

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

EOD
08/31/2022

IN RE:	§	
	§	
DONALD R. TRIPLETT, JR.	§	Case No. 19-42570
xxx-xx-8753	§	
	§	
Debtor	§	Chapter 7
<hr/>		
KEITH BLACK	§	
	§	
Plaintiff	§	
	§	
v.	§	Adversary No. 20-04057
	§	
DONALD R. TRIPLETT, JR.	§	
	§	
Defendant	§	
<hr/>		
RON VALK AND SHAWN VALK	§	
	§	
Plaintiffs	§	
	§	
v.	§	Adversary No. 20-04058
	§	
DONALD R. TRIPLETT, JR.	§	
	§	
Defendant	§	
<hr/>		
JEREMY HALTOM	§	
	§	
Plaintiff	§	
	§	
v.	§	Adversary No. 20-04059
	§	
DONALD R. TRIPLETT, JR.	§	
	§	
Defendant	§	

**OMNIBUS ORDER DENYING PLAINTIFFS' MOTIONS
TO REASSIGN ADVERSARY PROCEEDINGS**

On August 31, 2022, the Court considered the following motions filed by Plaintiffs in each of the above matters:

- 1) “Motion to Reassign Adversary Proceeding” filed by Plaintiff, Keith Black, in Case 20-4057 at [dk. #148](#);
- 2) “Motion to Reassign Adversary Proceeding” filed by Plaintiffs, Ron Valk and Shawn Valk, in Case 20-4058 at [dk. #172](#); and
- 3) “Motion to Reassign Adversary Proceeding” filed by Plaintiff, Jeremy Haltom, in Case 20-4059 at [dk. #150](#).

These filings are referred to collectively as the “Motions.” Defendant objected to each of the Motions. The Court finds that the Court’s decision regarding the Motions would not be significantly aided by oral argument.

I. Jurisdiction

The Court has jurisdiction of this matter pursuant to [28 U.S.C. §§ 1334](#) and [157](#). The Court has authority to enter a final judgment in this adversary proceeding because it constitutes a statutorily core proceeding pursuant to [28 U.S.C. § 157\(b\)\(2\)\(A\)](#), [\(I\)](#), and [\(J\)](#), and meets all constitutional standards for the proper exercise of full judicial power by this Court. When considering an

intra-district transfer request, courts generally have significant discretion.

Stewart v. Comm'r of SSA, No. 1:21-CV-204, [2021 U.S. Dist. LEXIS 111417](#), at *2 (E.D. Tex. 2021).

II. Relief Requested

Plaintiffs' Motions seek the *intra-division reassignment* of these adversary proceedings from the docket of Hon. Joshua P. Searcy ("Judge Searcy") to the docket of the Hon. Brenda T. Rhoades ("Judge Rhoades"). Plaintiffs' Motions seek reassignment for "the following reasons: (A) the 727 Adversaries are becoming inextricably intertwined with the extensive history of the Main Bankruptcy Case and the Fraudulent Transfer Adversaries; (B) the parties are all centrally located near the Plano, Texas courthouse, where Judge Rhoades sits; and (C) the Court is returning to in-person hearings, which will require all parties to travel a long distance on a potential regular basis to Tyler, Texas, where Judge Searcy sits."¹ The Motions also state that "[f]or the convenience of the parties and the sake of judicial economy, the time is ripe to reassign this and the other 727 Adversaries to Judge Rhoades . . ."²

¹ Mot., ¶ 22, 8, ECF No. 148 in Case No. 20-4057; Mot., ¶ 21, 7, ECF No. 172 in Case No. 20-4058; Mot., ¶ 22, 8, ECF No. 150 in Case No. 20-4059.

² *Id.*

Plaintiffs are not requesting an *inter-district* venue transfer to a different district, nor are they requesting an *intra-district* transfer from one division in this judicial district to a different division in this same district.³ The Motions instead seek only an *intra-division reassignment* within the Sherman Division from Judge Searcy to Judge Rhoades. Judge Searcy presides primarily in the Tyler, Marshall, Lufkin, and Beaumont Divisions of the United States Bankruptcy Court for the Eastern District of Texas (the “Court”). Judge Rhoades presides primarily in the Sherman and Texarkana Divisions of the United States Bankruptcy Court for the Eastern District of Texas. However, [11 U.S.C. § 523](#) dischargeability and [11 U.S.C. § 727](#) discharge adversaries originating in the Sherman Division are assigned to and heard by Judge Searcy to equalize the docket between judges in this district.⁴

Plaintiffs’ requests are unusual and raise concerns of judge shopping which are not unique to this Court.⁵ The Motions were filed after Defendant

³ In these cases, Judge Searcy is presiding in the Sherman Division.

