

In the United States Bankruptcy Court

for the

Southern District of Georgia

Savannah Division

FILED  
at 9 O'clock & 00 min A.M.  
Date 3/25/04

MICHAEL F. McHUGH, CLERK  
United States Bankruptcy Court  
Savannah, Georgia

Chapter 7 Case

Number 03-43487

In the matter of: )  
 )  
ADAM CRAIG )  
STEPHANIE CRAIG )  
 )  
Debtors )

**MEMORANDUM AND ORDER**  
**ON MOTION TO DISMISS STEPHANIE CRAIG**

Trustee moved to dismiss Stephanie Craig from this joint Chapter 7 case on December 12, 2003. A hearing was held on the motion on January 20, 2004. This Court has jurisdiction over this proceeding pursuant to the standing order of reference of the District Court for the Southern District of Georgia issued pursuant to 28 U.S.C. § 157(a).

**FINDINGS OF FACT**

Debtors filed their joint petition on October 31, 2003. At the § 341 meeting of creditors, Mrs. Craig testified that she established residency in this district on August 4, 2003. Trustee asserts that Mrs. Craig fails to satisfy the venue provisions of 28 U.S.C. § 1408 because she had not been a resident nor had any principal assets located in this district for the 180 days immediately preceding the filing of her Chapter 7 petition or for a longer portion of that 180 days. There is no dispute that Mr. Craig satisfies the venue provisions of 28 U.S.C. § 1408. Trustee asserts that in a joint petition filed under 11 U.S.C. § 302(a) both debtors must satisfy the venue requirements of 28 U.S.C.

cc:

Debtor - Craig  
Debtor's Atty. - Rytte  
Creditor  
Creditor's Atty.  
Trustee - Drake  
U. S. Trustee - James 3/25/04

§ 1408.

CONCLUSIONS OF LAW

Venue in bankruptcy is governed by 28 U.S.C. § 1408 which 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 . . .

Trustee asserts that because a husband and wife who file a joint petition remain separate debtors with separate estates, each debtor must satisfy the venue requirements of 28 U.S.C. § 1408. *See Reider v. FDIC (In re Reider)*, 31 F.3d 1102, 1111 (11th Cir. 1994)(establishing that estates of husband and wife who file jointly remain separate until consolidated).

Debtor relies on 11 U.S.C. § 302(a) which governs joint cases and provides in relevant part:

(a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter

and such individual's spouse.

The plain language of the statute does not require that the spouse also must be eligible to be a debtor under the chapter in order to file as a joint debtor. *See Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 300, 78 L.Ed.2d 17 (1983)(“Where Congress includes particular language in one section of a statute but omits it in another section . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”); *Coggin Auto. Corp. v. Comm’r Internal Revenue*, 292 F.3d 1326, 1332 (11th Cir. 2002)(“The general rule is that unless there is some ambiguity in the language of a statute, a court’s analysis must end with the statute’s plain language.”); *see also* 2 Collier on Bankruptcy ¶ 302.03[1] (15th ed. rev. 2003)(“Under section 302(a), if one spouse meets the eligibility requirements, the other spouse normally need not.”).

Few courts have addressed the issue of whether or not both spouses in a joint case must satisfy the venue requirements of § 1408. The Bankruptcy court in the District of Columbia addressed the issue in a footnote. *In re Feltman*, 285 B.R. 82, 86 n.8 (Bankr. D.D.C. 2002). The court noted that the language in § 1408(1) referring to “the person or entity that is the subject of such case” suggests that both spouses in a joint petition must satisfy the venue requirement. Because a joint petition includes the separate cases of the husband and the wife, each must satisfy the venue requirements in their individual case. Other courts have addressed the issue in the context of which exemption the debtors may choose. *See, e.g., In re Andrews*, 225 B.R. 485 (Bankr. D. Idaho 1998)(debtor-husband who resided in Washington, which had not opted out of federal exemptions, yet elected to file joint petition with wife who resided in Idaho, which had opted out of federal

exemptions, was limited to claiming Idaho state law exemptions).

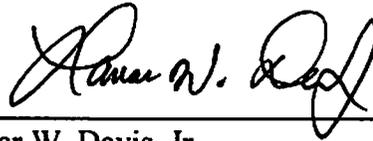
This Court does not find Feltman to be persuasive. First, a leading bankruptcy authority provides that, “[i]f a joint petition is filed by the debtor and the debtor’s spouse, venue is proper if either satisfies the requirements of code § 1408.” 5 Norton Bankruptcy Law and Practice 2d 114:1 (rev. 2003). Second, Congress provided for joint petitions in order to benefit both debtors and creditors. *See* H.R. Rep. No. 95-595, at 321 (1977)(“A joint case will facilitate consolidation of [a husband’s and wife’s] estates, to the benefit of both the debtors and their creditors, because the cost of administration will be reduced, and there will be only one filing fee.”). Because Congress found the ability to file a joint petition to be a substantial benefit to all parties, it waived some of the fundamental eligibility requirements of the spouse filing a joint petition with an individual eligible to be a debtor. *See* 11 U.S.C. § 302. Since Congress deliberately waived eligibility requirements of the second spouse, it would not appear logical to construe venue requirements in such a way as to prevent the filing of joint petitions when one debtor spouse satisfies the venue requirements.

Moreover, this result promotes judicial economy. If Mrs. Craig’s case is held to have been filed in the improper venue, this Court has the option of either dismissing her case or transferring it to the proper venue. Bankr. Rule 1014(a)(2). If her case is transferred to another venue, then the transferee court would be free to, and would likely, transfer it back to this district in the interests of justice and convenience. Bankr. Rule 1014(a)(1). As the House of Representatives noted in support of allowing joint petitions, “[v]ery often, . . . in the consumer debtor context, a husband and wife are jointly liable on their debts, and jointly hold most of their property.” H.R. Rep. No. 95-595,

at 321 (1977). Because of the nature of the debts and the assets, it would be in the interests of justice and convenience to administer these two cases jointly from the outset. Therefore, Trustee's Motion to Dismiss is denied.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Trustee's Motion to Dismiss is DENIED.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 23<sup>rd</sup> day of March, 2004.