

FOR ELECTRONIC PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 09-13013  
)  
DAN W. ELLIOTT, JR. and ) Chapter 7  
YSTEMIA JACKSON, )  
) Judge Pat E. Morgenstern-Clarren  
Debtors. )  
) **MEMORANDUM OF OPINION**

The United States trustee moves to dismiss the chapter 7 case filed by debtors Dan Elliot and Ystemia Jackson alleging that they were not married when they filed their petition and are not, therefore, eligible to be joint debtors.<sup>1</sup> The debtors oppose the motion on the ground that they have been in a common law marriage since 1985.<sup>2</sup> For the reasons that follow, the motion to dismiss is denied.

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

**BANKRUPTCY CODE §§ 302(A) AND 707(B)**

The bankruptcy code provides that an individual debtor and that person's spouse may file a joint case. 11 U.S.C. § 302(a). Conversely, two individuals who are not spouses are not eligible to file jointly.

---

<sup>1</sup> Docket 13.

<sup>2</sup> Docket 17.

## THE OHIO LAW REGARDING COMMON LAW MARRIAGES

Ohio has abolished common law marriage, except for those marriages that existed before October 10, 1991. OHIO REV. CODE § 3105.12. A common law marriage “is the marital joinder of a man and a woman without the benefit of formal papers or procedures.” *Nestor v. Nestor*, 472 N.E.2d 1091, 1094 (Ohio 1984). Such a marriage is established by proving these four elements:

- (1) a meeting of the minds between two competent individuals to become husband and wife;
- (2) cohabitation as husband and wife;
- (3) a holding out to those with whom the couple normally come in contact that they are husband and wife; and
- (4) a reputation in the community as husband and wife.

*Id.* Where there is direct evidence that the parties entered into such a contract, “the evidence of long-time cohabitation and reputation of living together as [husband] and wife should be given even greater weight to further strengthen the inference of marriage.” *Id.* at 1094-95. The marriage must be proven by clear and convincing evidence. *Id.* at 1094.

### FACTS

The debtors Dan Elliot and Ystemia Jackson have continuously shared a household since 1985. They have two children, one born in 1986 and the other in 1991. After the birth of their first child, Mr. Elliot and Ms. Jackson purchased and wore wedding rings, and told their family and friends of their decision to be husband and wife. Their children lived with them until the children reached adulthood. In 2006, Mr. Elliot signed a will stating that he was married to Ms. Jackson and had two children from the marriage. He did so to make sure that she

was provided for financially in case he died before she did. Before that, he had provided for her through a life insurance policy.

Mr. Elliot and Ms. Jackson applied for a marriage license in 1998, intending to have a formal wedding followed by a large reception, mostly so that both sides of their family, including out of town relatives, could come together and celebrate with them. Ms. Jackson, however, fell ill and had to be hospitalized. When she recovered, they had a series of tragic deaths in their family, followed by financial difficulties which eventually led to this bankruptcy filing. In the course of all that, the plan to get married and have a big reception was sidelined because they could not afford the reception they wanted, and they already considered themselves to be married. The court finds each of the debtors to be sincere and believed their testimony. Based on their statements, the court finds that a common law marriage existed between Dan Elliot and Ystemia Jackson as of 1986, which marriage continued at the time that they filed their chapter 7 petition. They are, therefore, eligible to be joint debtors.

The United States trustee disputes this conclusion, arguing that the debtors made statements in tax documents that they were not married. Mr. Elliot holds a full-time job at Coyne Textile Services and a part-time job at WalMart. When he started at Coyne in 1988, he told the employer that he was single, a fact reflected on each pay advice from that day forward. When he started at WalMart about two years ago, however, he told the employer that he was married, a fact that again appears on his pay advices. Ms. Jackson has worked at Coyne since about 1996. Her pay advices also reflect her statement to Coyne when she began employment that she was single. The court finds that the debtors' statements to Coyne, both made more than 10 years ago,

were done carelessly, rather than with the intent to repudiate and abandon their 1986 common law marriage.

The United States trustee also points to representations made by the debtors in their tax returns. Over the years, both debtors have had their tax returns prepared by paid professionals, sometimes by H & R Block and at other times by 800 Tax Refund Inc., 6507 St. Clair Avenue, Cleveland, Ohio. The only documents on this issue were Ms. Jackson's 2007 Form 1040A and 2008 Form 1040A, both prepared by 800 Tax Refund Inc., and Mr. Elliot's 2008 Form 1040 which was probably prepared by 800 Tax Refund, Inc. as well. Ms. Jackson's returns state that she is filing as "Head of Household (with qualifying person)." Mr. Elliot's return states that he is single. They both testified that they told the preparer they had a common law marriage, and he responded that if they did not have a marriage license, they were not married. He then advised Mr. Elliot to file as single and Ms. Jackson to file as head of household, neither of which is correct.

The United States trustee introduced into evidence IRS Publication 17 which discusses the filing status categories in the tax code; i.e. married, single, married filing separately, married filing jointly, and head of household. There was, however, no evidence that the debtors had ever seen this publication, so it cannot serve to prove that the debtors understood the options and deliberately chose to represent that they were not married. Similarly, the United States trustee presented testimony that a paid tax return preparer is supposed to understand the legal distinction between and among the filing status categories. The implication is that if the debtors had really told the preparer what the situation was, the preparer would have advised them to file as married and they acted against his advice, thus showing an intent not to be married. The court agrees that

a paid tax preparer should understand the tax code, in which case this preparer should not have drafted the returns as it did. The testimony here, however, showed that the debtors provided truthful information to the preparer about their marital status, and the preparer either did not have the appropriate base of legal information or did not utilize it in preparing these returns. In any event, the court finds satisfactory the debtors' explanation for why their returns are inaccurate on this point.

Finally, the United States trustee relies on additional facts to counter the conclusion that the debtors are in a common law marriage, specifically that Ms. Jackson did not change her name following the marriage and the couple does not have a joint bank account. Neither of these is an unusual situation for a married couple, in this day and age.

#### **CONCLUSION**

Since 1986, Mr. Elliot and Ms. Jackson have lived together, had two children together, and continuously held themselves out to their family, friends, and community as a married couple. They have proven by clear and convincing evidence that they are in a common law marriage. The motion to dismiss is, therefore, denied.



---

Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

FOR ELECTRONIC PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 09-13013  
 )  
DAN W. ELLIOTT, JR. and ) Chapter 7  
YSTEMIA JACKSON, )  
 ) Judge Pat E. Morgenstern-Clarren  
Debtors. )  
 ) **ORDER**

For the reasons stated in the memorandum of opinion issued this same date, the United States trustee's motion to dismiss is denied. (Docket 13, 17).

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Pat E. Morgenstern-Clarren".

---

Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge