

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.

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CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
TOLEDO



Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 07-31409
)	
Alan L. Bigham)	Chapter 7
Rae J. Bigham,)	
)	
Debtors.)	JUDGE MARY ANN WHIPPLE

ORDER DENYING MOTION TO SEVER

This case is before the court on Debtor Rae Bigham’s motion to sever her case from her spouse’s jointly filed case (“Motion”) [Doc. # 40] and Chapter 7 Trustee Bruce Comly French’s (“Trustee”) opposition to the Motion.

Debtors Alan L. Bigham and Rae J. Bigham are husband and wife. They filed a joint petition under Chapter 7 of the Bankruptcy Code on April 14, 2007. In their petition, Debtors properly identified on their Schedules A and B ownership of real and personal property as either jointly or individually owned and identified their debts on their Schedules D and F as husband’s debts, wife’s debts or joint debts. All of their secured debts on Schedule D are scheduled as joint debts and there are joint debts, husband’s debts and wife’s debts scheduled as unsecured debts on Schedule F.

Debtors jointly appeared at the meeting of creditors conducted by the Trustee on June 12, 2007. [See Doc. # 15]. They both received a discharge on August 17, 2007. [Doc. # 16]. The Trustee filed his no asset report on August 21, 2007. [Doc. # 15]. The final decree was issued and the case was then closed by the Clerk of Court on August 21, 2007. [Doc. # 18]. On October 21, 2007, the Trustee filed a motion to reopen

the case and defer the filing fee, indicating as the basis for reopening that “[m]onies are to be received from an inheritance.” [Doc. # 20]. The motion to reopen was granted by order entered without objection on October 26, 2007. [Doc. # 21].

On the request of the Trustee, the Clerk of Court issued a notice of assets and of the need to file claims by April 7, 2008. [Doc. # 27]. Subsequently, also on the Trustee’s motion, the court authorized notice of surplus funds and of an extended deadline for creditors to file claims against the surplus. [Doc. # 38]. The Clerk of Court gave notice of an extended deadline of May 25, 2008, by which claims against the surplus funds were to be filed. [Doc. # 39]. By the original deadline of April 7, 2008, a total of \$34,336.11 in claims had been filed. [Court Claims Register]. There were no additional claims filed by the surplus bar date. [*Id.*].

Debtor Rae Bigham then filed her Motion to sever her case from the joint case of her co-debtor and spouse Alan Bigham. The grounds for the Motion are that the assets recovered by the Trustee are due solely to the inheritance received by Rae Bigham, and that her case should be severed and separately administered from Alan Bigham’s case so that only her creditors and joint creditors are paid from those assets while creditors of Alan Bigham are not paid from those assets, thereby increasing the surplus to be paid back to her. The Motion reports that the total received by the estate on account of the inheritance is \$74,461.78, as compared to the total of \$34,336.11 in claims filed.¹ The Trustee opposes Rae Bigham’s Motion as premature, on the ground that the proper allocation of debts cannot be determined and that severance would be prejudicial to creditors. He does not contest that the source of the assets available to be administered is an inheritance paid to Rae Bigham, only, and that only her assets comprise the estate to be administered.

Both parties misconstrue the import of the filing of a joint case by spouses as permitted by 11 U.S.C. § 302. Debtor Rae Bigham’s Motion and the Trustee’s opposition, to some extent, proceed from the erroneous premise that a joint filing, without more, effects a substantive consolidation of the assets and liabilities of the spouses. A joint petition filed by spouses as permitted by § 302(a) does not result in a substantive consolidation of the estate of both debtors but, rather, creates two separate estates. *Wornick v. Gaffney*, 544 F.3d 486, 491-92 (2d Cir. 2008); *Bunker v. Peyton (In re Bunker)*, 312 F.3d 145, 150 (4th Cir. 2002); *Reider v. Federal Deposit Insurance Corp. (In re Reider)*, 31 F.3d 1102, 1109 (11th Cir. 1994); *In re Greer*, 242 B.R. 389, 395 (Bankr. N.D. Ohio 1999)(“[I]t is clear that the filing of a joint petition in bankruptcy creates two separate and distinct estates.”); *In re Bowshier*, 313 B.R. 232, 239 (Bankr. S.D. Ohio

1

The most recent interim Form 1 Individual Estate Property Record and Report Asset Cases and Form 2 Cash Receipts And Disbursements Record filed by the Trustee shows net receipts of \$74,562.20, of which the total of \$74,461.78 is attributed to 1/3 of Jean Lehman Life Estate. [Doc. # 53].

