

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
03 MAY -8 AM 10:59  
U.S. BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

ENTERED

C/A No. 03-03334-W

Terry Lee Henry,

MAY 08 2003

ORDER

Debtor. **R. S. S.**

Chapter 7

THIS CASE comes before the Court upon an Amendment to Petition filed by Terry Lee Henry ("Debtor" or "Mr. Henry") on April 28, 2003. Debtor filed a Voluntary Petition (the "Petition") seeking Chapter 7 relief on March 18, 2003. The Petition lists Mr. Henry as the sole debtor of this bankruptcy case. On the second page, the Petition appears to be signed by Mr. Henry and his wife, Nanette Hargrove Henry ("Ms. Henry"). The Clerk of Court treated the Petition as an individual filing with Mr. Henry as the only debtor in the case. A Notice of Chapter 7 Bankruptcy Case was served upon listed creditors on March 19, 2003. A Meeting of Creditors was held on April 17, 2003, and the Chapter 7 Trustee filed a Report of No Distribution on May 6, 2003.

Debtor now seeks to amend his Petition to add Ms. Henry as a debtor, ostensibly to provide her the relief of Debtor's Chapter 7 case retroactively. The Court infers that the failure to include Ms. Henry on the Petition was a clerical mistake and that her signature on the second page indicates her intention to file a joint case with Mr. Henry. However, it is not the responsibility of the Court or Clerk's office to ferret out or infer the parties' intent when filing a Petition. It is the responsibility of Debtor and his counsel to properly complete the Petition. Additionally, the attempt to correct the apparent mistake in this fashion after service of the Notice to Creditors, the Meeting of Creditors, and the Trustee's filing of a Report of No Distribution may be prejudicial.

It is well settled that a debtor may not amend her petition in order add her spouse as a joint

debtor retroactive to the date of her petition. See Olson-Ioane v. Derham-Burk (In re Olson), 253 B.R. 73 (B.A.P. 9<sup>th</sup> Cir. 2000); In re Clinton, 166 B.R. 195 (Bankr. N.D. Ga.1994); In re Sobin, 99 B.R. 483 (Bankr. M.D. Fla.1989); In re Kirkus, 97 B.R. 675 (Bankr. N.D. Ga.1987); In re Woodell, 96 B.R. 614 (Bankr. E.D. Va.1988); In re Masterson, 55 B.R. 648 (Bankr. W.D. Pa.1985) (dictum); In re Austin, 46 B.R. 358 (Bankr. E.D. Wisc.1985).

“Nothing in section 302 suggests that a debtor may amend her petition to add a spouse as a debtor and thereby retroactively commence a case for that spouse.” Clinton, 166 B.R. at 196. Allowing such an amendment only raises legal issues regarding the effective date of any order of relief, notice to creditors, and discharge as to the added spouse.

The proper remedy is for the spouse to file her own Petition and for the parties to move for administrative or substantive consolidation if they wish.

Therefore, the Amendment to Petition filed on April 28, 2003 is stricken.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
May 7, 2003.

  
UNITED STATES BANKRUPTCY JUDGE