⁴ These adversary proceedings were originally assigned to Judge Searcy's predecessor, the Hon. Bill Parker. Adversary proceedings relating to a discharge under [11 U.S.C. § 727](#) or dischargeability of debt under [11 U.S.C. § 523](#) have been assigned in this way for more than a decade. See General Orders 16-1, 11-10, and 10-3.

⁵ At least one Court in the Northern District of Texas has previously stated that “[t]he Court is not inclined to allow transfers within the district unless doing so better serves the interests of justice or is of convenience to the parties.” *In re Stevenson*, Nos. 12-20327-rlj-13, 12-20345-rlj-13, 12-20348-rlj-13, 12-20353-rlj-13, 12-20400-rlj-13, [2012 Bankr. LEXIS 5984, at *4](#) (Bankr. N.D. Tex. 2012).

separately filed a motion for sanctions in each of these cases on June 28, 2022,⁶ and after this Court ruled against Plaintiffs in one of many discovery disputes on June 29, 2022.⁷ The Court on numerous occasions has been called upon to resolve discovery disputes, including compelling discovery from one or more Plaintiffs.⁸ In an effort to avoid continued discovery disputes, the Court imposed on counsel the Meet and Confer requirement of Local District Court Rule CV-7(h) and (i).⁹ The Court has also repeatedly reminded counsel of the standards for attorney conduct contained in Local District Court Rule AT-3 which has been adopted by this Court pursuant to LBR 1001(i). Consequently, the Court is necessarily concerned about the Motions due to the consistently contumelious style of litigation by which these adversaries have so far been prosecuted.

⁶ Mot. for Sanctions, ECF No. 141, Case 20-4057; Mot. for Sanctions, ECF No. 165, Case 20-4058; Mot. for Sanctions, ECF No. 143, Case 20-4059.

⁷ Order on Motions for Protective Orders, ECF 121, Case 20-4057; ECF No. 133, Case 20-4058; ECF No. 123, Case No. 20-4059.

⁸ For example, see *Halton v. Triplett (In re Triplett)*, Nos. 19-42570, 20-04059, [2022 Bankr. LEXIS 64](#) (Bankr. E.D. Tex. 2022).

⁹ *Black v. Triplett (In re Triplett)*, Nos. 19-42570, 20-4057, 20-4058, 20-4059, [2022 Bankr. LEXIS 2256](#) (Bankr. E.D. Tex. 2022).

III. Analysis

The difference between an *intra-district* transfer, *intra-division reassignment*, and *inter-district* venue transfer is central to resolution of the Motions. A request for an *intra-district* transfer occurs when a party seeks to have a case transferred from one division in a judicial district to a different division in that same district. For example, if Plaintiffs sought to have these adversaries transferred from the Sherman Division to the Marshall Division, that would be an *intra-district* transfer. In contrast, a request for an *intra-division reassignment* occurs when a party seeks to have a case transferred from one judge in a particular division to a different judge in that same division. An example of this would be a request to transfer a case from one bankruptcy judge in the Dallas Division of the Northern District of Texas to a different bankruptcy judge in that same division. Neither a request for *intra-district* transfer nor *intra-division reassignment* should be confused with a request for *inter-district* venue transfer of a case from a division in one district to a division in a different district. One bankruptcy court has explained the applicable statutes regarding *intra-district* transfer and *inter-district* venue transfer as follows:

Section 1408 of title 28 addresses the venue of bankruptcy cases; § 1409(a) addresses the venue of *proceedings*, stating that "a proceeding *arising under* title 11 or *arising in* or *related to* a case under title 11 may be commenced in the district court in which

such case is pending." [28 U.S.C. § 1409\(a\)](#) (emphasis added). Accordingly, an adversary proceeding like the one here may be commenced in the district court where the bankruptcy case is pending. That the suit here is filed in a proper venue is not disputed.

