

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 02-20945
)
ROSE E. ELLIOTT,) Chapter 7
)
Debtor.) Judge Arthur I. Harris

ORDER DENYING MOTION TO REOPEN CASE TO ADD NEW CREDITOR

Before the Court is the debtor's motion to reopen her Chapter 7 case to add an unsecured creditor (Docket # 11). In her motion, the debtor requests that the Court reopen her case to allow her to add an unsecured creditor who was omitted from her original schedules and has now filed a civil lawsuit in the Vermilion Municipal Court. The debtor states that the omission of the creditor was inadvertent. For the reasons that follow, the Debtor's motion is denied.

On September 30, 2002, the debtor filed her Chapter 7 bankruptcy case. On November 18, 2002, the Chapter 7 Trustee filed a report stating that this is a no-asset case (Docket # 5). On January 16, 2003, the order of discharge was entered (Docket # 7). On March 12, 2003, this case was closed. On January 12, 2004, the debtor filed her motion to reopen the case.

The Court has reviewed the case file, docket, debtor's motion, and relevant case law. Based upon that review, the Court finds that it is unnecessary to reopen the debtor's no-asset Chapter 7 case to amend the schedules in order to obtain a

discharge of the previously omitted debt. Pursuant to the decision of the Sixth Circuit in *Zirnhelt v. Madaj*, (*In re Madaj*), 149 F. 3d 467(6th Cir. 1998), reopening a Chapter 7 no-asset case merely to schedule an omitted, and otherwise dischargeable, debt is a useless and unnecessary gesture. In *Zirnhelt* the Court faced facts similar to the present case and stated “the reopening of Debtors’ Chapter 7 case to permit the amendment of the schedules can have no effect whatsoever. The debt in question, listed or not, is discharged.” 149 F. 3d at 472. Accordingly, in this Chapter 7 no-asset case, the omitted debt, if otherwise dischargeable, was discharged when the order of discharge was entered on January 16, 2003.¹ *Accord In re Williams*, 291 B.R. 445 (Bankr. E.D. Tenn. 2003).

Therefore, the debtor’s motion to reopen her Chapter 7 case is denied.

¹ If there is a dispute as to the nondischargeable nature of any omitted debt, the debtor and creditor are both free to pursue the issue of nondischargeability by moving to reopen the case and filing an adversary proceeding in the Bankruptcy Court or by pursuing an action for a declaratory judgment in state court. *See* 11 U.S.C. §§ 350 (b), 523(a)(3); FED. R. BANKR. P. 4007(b); *In re Dixon*, 295 B.R. 226, 231-32 (Bankr. E.D. Mich. 2003) (granting creditor's motion to reopen case to pursue nondischargeability complaint). *See also* L. Helbling & C. Klein, *The Emerging Harmless Innocent Omission Defense to Nondischargeability Under Bankruptcy Code § 523(a)(3)(A): Making Sense Of The Confusion Over Reopening Cases And Amending Schedules To Add Omitted Debts*, 69 Am. Bankr. L.J. 33, 44-45, 59-63 (1995).

IT IS SO ORDERED.

/s/ Arthur I. Harris 01/28/2004
Arthur I. Harris
United States Bankruptcy Judge