

IN THE SUPREME COURT OF THE STATE OF NEVADA


DARLENE L. NOBLE,
Appellant,
vs.
EDWARD D. NOBLE,
Respondent.

No. 44359

FILED

MAY 25 2006

ORDER DISMISSING APPEAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

On March 28, 2006, this court entered an order noting that the settlement judge had filed a report indicating that respondent filed for bankruptcy. A copy of the bankruptcy petition was attached to the report.

In our order, we noted that the filing of a bankruptcy petition operates to stay, automatically, the “continuation” of any “judicial . . . action . . . against the [bankruptcy] debtor.” 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial court. Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. See e.g., Ingersoll-Rand Financial Corp. v. Miller Mining Co., Inc., 817 F.2d 1424 (9th Cir. 1987). A review of the district court documents submitted to this court pursuant to NRAP 3(e) revealed that respondent was the petitioner in the action below. Accordingly, it did not appear that the automatic bankruptcy stay applied to this appeal. Nevertheless, our order directed counsel for respondent to file a response informing this court whether this appeal has been stayed due to the bankruptcy proceedings. That order directed counsel to attach any relevant orders of the bankruptcy court to the response.

Counsel for respondent has filed a response representing that this matter was improperly captioned in the district court. Specifically,

counsel explains that the district court proceedings from which this appeal is taken were initiated by appellant's filing of a "Filing of Foreign Decree and Orders." Thus, counsel explains, appellant should have been listed as the petitioner below. In fact, on the copy of appellant's "Filing of Foreign Decree and Orders," appellant is listed as the petitioner, however, the district court clerk appears to have docketed the proceeding based on the Arizona "Decree of Dissolution of Marriage," which was attached to the "Filing of Foreign Decree and Orders." Thus, it appears that the caption in the district court record is incorrect and that appellant was the petitioner and respondent here was the respondent below.


Because respondent on appeal was the respondent in the proceedings below, the automatic stay provision of bankruptcy law applies to this appeal. See 11 U.S.C. § 362(a)(1). Rather than have this matter pending indefinitely on this court's docket, however, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice to appellant's right to move to reinstate this appeal upon the lifting of the bankruptcy stay. As we do not reach the merits of this appeal, we conclude that such dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754 (9th Cir. 1995) (holding that a post-bankruptcy petition dismissal will violate the automatic stay "where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case"). Accordingly, we dismiss this appeal.¹ Such dismissal is without prejudice

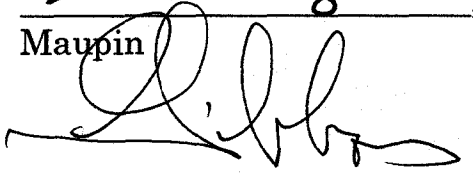
¹ As we dismiss this appeal, it is not necessary for this court to remand this matter to the district court for the parties to file the proposed "Stipulation and Order Correcting Case Caption," in the district court. An

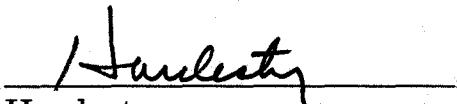
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to appellant's right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if appellant deems such a motion appropriate at that time.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Lansford W. Levitt, Settlement Judge
Amesbury & Schutt
Charles M. Damus
Clark County Clerk

... continued

unfiled and unsigned copy of that proposed stipulation is attached to counsel's response as exhibit "B."