

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE: )  
)  
Robin Virginia Heinze, ) Case No. 02-83050  
)  
Debtor. )  
\_\_\_\_\_)  
)  
Sara A. Conti, Trustee in )  
Bankruptcy for the Estate )  
of Robin Virginia Heinze, )  
)  
Plaintiff, )  
)  
v. ) Adversary No. 08-9012  
)  
George Paul Laroque, )  
)  
Defendant. )  
)

ORDER

The matter before the court is a petition for writ of habeas corpus filed by the defendant in which the defendant requests that the court order that he be brought before the court in order to attend a hearing in this case which is scheduled to be held in the United States Bankruptcy Court, First Floor Courtroom, The Durham Center, 300 West Morgan Street, Durham, North Carolina, on May 8, 2008. The reason that defendant is requesting such relief is that the defendant currently is incarcerated in Wake Correctional Center, 1000 Rock Quarry Road, Raleigh, North Carolina, pursuant to a prison sentence that extends past May 8, 2008.

Pursuant to 28 U.S.C. § 2241, "the Supreme Court, any justice thereof, the district courts and any circuit judge within their

respective jurisdictions" have the authority to issue writs commanding the presence of a prisoner in court. However, "[i]t is not clear whether a bankruptcy court as an adjunct of the district court has independent authority to issue such a writ." In re Larson, 232 B.R. 396, 398 (Bankr. W.D. Wis. 1999); see also In re Cornelious, 214 B.R. 588 (Bankr. E.D. Ark. 1997); In re Bona, 124 B.R. 11 (S.D.N.Y. 1991). In Larson, the court suggested that "if it appeared that the Debtor were entitled to issuance of the writ, this court would certify the matter to the district court, with a recommendation that the writ be issued by that court." 232 B.R. at 398.

The factors that have been considered in determining whether a writ of habeas corpus ad testificandum should be issued include: (1) the costs and inconvenience of transporting the prisoner from his place of incarceration to the courtroom; (2) any potential danger or security risks which the presence of the prisoner would pose to the court; (3) whether the matter at issue is substantial; (4) the need for an early determination; (5) the possibility of delaying trial until the prisoner is released; (6) the probability of success on the merits; (7) the integrity of the correctional system; and (8) the interests of the inmate in presenting his testimony in person rather than by deposition. Stone v. Morris, 546 F.2d 730, 735-36 (7th Cir. 1976). Also, the court should issue a writ that requires the production of a prisoner only in those

cases where the prisoner's physical presence will contribute significantly to a fair adjudication of the matters for determination. In re Burrell, 186 B.R. 230, 233 (Bankr. E.D. Tenn. 1995). Having considered these factors in the context of this proceeding, the court has concluded that an order requiring that the Debtor be brought before the court on May 8, 2008, should not be issued.

The matters that are scheduled for hearing on May 8, 2008, are the Debtor's motion to dismiss for failure to state a claim upon which relief can be granted and the initial pre-trial conference. Resolution of the motion to dismiss will be based on the written record in this proceeding, primarily the plaintiff's complaint and the defendant's motion to dismiss, and will not require an evidentiary hearing. The same is true of the initial pre-trial conference which will involve the court establishing a discovery schedule after conferring with the parties.

Arrangements have been made for the defendant to participate in the hearing by telephone from the facility at which he is incarcerated. This arrangement will allow the defendant to present his arguments to the court regarding both of the matters scheduled for hearing on May 8, 2008. Given the nature of the matters scheduled for hearing on May 8, 2008, the court is satisfied that a telephonic appearance and participation by telephone will provide the defendant with a full and fair hearing and that a personal appearance before the court is not required in order for the

defendant to address adequately the matters scheduled for hearing. In order for the defendant to be present at the hearing, it would be necessary for appropriate law enforcement personnel to remove the defendant from Wake Correctional Center and to maintain custody of the defendant at the hearing and until they return him to Wake Correctional Center following the hearing. The exact extent of the security risks associated with removing the defendant from confinement is not clear. However, it is clear that the expenditure of government resources and manpower required in order have the defendant present in court is not offset by the reasonable needs of the defendant. This is particularly true inasmuch as the Debtor's physical presence would not contribute significantly to a fair adjudication of the matters for determination. Nor is it feasible to delay this proceeding and the liquidation of property of the bankruptcy estate until the defendant is released.

Accordingly, to the extent that this court has the authority to issue a writ of habeas corpus ad testificandum, this court declines to do so for the foregoing reasons. For the same reasons, this court also declines to certify the defendant's motion to the district court with a recommendation that a writ be issued.

IT IS SO ORDERED.

This 23rd day of April, 2008.

  
\_\_\_\_\_  
WILLIAM L. STOCKS  
United States Bankruptcy Judge