

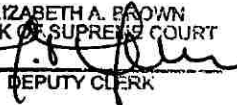
IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPERIOR EMERGENCY
PHYSICIANS HARRIS, PLLC, A
NEVADA PROFESSIONAL LIMITED
LIABILITY COMPANY,
Appellant,
vs.
ALEX MALONE, M.D., AN
INDIVIDUAL,
Respondent.

No. 85514

FILED

JUN 09 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

Counsel for appellant has filed a notice informing this court that appellant filed for bankruptcy on March 30, 2023, and requesting this court to stay this appeal for a period of six months rather than dismissing this appeal so it can attempt to confirm a plan of reorganization. Respondent opposes the request for stay.

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 appellant was a defendant below. Therefore, this appeal is stayed pursuant to the automatic stay provisions of federal bankruptcy law.

Although appellant asks his court to stay the proceedings for a period of 6 months, it is not clear that the bankruptcy court proceedings will

be completed within that time frame. 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 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.¹ 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, 755 (9th Cir. 1995) (holding that a post-bankruptcy petition dismissal will violate the automatic stay “where a decision to dismiss requires the court to first consider other issues presented by or related to the underlying case”).

Accordingly, we deny appellant's request for a stay and we dismiss this appeal. This dismissal is without prejudice to appellant's right to move for reinstatement of this appeal upon either the lifting of the

¹ The automatic stay provides a debtor “with protection against hungry creditors” and gives it a “breathing spell from its creditors” by stopping all collection efforts. *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755 (9th Cir. 1995) (internal quotation marks omitted). Further, it “assures creditors that the debtor's other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor's assets.” *Id.* at 755-56.

bankruptcy stay or final resolution of the bankruptcy proceedings, if appellant deems such a motion appropriate at that time.

ORDER this appeal DISMISSED.

, J.
Cadish

, J.
Pickering

, J.
Bell

cc: Chief Judge, The Eighth Judicial District Court
Hon. Mark Gibbons, Senior Justice
Charles K. Hauser, Settlement Judge
McDonald Carano LLP/Reno
McDonald Carano LLP/Las Vegas
Hutchings Law Group, LLC
Eighth District Court Clerk