

IN THE SUPREME COURT OF THE STATE OF NEVADA

JARED SCHAEFER, AS GUARDIAN AD  
LITEM OF STEVEN MITCHELL, A  
MINOR,

Appellant,

vs.

MARC O'CONNOR, M.D.,

Respondent.

No. 50980

**FILED**

JUL 21 2008

TRACIE M. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DISMISSING APPEAL

Pursuant to the recommendation of the settlement judge and good cause appearing, this appeal is removed from the settlement conference program. See NRAP 16. The settlement judge reports that this appeal is not appropriate for mediation at this time as the matter appears to be stayed by an action in another court.


After the settlement judge filed his report, respondent filed a "Notice of Stay." In that notice, respondent informs this court that respondent's insurance carrier, MIIX Insurance Company, has filed a Petition for Liquidation in the Superior Court of New Jersey Chancery Division. Further, in that proceeding, the New Jersey court "entered an Order staying any proceedings in which MIIX is a party including those actions in which its insureds have been sued." Accordingly, it appears this appeal is stayed pursuant to that order. Appellant has not filed a response to respondent's Notice of Stay.

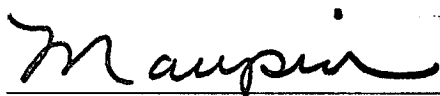
Due to the stay, this appeal may linger indefinitely on this court's docket pending final resolution of the liquidation proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice. Because a dismissal *without prejudice* will not require this court to reach the merits of this appeal, we

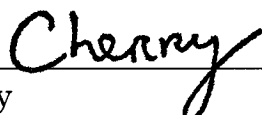
conclude that such dismissal will not violate the New Jersey Court's stay. Cf., Independent Union of Flight Attendants v. Pan American World Airways, Inc., 966 F.2d 457, 459 (9<sup>th</sup> Cir. 1992) (holding that the automatic bankruptcy stay does not preclude dismissal of an appeal so long as dismissal is "consistent with the purpose of the statute [11 U.S.C. §362(a)]"; Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755 (9<sup>th</sup> 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. This dismissal is without prejudice to appellant's right to move for reinstatement of this appeal upon either the lifting of the stay or final resolution of the liquidation proceedings, if appellant deems such a motion appropriate at that time.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Mark R. Denton, District Judge  
Robert F. Saint-Aubin, Settlement Judge  
Potter Law Offices  
Alverson Taylor Mortensen & Sanders  
Kent & Bechtel, PLLC  
Eighth District Court Clerk