Henry et al v. Rizzolo et al Doc. 647

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KIRK AND AMY HENRY,

Plaintiffs,

vs.

FREDRICK RIZZOLO, aka RICK RIZZOLO, *et al.*,

Defendants.

Case No. 2:08-cv-00635-PMP-GWF

ORDER

This matter is before the Court on Garnishee Defendant Transamerica's Motion for Clarification of Order Dated September 17, 2012 and for Stay of Writ of Execution Pending Clarification (#644, #645), filed on September 27, 2012. This motion has not yet been responded to by Plaintiffs or the Defendant and judgment debtor Kimtran Rizzolo.

Based on the Court's review of Transamerica's motion, however, the Court will stay the enforcement of Order (#634) pending further briefing on Transamerica's motion for clarification of the order, including a determination of its validity and enforceability. In this regard, *Settlemeyer & Sons v. Smith & Harmer*, 124 Nev. 1206, 1214, 197 P.3d 1051, 1056 (2008) states that where a garnishment is contested, the matter must be tried and judgment rendered in a manner similar to civil cases. There has been no trial of the garnishment in this matter in a manner similar to civil cases. Nor does the undersigned Magistrate Judge have the authority to enter final judgment in a civil action absent the consent of the parties to proceed before the Magistrate Judge, which has not occurred in this case. Accordingly,

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IT IS HEREBY ORDERED that Garnishee Defendant Transamerica's Motion for Stay of Writ of Execution Pending Clarification (#645) is **granted** and the enforcement of Order (#634) and the Writ of Execution (#594), pursuant thereto, are **stayed** pending further clarification of Order (#634) and a determination whether said order is valid and enforceable.

DATED this 28th day of September, 2012.

George Foley Jr.

GEORGE FOLEY, JR.
United States Magistrate Judge