

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL P. SALOMONSON,
Appellant,
vs.
JACK L. AYERS, AN INDIVIDUAL;
AND ELSIE M. AYERS, AN
INDIVIDUAL,
Respondents.

No. 57740

FILED

SEP 12 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Anderson
DEPUTY CLERK

ORDER GRANTING MOTION TO WITHDRAW
AND DISMISSING APPEAL

On August 18, 2011, respondents' attorney, Megan K. Mayry McHenry, of the Law Office of Hayes & Welsh, moved to withdraw as counsel of record under RPC 1.16(b)(5), (6), and (7). The unopposed motion is granted, NRAP 46(e); SCR 46, and the clerk of this court shall remove attorney Mayry McHenry as respondents' counsel of record in this appeal.

Additionally, respondents have notified this court that they filed a voluntary petition for Chapter 7 bankruptcy on June 10, 2011, in the United States Bankruptcy Court for the Central District of Nevada (Case No. 11-19184-LBR). The filing of a Chapter 7 petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the [bankruptcy] debtor." 11 U.S.C. § 362(a)(1) (2006). 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 debtors were defendants in the underlying trial court action. Id. In the underlying district court action, respondents were counterdefendants. 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. 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 within 60 days of either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

It is so ORDERED.

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Doug Smith, District Judge
E. Paul Richitt, Jr., Settlement Judge
Baumgardner Law
Law Office of Hayes & Welsh
Eighth District Court Clerk