IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY O. GARMONG,
Appellant,
vs.
NANCY REY JACKSON; AND LINDA LAFOND GARMONG,
Respondents.

No. 53210

FILED

NOV 10 2010

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

ORDER DISMISSING APPEAL IN PART AND AFFIRMING IN PART

This is an appeal from a district court summary judgment in a tort action. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

Appellant filed a district court action against respondents, alleging that they deceived him into signing a prenuptial agreement that respondent Linda Lafond Garmong did not understand. Since the initiation of this appeal, respondent Garmong has filed for bankruptcy. Accordingly, pursuant to the automatic bankruptcy stay of 11 U.S.C. § 362(a)(1) (2006), this court stayed the proceedings in this case. 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 as to respondent Garmong without prejudice to the parties' 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)]").

As to respondent Nancy Rey Jackson, she is not a party to the bankruptcy action, and thus, this appeal may proceed as to her. As an initial matter, while it may have been preferable for the district court to give the parties notice of its intent to take judicial notice of the proceedings in the divorce case, its failure to do so was not prejudicial to appellant. See NRCP 61 (explaining that we "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties"); NRS 47.150(1) ("A judge or court may take judicial notice, whether requested or not."). Because appellant's complaint was based on respondent Garmong's challenge to the prenuptial agreement in the divorce proceedings, appellant was on notice that the divorce proceedings were material to his tort claims. Moreover, appellant has not disputed that he declined to pursue enforcement of the prenuptial agreement, nor has he presented to this court a meritorious argument against the district court taking judicial notice of the divorce proceedings. In particular, given the nature of the complaint and the relatedness of the cases, the district court was entitled to take judicial notice of the earlier divorce proceeding. See Occhiuto v. Occhiuto, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (recognizing that a close relationship between two cases may justify the district court taking judicial notice of the earlier proceedings).

We conclude that the district court properly granted summary judgment to Jackson because the undisputed facts, taken in the light most favorable to appellant, show that Jackson was entitled to judgment as a matter of law, given that any damages arguably sustained by appellant were the result of his decision not to pursue enforcement of the prenuptial

agreement. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that summary judgment is appropriate if the pleadings and other evidence, viewed in the light most favorable to the nonmoving party, show that there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law). Contrary to appellant's argument on appeal that he sustained the damages during the marriage, when he provided money to Linda Garmong in compliance with the prenuptial agreement, he could not have argued that he was damaged by those payments if the prenuptial agreement ultimately had been enforced. Thus, his decision not to enforce the agreement was the act that caused the alleged damages.[1]

For the reasons discussed, we

ORDER this appeal DISMISSED as to respondent Linda Lafond Garmong and ORDER the judgment of the district court AFFIRMED as to respondent Nancy Rey Jackson.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. David R. Gamble, District Judge
Les W. Bradshaw
Nancy Rey Jackson
Linda Lafond Garmong
Stephen G. Young
Douglas County Clerk

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[1]We have considered appellant's remaining arguments and conclude that they lack merit.