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ORDERED PUBLISHED

HAROLD S. MARENUS, CLERK

U.S. BKCY. APP. PANEL

OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-04-1570-KMaB
)		
JEANETTE DONALD,)	Bk. No.	LA 04-24773-SB
)		
)		
Debtor.)		
)		
)		
JEANETTE DONALD,)		
)		
Appellant,)		
)		
v.)	OPINION	
)		
NANCY CURRY, Chapter 13)		
Trustee; WELLS FARGO)		
BANK, N.A.,)		
)		
Appellees.)		

Argued and Submitted on February 23, 2005
at Los Angeles, California

Filed - July 19, 2005

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Samuel L. Bufford, Bankruptcy Judge, Presiding

Before: KLEIN, MARLAR, and BRANDT, Bankruptcy Judges.

1 KLEIN, Bankruptcy Judge:
2

3 The debtor appeals from an order transferring her bankruptcy
4 case from the Central District of California to the Northern
5 District of Georgia under 28 U.S.C. § 1412 for improper venue.
6 The debtor contends her domicile is California. We AFFIRM the
7 factual determination that the debtor's domicile is in Georgia.
8 Moreover, regardless of domicile, transfer was permissible.
9

10 FACTS

11 After living many years in California, the debtor, Jeanette
12 Donald, moved to Georgia in 1999 with her spouse. She remained
13 in Georgia after her spouse died in February 2001, maintaining a
14 residence in Waleska, Georgia, which she mortgaged in 2003. The
15 Social Security Administration sends payments to her Georgia
16 residence.

17 In May 2004, Ms. Donald traveled to California for a
18 contract job in Los Angeles that turned out to last about thirty
19 days, after which she returned to Georgia. While in California
20 she stayed with a friend and did not obtain her own residence.

21 On July 6, 2004, after returning to Georgia, Ms. Donald
22 filed a chapter 13 bankruptcy case in the Central District of
23 California for the apparent purpose of curing the mortgage
24 default on her Georgia residence. Her petition used the address
25 of her friend in Whittier, California, with whom she had stayed.

26 The chapter 13 plan proposed to cure the Georgia mortgage
27 default, pay a Georgia tax collector, and pay the full \$1,304.82
28 in general unsecured debt (owed mainly to national creditors).

1 At the meeting of creditors on August 24, 2004, Ms. Donald
2 testified that her address was in Waleska, Georgia, that the
3 Whittier address on her petition belonged to a friend, and that
4 she had been back in California only temporarily. When
5 questioned about venue, she said, "well maybe we can transfer."

6 The trustee announced an intention to object to venue and,
7 three days later, filed an objection to plan confirmation on the
8 grounds of improper venue under 28 U.S.C. § 1408(1) and of plan
9 infeasibility under 11 U.S.C. § 1325(a)(6). Her mortgage
10 creditor objected to confirmation on the basis that her schedules
11 did not reveal income sufficient to fund the proposed plan.

12 On the day of the confirmation hearing, Ms. Donald amended
13 her schedules to add \$4,000 per month income from employment in
14 Georgia that was obtained during the case. She also filed a
15 memorandum of points and authorities in support of confirmation
16 and her choice of venue based on domicile.

17 She argued, first, that the trustee waived the venue issue
18 by not filing a separate transfer motion in addition to asserting
19 improper venue as an objection to plan confirmation and, second,
20 that venue was proper in California based on domicile.

21 In her declaration supporting her position regarding
22 domicile, she averred that she did not relinquish her California
23 domicile when she and her spouse moved to Georgia in 1999. She
24 added that she always intended to return to California even
25 though she remained in Georgia for three years after her
26 husband's death.

27 During argument, the court inquired whether transfer would
28 be an appropriate resolution. Debtor's counsel agreed that

1 transfer was an option available to the court.

