

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

In re

WILLIAM BRADY TIMBS)	Case No. 93-35222
a/k/a BILL TIMBS)	
REBECCA LYNN TIMBS)	
a/k/a REBECCA LYNN GROSS)	Chapter 7
)	
Debtors)	

M E M O R A N D U M

This matter is before the court on a motion for stay pending appeal filed by Northside Hospital on May 11, 1994. The motion requests that the court "stay all further proceedings concerning these issues" and refers to this court's March 21, 1994 order, to which Northside Hospital filed a motion for leave to appeal on March 31, 1994; the court's May 4, 1994 order which Northside Hospital appealed by filing a notice of appeal on May 11, 1994; and a hearing presently set for May 17, 1994, on a motion for sanctions against Northside Hospital's counsel, David Lufkin, for his alleged violation of the automatic stay. The grounds offered in support of a stay are the movant's contention that the court never acquired personal jurisdiction over Northside Hospital, and until this issue is resolved on appeal, it would be a waste of judicial economy to conduct any further proceedings.

Rule 8005 of the Federal Rules of Bankruptcy Procedure provides in part that "the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or

make any other appropriate order during the pendency of an appeal " A motion for stay of a judgment or other order pending appeal is discretionary. See *In re Overmyer*, 53 B.R. 952, 955 (Bankr. S.D.N.Y. 1985). The issuance of a stay is appropriate only where the following factors are established: likelihood that party seeking stay will prevail on the merits of the appeal; movant will suffer irreparable injury unless the stay is granted; other parties will suffer no substantial harm if the stay is granted; and public interest will not be harmed if the stay is granted. See *In re Dial Industries, Inc.*, 137 B.R. 247, 249 (Bankr. N.D. Ohio 1992); *In re Microwave Products of America, Inc.*, 102 B.R. 659, 660 (Bankr. W.D. Tenn 1989). Without a substantial indication of probable success on appeal, a court should not issue a stay pending an appeal as there is no justification for a court's intrusion into the normal processes of administration and judicial review. See *In re Porter*, 54 B.R. 81, 82 (Bankr. Okla. 1985).

Movant has failed to address any of the criteria referred to above. The court has previously addressed movant's contention that the court lacked personal jurisdiction over Northside Hospital and found that argument unpersuasive. See memorandum and order entered May 16, 1994, on Northside Hospital's motion to set aside March 21 order. In addition, there is no evidence that Northside Hospital will suffer irreparable injury unless the stay is granted. Accordingly, the court does not find that a stay of further proceedings in this matter is appropriate. Contrary to Northside's assertion that judicial economy will be served if the stay is

granted, the court finds that judicial economy would be served by proceeding with the May 17 hearing. This hearing like one held on April 26, 1994, and this court's March 21, 1994 order, all arise out of the same set of facts and involve the same legal issues - Northside Hospital's failure to stop its garnishment of debtor Rebecca Timbs' wages once Northside Hospital received notice of the debtors' bankruptcy filing. It would appear expeditious for this court to rule on all issues arising out of these facts so that when this matter is considered on appeal, the appellate court will have all of the issues and facts before it.

Although it is not clear from an examination of the motion, this court assumes that Northside Hospital's motion for stay pending appeal seeks only a stay of the May 17 hearing. If Northside Hospital desires to pursue a stay of execution of the monetary sums awarded in the May 4 order or otherwise, the court will entertain a motion, along with a proposed *supersedeas* bond as a condition to the stay. See FED. R. CIV. P. 62(d) as incorporated by FED. R. BANKR. P. 7062; see also 9 COLLIER ON BANKRUPTCY ¶ 8005.03 (1993).

An order will enter in accordance with this memorandum denying Northside Hospital's motion for a stay.

ENTER: May 16, 1994

BY THE COURT



MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE