

IN THE SUPREME COURT OF THE STATE OF NEVADA

STUART M. HOFFMAN,
Appellant,
vs.
CHERYL A. GRAMES-HOFFMAN,
Respondent.

No. 55571

FILED

NOV 12 2010

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

ORDER DISMISSING APPEAL
AND REGARDING SANCTIONS

This is an appeal from a district court divorce decree and an order denying a new trial. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

On April 16 and July 21, 2010, this court ordered appellant's counsel to file a report regarding the status of appellant's bankruptcy proceedings. The July 21 order pointed out that failure to respond could result in sanctions. When appellant's counsel failed to respond, on September 16, 2010, we conditionally imposed sanctions, requiring appellant to either file a status report within 10 days or pay \$500 in sanctions to the Nevada Supreme Court Law Library within 15 days. We also noted that, as this appeal is considered a continuation of the trial court action, Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987), which involved dividing property, it appeared that the 11 U.S.C. § 362(a) automatic stay applied, and appellant's failure to demonstrate that the automatic stay has been lifted or that this appeal may otherwise proceed would result in the dismissal of this appeal.

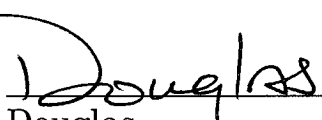
To date, appellant has failed to respond to our orders. Thus, given the apparent applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. We conclude that judicial efficiency will be best


served if this appeal is dismissed without prejudice. Because such a dismissal 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 the dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (providing that a post-bankruptcy dismissal violates the automatic stay when “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) (explaining that the automatic bankruptcy 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, this appeal is dismissed without prejudice to appellant’s right to move for its reinstatement upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

Further, the \$500 sanction imposed on September 16 remains due. Appellant’s counsel, G. Luke Ciciliano of Ciciliano & Associates, LLC, shall have 15 days from the date of this order to personally pay the \$500 sanction and provide this court with proof of such payment. Failure to comply with this order will result in additional sanctions, including referral to the State Bar of Nevada.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. William S. Potter, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Ciciliano & Associates, LLC
Dickerson Law Group
Eighth District Court Clerk
Supreme Court Law Librarian