

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LADNER,
Appellant,
vs.
NLV PAIN MANAGEMENT AND
URGENT CARE,
Respondent.

No. 77218

FILED

JAN 15 2019

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order granting a motion to dismiss appellant's complaint. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

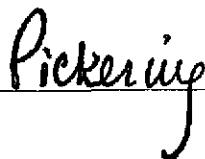
Counsel for respondent NLV Pain Management and Urgent Care (NLV) has filed a Notice of Bankruptcy Filing, informing this court that NLV has filed for Chapter 7 bankruptcy relief. The filing of a bankruptcy petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the debtor." 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic stay, is considered a continuation of the action in the trial court. Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. *See Ingersoll-Rand Fin. Corp. v. Miller Mining Co., Inc.*, 817 F.2d 1424 (9th Cir. 1987). It appears that NLV was a defendant below. Therefore, this appeal is stayed as to NLV pursuant to the automatic stay provisions of federal bankruptcy law.

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 as to NLV.


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 dismissal will not violate the bankruptcy stay. *See Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 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)]”); *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 756 (9th Cir. 1995) (holding that a postbankruptcy petition 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”).

Accordingly, we dismiss this appeal as to NLV Pain Management and Urgent Care. This dismissal is without prejudice to appellant’s right to move for reinstatement upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if appellant deems such a motion appropriate at that time.

It is so ORDERED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Cadish

cc: Hon. Eric Johnson, District Judge
Michael Ladner
Kung & Brown
John H. Cotton & Associates, Ltd.
Eighth District Court Clerk