

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0649

FILED

NOV 29 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

KEVIN DeTIENNE, individually and on Behalf of
THE VIBEKE DeTIENNE TRUST, AS TRUSTEE,
THE TRAIN STATION, LLC., A Montana Limited
Liability Company, and THE MONEY TRAIN, LLC,
a Montana Limited Liability Company,

Plaintiffs and Appellees,

v.

ORDER

BRYAN SANDROCK, GG&ME, LLC a Montana
Limited Liability Company, and DRAES, INC., a
Montana Close Corporation,

Defendants and Appellants.

The above-named Defendants/Appellants have moved for a stay pending appeal of the judgment entered, based upon Appellants' default, by the District Court on September 28, 2016.

This case involves a complicated procedural history, both before and after the District Court's entry of the default judgment against the Appellants in an amount exceeding \$2 million, as well as for eviction, and other relief. The unusual procedural posture of the case impacts the manner in which this Court can proceed.

The record has not yet been filed, because post-judgment motions are still pending before the District Court. Thus, our understanding of the status of the case is limited. From a review of Appellants' motion and the attached exhibits, however, we discern that, following entry of the judgment against them on September 28, 2016, Appellants filed a Rule 60 motion for relief from the judgment. As acknowledged by the District Court in an order entered November 21, 2016, denying Appellants' motion for stay pending appeal, Appellants' Rule 60 motion will be resolved on December 6, 2016, either by

court ruling or by deemed denial under M. R. Civ. P. 60(c)(1). The District Court granted a stay of judgment pending disposition of the Rule 60 motion, but, foreshadowing the outcome of that motion, denied a stay thereafter, reasoning that the alternative financial security to the supersedeas bond proposed by Appellants was insufficient.

Further, Plaintiffs/Appellees' motion for attorney fees is also pending before the District Court. Appellants' notice of appeal was filed on October 31, 2016, and stated that it is filed pursuant to M. R. Civ. P. 58(e). Appellants offered therein that Rule 58(e) "provides that the district court is not deprived of jurisdiction to enter its order on a timely motion for attorney fees and costs by the premature filing of a notice of appeal, and a notice of appeal filed before the disposition of any such motion shall be treated as filed on the date of such entry." In the meantime, the initially appointed appellate mediator withdrew, and an alternate mediator has been appointed.

M. R. Civ. P.58(e) provides that a judgment, even though entered, is not considered final for purposes of appeal "until any necessary determination of the amount of costs and attorney fees awarded" is made. The portions of the Rule cited by Appellants may save from dismissal an appeal that has been filed prior to the entry of an attorney fee order, but the Rule does not authorize prosecution of an appeal prior to entry of a final judgment that includes the attorney fee award.

Thus, Appellants' motion to this Court for a stay is technically premature—the judgment entered by the District Court on September 28, 2016, will not be final and appealable until the attorney fee order is entered, and Appellants cannot prosecute their appeal until then. On the other hand, Appellants' prompt request for a stay is understandable, given that the District Court has signaled that Appellants' Rule 60 motion will be denied as of December 6, and has already denied a stay of judgment pending appeal. Also, in the meantime, resources have been expended to secure an appellate mediator for the parties.

In view of these circumstances, we conclude the best course is to order the following:

IT IS ORDERED that the motion for stay of the District Court's judgment is DENIED WITHOUT PREJUDICE. When a final, appealable judgment has been entered by the District Court, Appellants may renew their motion for a stay of the judgment by reference to their previously-filed motion and exhibits, and by filing a supporting affidavit. M. R. App. P. 22(2)(a)(1). This Court will obtain a response to the motion from Appellees and resolve the issues related to the request.

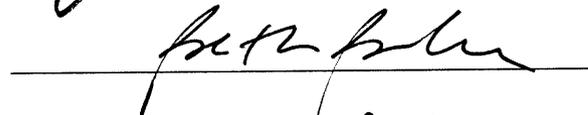
IT IS FURTHER ORDERED that this appeal is STAYED pending entry of a final judgment by the District Court. Appellate mediation is stayed and will be completed within 75 days from entry of a final judgment by the District Court, instead of 75 days from the filing of the notice of appeal. M. R. App. P. 7(3)(a).

The Clerk of the Supreme Court is directed to send a copy of this Order to counsel of record and to Mediator David C. Dalthorp.

DATED this 29th day of November, 2016.



Chief Justice



Justices