

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2014-076

APRIL TERM, 2014

|                            |   |                               |
|----------------------------|---|-------------------------------|
| Jennifer Brooks (Bjurling) | } | APPEALED FROM:                |
|                            | } |                               |
|                            | } |                               |
| v.                         | } | Superior Court, Windsor Unit, |
|                            | } | Family Division               |
| William Brooks             | } |                               |
|                            | } | DOCKET NO. 173-4-09 Wr dm     |

In the above-entitled cause, the Clerk will enter:

This appeal involves a final divorce order between the parties. This Court reinstated the original final divorce order and remanded to the trial court for additional calculations in November 2013. Brooks v. Brooks, Nos. 2011-334, 2012-404 & 2013-159 (Vt. Nov. 20, 2013). The trial court then issued the remanded order on February 5, 2014. Appellant filed a notice of appeal with this Court on March 10. However, in between, appellant filed for bankruptcy on February 27, 2014 and then filed a motion to stay his appeal pending the bankruptcy proceeding. Appellee moves to dismiss the appeal as void ab initio, arguing that appellant was prohibited from filing an appeal by the automatic stay of proceedings involving a division of property under federal bankruptcy law.

Appellee's motion to dismiss this appeal as void ab initio is denied. However, insofar as appellant filed his notice of appeal after filing for bankruptcy, the notice was not effective because the automatic bankruptcy stay was in place under 11 U.S.C.A § 362(a), (b)(2)(A)(iv). See, e.g., Eastern Equip. & Servs. Corp. v. Factory Point Nat'l Bank, 236 F.3d 117, 121 (2d Cir. 2001). Because the notice was not effective at the time it was filed, the appeal is premature and is dismissed without prejudice to refile if the bankruptcy court lifts the automatic stay or once proceedings in bankruptcy are completed. Appellant is required to refile his appeal with this Court within thirty days of either event.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice

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Geoffrey W. Crawford, Associate Justice