

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOLMES, III,

Appellant,

vs.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Respondent.

Case No.: 71680 Electronically Filed
Jun 01 2017 09:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, The Honorable Douglas E. Smith
Presiding

**REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL AND
SUGGESTION OF BANKRUPTCY**

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I. INTRODUCTION

Respondent Las Vegas Metropolitan Police Department (“LVMPD”), by and through its attorneys, Marquis Aurbach Coffing, hereby files its reply in support of the motion to dismiss this appeal based upon the bankruptcy petition filed by Appellant, Robert Holmes, III (“Holmes”) and the automatic bankruptcy stay of 11 U.S.C. § 362.

On May 12, 2017, LVMPD filed its motion to dismiss the appeal filed by Holmes after Holmes filed Chapter 7 bankruptcy. Holmes has opposed the motion to dismiss appeal. *See* Appellant’s Reply and Opposition to Respondent’s Motion to Dismiss Appeal (“Opposition”). In his Opposition, Holmes also requests a stay of execution of judgment from this Court. LVMPD maintains the appeal should be dismissed based upon the bankruptcy stay and relevant case law, and requests the Court deny Holmes’ request for a stay of execution.

II. LEGAL ARGUMENT

A. THE APPEAL SHOULD BE DISMISSED PURSUANT TO THE AUTOMATIC BANKRUPTCY STAY.

LVMPD has requested dismissal of this appeal based upon case law which holds the automatic bankruptcy stay includes appeals where an appeal relates to litigation initially brought against the appellant, because proceeding with an appeal under these circumstances is a continuation of litigation from the lower court. *See*

Ingersoll-Rand Fin. Corp. v. Miller Min. Co., Inc., 817 F.2d 1424, 1426 (9th Cir. 1987); *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 756 (9th Cir. 1995); *Parker v. Bain*, 68 F.3d 1131, 1137 (9th Cir. 1995) (discussing the impact of the bankruptcy stay on an appeal and looking to whether the appeal is a continuation of litigation that initially constituted an action or proceeding against the debtor in the district court).

B. HOLMES' ARGUMENTS ARE IMPROPERLY BASED UPON NEW ISSUES OF FACT WHICH CANNOT BE CONSIDERED BY THIS COURT.

In his Opposition, Holmes has raised several new issues of fact, which are not appropriate for consideration by this Court. “A party may not raise ‘new issues, factual and legal, that were not presented to the district court ... that neither [the opposing party] nor the district court had the opportunity to address.’” *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. Adv. Op. 61, 290 P.3d 249, 252 (2012) (quoting *Schuck v. Signature Flight Support*, 126 Nev. 434, 437, 245 P.3d 542, 545 (2010)). First, Holmes explains his reasons for filing for bankruptcy related to money that belonged to his father being garnished from a shared account. Opposition at p. 2, ¶1. This is not the proper forum or the procedurally proper mechanism for challenging a garnishment or claiming an exemption to LVMPD’s collection efforts, and this Court cannot interpret these facts that were raised in the

first instance in response to the motion to dismiss appeal. Similarly, Holmes has argued that LVMPD's motion to dismiss his appeal is part of a concerted effort by LVMPD to put excessive pressure upon Holmes or to intentionally make things difficult for him. While LVMPD's counsel has diligently pursued this case, as any similar litigation matter, it is apparent that Holmes has misinterpreted statements by LVMPD's counsel. *See* Declaration of Adele V. Karoum in Support of Motion to Dismiss Appeal. While LVMPD's counsel has addressed these allegations to clarify the record due to the nature of the allegations, ultimately, these allegations are not relevant to the subject of the instant motion: whether this appeal should be dismissed based upon Holmes filing a Chapter 7 bankruptcy. The appeal should be dismissed based upon the arguments and law as set forth in the Motion to Dismiss Appeal.

C. HOLMES' REQUEST FOR A STAY OF EXECUTION OF JUDGMENT MUST BE DENIED.

Finally, a portion of Holmes' Opposition to Respondent's Motion to Dismiss Appeal argues that this Court should stay execution of the judgments ordered by the District Court. *See* Opposition at p. 2. Holmes has not moved in the district court for a stay of judgment pending appeal. *See* NRAP Rule 8(a)(1). To the extent Holmes' Opposition may be construed as a motion for a stay, Holmes has not set forth any of the requirements for a motion for stay pending appeal in NRAP

Rule 8(a)(2). Holmes apparently requests a stay of execution based upon his current conditions of claimed financial hardship and his belief that LVMPD is pressuring him to not pursue his appeal, without meeting the requirements for a stay under NRAP Rule 8. *See* Opposition at p. 2–3. In the event this Court does not dismiss the appeal, Holmes’ request for a stay of execution of judgment must be denied because Holmes has failed to meet the requirements under NRAP.

III. CONCLUSION

For the foregoing reasons, LVMPD respectfully requests this Court dismiss the appeal. If the Court determines dismissal is not appropriate at this time, LVMPD requests the Court deny Holmes’ request within his Opposition for a stay of execution of the judgment, because Holmes has not met the requirements under Nevada law for a stay.

Dated this 31st day of May, 2017.

MARQUIS AURBACH COFFING

By /s/ Adele V. Karoum
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION
TO DISMISS APPEAL AND SUGGESTION OF BANKRUPTCY** was filed electronically with the Nevada Supreme Court on the 31st day of May, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

n/a

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Robert Holmes, III
4657 Swaying Ferns Dr.
Las Vegas, Nevada 89147
Appellant in Proper Person

/s/ Leah Dell

An employee of Marquis Aurbach Coffing

Exhibit 1

AFFIDAVIT OF ADELE V. KAROUM, ESQ.

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

Adele V. Karoum, Esq., being first duly sworn deposes and says:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I was present during the conversation to which Robert Holmes III (“Holmes”) refers after a district court hearing, with two additional LVMPD attorneys, Matthew Christian, Esq. and Micah Echols, Esq.

3. Attorney Erik Fox, who previously worked for Marquis Aurbach Coffing, has not worked on this state court forfeiture case in the district court or on appeal. Erik Fox was not present during the conversation to which Holmes refers.

4. LVMPD’s attorneys met with Holmes outside of the courtroom after a hearing in 2016.

5. LVMPD attorneys said they were going to continue to work for LVMPD on this case and said they would continue to represent their client, even if Holmes appealed and the case took several more years to be completed.

6. LVMPD's counsel never told Holmes that LVMPD intended to make him pay but referred to the litigation being lengthy, and their confidence that they would ultimately be successful.

Further Affiant sayeth naught.

Dated this 31st day of May, 2017.

Adele V. Karoum
Adele V. Karoum, Esq.

SUBSCRIBED and SWORN to before me
this 31st day of May, 2017.

Leah Dell
NOTARY PUBLIC in and for said
County of State

