

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF ENDOSCOPY
CENTER AND ASSOCIATED
BUSINESSES AND COORDINATED
CASES.

No. 51740

DIPAK K. DESAI, M.D.; KUSUM DESAI
AND ELADIO CARRERA, M.D.,

Appellants,

vs.

ROB CHAMBERLAIN; JOE E. MASS;
LISA GARBARINO; DAVID
GARBARINO; AUTUMN MERRILL-
SMITH; DENISE MOSES; DONNA
CULP; HOMER Q. CULP; NIDIA CRUZ;
AND ANNE LOUISE CHAMBERLAIN,
Respondents.

FILED

MAY 17 2010

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order granting in part and denying in part a motion for a preliminary injunction in a medical malpractice action. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

Dismissal as to appellant Dipak K. Desai, M.D.

Appellant Dipak K. Desai, M.D. has filed a notice informing this court that he has filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Nevada. 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. See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. Id. A review of the

district court documents submitted to this court reveals that Desai was a defendant in the action below. 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. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice to Desai's right to move to reinstate his 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)]”).

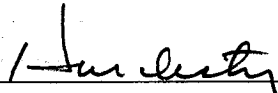
Accordingly, we dismiss Desai's appeal. This dismissal is without prejudice to his right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings.

Stipulated dismissal as to the remaining appellants

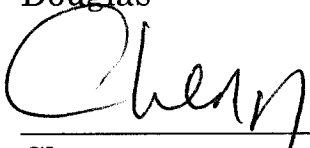
Counsel for appellants Kusum Desai and Eladio Carrera, M.D., and counsel for respondents have filed a stipulation seeking the dismissal of this appeal, based on the district court's apparent grant of a motion to dissolve the injunction at issue in this appeal and to release the


bond securing that injunction. The parties contend that this appeal is now moot, and thus, ask that it be dismissed without prejudice. We approve the parties' stipulation and dismiss this appeal without prejudice. The parties shall bear their own attorney fees and costs, if any. NRAP 42(b).


It is so ORDERED.¹



_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

¹The Honorable Ron D. Parraguirre, Chief Justice, voluntarily recused himself from participation in the decision of this matter.

cc: Hon. Allan R. Earl, District Judge
Ara H. Shirinian, Settlement Judge
Alverson Taylor Mortensen & Sanders
Lewis & Roca, LLP/Las Vegas
Lewis Brisbois Bisgaard & Smith, LLP
Lionel Sawyer & Collins/Las Vegas
Kemp, Jones & Coulthard, LLP
Mainor Eglet Cottle, LLP
Muije & Varricchio
Eighth District Court Clerk