

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2017-149

JUN 12 2017

JUNE TERM, 2017

Eric Resnick* v. Susan Resnick	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit
	}	Family Division
	}	
	}	DOCKET NO. 407-10-15 Rddm

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

On May 30, 2017, appellant husband filed a motion for stay pending appeal. For the following reasons, the family court's order granting wife immediate possession of the lake house pending appeal is reversed and an automatic stay of the property division in the final divorce order is imposed pursuant to Vermont Rule for Family Proceedings 12(d)(1).

Husband's motion for stay concerns a lake house the parties purchased during their marriage. While their divorce was pending, husband had possession of the lake house pursuant to a stipulated temporary order. In the final divorce order, the family court awarded wife the lake house as well as the marital home. The family court awarded husband seven rental properties and another home that he had purchased post-separation but prior to their divorce. Husband filed a timely notice of appeal of the final divorce order, including the part of the order relating to real property division.

After husband filed his appeal, wife filed a motion for possession of the lake house pending the appeal. The family court granted the motion, concluding that Vermont Rule for Family Proceedings 12(d)(2)(A) provided the family court with the discretion to enforce the judgment. Husband appealed this order under Vermont Rule of Appellate Procedure 8(a).*

Family Rule 12(a) governs stays prior to appeal. Under Rule 12(a)(1), an execution on a judgment is automatically stayed for thirty days after the entry of the judgment or until the appeals period expires. Rule 12(a)(2) provides certain exceptions to this automatic stay, including orders relating to parental rights and responsibilities, spousal maintenance, and dissolution of the marriage. V.R.F.P. 12(a)(2)(A). There is no exception to the automatic stay for orders pertaining to real property.

Once an appeal is taken, Rule 12(d) governs stays while the appeal is pending. Rule(d)(1) states that any judgment that was automatically stayed under Rule 12(a)(1) is also stayed during


* Wife argues that husband did not initially file a motion in the family court to stay the court's order of possession as ordinarily required by Vermont Rule of Appellate Procedure 8(a)(1). Because we conclude that the family court did not have the discretion to lift the automatic stay under Family Rule 12, we do not address this argument relating to Appellate Rule 8(a).

the pendency of the appeal. If a judgment was not stayed pursuant to Rule 12(a)(1)—that is, if it did not fall under one of the exceptions outlined above—the family court has the discretion under Rule 12(d)(2)(A) to enforce the judgment while the appeal is pending. See V.R.F.P. 12(d)(2)(A) (“When an appeal has been taken from a judgment . . . in which no stay pursuant to paragraph (1) of subdivision (a) of this rule is in effect, the court in its discretion may, during the pendency of the appeal, grant or deny motions for modification or enforcement of that judgment.”).

As indicated above, Rule 12(a)(2) does not exempt orders pertaining to the division of real property from the automatic stay. Because there is no specified exemption, the portion of the final divorce order relating to the division of real property was subject to the automatic stay under Rule 12(a)(1) prior to the appeal and, subsequently, under Rule 12(d)(1) once the appeal was filed.

The court’s order granting immediate execution of the judgment is reversed and an automatic stay is imposed.

BY THE COURT:



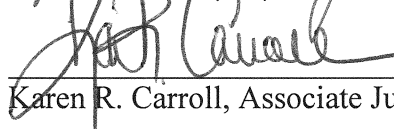
Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Harold E. Eaton, Jr., Associate Justice



Karen R. Carroll, Associate Justice