

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIKA MARIE JOHNSON,
Appellant,
vs.
TOM JOHNSON,
Respondent.

No. 42762

FILED

FEB 08 2007

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a final divorce decree. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

This appeal was docketed in this court on February 6, 2004. This appeal has been stayed pursuant to the automatic stay provisions of federal bankruptcy law,¹ due to a total of three bankruptcy petitions filed at various times by the parties. On July 6, 2006, this court entered an order directing respondent to file a report informing this court of his most recent bankruptcy case's status within ninety days, and every ninety days thereafter. Respondent filed his first report in a timely fashion on October

¹See 11 U.S.C. § 362(a)(1).

4, 2006, but failed to file the second report, which was due on January 4, 2007, and still has not been filed as of this order's date.

We note that this appeal has remained on our docket for three years with little action other than bankruptcy notices. Further, given the applicability of the automatic stay, this appeal may languish indefinitely on this court's docket until respondent's bankruptcy proceedings are concluded. Under these circumstances, we conclude that judicial efficiency will be best served if this appeal is dismissed, without prejudice. Because a dismissal without prejudice is not inconsistent with the primary purposes of the bankruptcy stay—to provide protection for debtors and creditors—and will not require this court to reach the merits of this appeal, we further conclude that such a dismissal will not violate the automatic bankruptcy stay.²

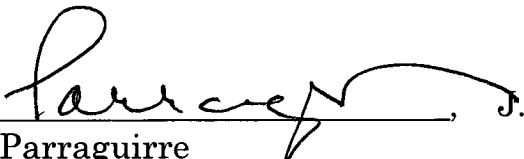
²Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755-56 (9th Cir. 1995) (noting that the automatic stay's purpose is to provide a debtor "with protection against hungry creditors" by giving a "breathing spell" from collection efforts, and to assure creditors "that the debtor's other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor's assets," and holding that dismissal of an appeal 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"); 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 the dismissal is "consistent with the purpose of the statute").

Accordingly, we dismiss this appeal. This dismissal is without prejudice to appellant's right to move for reinstatement of the appeal 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.


_____, C.J.

Maupin


_____, J.

Parraguirre


_____, J.

Saitta

cc: Second Judicial District Court Dept. 7, District Judge
Erika Marie Johnson
Demetras, O'Neill & Otto
Tom Johnson
Washoe District Court Clerk