

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
CLEVELAND WILLIAMS,) CASE NO. BK00-40865
) CH. 13
DEBTOR.) Filing No. 31, 38

MEMORANDUM

Hearing was held on Motion by Evelyn Johnson to Permit Late Filing of a Claim and Objection by the Debtor. Appearances: Gene Oglesby as attorney for debtor and Jay Dorsey as attorney for claimant. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A) and (B).

Facts

Evelyn Johnson, who lives in Washington, D.C., is the personal representative of her daughter's estate. Ms. Johnson's daughter died in 1991 from complications with her pregnancy. Ms. Johnson filed a wrongful death action against Dr. Williams in Washington, D.C., on behalf of her grandson, who was delivered shortly before his mother died. This child is the sole beneficiary of his mother's estate.

The wrongful death suit was stayed upon the filing of Debtor's previous Chapter 13 case in 1994. That bankruptcy case was ultimately dismissed. Ms. Johnson reinstated her litigation against the Debtor, who promptly filed the current Chapter 13 case. Dr. Williams listed Ms. Johnson's claim as unsecured and disputed. This \$5 million claim represents the vast majority of Debtor's \$5.3 million debt.

The claims bar date in this case was November 7, 2000. Ms. Johnson did not file a timely proof of claim because she believed that her claim was "listed" and would be included in any distribution under the plan. When a motion to confirm the plan was filed, Ms. Johnson learned her claim was not treated in the plan. She then filed a proof of claim and an objection to confirmation. When the confirmation hearing was held on December 6, 2000, Ms. Johnson was given 10 days to file a motion for leave to file her claim out of time. The tenth day was a weekend day, and so the motion should have been filed by Monday, December 18, 2000. It reached the Office of the Clerk on the

19th.

Dr. Williams objects because the claim originally filed is untimely and the motion referred to by Judge Minahan is untimely, by one day.

Law and Discussion

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. With certain exceptions, a proof of claim must be filed "not later than 90 days" after the first date set for the first meeting of creditors pursuant to 11 U.S.C. § 341.

Courts strictly construe this deadline. The proof of claim must be filed with the Court on or before the last date for filing. Simply putting the claim in the mail on or before the deadline is insufficient if it is received after the deadline. In re Bailey, 151 B.R. 28, 33-34 (Bankr. N.D.N.Y. 1993). The Court has no equitable power to enlarge the filing period after it has passed. Gardenhire v. Internal Revenue Serv. (In re Gardenhire), 209 F.3d 1145, 1150-51 (9th Cir. 2000), and cases cited therein.

However, the Federal Rules of Bankruptcy Procedure provide specific limited exceptions to this stringent requirement. Rule 3002(c) permits the Court to enlarge the period for filing claims if certain circumstances are met. The circumstances include a proof of claim on behalf of an infant: "(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either."

Ms. Johnson asserts that as the representative of her grandson, who is the ultimate beneficiary of any recovery in the Washington wrongful death lawsuit, the "infant exception" should apply to her claim.

Ms. Johnson further asserts that excusable neglect is a valid reason under Rule 9006(b) for enlarging the time in which to file her proof of claim. Courts, however, do not agree on whether an extension based on excusable neglect is available in Chapter 13 cases. Compare In re Moore, 247 B.R. 677 (Bankr. W.D. Mich. 2000) (claimant must establish excusable neglect) with In re Stewart, 247 B.R. 515 (Bankr. M.D. Fla. 2000) (Supreme

Court's decision in Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993), excludes Rule 3002(c) from excusable neglect standard).

The merits of the parties' excusable neglect arguments do not need to be addressed. Ms. Johnson's claim was filed 28 days late and the motion was filed one day date. The claim, however, is not a surprise to Dr. Williams. If Ms. Johnson's claim is disallowed as untimely, Dr. Williams' obligation, if any, to Ms. Johnson will have been determined on a technicality rather than on the merits. The Bankruptcy Code is not intended to be a trap for unwary creditors. Because Ms. Johnson's situation arguably falls under the Rule 3002(c)(2) exception, I will extend the time for filing her proof of claim. I find that such an extension is in the interest of justice and will not unduly delay administration of this case. The proof of claim filed on December 5, 2000, is, therefore, timely.

IT IS ORDERED the Motion by Evelyn Johnson to Permit Late Filing of a Claim (Fil. #31) is granted.

Separate journal entry to be filed.

DATED: February 16, 2001

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:
Gene Oglesby, Atty. for Debtor, 402-476-8002
Jay B. Dorsey, Atty. for Evelyn Johnson, 202-544-2701

Copies mailed by the Court to:
United States Trustee
Kathleen Laughlin, Ch. 13 Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties not listed above if required by rule or statute.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
CLEVELAND WILLIAMS,)	CASE NO. BK00-40865
)	A
<u>DEBTOR(S)</u>)	
)	CH. 13
)	Filing No. 31, 38
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	
)	DATE: February 16, 2001
<u>Defendant(s)</u>)	HEARING DATE: February 14, 2001

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion by Evelyn Johnson to Permit Filing of Late Claim and Objection by Debtor.

APPEARANCES

Jay Dorsey, Attorney for claimant
Gene Oglesby, Attorney for debtor

IT IS ORDERED:

The Motion by Evelyn Johnson to Permit Late Filing of a Claim (Fil. #31) is granted. See Memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

Gene Oglesby, Atty. for Debtor, 402-476-8002
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