

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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WESTERN DIVISION
FILED

APR 30 1998

JED G. WEINTRAUB
CLERK OF COURT
WESTERN DISTRICT OF TENN.

In re

LOYD MANLEY,

Case No. 98-22141-L

Debtor.

Chapter 13

MEMORANDUM OPINION AND ORDER CONSIDERING
MOTION THAT CASE BE TRANSFERRED FROM WESTERN DIVISION
TO THE WESTERN DISTRICT OF TENNESSEE EASTERN DIVISION'

The contested matter before the Court is the motion filed by the Debtor's only secured creditor, Chester County Bank ("Bank"), to transfer this case from the Western Division of the Western District of Tennessee to the Eastern Division. The Bank relies on the Debtor's petition, which indicates that the Debtor resided in Homsby, Tennessee. Homsby is located in the Eastern Division of this judicial district. The Bank also relies on the fact that the Debtor's only secured creditor, the Bank, is also located in the Eastern Division. On the date of the hearing in this matter, the Debtor appeared and testified. The Bank waived oral argument. This opinion contains this Court's findings of fact and conclusions of law pursuant to Fed. R. Bank. P. 7052.

BACKGROUND FACTS

The relevant background facts are not in dispute. On February 12, 1998, the Debtor filed his petition for relief in the United States Bankruptcy Court for the Western District of Tennessee,

¹ The caption of the motion filed read: "Motion that Case be Transferred from Western District to the Western District of Tennessee Eastern Division." Based on the content of the motion, the caption should have read as it appears in the caption in this memorandum opinion.

Western Division, in Memphis. Edgar Sugg, a Memphis attorney, represents the Debtor. The petition identifies the Debtor's street address as 830 Sparks Road, Homsby, Tennessee. The Court takes judicial notice that Homsby is located in Chester County, Tennessee, a county within the Eastern Division of this judicial district. The Debtor's Schedule D — Creditors Holding Secured Claims lists one secured creditor, Chester County Bank, located in Chester County, Tennessee. The Debtor's Schedule F — Creditors Holding Unsecured Nonpriority Claims lists one creditor, Willie German Equipment Co., I, located in Somerville, Tennessee, in Fayette County, Tennessee. This Court takes judicial notice that Fayette County is located in the Western Division of this judicial district.

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 by Murray Incorporated for 9 ½ years. Murray Incorporated is located in Jackson, Tennessee, where the Bankruptcy Court for the Eastern Division sits.

Subsequent to filing his chapter 13 petition for relief, the Debtor moved to Mason, Tennessee, which is located in Tipton County, Tennessee. This Court takes judicial notice that Tipton County is located in the Western Division of this judicial district.

ISSUE PRESENTED

Whether the Debtor's bankruptcy case, which was filed in the appropriate judicial district, but not in the judicial division of his residence at the time the petition was filed, should be transferred to the Eastern Division.

DISCUSSION

Proper venue is determined as of the date of the commencement of the case. In *re McCall*, 194 B.R. 590, 593 (Bankr. W.D. Term. 1996). The venue statutes, however, only discuss filing in the proper district. In the instant case, the Debtor in fact filed his petition in the proper district, the Western District of Tennessee. The Bank contends, however, that the Debtor filed his petition in the wrong division. The Debtor contends that it is more convenient for the parties to administer this case in the Western Division. This Court has previously discussed intra-district transfers in *In re Perry*, Chapter 13 Case No. 97-26799-L (W.D. Term. June 5, 1997). In *Perry*, this Court listed five factors to consider:

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.

Perry, Chapter 13 Case No. 97-26799-L at *9 (citing *In re Steele Cattle, Inc.*, 101 B.R. 263, 265-66 (D. Kan. 1988)).

Consideration of these factors indicates the appropriateness of transferring the venue of this case to the Eastern Division. According to Judge William Houston Brown in *In re McCall*, venue is determined as of the date of the commencement of the case. *McCall*, 194 B.R. at 593. Thus, this Court must consider the above listed factors as of the date of filing. At the time the Debtor

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commenced this case, he resided in the Eastern Division. His only secured creditor, the Bank, is located in the Eastern Division. Further, the collateral securing the Bank's note, a 1993 Mazda Pickup, was located in the Eastern Division. The Debtor is employed in the Eastern Division. The only tie that the Debtor had to the Western Division at the time he filed his petition was his 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. 459, 461 (Bankr. E. D. Mich. 1986) (citing 15 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE, §3850 at 262 (1976)). The fact that the Debtor has subsequently moved into the Western Division does not change this Court's analysis. Additionally, the Court notes that the Debtor works in Jackson, Tennessee, where the Bankruptcy Court for the Eastern Division sits.

CONCLUSION

While the Debtor's initial choice to file his petition in the Western District 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 that the Motion to Transfer Venue to the Eastern Division is GRANTED.

BY THE COURT



JENNIE D. LATTA
United States Bankruptcy Judge

Dated: 4-30-98

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cc: Debtor
Debtor's Attorney
Bank's Attorney
Chapter 13 Trustee