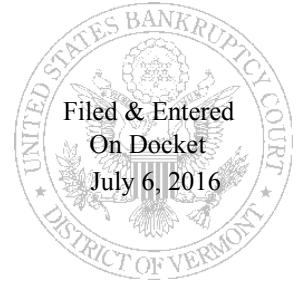


UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT



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**In re:**

**David A. Degree,  
Debtor.**

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**Chapter 7 Case  
# 16-11294**

**ORDER**

**DENYING DEBTOR'S MOTION TO AMEND PETITION TO ADD SPOUSE AS JOINT DEBTOR**

On Thursday, June 30, 2016, the Debtor filed an individual Chapter 7 case (doc. # 1). Late the next evening, the Debtor filed a motion to amend his petition to add his spouse and have the case proceed as a joint filing (doc. # 4, the "Motion"). The Motion asserts the Debtor's initial petition "inadvertently omitted [his spouse] through a software error." The notice of commencement of the bankruptcy case was issued on July 3, 2016 (doc. # 6). The question the Motion presents is whether a debtor may change a bankruptcy filing from an individual case to a joint case by amending the petition.

Both the Bankruptcy Code and Rules address an aspect of this question but neither provides a clear and direct answer. The Code provision governing the filing of joint bankruptcy cases states:

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.

11 U.S.C. § 302(a)(emphasis added). The Bankruptcy Rule which describes the process for amending documents filed in a bankruptcy case provides:

A voluntary petition... may be amended by the debtor as a matter of course at any time before the case is closed.

Fed. R. Bankr. P. 1009(a).

Bankruptcy courts which have considered motions to amend a petition to add a joint debtor have generally denied them, often based upon the language of the Code.<sup>1</sup> For example, in *In re Chilson*, 525 B.R. 130 (Bankr. D.N.M. 2015), the court reviewed the cases on point and reasoned as follows:

While the language [of § 302] could be interpreted to allow a later, amended petition signed by both spouses, which theoretically would then "commence" the "joint case" (as opposed to the single case before the amendment), such a reading seems artificial and strained. Use of the terms "joint," "commenced," and "single petition" together in the sentence strongly imply [sic] the intention to require that a single petition, signed by both debtors, be filed at the beginning of the case, resulting in one petition date and one order for relief.

In re Chilson, 525 B.R. at 132. That court also considered the language of Bankruptcy Rule 1009(a) and determined it did not allow an individual debtor to amend his petition to add a joint debtor:

[C]ourts agree that Rule 1009(a) cannot be read to allow a change in the identity of the debtor. Furthermore, it is axiomatic that in the event of a conflict between the Code and the Rules, the Code wins.

In re Chilson, 525 B.R. at 132-33 (citations omitted). The leading bankruptcy treatise points out that an amendment of the petition to add a joint debtor “may not be improper in every case and should be considered in light of the circumstances of the particular case.” However, it cites only a single (1987) decision where it was allowed,<sup>2</sup> and acknowledges the confusion such amendments may cause in the administration of bankruptcy cases, particularly concerning the bankruptcy filing date. See 2 COLLIER ON BANKRUPTCY ¶ 302.02[3] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.); see also In re Olson, 253 B.R. 73 (9th Cir. BAP 2000); In re Daly, No. 07-22628-13, 2008 WL 276538 (Bankr. D. Kan. Jan. 30, 2008); In re Kilgore, No. 04-90855, 2004 WL 5848036 (Bankr. N.D. Ga. Mar. 19, 2004).

Here, the filing of the Motion on a late Friday evening preceding a 3-day holiday weekend meant that no one in the Clerk’s Office would have been aware of or able to process it until the following Tuesday morning – five days after the Debtor filed his (individual) petition. Additionally, the Motion sets forth no extraordinary circumstances that would demonstrate an equitable basis to allow the conversion of the case to a joint filing, and presents no facts that would offset the potential complications that could be caused in the administration of the case if a joint debtor were added at this time. Also significant to the Court’s decision is the fact that the Debtor does have a remedy: the Debtor’s spouse may file her own case and then seek joint administration with the instant case under Bankruptcy Rule 1015(b). See In re Chilson, 525 B.R. at 136; In re Olson, 253 B.R. at 75; In re Daly, 2008 WL 276538 at \*2.

In sum, given the paramount importance assigned to the filing date of the petition, the benefits and rights available to the named debtor in a bankruptcy case which arise and depend upon the filing date, the particular facts of this case, and the existence of a reasonable alternative to amending the petition,

IT IS HEREBY ORDERED that the Debtor’s Motion is denied.

July 6, 2016  
Burlington, Vermont



Colleen A. Brown  
United States Bankruptcy Judge

<sup>1</sup> While there are many bankruptcy court decisions addressing this issue, there are none from within the Second Circuit.

<sup>2</sup> See In re Kirkus, 97 B.R. 675 (Bankr. N.D. Ga. 1987).