

IT IS SO ORDERED.

Dated: July 15, 2015  
11:35:01 AM



*Kay Woods*  
 Kay Woods  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

DAVID E. COOK,

Debtor.

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CASE NUMBER 15-40698

CHAPTER 13

HONORABLE KAY WOODS

\*\*\*\*\*  
 ORDER GRANTING MOTION FOR JOINT ADMINISTRATION WITH  
 CHAPTER 13 CASE NO. 14-42512  
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This cause is before the Court on Motion for Consolidation of Cases Pending in the Same Court Pursuant to 11 U.S.C. Section 302 and Rule 1015(b) ("Motion to Consolidate") (Doc. 21) filed by Debtor David E. Cook, through counsel Robert L. Herman, Esquire, on May 25, 2015. Mr. Cook seeks to consolidate his chapter 13 case, which was filed on April 20, 2015, with the chapter 13 case of his wife, Diana L. Cook, Case No. 14-42512, which was filed on December 9, 2014 through Mr. Herman. Mr. Cook states that (i) he

is married to Mrs. Cook (Mot. to Cons. ¶ 3); (ii) he and Mrs. Cook reside together (*id.*); (iii) he and Mrs. Cook have common creditors (*id.* ¶ 5); and (iv) his income is the sole source of funding for both his chapter 13 case and Mrs. Cook's chapter 13 case (*id.* ¶ 4).

Mr. Cook further represents that he "would have been eligible to file jointly with his wife at the time of the commencement of the related case." (*Id.* ¶ 6.) This statement does not appear to be true because Exhibit D - Individual Debtor's Statement of Compliance with Credit Counseling Requirement and the attached Certificate of Counseling (Doc. 3) indicate that Mr. Cook took the required credit counseling on April 19, 2015. Based on these documents, it does not appear that Mr. Cook would have been eligible to be a debtor when Mrs. Cook filed her case on December 9, 2014. See 11 U.S.C. 109(h) (2015).

Section 302 of the Bankruptcy Code permits a husband and wife to file a joint case.

(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 commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.

(b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated.

11 U.S.C. § 302 (2015). As set forth above, § 302 contemplates the joint debtors filing a single petition with one date for the order for relief. That is not the situation before the Court.

Federal Rule of Bankruptcy Procedure 1015(b), Consolidation or Joint Administration of Cases Pending in Same Court, provides:

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, . . . the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. . . .

FED. R. BANKR. P. 1015(b) (2015). In the present situation, there are two petitions pending before this Court for a husband - David E. Cook - and a wife - Diana L. Cook; thus, Rule 1015(b), which provides for joint administration of these two cases, is applicable. Accordingly, the Court hereby grants the Motion to Consolidate, to the extent it seeks joint administration of the two cases, with the case of Mrs. Cook, Case No. 14-42512, being the lead case. All notices and filings in either case shall bear the following caption:

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re:	)	Case No. 14-42512
	)	Jointly Administered
Diana L. Cook and	)	
David E. Cook,	)	Chapter 13
	)	
Debtors,	)	Honorable Kay Woods

Despite the joint administration, however, unlike a case filed pursuant to § 302, there is not one order for relief. The date each debtor filed her/his petition is the date of the order for relief in her/his respective case.

Mr. Cook claims that substantive consolidation will not cause harm to his or Mrs. Cook's creditors (Mot. to Cons. ¶ 8) and that consolidation of these two cases is necessary in order to fund a feasible plan to pay his and Mrs. Cook's creditors (*id.* ¶ 7). However, it is not yet clear to the Court whether substantive consolidation of the two cases will work any hardship upon the creditors of either bankruptcy estate.

In the case of Mrs. Cook, the chapter 13 plan (Doc. 2) was confirmed on February 17, 2015. The Confirmation Order (Doc. 14) provides for Mrs. Cook (evidently through contributions by Mr. Cook) to make payments of \$1,085.00 per month for 60 months, with a dividend to unsecured creditors of 100%. Mr. Cook lists both secured and unsecured creditors on his schedules that are not scheduled by Mrs. Cook. When Mr. and Mrs. Cook propose a modified plan in the jointly administered case pursuant to 11 U.S.C. § 1329, the Court will determine if consolidation is appropriate.

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