

IN THE SUPREME COURT OF THE STATE OF NEVADA

GAIL ANN DOYLE, N/K/A GAIL A.
ROOT,
Appellant/Cross-Respondent,
vs.
PETER DOYLE,
Respondent/Cross-Appellant.

No. 49367

FILED

NOV 19 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal and cross-appeal from a district court divorce decree and post-judgment orders denying a new trial and dissolving a preliminary injunction. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

On October 1, 2007, respondent/cross-appellant filed a notice of bankruptcy. Respondent/cross-appellant's notice informs this court that on September 7, 2007, he filed a petition under Chapter 11 of the United States Bankruptcy Code as Case No. BK-S 07-15651, in the United States Bankruptcy Court.

The filing of a bankruptcy petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the [bankruptcy] debtor."¹ An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial

¹11 U.S.C. § 362(a)(1) (2000).

court.² Moreover, the automatic stay applies to proceedings seeking to determine the division of property in a divorce action.³ Thus, because respondent/cross-appellant is a debtor⁴ and the issues on appeal concern the division of the parties' marital assets and debts, we conclude that this appeal is subject to the automatic bankruptcy stay.

Consequently, as this appeal may linger indefinitely on this court's docket pending the bankruptcy's final resolution, judicial efficiency will be best served if these appeals are dismissed without prejudice. A dismissal without prejudice does not require this court to reach the appeal's merits, and thus, does not violate the bankruptcy stay and its primary purpose—to protect debtors and creditors.⁵ Accordingly, we

²Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987).

³11 U.S.C. § 362(b)(2) (2000) (stating that the automatic bankruptcy stay does not apply to an action “for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate”), amended by 11 U.S.C. § 362(b)(2)(A)(iv) (Supp. 2007).

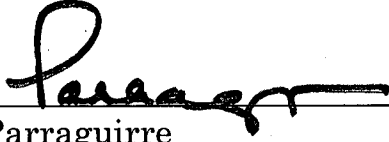
⁴11 U.S.C. § 101(13) (2000) (providing that the “debtor” in a bankruptcy proceeding is a person, concerning which, the case is commenced).

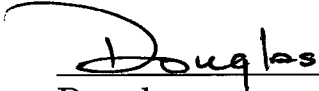
⁵See IUFA v. Pan American, 966 F.2d 457, 459 (9th Cir. 1992) (holding that an automatic bankruptcy stay does not preclude an appeal's dismissal, as long as the dismissal is “consistent with the purpose of [11 U.S.C. § 362(a)]”); Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (noting that a post-bankruptcy petition dismissal will violate an automatic stay “where [a] decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”).

dismiss these appeals without prejudice to either parties' right to move for the appeal's and cross-appeal's reinstatement upon either the lifting of the bankruptcy stay or the bankruptcy proceeding's final resolution, if either party deems such a motion appropriate at that time.

It is so ORDERED.⁶


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Gail A. Root
Peter M. Doyle
Paul M. Gaudet
Goldsmith & Guymon, P.C.
Eighth District Court Clerk

⁶In light of this order, we deny as moot appellant/cross-respondent's proper person motions filed on August 3, 6, 16, and October 10, 2007. Moreover, we acknowledge that respondent/cross-appellant is proceeding in proper person on appeal.