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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

In re. MARCO A. RODRIQUEZ, and VANESSA M. RODRIQUEZ,	*	NO. 4-99-CV-90534
Debtors.	*	
MARK E. NIETERS,	*	
Appellant.	*	
v.	*	
GARY L. SEVCIK,	*	
Appellee.	*	
ANITA L. SHODEEN,	*	ORDER ON MOTION TO STAY PENDING APPEAL
Trustee.	*	

Gary L. Sevcik ("Sevcik"), moves this Court to stay its Order to Vacate the Order to Vacate the Bankruptcy Court's Order to Sell Property pending appeal pursuant to Bankruptcy Rule 8017(b), Rule 62(c) & (d) of the Federal Rules of Civil Procedure, and Rule 8 of the Federal Rules of Appellate Procedure. Sevcik filed this Motion to Stay on June 29, 2000. Mark E. Nieters ("Nieters"), filed a resistance on July 5, 2000. A hearing was held on this matter on July 12, 2000. The matter is fully submitted.

I. Facts

The subject of the original appeal before this Court was a parcel of land owned by Debtors Marco A. and Vanessa M. Rodriquez ("the Rodriquez's"). Sevcik owned tax deeds on the property. Nieters, acting as an agent of the bankruptcy estate, redeemed the certificates on

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May 21, 1999. The sale of the property to Nieters was approved by the Bankruptcy Court on May 24, 1999.

Sevcik challenged the sale and on July 13, 1999, the Bankruptcy Court[1] vacated its Order to Sell Property. Nieters appealed and on May 30, 2000, an order was entered by this Court vacating the Order to Vacate the Order to Sell Property. This Court found that Sevcik's legal interest in the property terminated with the estate's redemption of the tax certificates. Furthermore, this Court determined that Sevcik was not a party in interest. Therefore, he was not entitled to notice of the bankruptcy proceedings.

Pursuant to the Court's May 30th order, Trustee Anita L. Shodeen, issued a deed for the property to Nieters on June 22, 2000. On June 27, 2000, Sevcik filed a Notice of Appeal to the United States Circuit Court of Appeals for the Eighth Circuit. Sevcik filed this Motion to Stay the Order two days later, on June 29, 2000.

II. Analysis

Bankruptcy Rule 8017(b), Rule 62(c) & (d) of the Federal Rules of Civil Procedure, and Rule 8 of the Federal Rules of Appellate Procedure each authorize a district court to grant a stay of judgment pending appeal. Courts are in disagreement over whether a district court may grant a stay after an appeal to a court of appeals has been filed. *Compare In re One Westminster Co., Inc.*, 74 B.R. 37, 38 (D. Del. 1987) (no jurisdiction to grant stay) *with In re Miranne*, 852 F.2d 805, 806 (5th Cir. 1988) (district court retains jurisdiction to grant stay). However, the majority of courts appear to follow the 5th Circuit in *Miranne* in holding that courts retain jurisdiction to grant a stay even after the case has been appealed. *See generally, In re KAR Dev. Assocs. L.P.*, 182 B.R. 870, 872 (D. Kan. 1995); *In re Winslow*, 123 B.R. 647, 648 (D. Colo. 1991); *Mastro v.*

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[1] Honorable Lee M. Jackwig, United States Bankruptcy Court for the Southern District of Iowa.

Rigby (In re Imperial Real Estate Corp), 234 B.R. 760, 762 (B.A.P. 9th Cir. Wash. 1999).

The standards used to determine whether a stay is granted under Rule 8017 are the same as those under Bankruptcy Rule 8005. *See In re KAR*, 182 B.R. at 872. These standards are identical to those used in a motion to stay under Rule 62. The Court is to consider the following four factors in determining whether a stay is warranted: (1) the likelihood of success on the merits by the moving party; (2) the likelihood of irreparable injury to the moving party absent a stay; (3) the prospect that others will be harmed if the court fails to grant the stay; and (4) the public interest in granting the stay. *See Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 423 (8th Cir. 1998); *see also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

The first factor, likelihood of success on the merits, is the most important. *See S & M Constructors, Inc. v. Foley Co.*, 959 F.2d 97, 98 (8th Cir. 1992). Unfortunately, as adjudicator of the original Order in this case, the factor is also the most difficult for this Court to examine objectively. While this Court does not wish to declare itself infallible, the Court has had an adequate opportunity to review the merits of the claims and has already made a determination based upon those claims. Sevcik has failed to produce additional arguments or authority not previously considered by this court. Moreover, this was not a factually complicated case, nor one in which the legal issues were particularly complex. For these reasons, the Court concludes that there is not a sufficient likelihood of success on the merits.

Nor does this Court conclude that anyone – Sevcik, other interested parties, or the general public – will suffer harm if a stay is not granted. First, Sevcik has failed to present any tenable argument that he will suffer irreparable harm if the motion to stay is not granted. Second, Nieters produced a copy of a complaint sent to the City of Windsor Heights by counsel for Sevcik which states that "the lot contains numerous fallen, rotting, and deteriorating trees. The

lawn has not been mowed for an extended period of time." While these are aesthetic concerns, they do not appear to rise to such a level that the property constitutes a danger to the public. Moreover, Nieters has stated that he has recently made efforts to clean up the property. Thus, any harm in failing to grant the stay is speculative at best and is not sufficient grounds upon which to grant a stay. *See Packard Elevator v. ICC*, 782 F.2d 112, 115 (8th Cir. 1986).

III. Conclusion

The standards for granting a stay pending appeal have not been met. Accordingly, Sevcik's Motion to Stay Pending Appeal (Docket #10) is DENIED.

IT IS SO ORDERED.

Dated this 13th day of July, 2000.

Robert W. Pratt

ROBERT W. PRATT
U.S. DISTRICT JUDGE