

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT**

In re BILLY JASON HARWELL, also  
known as B. Jason Harwell,

Debtor.

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BILLY JASON HARWELL,

Appellant,

v.

LYNN MARTINEZ, Trustee,

Appellee.

BAP No. CO-07-053

Bankr. No. 05-41744-ABC  
Chapter 7

ORDER DENYING MOTION  
FOR LEAVE TO APPEAL,  
GRANTING RENEWAL OF  
STAY REQUEST, AND  
DIRECTING CLERK'S OFFICE  
TO SET BRIEFING SCHEDULE

May 11, 2007

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Before BOHANON, McNIFF, and THURMAN, Bankruptcy Judges.

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The matter before the Court is Appellant Billy Jason Harwell's Motion for Leave to Appeal, filed May 2, 2007 (the "Motion for Leave"). Appellee Lynn Martinez, Trustee, filed an Answer In Opposition to Motion for Leave to Appeal on May 3, 2007. Appellant filed its Reply to the Trustee and the Bankruptcy Court on May 4, 2007 (the "Reply"). The Court also has before it Appellant's Emergency Motion for Stay Pending Appeal, filed May 2, 2007, Appellant's Submission of Correction to Appellant's Emergency Motion for Stay Pending Appeal, filed May 3, 2007, Appellant's Appendix in Support of Appellant's Emergency Motion for Stay Pending Appeal, filed May 3, 2007,

*5/11/07*

and the Appellee's Objection to the Emergency Motion for Stay Pending Appeal, filed May 7, 2007.

On May 3, 2007, this Court entered an Order Granting [Appellant's] Motion for Stay of the bankruptcy court's April 27, 2007 Order on Trustee's Motion to Require Debtor to Surrender All Personal Property of the Estate (the "Surrender Order") for a period of 10 days pending the bankruptcy court ruling on a motion for stay of the Surrender Order which the Appellant had previously lodged before it. On May 4, 2007, Appellant filed a Submission of Bankruptcy Court's Order Denying Motion for Stay Pending Appeal, and in its Reply, above, "requests this Panel to extend indefinitely its stay pending appeal, staying enforcement of the [Surrender Order] until final disposition of this Appeal . . . ." Reply at 2. (the "Renewed Stay Request"). Therefore, in addition to seeking leave to appeal, Appellant also seeks a continuation of the stay of the Surrender Order.

The Surrender Order is essentially a turnover order, which is a final order for the purposes of appeal. *In re Yates*, 332 B.R. 1, 3 (10th Cir. BAP 2005). Therefore, no motion for leave to appeal it is necessary. As such, the Motion for Leave is denied.

Insofar as the Appellant requests that we stay enforcement of the Surrender Order pending this appeal, the Court must consider four factors:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

*Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (reviewing standard for stay under Fed. R. Civ. P. 62(c)), *quoted in McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th

Cir. 1996); *see also Lang v. Lang (In re Lang)*, 305 B.R. 905 (10th Cir. BAP 2004), *aff'd*, 414 F.3d 1191, 1201-02 (10th Cir. 2005); *United States v. Various Tracts of Land in Muskogee and Cherokee Counties*, 74 F.3d 197, 198 (10th Cir. 1996). After careful review of the Renewed Stay Request, the Court concludes that the stay imposed should be extended through May 29, 2007, at which time the Trustee's objections to Appellant's claimed exemptions are scheduled to be heard by the bankruptcy court. We cannot see how any party will suffer prejudice in this regard, and there is nothing before us to suggest that Appellant has attempted to secrete or dissipate assets of the estate. We note the Trustee's statement that in regard to certain of Appellant's claimed exemptions, to wit, in his and his family's clothing and to food and fuel, no objection has been interposed, and that this property became de facto exempt on May 10, 2007.

Accordingly, it is HEREBY ORDERED that:

- (1) The Motion for Leave is DENIED as unnecessary.
- (2) The Renewed Stay Request is GRANTED through the date that the bankruptcy court rules on the Debtor's Exemptions and Objections currently set for hearing on May 29, 2007.
- (3) The Clerk is directed to set a briefing schedule in this appeal.

For the Panel:  
Barbara A. Schermerhorn, Clerk of Court

By:



Laura Guice  
Deputy Clerk

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**Case Name:** Billy Harwell v. Lynn Martinez  
**Case Number:** 07-53  
**Document(s):** Document(s)

**Docket Text:**

[56625] ORDER: Order filed by Judges BOHANON; MCNIFF; THURMAN denying Motion for leave to appeal [56535-2], granting the Renewed Stay Request, and directing the Clerk to set a briefing schedule. Mailed and faxed to all parties; docketed to the bankruptcy court CM system. Entry Date: 05/11/2007.

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**07-53 Notice will be faxed to:**

Bolton, Bradford L. = efile to Bk cm/CCF  
Dalton, Virginia M.  
Fulford, Mark L.  
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**07-53 Notice will be mailed to:**

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**RELIEF(S) DOCKETED:**  
**DOCKET PART(S) ADDED:** 41860, 41861