

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

RUTHIE M. PERRY,

Case No. 97-26799-L

Debtor.

Chapter 13

MEMORANDUM OPINION AND ORDER GRANTING INTRA-DISTRICT TRANSFER

This matter is before the court upon the motion of the Bank of Milan filed on Monday, June 2, 1997, to transfer venue of this bankruptcy case from the United States Bankruptcy Court for the Western District of Tennessee, Western Division, to the United States Bankruptcy Court for the Western District of Tennessee, Eastern Division. In other words, the creditor seeks an intra-judicial transfer of this bankruptcy case. The matter was submitted to the court and considered on an expedited basis because the debtor has filed an adversary complaint for turnover of an automobile against the moving creditor. The complaint was set for hearing in the Western Division on Tuesday, June 3, 1997, at 10:00 a.m. Counsel for the moving creditor was not available to attend the scheduled hearing because he was involved in first meetings of creditors in Jackson, Tennessee, which are routinely scheduled for Tuesdays of each week. Thus, at the request of the Bank of Milan, the court heard from counsel for the parties at approximately 9:30 a.m. on Tuesday, June 3, 1997, with counsel for the debtor being in chambers and counsel for the Bank of Milan being present telephonically. The parties agreed to submit the motion to the court on stipulated facts. Each of the parties has submitted a legal memorandum which the court has carefully reviewed and considered. The matter was considered without notice to the United States Trustee, the Chapter 13 trustee, or

other creditors and interested parties in order to avoid undue delay to the debtor in having the complaint for turnover considered by the appropriate bankruptcy judge, while not forcing the moving creditor to come to Memphis in the event that it were ultimately determined that administration of the bankruptcy case should proceed in Jackson. For the reasons stated below, the court has concluded that this bankruptcy case should be transferred to the Eastern Division of this judicial district. This memorandum shall constitute the court's findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052. This is a core proceeding. 28 U.S.C. § 157(b)(2)(A).

BACKGROUND FACTS

The relevant background facts are not in dispute and may be summarized as follows: On May 12, 1997, the debtor filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Tennessee, Western Division, in Memphis. David D. James, Jr., a Memphis attorney, represents the debtor.

The petition identifies the street address of the debtor as 111 St. Route 187, Milan, Tennessee. The court takes judicial notice that Milan is located in Gibson County, Tennessee, a county within the Eastern Division of this judicial district. The debtor's Schedule D-Creditors Holding Secured Claims lists two secured creditors, The Bank of Milan, located in Milan, Tennessee, and Security Finance, located in Humboldt, Gibson County, Tennessee. The debtor's Schedule F-Creditors Holding Unsecured Nonpriority Claims lists sixteen creditors, six of whom are

located in Jackson, Madison County, Tennessee; three of whom are located in Trenton, Gibson County, Tennessee; two of whom are located in Humboldt, Gibson County, Tennessee; one of whom is located in Alamo, Crockett County, Tennessee; one of whom is located in McKenzie, Carroll County, Tennessee; and three of whom are located outside the state of Tennessee.

The debtor's Schedule A-Real Property lists no real property owned by the debtor. The debtor's Schedule I-Current Income of Individual Debtor(s) indicates that the debtor has been employed as a teacher in the Trenton Special School District for five years.

Although the debtor did not indicate that she had been a debtor in any prior bankruptcy case, the court's records reflect that the debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code together with her husband on December 29, 1993, in case number 93-12720. That petition was filed and that case was administered in the Eastern Division of the Western District of Tennessee. The case was assigned to Bankruptcy Judge G. Harvey Boswell. The court's records further reflect that the case was converted to Chapter 7 on June 6, 1995, and that the debtors were discharged on October 27, 1995.

The debtor's only apparent contact with the Western Division is that her attorney, David D. James, Jr., maintains his office in Memphis, Shelby County, Tennessee.

ISSUE PRESENTED

Whether the debtor's bankruptcy case, which was filed within the appropriate judicial district, but not in the judicial division of her residence, should be transferred to the division of her

residence.

DISCUSSION

The debtor argues that her case was filed in the proper district, and that because neither the statutes of the United States nor the Local Bankruptcy Rules require the filing to be within a particular division of this judicial district, the debtor is free to file within either division. The debtor is correct that her case was filed within the appropriate judicial district.

