

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

RAY EVERETT WILSON,  
Debtor.

Case No. 87-1402-C  
Chapter 12

ORDER ON MOTION FOR NUNC PRO TUNC APPOINTMENT

At Des Moines, in the Southern District of Iowa, on the 18th day of April, 1988.

On March 28, 1988 the debtor's attorney filed a motion for order seeking nunc pro tunc approval of appointment as attorney for the debtor and thereby an order permitting fees and expenses for services rendered post petition and prior to the order authorizing employment. The above motion is in response to this court's January 22, 1988 order which confirmed the employment of counsel from and after November 17, 1987 but denied without prejudice the request to confirm employment for work performed from the filing of the petition through November 17, 1987. That order informed the debtor's attorney that services performed postpetition but prior to court authorization for employment were not compensable unless the attorney secured nunc pro tunc authorization of employment. The order further informed counsel that nunc pro tunc authorization is limited to cases where extraordinary circumstances are present. See Matter of Independent

Sales Corp., 73 B.R. 772 (Bankr. S.D. Iowa 1987) (and cases cited therein).

The debtor's attorney's motion states that his failure to obtain an order authorizing employment "was a result of oversight and ignorance on behalf of counsel". The motion further states the services rendered by counsel were reasonable and necessary for the protection of the estate and resulted in the preservation of the debtor's estate and the continued operation of the farming entity.

A discussion of what circumstances meet the "extraordinary" category necessary to permit nunc pro tunc appointment is contained in Matter of Independent Sales Corp., 73 B.R. 772, 777-78 (Bankr. S.D. Iowa 1987). This court noted the Third Circuit Court of Appeal's analysis in Matter of Arkansas, Co., Inc., 798 F.2d 645, 648-51 (3rd Cir. 1986). The Third Circuit enunciated the following standard for retroactive approval of employment:

[N]unc pro tunc approval should be limited to cases where extraordinary circumstances are present. Otherwise the bankruptcy court may be overly inclined to grant such approval influenced by claims of hardship due to work already performed. In this respect we part company with those courts that have suggested that inadvertence or oversight of counsel may constitute excusable neglect sufficient to relieve the parties of the consequences of their inaction. See In re King Electric Co., Inc., 19 B.R. 660 (E.D. Va. 1982); see also In re Triangle Chemicals, Inc., 697 F.2d at 1289. We agree instead with the approach of those courts that limit the grant of retroactive approval to cases where prior approval would have been appropriate and the delay in seeking

approval was due to hardship beyond the professional's control. See In re Brown, 40 B.R. 728, 731 (Bankr. D. Conn. 1984); In re Seatrain Lines, Inc., 15 B.R. 583, 584 (Bankr. S.D. N.Y. 1981). While this may seem to be a harsh rule, a more lenient approach would reward laxity by counsel and might encourage circumvention of the statutory requirement.

Id. at 649-650. This standard has been followed by several bankruptcy courts. Matter of Diamond Mortg. Corp., 77 B.R. 597, 601 (Bankr. E.D. Mich. 1987); Matter of Camp Lightweight, Inc., 76 B.R. 855, 857 (Bankr. M.D. Ga. 1987); Matter of Fleeman, 73 B.R. 579, 582 (Bankr. M.D. Ga. 1987). Accordingly, oversight, inadvertence or ignorance is not an extraordinary circumstance so as to justify nunc pro tunc authorization of employment.

THEREFORE, based on the foregoing analysis, the motion for order nunc pro tunc filed on behalf of the debtor's attorney is hereby denied.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE