurisdiction, the Court has no authority to address intervention or enter any orders

other than one dismissing this case.

II. <u>This Court Lacks Jurisdiction Over Choctaw Nation's Proposed Claim</u>

15. "*Naturalis* prohibits [the] type of challenge" where it is alleged that "the Commission should have acted differently . . . given the set of circumstances . . . ." *Ark. Dept. of Finance and Admin. v. Carpenter Farms Medical Group, LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020), citing *Arkansas Department of Finance and Administration v. Naturalis Health, LLC*, 2018 Ark. 224, 549 S.W.3d 901.

16. The Choctaw Nation cites section 212 of the APA for authority for its claim, but that section is not available to the Choctaw Nation because it did not obtain an "adjudication" as defined by the APA. The APA's judicial review provision allows "a person . . . who considers himself or herself injured in his or her person, business, or property by final agency action" to seek judicial review of that action, but only "[i]n cases of adjudication." Ark. Code Ann. § 25-15-212(a).

17. The APA does not authorize judicial review of administrative decisions outside an adjudication. Thus, a Circuit Court lacks subject-matter jurisdiction to review an agency's day-to-day administrative decisions. *Fatpipe, Inc.*, 2012 Ark. 248, 5-6, 410 S.W.3d 574, 577 (2012) *citing Arkansas Livestock and Poultry Comm'n*, 276 Ark. 326, 634 S.W.2d 388. The APA does not grant the judicial branch a supervisory role over day-to-day actions of administrative agencies. *Munson v. Arkansas Dept. of Correction Sex Offender Screening & Risk Assessment*, 369 Ark. 290, 293, 253 S.W.3d 901, 903-04 (2007). "Rather, it is only the agency's judicial functions that are subject to appellate review and then only as narrowly prescribed in the act." *Id.* at 293, 253 S.W.3d at 904.

18. Because there has been no adjudication before the administrative agency regarding Choctaw Nation's claim (see above analysis regarding lack of adjudication), there is no final agency action to be reviewed in this matter. *Fatpipe, Inc.*, 2012 Ark. at 7, 410 S.W.3d at 578 *citing*

Walker v. Ark. State Bd. of Educ., 2010 Ark. 277, 365 S.W.3d 899 (2010); *see also Arkansas Professional Bail Bondsman Licensing Bd. v. Frawley*, 350 Ark. 444, 451, 88 S.W.3d 418, 422 (2002).

19. Thus, Choctaw Nation's claim has no merit. This Court lacks subject matter jurisdiction over Choctaw Nation's proposed claim.

III. <u>Choctaw Nation Does Not Have An Adequate Interest In This Matter</u>

20. The Choctaw Nation has no established interest which entitles it to intervention in this matter.

21. Amendment 100 requires that a "casino applicant" submit a letter of support or resolution of support from the County Judge or the Quorum Court when submitting an application. Amendment 100, § 4(n). Despite applying in the May 2019 application period, the Choctaw Nation failed to submit a letter or resolution of support. The Choctaw Nation has not received a letter or resolution of support since that time. Indeed, the Pope County Judge has affirmed that he will issue no letter to the Choctaw Nation. Thus, the Choctaw Nation has no more interest in a casino license in Pope County than any other business located outside Arkansas.

22. The Arkansas Rules of Civil Procedure allow a party to intervene in a matter as of right "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Ark. R. Civ. P. 24(a).

23. The Choctaw Nation claims "economic damage" as its basis to assert a "sufficient interest" and cites *Arkansas Beverage Retailers Ass'n, Inc. v. Moore***,** 369 Ark. 498, 256 S.W.3d 488 (2007). But, the Supreme Court did not grant standing in that case solely based on "economic

damage." Instead, the Court held that economic damage that resulted from **disparate treatment** by the agency among licensees conferred standing. The Court stated: "ABRA has alleged much more than financial impact; indeed, it has alleged disparate treatment under a statute regulating the sale of goods by alcoholic-beverage retailers." *Id.* at 508, 256 S.W.3d at 495. Multiple factors distinguish the Choctaw Nation from the petitioners in *Moore*: Petitioners there were licensees of the agency; the Choctaw Nation is not. Petitioners there were subjected to license restrictions by the agency, the Choctaw Nation is not. The Choctaw Nation does not (and cannot) cite disparate treatment or any other legal theory, but rather only financial impact.

24. Not only is the Choctaw Nations' alleged financial impact alone insufficient, but also Choctaw Nation's economic damage theory is far too tenuous to rise to the level of a "sufficient interest." Moreover, disposition of this matter will have no impact on Choctaw Nation's ability to protect its alleged "interest." "A party qualifies as having sufficient interest to intervene, where, as a result of a ruling on a governmental regulation, the party would suffer economic damage. This theory supporting intervention recognizes an intervention by right where the interest of a company was in maintaining the economic vitality and competitive ability of its sole supplier." *See UHS of Arkansas, Inc. v. City of Sherwood*, 296 Ark. 97, 103, 752 S.W.2d 36, 38-39 (1988) (internal citations omitted). But one must establish more than a sufficient interest: a litigant must show that disposition of the action as a practical matter may impair or impede that litigant's ability to protect its interest. *Id.* The litigant must establish an "injury" that is "concrete, specific, real and immediate rather than conjectural or hypothetical." *Estes v. Walters*, 269 Ark. 891, 894, 601 S.W.2d 252, 254 (1980).

25. The Choctaw Nation's tenuous connection to this case is illustrated by the casino market. Some twenty-five casinos are located within 100 miles of the Choctaw Nation's casino at

Pocola, Oklahoma. https://www.casinos.us/oklahoma/ (last visted Dec. 2, 2021). There are over 100 casinos in Oklahoma, with the majority located on the east side of the State. *Id.* Competition with other casinos is part of the Choctaw Nation's business. Adding one more, constitutionally approved casino in another state changes little about the competition in the casino business.

26. In *City of Sherwood*, the General Assembly had passed an act that provided a moratorium on construction of new or expanded health facilities in the State. The Act provided certain exemptions that would allow new facility construction. The City of Sherwood filed suit against other parties including the state agencies charged with enforcing the law seeking a declaration that the city came within an exemption from the construction moratorium. All parties agreed that the law was constitutional and that Sherwood qualified for the exemption. UHS, an operator of a residential psychiatric facility in the City of Sherwood, sought to intervene after judgment was entered to challenge the validity of the exemption.[1] The Supreme Court granted UHS's request for intervention, stating that UHS argued that "the act was unconstitutional and, as we have seen, none of the original parties on either side of the Sherwood case had any interest in finding the legislation unconstitutional." *Id.* at 104, 752 S.W.2d at 39.

27. UHS's intervention was supported by a number of factors. The law stopped construction and expansion of health care facilities across the State, except for in UHS's market. The act directly applied to UHS to treat it differently than other health care facilities. UHS was also already licensed by the regulators and already subject to regulation of construction and expansion. Moreover, as the sole dissenting party, UHS's intervention was necessary to provide a justiciable case in that matter. The original parties all agreed with Sherwood's claims. Without

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[1] The original lawsuit was filed and decided in twenty-two days. Thus, UHS did not have an opportunity to file in the litigation before judgment was issued.

UHS, there was no justiciable issue present because "there was no controversy between the parties on any point asserted in the pleadings." *Id.* at 101-02, 752 S.W.2d at 38.

28. These facts, and the principles set forth in *City of Sherwood*, do not aid Choctaw Nation in its request for intervention. The present situation does not merely present a government regulation or act, but rather the Arkansas Constitution. Amendment 100 itself dictates that a casino will operate in Pope County, regardless of which applicant is successful. Nothing about Amendment 100 or the ARC's approval of Legends' gaming experience raises any disparate impact as to the Choctaw Nation. Not only is the Choctaw Nation not subject to regulation by the ARC, it does not even have any casino facilities in Arkansas. This case is already fully contested between Gulfside on the one hand and Legends and the ARC on the other. Adding the Choctaw Nation would add nothing to the claims in this case. Most importantly, unlike UHS who challenged an act that provided an exemption for construction moratorium, Choctaw Nation does nothing to challenge Amendment 100's authorization of a casino in Pope County. It merely recites Gulfside's argument that Legends is not qualified. The Choctaw Nation raises no argument that it has any stake in any controversy over **who** the ARC selects to operate the Pope County casino. The Choctaw Nation's only interest is that it would like to delay any operator from opening the Pope County casino indefinitely.

29. Regardless of whether a casino in Pope County potentially impedes on the Choctaw Nation's market, a casino in Pope County is called for by the Arkansas Constitution. That is not challenged by Choctaw Nation. Choctaw Nation can do nothing to prevent the opening of a Pope County casino. Thus, disposition of this matter will not impede any interest the Choctaw Nation claims to have. To state it differently, the issue here is not whether or not there will be a casino in Pope County. That issue was resolved by the voters in November 2018.

30. Choctaw Nation also cites *Cherokee Nation Businesses v. Gulfside Casino Partnership*, 2021 Ark. 17, 614 S.W.3d 811, in support of its request for intervention. The Arkansas Supreme Court emphasized that to have a right to intervene the litigant must have a "direct" and "recognized interest" in the subject matter of the litigation that is both "substantial" and "legally protectable." *Id.* at 6-7, 614 S.W.3d at 815-16.

31. Based upon these principles, the Supreme Court concluded:

> Cherokee asserts a sufficient interest in the litigation based on its status as the **only qualified applicant** for the Pope County casino license. According to the record, Cherokee is the **only potential casino operator with the support of the sitting county judge and quorum court.** Cherokee further alleges an interest based on its **contractual economic development agreement with Pope County.** In that contract, the county pledged **exclusive support** for Cherokee's license application in exchange for Cherokee's promise to invest over forty million dollars in Pope County. We conclude that Cherokee has a "recognized interest" in the litigation based on its interest in the license, having its license application considered, and its contract with Pope County.

Id. at 8, 614 S.W.3d at 816 (emphasis added).

32. Unlike Legends and its owner Cherokee Nation Businesses, Choctaw Nation (1) never had support from the County Judge; (2) never had support from the Quorum Court; and (3) never executed any economic development agreement with Pope County where the County pledged its exclusive support. Choctaw Nation, as an unqualified applicant, does not have any "interest in the license" because it never had any qualification to compete for the license. And, in regards to its economic damage theory, it has not alleged injury that is "concrete" rather than "conjectural" or "hypothetical."

33. For these reasons, as well as the reasons below which evidence that any alleged interest is not legally protectable, Choctaw Nation does not have a sufficient interest for intervention in this matter either under the APA or the Arkansas Rules of Civil Procedure.

IV. <u>Choctaw Nation's Proposed Claim Is Moot</u>

34. A matter becomes moot "when any judgment rendered would have no practical legal effect upon a then existing legal controversy." *Gray v. Thomas-Barnes*, 2015 Ark. 426, 5, 474 S.W.3d 876, 879 (2015) (citing *Kinchen v. Wilkins*, 367 Ark. 71, 238 S.W.3d 94 (2006)). To review an issue that is moot would be to render an advisory opinion, and the Arkansas Supreme Court has stated on numerous occasions that it is improper to issue advisory opinions. *See Robinson v. Craighead County Board of Election Commissioners*, 300 Ark. 405, 779 S.W.2d 169 (1989); *Stafford v. City of Hot Springs*, 276 Ark. 466, 637 S.W.2d 553 (1982); *McCuen v. Harris*, 271 Ark. 863, 611 S.W.2d 503 (1981).

35. The ARC has issued the casino gaming license to Legends and CNB. Choctaw Nation's Petition (as well as Gulfside's Petition) only involves Legends, not CNB. So, any judgment would not have a practical impact because CNB will still hold the casino gaming license.

36. Further, CNB demonstrates casino gaming experience. CNB is the sole member and manager of CNE, which operates ten (10) casinos in Oklahoma. Complaint, ¶ 51. Despite this admission, Gulfside and Choctaw Nation make the illogical conclusory allegation that CNB, after successfully operating ten (10) casinos in Oklahoma as the sole member of CNE, does not manage, operate, or have casino gaming experience. Neither Petition alleges any facts presented to the ARC that would undercut CNB's success with CNE. Evidently, both Gulfside and Choctaw Nation believe that owning and successfully managing a casino company does not qualify as "demonstrating experience." This defies reason. Regardless, the Choctaw Nation's tendered claims do not revolve around any decision the ARC has made regarding CNB. This Court does not have subject matter jurisdiction over any decision the ARC has made regarding CNB (and as stated above, it has no jurisdiction over the claims in this matter either).

37. Moreover, Choctaw Nation's proposed claim seeks to prevent the ARC from issuing a license in Pope County, Arkansas. Choctaw Nation claims its injury is that it will have to compete with another entity. That is not a result of any action by the ARC, but rather Amendment 100 itself. Amendment 100 provides four casino licenses, one in Pope County. Nothing in this litigation (or any other) would change the fact that the ARC must still license a qualified entity to operate a casino in Pope County. Thus, the "injury" Choctaw Nation seeks to avoid has already occurred and there is nothing this litigation will change about that outcome. Accordingly, this matter is moot.

V. Choctaw Nation Failed To Exhaust Administrative Remedies

38. Choctaw Nation failed to present any of its complaints to the ARC. Arkansas has well established the requirement that a putative litigant must exhaust all administrative remedies before filing suit.

