

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

In re)	
)	
ROBIN KAY ARWOOD)	Case No. 94-20530
)	Chapter 7
)	
Debtor)	

MEMORANDUM AND ORDER

The debtor filed an "Amendment to Petition and Schedules" on May 6, 1994, requesting that her voluntary petition under Chapter 7 filed April 7, 1994, be amended to add the name of her husband, Clay Aze Arwood. Attached to the amendment were new schedules and a new petition executed by both Mr. and Mrs. Arwood. By this amendment, the debtor seeks to convert her individual case to a joint case.

Section 302 of the Bankruptcy Code provides in material 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 spouse. The commencement of a joint case under a chapter of title constitutes an order for relief under such chapter.

11 U.S.C.A. § 302 (West 1979).

Although FED. R. BANKR. P. 1009(a) provides that a voluntary petition may be amended by the debtor as a matter

of course at any time before the case is closed, the courts that have considered this matter have concluded that this right to amend the petition does not extend to adding a new debtor to create a joint case even if the new debtor is the spouse of the original debtor. *In re Clinton*, 1994 WL 149691 (Bankr. N.D. Ga.); *In re Sobin*, 99 B.R. 483 (Bankr. M.D. Fla. 1989); *In re Woodell*, 96 B.R. 614 (Bankr. E.D. Va. 1988); *In re Austin*, 46 B.R. 358 (Bankr. E.D. Wis. 1985). As observed by one court:

Section 302(a) prescribes the only manner in which a joint petition may be commenced, *i.e.* both spouses must file the petition concurrently. It does not allow for conversion to a joint case simply by amendment to the petition. Instead, the other spouse must also file a petition so as to "commence" that spouse's own case.

In re Sobin, 99 B.R. at 483.

The rationale for this holding is as follows:

[T]he filing date of the bankruptcy petition is of fundamental importance to the case since a number of rights, obligations, and deadlines are determined by that date. This includes such matters as the property included in the bankruptcy estates; the debts to be discharged; the scheduling of a creditors' meeting under § 341(a); the imposition of the automatic stay; the deadlines for filing dischargeability, lien avoidance, and preference avoidance complaints; and the time for assuming or rejecting executory contracts.

Although the Court recognizes that very little harm may actually occur if the [amendment were allowed], ... add[ing] a spouse in this manner

raises serious questions as to the appropriate filing date. These questions are avoided by requiring the spouse to file a separate petition as appears to be contemplated by §§ 301 and 302. In the appropriate situation, the two cases can then be consolidated for joint administration upon the debtor's request.

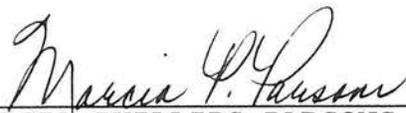
In re Sobin, 99 B.R. at 484; See also *In re Woodell*, 96 B.R. at 615.

Accordingly, the court directs that the amendment filed May 6, 1994, by the debtor Robin Kay Arwood, seeking to add her husband, Clay Aze Arwood, to her individual case as a co-debtor is DISALLOWED without prejudice to the right of Mr. Arwood to file an individual case pursuant to 11 U.S.C.A. § 301 (West 1979).

SO ORDERED.

ENTER: May 17, 1994

BY THE COURT



MARCIA PHILLIPS PARSONS
United States Bankruptcy Judge