2004); *In re Hicks*, 300 B.R. 372, 378 (Bankr. D. Idaho 2003); *In re Knobel*, 167 B.R. 436, 437, 439, n.4, 440-41, 442 (Bankr. W.D. Tex. 1994)(footnote four collects many pre-and post-Bankruptcy Code cases addressing this issue); *In re Gale*, 177 B.R. 531, 534-35 (Bankr. E.D. Mich. 1995)(also collecting cases); 2 Alan N. Resnick, et al., *Collier on Bankruptcy* ¶ 302.01(15th ed. 2002); see *In re McAlister*, 56 B.R. 164 (Bankr. D. Or. 1985)(states that debtor wife has standing to object to claims of creditors of only late debtor husband); *In re Jorzak*, 314 B.R. 474, 479-80 (Bankr. D. Conn. 2004)(also addressing standing of debtor with assets to object to claims against estate of other debtor). That separate estates are created is acknowledged by the statute's provision that "[a]fter 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(b). As one court explained, the filing of a joint petition "has the effect of allowing two estates to be administered by one Trustee on the theory that this would allow for more efficient administration." *In re McCulley*, 150 B.R. 358, 360 (Bankr. M.D. Pa. 1993). Substantive consolidation, on the other hand, creates a single estate from the two individual estates, *Bunker*, 312 F.3d at 153-54, but does not occur absent a specific determination and order by the court, see *Hicks*, 300 B.R. at 378; *Greer*, 242 B.R. at 395, n.3; *In re Lindstrom*, 331 B.R. 267, 270 (Bankr. E.D. Mich. 2005). Indeed the schedules of assets and liabilities that are part of the Official Bankruptcy Forms that debtors are required to use, Fed. R. Bankr. P. 1007, contemplate separate administration of the two estates. Schedules A and B listing debtors' property interests require them to designate whether property is "Husband, Wife, Joint or Community." Similarly, Schedules D, E and F listing debtors' liabilities require them to designate as to each debt whether it is "Husband, Wife, Joint or Community."

In this case no party in interest has at any point in the proceedings requested substantive consolidation of the separate estates of Rae Bigham and Alan Bigham and the court has not at any point determined that Debtors' jointly filed Chapter 7 case petition should be substantively consolidated. No order consolidating the two estates was entered either before the case was administratively closed by the Clerk of Court or after it was reopened on the Trustee's motion. It is not this court's practice to enter consolidation orders routinely in Chapter 7 cases in the absence of a request by a party in interest to do so. The court lacks the effective procedural framework through which the ownership of assets actually administered and claims to be paid can be determined such that substantive consolidation could properly be effected on an *ex parte* basis and without notice and an opportunity for hearing. See *Lindstrom*, 331 B.R. at 270. Nor is there a local bankruptcy rule or general order that would effect substantive consolidation in the absence of an order sought by a party in interest. In the vast majority of joint Chapter 7 cases filed under § 302 in this court, it

makes no difference whether the estates are substantively consolidated or not, either because there are no assets to be administered in the first place or because the household assets and liabilities are in fact joint. This is one of the rare cases in which the assets to be administered, and likewise it appears all of the liabilities, are not joint, and substantive consolidation would make a material difference in who gets paid.

In the absence of a substantive consolidation of the separate estates of Debtor Rae Bigham and Debtor Alan Bigham, the Trustee must administer the two estates that were created at the time of filing separately. *Id.*; *Hicks*, 300 B.R. at 378. Debtor Rae Bigham's Motion proceeds from the assumption that in the absence of severance, Rae Bigham's assets will be used to pay Alan Bigham's individual creditors. Regardless of whether Rae Bigham's case proceeds under a separate case number or continues under the existing case number, the two estates must be separately administered. Whether there is one case number or two case numbers, the results in terms of distribution to creditors should be the same.

The only reason the court can see for possibly severing Rae Bigham's case from Alan Bigham's case at this point is if estate administration would be more transparent and more efficient. *Cf. In re Shjeflo*, 383 B.R. 192 (Bankr. N.D. Okla. 2008). At this point, the court does not believe it would be, and that creditors would more likely be prejudiced by severance at this late date. They have been given multiple notices of the commencement of the joint case, of Debtors' discharge, of reopening of the case and of two deadlines to file claims under the existing case number. Splitting Rae Bigham's case off to a new case number would require that claims be re-filed under that case number. The likelihood at this point is that confusion would reign and that some creditors would simply fail to respond to a new claims bar date. Any complexity the Trustee faces in claims administration and deciding who to pay and who not to pay would likely not be lessened. The court also notes that his administration will be assisted by the fact that Debtors' schedules in this case have been comprehensively and properly filled out, and in fact do list creditors as husband, wife or joint. Likewise, a brief review of the claims filed by creditors shows that most can be independently determined from those documents as being joint, husband or wife. Moreover, the 1/3 Jean Lehman Life Estate interest that the Trustee's Form 1 identifies as being administered was specifically identified on Debtors' Schedule B as being the Debtor wife's asset, with all other assets also being identified as to ownership. Yet no party in interest has requested substantive consolidation of the two separate estates to date.

Based on the foregoing reasons and authorities, the court finds that Debtor Rae Bigham's Motion to sever her case from her jointly filed spouse's case to effect separate administration of the two estates is unnecessary, will not enhance efficiency of administration of either Debtor's estate and will be denied as moot.

THEREFORE, good cause appearing,

IT IS ORDERED that Debtor Rae J. Bigham's Motion for Severance of the Consolidated and Jointly Administered Case [Doc. # 40] be, and hereby is, **DENIED**.