39. A putative litigant is not entitled to judicial relief for an alleged injury until the litigant exhausts all administrative remedies. *Ahmad v. Beck*, 2016 Ark. 30, 6, 480 S.W.3d 166, 170 (2016), citing *Hotels.com, LP v. Pine Bluff Advertising & Promotion Comm'n*, 2013 Ark. 392, 430 S.W.3d 56; *see also McGhee v. Ark. State Bd. of Collection Agencies*, 368 Ark. 60, 243 S.W.3d 278 (2006) (stating that a basic rule of administrative procedure requires that an agency be given the opportunity to address a question before a complainant resorts to the courts). "Litigants may not, by refusing or neglecting to submit issues ... to administrative agencies, bypass them and call upon the courts to determine matters properly determinable originally by the agencies." *Id.* at 8, 480 S.W.3d at 171, quoting 2 Am. Jur. 2d Administrative Law, § 452. Where a litigant fails to exhaust administrative remedies, his claim should be dismissed. *Id.* at 6, 480 S.W.3d at 170.

40. Choctaw Nation's claims cannot skirt the APA process. The ARC licensed both

Legends and CNB consistent with the Casino Gaming Rules. Those Rules contain significant standards for how a corporate entity is to be licensed to hold the Pope County casino gaming license. The Choctaw Nation's failure to cite any of the Casino Gaming Rules in its Petition echoes Gulfside's similar failure to appreciate the effect of the Rules and how Legends squarely fits those Rules. For both of these entities to ignore the Casino Gaming Rules' requirements addressing how corporate entities (particularly limited liability companies like Legends and CNB) may hold a casino gaming license demonstrates a lack of candor with this Court.

41. More importantly, their flawed argument raises constitutional questions with the Casino Gaming Rules that neither Gulfside nor the Choctaw Nation brought before the ARC. Neither do they address those issues here.[2] Failing to challenge the Rules themselves, neither Gulfside nor the Choctaw Nation can do so now. ARC's licensing of Legends and CNB, as required by the Casino Gaming Rules, means that the time for raising these challenges has ended.

42. For these reasons, this Court lacks subject matter jurisdiction as there has been no "adjudication" as defined by the APA, and administrative remedies have not been exhausted. Therefore, Choctaw Nation's claims have no merit.

VI. <u>Choctaw Nation's Interests Are Adequately Represented</u>

43. Choctaw Nation's allegations are identical to Gulfside's: that the ARC erred in finding that Legends – whose sole owner and manager is CNB who owns and manages a company that operates ten (10) casinos – has "demonstrated" casino gaming experience as required by Amendment 100.

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[2] Of course, the Casino Gaming Rules must be presumed Constitutional. *Cherokee Nation Businesses, LLC v. Gulfside Casino Partnership*, 2021 Ark. 183, 7-8. Arguments not raised before the ARC are waived, even constitutional arguments. *Ark. Contractors Licensing Bd. v. Pegasus Renovation Co.*, 347 Ark. 320, 330 n. 1 (2001).

44. Intervention is improper as Choctaw Nation's interests are adequately represented by Gulfside. Gulfside has fully briefed this Court regarding its allegations. Choctaw Nation's arguments and pleadings in regards to Gulfside's claims would only be repetitive.

45. Ark. R. Civ. P. 24(a) prohibits intervention if the intervening party's interest "is adequately represented by existing parties." *Billabong Products, Inc. v. Orange City Bank*, 278 Ark. 206, 208, 644 S.W.2d 594, 595 (1983). An interest is adequately represented "when the interest of a party to the litigation is identical or not significantly different from that of the proposed intervenors." *National Enterprises, Inc. v. Union Planters Nat. Bank of Memphis*, 322 Ark. 590, 594, 910 S.W.2d 691, 694 (1995).

46. Gulfside and Choctaw Nation have identical interests in regards to Gulfside's claims: (1) both are unqualified applicants for the same casino license; and (2) both argue that Legends has failed to "demonstrate" casino gaming experience. Therefore, Choctaw Nation has no right to intervene. Indeed, neither entity has a right to bring this matter in the first place. Because its efforts would only be repetitive of existing parties, Choctaw Nation's request should be denied.

47. Finally, the Choctaw Nation's claims are substantively, plainly incorrect.

CONCLUSION

48. This Court lacks subject matter jurisdiction over Gulfside's claims, and this matter should be fully dismissed for that reason without further consideration. This failure also renders Choctaw Nation's requested intervention improper and moot. Regardless, the ship has sailed on this case. Legends has the casino license, along with CNB. Choctaw Nation has no valid interest as an unqualified and rejected applicant. Any judgment entered in this case would be without jurisdiction and would have no practical effect on any party to this litigation.

WHEREFORE, Legends prays that this Court deny Choctaw Nation's Motion to Intervene;

for attorney's fees and costs; and for all other proper relief.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I certify that, on this 7th day of December, 2021, a true and correct copy of foregoing was filed via electronic case filing system which will send notice to all case participants.

/s/ Bart Calhoun
Bart W. Calhoun