Section 1412 provides that a "district court may transfer a *case or proceeding under title 11* to a district court for another district, in the interest of justice or for the convenience of the parties." [28 U.S.C. § 1412](#) (emphasis added). Section 1404(a) is slightly different, stating that "[f]or the convenience of parties *and witnesses*, in the interest of justice, a district court may transfer *any civil action* to any other district *or division* where it might have been brought" [28 U.S.C. § 1404\(a\)](#) (emphasis added).

Section 1404(a) obviously provides for intra-district transfers, as well as consideration of witnesses. As Defendants note, it also refers to "any civil action" whereas § 1412 applies to a "case or proceeding under title 11." See §§ 1404(a), 1412 (emphasis added).

Ries v. Ardinger (In re Adkins Supply Inc.), Nos. 11-10353-RLJ-7, 14-01000, 1:14-CV-095-C, [2015 Bankr. LEXIS 960](#), at *6-8 (Bankr. N.D. Tex. 2015).

The source of authority for determining how bankruptcy courts should evaluate a request for an *inter-district transfer* is straightforward. As explained by the court in *Ries*, [28 U.S.C. § 1408](#) governs venue selection at commencement of a "case" under title 11, and [28 U.S.C. § 1409](#) governs venue selection upon commencement of a "proceeding arising under title 11 or arising in or related to a case under title 11." These cases were properly commenced in the Sherman Division as was the main underlying bankruptcy case. [28 U.S.C. § 1412](#) governs requests for *inter-district* venue transfers of

cases or proceedings under title 11. Under [28 U.S.C. § 1412](#), such transfers are permitted “to a district court for another district.”¹⁰ Upon a plain reading therefore, it does not appear that [28 U.S.C. § 1412](#) bears on a request for *intra-district* transfer nor for *intra-division reassignment*. These provisions are not at issue in the Motions because Plaintiffs have not requested in their Motions the *inter-district* venue transfer of these adversary proceedings.

The authority for evaluating an *intra-district* transfer, let alone an *intra-division* reassignment, is less clear. Some courts have looked to local rules for guidance. *In re West*, No. 12–60951, [2012 WL 1252984](#), *1 (Bankr.N.D.Ohio Apr. 13, 2012) (in absence of guidance for intra-district reassignment of the case, the court looked to the reassignment section of its local bankruptcy rules); *In re Stolicker Dairy Farms*, [67 B.R. 459, 461](#) (Bankr.E.D.Mich.1986) (because the bankruptcy rules did not provide for intra-district transfer of a bankruptcy case, the court was guided by its local rules). However, this Court’s local rules offer no guidance and are silent regarding *intra-district* transfers and *intra-division reassignments*. It is likely for this reason that Plaintiffs contend [28](#)

¹⁰ The full text of [28 U.S.C. § 1412](#) reads as follows:

“A district court may transfer a case or proceeding under title 11 [[11 USCS §§ 101 et seq.](#)] to a district court for another district, in the interest of justice or for the convenience of the parties.”

U.S.C. § 1404(a) should be used by this Court to consider whether *intra-division reassignment* of these adversary proceedings is appropriate.¹¹

Cases do not agree on whether 28 U.S.C. § 1404(a) is available as a source of authority permitting *intra-district* transfers by bankruptcy courts. Fed R. Bankr. P. 7087 states that “on motion and after a hearing, the court may transfer an adversary proceeding or a part thereof *to another district pursuant to 28 U.S.C. § 1412* . . .” [emphasis added]. No reference to 28 U.S.C. § 1404(a), nor indeed to *intra-district* transfers or *intra-division reassignments*, is made in Fed R. Bankr. P. 7087. This could be understood as removing 28 U.S.C. § 1404(a) from the possible sources of bankruptcy court authority for transferring adversary proceedings. At least one Court considering this statutory conundrum observed that:

Unfortunately, here, neither the District Court Local Rules nor the Bankruptcy Court Local Rules addresses intra-district transfers. A court faced with a similar situation held that §§ 1404(a) and 1412 are not mutually exclusive and then applied § 1404(a) to determine an intra-district venue transfer. *In re Perry*, No. 02–13366, 2002 WL 31160132, *4 (Bankr.W.D.Tenn. Sept. 26, 2002) (creditor filed a motion to change venue of case to another division within the same district). The simple solution is to use § 1404(a), but that would ignore both Rule 7087 and the

¹¹ The Motions each state the following: “Nevertheless, the Court may look to 28 U.S.C. § 1404(a) and the *Radmax* factors developed by the Fifth Circuit to determine whether intra-division transfer/reassignment is appropriate.” See Mot., ¶ 31, 9, ECF No. 148 in Case No. 20-4057; Mot., ¶ 30, 9, ECF No. 172 in Case No. 20-4058; Mot., ¶ 31, 9, ECF No. 150 in Case No. 20-4059.

venue bias of § 1409, and bypass the analysis that comes with § 1412, which is tailored to consider bankruptcy-related interests.

Ries v. Ardinger (In re Adkins Supply Inc.), Nos. 11-10353-RLJ-7, 14-01000, 1:14-CV-095-C, [2015 Bankr. LEXIS 960](#), at *4 (Bankr. N.D. Tex. 2015).

Plaintiffs rely on *Perry*, cited by the court in *Ries*, for the proposition that *intra-division reassignments* are permitted under [28 U.S.C. § 1404\(a\)](#).¹² *In re Perry*, No. 02-13366, [2002 Bankr. LEXIS 1080](#), *4 (Bankr. W.D. Tenn. 2002). However, the court in *Perry* was considering the applicability of [28 U.S.C. § 1404\(a\)](#) in the context of an *intra-district* transfer between divisions, not an *intra-division reassignment*. Because the two are fundamentally different, this Court does not find *Perry* persuasive authority for evaluating an *intra-division reassignment*.

It is even less certain that [28 U.S.C. § 1404\(a\)](#) may be used to require the *intra-division reassignment* of these adversary proceedings. To support their contention that § 1404(a) should be used as a basis to reassign these cases, Plaintiffs rely in part upon two cases: *Case Energy Servs., LLC v. Padco Energy Servs., LLC*¹³ and *Bitler v. A.O. Smith Corp.*¹⁴ In *Padco*

¹² Mot., ¶ 28, 9, ECF No. 148 in Case No. 20-4057; Mot., ¶ 27, 8, ECF No. 172 in Case No. 20-4058; Mot., ¶ 28, 9, ECF No. 150 in Case No. 20-4059.

¹³ *Case Energy Servs., LLC v. Padco Energy Servs., LLC (In re Padco Energy Servs., LLC)*, No. 16-51380, [2019 U.S. Dist. LEXIS 54749](#) (W.D. La. 2019).

¹⁴ *Bitler v. A.O. Smith Corp.*, Civil Action No. 98-BB-1897, [2001 U.S. Dist. LEXIS 20550](#) (D. Colo. 2001).

Energy, Case Energy sought an *intra-district transfer* from the Lafayette Division to the Shreveport Division of the United States Bankruptcy Court for the Western District of Louisiana.¹⁵ Because Plaintiffs are not seeking an *intra-district transfer* from one division to another, *Padco* is unpersuasive regarding the Motions. In *Bitler*, defendants sought to move a jury trial from Denver, Colorado, to Grand Junction, Colorado, which was opposed by plaintiffs.¹⁶ Though distant geographically, these cities were both in the same division because the state of Colorado constitutes a single judicial district with one division.¹⁷ The *Bitler* court, which was not a bankruptcy court, stated that courts evaluating an *intra-division* transfer request “generally look to the factors relevant under [28 U.S.C. § 1404\(a\)](#) to a transfer between districts or divisions.”¹⁸ After evaluating certain factors under 10th Circuit precedent, the *Bitler* court denied the request. Importantly, nothing in the *Bitler* decision indicates that Defendants were asking for the jury trial to be *reassigned* from one judge to a different judge as Plaintiffs request in these cases. An *intra-division reassignment* is not the same as an *intra-district* transfer, and so the reasoning of *Bitler* is also unconvincing. Treating

¹⁵ *Padco Energy Servs., LLC*, [2019 U.S. Dist. LEXIS 54749 at *14](#).

