

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

Jean E. Perry,

Case No. 02-13366

Debtor.

Chapter 13

MEMORANDUM OPINION AND ORDER RE MOTION TO TRANSFER VENUE

This matter is before the Court upon the motion of Insouth Bank to transfer venue of this bankruptcy case from the United States Bankruptcy Court for the Western District of Tennessee, Eastern Division, to the United States Bankruptcy Court for the Western District of Tennessee, Western Division. In essence, what Insouth is seeking is an intra-district transfer of the debtor's case.

Insouth alleges that because (1) the debtor resides in Tipton County and (2) 28 U.S.C. § 123(c)(2) designates Tipton County as being in the Western Division of the Western District of Tennessee, the debtor's filing of her petition in the Eastern Division is improper.

The Court conducted a hearing on Insouth's motion on September 5, 2002. FED. R. BANKR. P. 9014. After reviewing the testimony from the hearing and the record as a whole, the Court has concluded that this bankruptcy case should be transferred to the United States Bankruptcy Court for the Western District of Tennessee, Western Division. This memorandum opinion and order shall constitute the Court's findings of facts and conclusions of law in accordance with FED. R. BANKR. P. 7052. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding.

I. FINDINGS OF FACT

The debtor in this case, Jean E. Perry, filed her voluntary chapter 13 petition in the United States Bankruptcy Court for the Western District of Tennessee, Eastern Division, on July 30, 2002. According to the petition, Lloyd Utley, a Jackson attorney, represents the debtor. The

debtor's address on the petition is listed as 308 Steven Avenue, Covington, Tennessee. The county of residence is listed as "Tipton."

Perry's Schedule D-Creditors Holding Secured Claims lists one creditor, Insouth Bank, located in Covington, Tennessee. Perry's Schedule F-Creditors Holding Nonpriority Claims lists three creditors, all of whom are located in Covington, Tennessee. Perry's Schedule A-Real Property lists the debtor's residence in Covington, Tennessee.

Perry indicated on her petition that she had previously filed a voluntary chapter 13 petition on November 19, 2001, in case number 01-38047. Although that petition listed the identical address for Perry as the petition in this case, Perry's previous case was filed in the Western Division of the Western District of Tennessee. Perry's attorney in the previous case was Harold D. Archibald of Memphis, Tennessee. Case number 01-38047 was dismissed on May 28, 2002, for failure to pay.

At the hearing on Insouth's motion, the debtor's attorney argued that Perry's 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. Insouth, on the other hand, argued that a bankruptcy case must not only be filed in the appropriate judicial district, but also in the appropriate judicial division.

II. CONCLUSIONS OF LAW

In a case almost identical to the one at bar, *In re Ruthie M. Perry*, No. 97-26799-L, slip op. (Bankr. W.D. Tenn. June 5, 1997) ("Judge Latta's case"), Judge Latta was confronted with the same issue as is before this Court: "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?" In Judge Latta's case, the debtor lived in Gibson County, Tennessee, which is in the Eastern Division of the Western District of Tennessee. Despite residing in the Eastern Division, the debtor in Judge Latta's case filed her bankruptcy petition in the Western Division of the Western District. Like the debtor in the case at bar, the

debtor in Judge Latta's case had also filed a previous bankruptcy petition in the other division of the district.

After looking at the interplay of several statutes and the local rules for both the Bankruptcy Court and the District Court, Judge Latta found that transfer of the case from the Western District of Tennessee, Western Division to the Western District of Tennessee, Eastern Division was appropriate. Because this Court agrees wholeheartedly with Judge Latta's decision in case number 97-26799, it hereby adopts its reasoning, as set forth below in bold print, as its own.

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).

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 [Judge Latta's 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 [in Judge Latta'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. *Planters Bank v. Tucker (In re Tucker)*, No. 85-26772-K, slip op. at 8 (Bankr. W.D. TN. Dec. 20, 1989). 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)). . . . 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)).**

In re Ruthie M. Perry, No. 97-26799-L, slip op. at 4-9.

Based on Judge Latta's thorough analysis of the relevant issues of law, this Court draws the following conclusions. Although the debtor in this case was correct in stating that her case was filed in the appropriate judicial district, consideration of the five factors set forth in Judge Latta's opinion dictate that transfer of this case from the Eastern Division to the Western Division of the Western District of Tennessee is appropriate. The debtor, all of the creditors and all of the debtor's assets are located within the Western Division. As in Judge Latta's case, the only tie this debtor appears to have with the Eastern Division is her attorney. The Court also notes that the debtor in this case filed a prior bankruptcy case in the Western Division, "indicating that the debtor felt that it was a convenient forum at one time." *In re Ruthie Perry*, No. 97-26799-L, slip op. at 9.

ORDER

It is therefore **ORDERED** that the Motion to Transfer Venue filed by Insouth Bank is **GRANTED**.

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: September 26, 2002

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