The moving creditor argues that a bankruptcy case must not only be filed in the appropriate judicial district, but also in the appropriate judicial division. The creditor relies upon Local Rule 3 of the United States District Court for the Western District of Tennessee, which provides at subsection (c): “a civil action against a single defendant residing in the district must be brought in the division where the defendant resides...” (emphasis added). In addition, the creditor relies upon the decision of Chief Bankruptcy Judge David S. Kennedy in Planters Bank v. Tucker (In re Tucker), No. 85-26772-K, slip op. (Bankr. W.D. TN. Dec. 20, 1989).

Venue in bankruptcy cases is governed by 28 U.S.C. § 1408. That section provides:

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district--

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States,

of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner or partnership.

The debtor is correct that this provision does not require that a bankruptcy case be filed within a particular division of a district court. In re Stolicker Dairy Farms, 67 B.R. 459, 461 (Bankr. E.D. Mich. 1986).

By virtue of 28 U.S.C. § 123, Tennessee is divided into three judicial districts. The Western District is comprised of two divisions as follows:

(1) The Eastern Division comprises the counties of Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley.

The Eastern Division also includes the waters of Tennessee River to low-water mark on the eastern shore wherever such river forms the boundary between the western and middle districts from the north line of Alabama north to the point in Henry County, Tennessee where the south boundary of Kentucky strikes the east bank of the river.

Court for the Eastern Division shall be held at Jackson.

(2) The Western Division comprises the counties of Dyer, Fayette, Lauderdale, Shelby, and Tipton.

Court for the Western Division shall be held at Memphis and Dyersburg.

11 U.S.C. § 123(c) (emphasis supplied).

As Bankruptcy Judge Steven W. Rhodes found in In re Stolicker Dairy Farms, this and other similar sections establishing the judicial districts and divisions for each of the states, is not a venue provision. In re Stolicker Dairy Farms, 67 B.R. at 460 (discussing the federal judicial districts and

divisions in Michigan). To paraphrase Judge Rhodes, 28 U.S.C. § 123 merely creates the Eastern, Middle and Western Districts of Tennessee and divides these districts into divisions by specifying the counties comprising each division. The section further specifies the locations where court can be held in each district.

The United States District Court for the Western District of Tennessee is one court, comprised of two divisions. Pursuant to 28 U.S.C. § 137: “The business of a court having more than one judge shall be divided as provided by the rules and orders of the court.” Pursuant to 28 U.S.C. § 151, “[i]n each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district.” Even though the bankruptcy court is a unit of the district court, the bankruptcy judges for each judicial district are given authority to promulgate their own local rules. Specifically, 28 U.S.C. § 154(a) provides:

Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

As stated above, the objecting creditor in this case relies in part on Local Rule 3 of the United States District Court for the Western District of Tennessee in support of its position that this bankruptcy case should have been filed in the county of the debtor’s residence. That rule incorporates 28 U.S.C. § 1393 which provides:

(a) Except as otherwise provided, any civil action, not of a local nature, against a single defendant in a district containing more than one division must be brought in the division where he resides.

(b) Any such action, against defendants residing in different divisions of the same district or different districts in the same State, may be brought in any of such divisions.

This section does not apply to bankruptcy cases and does not require the filing of a bankruptcy case in the division of the debtor's residence. Even by analogy, a bankruptcy case is not a civil action against a single defendant. The typical bankruptcy case, such as this one, involves numerous parties, each of which may be located in a different judicial district and/or division. Thus, the outcome of this case is not determined by 28 U.S.C. § 1393 or Local Rule 3 of the District Court.

The Local Bankruptcy Rules for the United States Bankruptcy Court for the Western District of Tennessee, promulgated in part pursuant to the authority granted in 28 U.S.C. § 154(a), does not require that a bankruptcy case be filed in the division of the debtor's residence. L.B.R. 1002-1(b) entitled "Divisions," merely states that "The clerk maintains an Office in each Division of this Judicial District." In a footnote, that rule identifies the counties in each of the divisions of the Western District. Under the Local Bankruptcy Rules for the Western District of Tennessee, a debtor residing in the Western District apparently may properly file a voluntary petition in either the Western or Eastern Division. This conclusion is further supported by the fact that there is no administrative policy whereby cases are assigned to the division of the debtor's residence. Cf. In re Steele Cattle, Inc., 101 B.R. 263, 265-66 (D. Kan. 1988).

From all of the above, the court concludes that the debtor's case was properly filed in the Western Division of the Western District of Tennessee.

This does not end the matter, however. One of the creditors in this case has timely filed a

motion to change the venue of this case to the Eastern Division. Pursuant to 28 U.S.C. § 1404(a): “For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” This section is substantially similar to 28 U.S.C. § 1412 which provides: “A district court may transfer a case or proceeding under title 11 [11 U.S.C. §§ 101 et seq.] to a district court for another district.” Similarly, Federal Rule of Bankruptcy Procedure 1014(a)(1) provides:

(a) Dismissal and Transfer of Cases.

(1) Cases Filed in Proper District. If a petition is filed in a proper district, on timely motion of a party in interest, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be transferred to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

While 28 U.S.C. § 1412(a) specifically references cases under title 11, it does not specifically include intra-district transfers. By its terms, it only contemplates transfers from one judicial district to another. The omission of reference to transfers to another division is not explained. The court, is persuaded however, that 28 U.S.C. §§ 1404(a) and 1412 are not mutually exclusive. That is, that permissive transfer of cases under title 11 to another division are permitted by 28 U.S.C. §1404(a). See In re Steele Cattle, Inc., 101 B.R. 263, 265-66 (D. Kan. 1988); see also, In re Stolicker Dairy Farms, 67 B.R. 459 (Bankr. E.D. Mich. 1986) (in which intra-district transfers were permitted by local bankruptcy rule, and the court concluded that such transfers were not statutorily prohibited). This conclusion is further supported by the underlying purpose for the division of large judicial districts into divisions, which can only be for the convenience of the litigants.

Whether to transfer venue of a bankruptcy case where venue is proper lies within the discretion of the court. In re Tucker, supra, slip op. at 8. The court should consider the following factors:

1. Location of creditors;
2. Location of the debtors;
3. Location of witnesses;
4. Location of debtor's assets; and
5. Which forum would provide the most efficient and economical administration of the cases.

In re Steele Cattle, 101 B.R. at 265-66 (citing In re Pickwick Place Ltd. Partnership, 63 B.R. 290 (Bankr. N.D. Ill. 1986)).

Consideration of each of these factors indicates the appropriateness of transferring the venue of this case to the Eastern Division. As noted in the recitation of facts, in this case, the debtor, all of the creditors other than three located outside the state of Tennessee, the debtor's assets, and presumably any witness are all located in the Eastern Division. The debtor is employed in the Eastern Division. The only tie that this debtor has with the Western Division is her attorney. The convenience of counsel is to be given little or no weight in consideration of venue. In re Stolicker Dairy Farms, 67 B.R. at 461 (citing 15 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE, § 3850 at 262 (1976)). The court also notes that the debtor's prior bankruptcy case was filed in the Eastern Division, indicating that the debtor felt that it was a convenient forum at one time.

CONCLUSION

While the debtor's initial choice to file her petition in the Western Division was not improper, the totality of the facts and circumstances in this case decidedly favor a permissive intra-district transfer of this case to the Eastern Division.

Based on the foregoing, IT IS ORDERED:

1. That the Motion to Transfer Venue Filed by the Bank of Milan on June 2, 1997, is hereby GRANTED; and
2. Because this matter was handled on an expedited basis in view of the pending Complaint for Turnover, the Bank of Milan shall immediately give notice of the entry of this order by mailing a copy of it to the United States trustee; the standing Chapter 13 trustees, both for Memphis and for Jackson; and all creditors and interested parties, which shall have a period of ten days from the entry of this order to request a formal hearing on the motion. The Bank of Milan shall file a certificate of service within three days of the mailing indicating its compliance with this order.

BY THE COURT

JENNIE D. LATTA

In re Ruthie M. Perry
Chapter 13 Case No. 97-26799-L
Order Granting Motion for Intra-District Transfer

United States Bankruptcy Judge

Dated: June 5, 1997

cc: David D. James, Jr.
Stephen L. Hughes