¹⁶ *Bitler*, [2001 U.S. Dist. LEXIS 20550 at *2](#).

¹⁷ *Id.*

¹⁸ *Id.*

requests for *intra-division reassignment* and *intra-district* transfer as synonymous creates the unacceptable possibility of attempted judge shopping by litigants. Allowing this to occur is clearly outside what any of the cited venue or transfer statutes are written to permit.

This Court does not find it necessary to decide whether [28 U.S.C. § 1404\(a\)](#) is available as a source of authority permitting *intra-district* transfers by bankruptcy courts. No decision is needed because Plaintiffs' Motions do not seek an *intra-district* transfer but rather an *intra-division reassignment* between judges.¹⁹ The Court does not find authority for an *intra-division reassignment* request under the plain language of [28 U.S.C. § 1412](#) as explained above, nor under [28 U.S.C. § 1404\(a\)](#).²⁰ However, even if authority for *intra-division reassignment* exists under [28 U.S.C. § 1404\(a\)](#), the Motions should still be denied.²¹

¹⁹ The Motions each state the following: "For all the reasons stated herein, Plaintiff[s] respectfully submits intra-division transfer/reassignment to Judge Rhoades is clearly more convenient not only to the parties, but to the Court. Accordingly, Plaintiff respectfully requests that this Adversary Proceeding be reassigned/transferred to Judge Rhoades." *See* Mot., ¶ 49, 13, ECF No. 148 in Case No. 20-4057; Mot., ¶ 48, 13, ECF No. 172 in Case No. 20-4058; Mot., ¶ 49, 13, ECF No. 150 in Case No. 20-4059.

²⁰ It is conceivable that administrative reasons may exist in some circumstances to warrant reassignment of an adversary, but the Court is aware of no such reasons in these cases.

²¹ There are of course circumstances in which a judge may be disqualified from hearing a particular matter under [28 U.S.C. § 455](#). This too is different from a request *for intra-division reassignment*, and Plaintiffs' Motions contain no such request.

Under applicable precedent, there are several factors which a court should consider when evaluating an *intra-district* transfer request under [28 U.S.C. § 1404\(a\)](#). The factors to be considered have been outlined by the 5th Circuit as follows:

A motion to transfer venue pursuant to § 1404(a) should be granted if ‘the movant demonstrates that the transferee venue is clearly more convenient,’ taking into consideration (1) ‘the relative ease of access to sources of proof’; (2) ‘the availability of compulsory process to secure the attendance of witnesses’; (3) ‘the cost of attendance for willing witnesses’; (4) ‘all other practical problems that make trial of a case easy, expeditious and inexpensive’; (5) "the administrative difficulties flowing from court congestion"; (6) "the local interest in having localized interests decided at home"; (7) "the familiarity of the forum with the law that will govern the case"; and (8) "the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law.’

In re Radmax, Ltd., [720 F.3d 285, 288](#) (5th Cir. 2013), quoting *In re Volkswagen of Am., Inc.*, [545 F.3d 304, 315](#) (5th Cir. 2008). Plaintiffs argue that the first five of these factors favor the *intra-division reassignment* of these cases, while the sixth, seventh, and eighth are neutral. The Court agrees that the sixth, seventh, and eighth factors are neutral, but does not agree that any others favor reassignment.

Plaintiffs’ arguments regarding the first three factors all relate to the parties’ convenience due Plaintiffs’ location in the Dallas Forth Worth metroplex. Attorneys and witnesses from the Dallas metroplex routinely appear in Judge Searcy’s Tyler courtroom, including in adversaries just like

these. These cases had been pending for more than two years at the time the Motions were filed. It is not a recent development that Judge Rhoades presides in the underlying bankruptcy case, that Judge Rhoades' courtroom is in Plano, Texas, that Judge Searcy presides in these adversaries, or that Judge Searcy's Tyler courtroom is in Tyler, Texas. Travel to Tyler, Texas generally takes 2 hours by automobile from the Dallas metroplex. Plaintiffs will therefore not be required to travel particularly far, and the Court considers this to be a minor inconvenience and expense. *In re Adkins*, [2015 WL 1498856](#) at * 8 (Bankr. N.D. Tex. 2015) (denying a motion to transfer when Defendants were located approximately three hours from the chosen venue). Additionally, the parties in these cases have not yet been required to appear in person in Judge Searcy's Tyler courtroom.²² While travelling to Tyler, Texas is admittedly less convenient than traveling to Plano, Texas, the Court does not believe the distance or cost so great as to justify an *intra-division reassignment*.²³ Plaintiffs also contend they may need to subpoena a

