

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 00-18972
)	
DANNY E. ATWATER,)	Chapter 7
Debtor.)	
)	Adversary Proceeding No. 01-1090
MICHELE ATWATER,)	
Plaintiff,)	Judge Arthur I. Harris
)	
v.)	
)	
DANNY E. ATWATER,)	
Defendant.)	

MEMORANDUM OF OPINION

This matter is before the Court on the debtor's motion for a stay pending appeal of this Court's Order entered May 19, 2003, (Docket #32) granting the Motion for Summary Judgment filed by Michele Atwater (Docket #29). After the Court issued its ruling regarding summary judgment, the debtor failed to appeal the ruling within the 10-day time period prescribed in Bankruptcy Rule 8002. For the reasons that follow, the debtor's motion for a stay pending appeal of the Court's May 19, 2003, order is denied.

Under Bankruptcy Rule 8005, the factors to be considered by a court in determining whether a stay or injunction pending appeal should issue are:

(1) whether the applicant has demonstrated a likelihood of success on the merits;

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(2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other interested parties; and (4) where the public interest lies. *See Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 954 F.2d 150, 153 (6th Cir. 1991); *In re Dow Corning*, 255 B.R. 445, 542 (E.D. Mich. 2000); *In re Best Reception Systems, Inc.*, 219 B.R. 988, 992-93 (Bankr. E.D. Tenn. 1998) (applying Rule 8005 and *Griepentrog* standard); *In re Abbo*, 191 B.R. 680, 682 (Bankr. N.D. Ohio 1996) (Krasniewski, J.) (same).

In weighing these factors against the circumstances of this case, the Court concludes that the debtor's appeal has little likelihood of success on the merits. Specifically, the debtor did not file his notice of appeal within the prescribed 10-day time period. *See* FED R. BANKR. P. 8002(a). As a result, the appellate court will likely find that it has no jurisdiction to hear the appeal. *See, e.g., In re Burns*, 322 F.3d 421, 429-31 (6th Cir. 2003) (strict time requirements of Rule 8002 are jurisdictional).

Furthermore, the debtor has not presented any evidence that he will be irreparably harmed absent the granting of a stay. For instance, the debtor argues that the Court should stay its order because an Ohio Court of Appeals may reverse

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the decision which served as one of the bases for this Court's order of May 19, 2003. However, in the event that an Ohio Court of Appeals renders a decision in the debtor's favor, he can move this Court for relief from judgment pursuant to Federal Rule of Civil Procedure 60, as made applicable to these proceedings by Bankruptcy Rule 9024. *See* FED. R. CIV. P. 60(b) ("On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment [when] a prior judgment upon which it is based has been reversed or otherwise vacated"). In addition, any argument of irreparable harm from the debtor would be undercut by the fact that the debtor failed to seek a stay of the applicable order from the Cuyahoga County Court of Common Pleas. *See* OHIO R. CIV. P. 62(B) ("When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond."). Therefore, the debtor's actions are inconsistent with a claim of irreparable harm. Nor do the other factors to be considered under Bankruptcy Rule 8005—potential harm to other parties and the public interest—favor the granting of a stay of this Court's Order pending the debtor's appeal.

Accordingly, the debtor's motion for a stay pending appeal is denied.

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IT IS SO ORDERED.

/s/ Arthur I. Harris 07/02/2003

Arthur I. Harris

United States Bankruptcy Judge