

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY J. REALMUTO,  
Appellant,  
vs.  
DENISE R. REALMUTO, N/K/A  
DENISE R. OLZASKI,  
Respondent.

No. 51169

**FILED**

FEB 20 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court post-decree order in a divorce matter. Eighth Judicial District Court, Family Court Division, Clark County; Sandra Pomrenze, Judge.

On January 12, 2009, appellant filed a motion for a 60-day extension of time to file the opening brief, or, alternatively, to “file a stipulation to dismiss appeal.” In his motion, appellant explains that he is in the process of filing a bankruptcy petition in the bankruptcy court. Subsequently, appellant filed a petition for writ relief, challenging a related order, and he submitted with the writ petition a copy of his Chapter 7 bankruptcy petition, filed in the United States Bankruptcy Court for the District of Nevada on January 22, 2009, and a notice of the bankruptcy filed in the Eighth Judicial District Court on January 27, 2009. See Realmuto v. Dist. Ct. (Realmuto), Docket No. 53189 (Petition for a Writ of Mandamus or Prohibition, February 2, 2009). We take judicial notice of the bankruptcy documents included as support for that writ petition. See NRS 47.130.

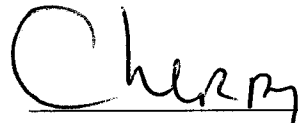
The filing of a bankruptcy petition operates to stay, automatically, the “continuation” of any “judicial . . . action . . . against the [bankruptcy] debtor.” 11 U.S.C. § 362(a)(1) (2002). An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial court. See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed in proceedings that were originally brought against the debtor, regardless of whether the debtor is the appellant or respondent in the appeal. Id. A review of the district court documents submitted to this court pursuant to NRAP 3(e) reveals that appellant and respondent were joint petitioners below, but that a post-decree order was entered against appellant and in favor of respondent. Accordingly, the automatic bankruptcy stay applies to this appeal.

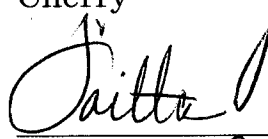
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court’s docket pending final resolution of the bankruptcy proceedings. Thus, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice to appellant’s right to move to reinstate this appeal upon the lifting of the bankruptcy stay. Because a dismissal without prejudice will not require this court to reach the merits of this appeal and is not inconsistent with the primary purposes of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that such a dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy 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”); see also IUFA v. Pan American, 966 F.2d 457, 459 (9th Cir. 1992) (holding


that the automatic stay does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of [11 U.S.C. §362(a)]”).

Accordingly, we construe appellant’s January 12, 2009, motion, alternatively seeking to “file a stipulation to dismiss appeal,” as a motion for voluntary dismissal, see NRAP 42(b), in light of the bankruptcy proceedings. We grant the motion and we dismiss this appeal. This dismissal is without prejudice to the parties’ right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or the final resolution of the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

It is so ORDERED.<sup>1</sup>

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

  
\_\_\_\_\_, J.  
Saitta

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

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<sup>1</sup>In light of this order, we deny as moot appellant’s December 9, 2008, motion for a stay, which we deferred ruling on in our January 8, 2009, order imposing sanctions and directing compliance with the Rules of Appellate Procedure. Also, to the extent that appellant’s January 12, 2009, motion sought an extension of time to file the opening brief, we deny that request as moot.

cc: Eighth Judicial District Court Dept. E, District Judge, Family Court  
Division  
Carolyn Worrell, Settlement Judge  
Cortese Law Firm  
Gordon & Silver, Ltd.  
Eighth District Court Clerk