²² Judge Searcy regularly utilizes technology to conduct remote hearings either telephonically or by virtual means. The directives regarding the various methodologies utilized for conducting hearings are located on Judge Searcy's webpage on the Court's website, <https://www.txeb.uscourts.gov/content/judge-searcy> under the *Court Appearances and Hearing Methods* tab. The Court has further directives regarding the health and safety of *In Person Hearings* under the *Health and Safety (Covid-19) Protocols* tab on the same web page.

²³ Plaintiffs have all listed addresses indicating their location in the greater Dallas Fort Worth metroplex.

witness outside of the 100-mile rule of Federal Rule of Civil Procedure 45(c)(1). Presently, this is a hypothetical and does not weigh in favor of granting the Motions.

Plaintiffs' contention that the fourth factor favors *intra-division reassignment* is based upon the idea that Judge Rhoades "is uniquely aware of (and was involved in) the events leading up to this Adversary Proceeding."²⁴ It is of course true that Judge Rhoades presides in the underlying bankruptcy case. But this Court disagrees that any personal knowledge Judge Rhoades may have from that experience outweighs this Court's similar ability to hear and consider any *evidence* that Plaintiffs may choose to present.²⁵ Nor would the *intra-division reassignment* of these cases facilitate the goal of and "easy, expeditious and inexpensive" trial. To the contrary, this Court has presided over these adversaries since taking the bench. Reassignment would lead only to the duplicative waste of judicial resources. This fourth factor weighs against granting the Motions.

Plaintiffs finally contend that the fifth factor favors *intra-division reassignment* because they believe judicial economy would be promoted and

²⁴ Mot., ¶ 40, 12, ECF No. 148 in Case No. 20-4057; Mot., ¶ 39, 12, ECF No. 172 in Case No. 20-4058; Mot., ¶ 40, 12, ECF No. 150 in Case No. 20-4059.

²⁵ The Court here notes that it has the highest and utmost respect for Judge Rhoades, both personally and professionally.

administrative difficulties avoided. The Court disagrees. Judge Rhoades has never presided in these adversaries and cannot be expected to have instant familiarity with them. Some effort would be required, at minimum, to become familiar with the status of these adversaries. This duplication of effort “would be wasteful of judicial resources and detrimental to judicial economy.” *Zoltar Satellite Sys., Inc. v. LG Elecs. Mobile Communications Co.*, [402 F. Supp. 2d 731, 737](#) (E.D. Tex. 2005). Furthermore, it is unclear what, if any, administrative difficulties would be avoided by reassignment. This factor also weighs against granting the Motions.

IV. Conclusion

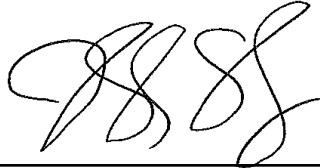
The Court finds that the Motions should be denied, and that *intra-division reassignment* of these adversaries from Judge Searcy to Judge Rhoades is not warranted. Accordingly, and for the reasons set forth herein, the Court finds that just cause exists for entry of the following Order.

IT IS THEREFORE ORDERED that the “Motion to Reassign Adversary Proceeding” filed by Plaintiff, Keith Black, in Case 20-4057 is **DENIED**.

IT IS FURTHER ORDERED that the “Motion to Reassign Adversary Proceeding” filed by Plaintiffs, Ron Valk and Shawn Valk, in Case 20-4058 is **DENIED**.

IT IS FURTHER ORDERED that the “Motion to Reassign Adversary Proceeding” filed by Plaintiff, Jeremy Haltom, in Case 20-4059 is **DENIED**.

Signed on 08/31/2022

A handwritten signature in black ink, appearing to read 'JS Searcy', written over a horizontal line.

THE HONORABLE JOSHUA P. SEARCY
UNITED STATES BANKRUPTCY JUDGE