2 The court agreed that California was not a proper venue and
3 ordered transfer to the Northern District of Georgia. Its
4 written order unambiguously referred to lack of domicile. Its
5 oral ruling also noted that "under the circumstances of the
6 case," transfer would "be appropriate."

7 The transfer order was entered November 15, 2004. The
8 notice of appeal was filed November 18, 2004, with a motion for
9 stay pending appeal. The bankruptcy clerk transmitted the
10 pleadings, transfer order, and copy of the docket to the Northern
11 District of Georgia on November 18, 2004, which papers were
12 docketed by the clerk of that court on November 23, 2004. The
13 bankruptcy court granted a stay pending appeal on November 24,
14 2004. On December 17, 2004, our clerk's jurisdictional query
15 about the apparent interlocutory nature of the appeal drew a
16 responsive motion for leave to appeal, which we granted.

17
18 JURISDICTION

19 The bankruptcy court had jurisdiction via 28 U.S.C. §§ 1334
20 and 157(b)(1). As we shall explain, we have jurisdiction under
21 28 U.S.C. § 158(a)(3).
22

23 ISSUES

24 1. Whether appellate jurisdiction ended with delivery of
25 the case files to, and docketing by, the transferee district.

26 2. Whether an objection to venue is waived when it is
27 interposed as a defense to a contested matter under Federal Rule
28 of Bankruptcy Procedure 9014, without making a separate motion to

1 transfer or dismiss contemplated by Rule 1014(a).

2 3. Whether venue was properly laid in the Central District
3 of California under 28 U.S.C. § 1408(1) on a theory of domicile.

4 4. Whether transfer was permissible under 28 U.S.C. § 1412.
5

6 STANDARD OF REVIEW

7 Our appellate jurisdiction is a question of law that we
8 raise sua sponte and resolve de novo. Menk v. Lapaglia (In re
9 Menk), 241 B.R. 896, 903 (9th Cir. BAP 1999). Domicile premised
10 upon intent and presence involves mixed questions of law and fact
11 reviewed for clear error. Lowenschuss v. Selnick (In re
12 Lowenschuss), 171 F.3d 673, 684-85 (9th Cir. 1999); Lew v. Moss,
13 797 F.2d 747, 750 (9th Cir. 1986). A decision to transfer a case
14 to another district is reviewed for abuse of discretion. Jones
15 v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000).
16

17 DISCUSSION

18 We must resolve the question of our jurisdiction before
19 turning, in order, to the issues presented by the parties.
20

21 I

22 An order transferring a case to another district under the
23 bankruptcy transfer statute, 28 U.S.C. § 1412, is interlocutory
24 for the same reasons that transfer orders under 28 U.S.C. §§ 1404
25
26
27

1 and 1406 are interlocutory.¹ Varsic v. United States Dist. Ct.,
2 607 F.2d 245, 251 (9th Cir. 1979) (28 U.S.C. § 1406); United
3 States Tr. v. Sorrells (In re Sorrells), 218 B.R. 580, 582 (10th
4 Cir. BAP 1998); 17 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE
5 § 111.60 (3d ed. 2005) ("MOORE'S"); 15 CHARLES ALAN WRIGHT ET AL.,
6 FEDERAL PRACTICE & PROCEDURE § 3855 (2d ed. 1986) ("WRIGHT & MILLER"); 1
7 COLLIER ON BANKRUPTCY ¶ 4.05[2] (Alan N. Resnick & Henry J. Sommer
8 eds. 15th ed. rev. 2005) ("COLLIER").

9 Appeal of an interlocutory order transferring venue under 28
10 U.S.C. § 1412, which is regarded as doing double duty for both
11 §§ 1404 and 1406, requires leave to appeal.² 28 U.S.C.
12 § 158(a)(3).

13
14 ¹ The transfer statutes provide, in relevant parts:

15 (a) For the convenience of parties and witnesses, in the
16 interest of justice, a district court may transfer any civil
17 action to any other district or division where it might have
18 been brought.

28 U.S.C. § 1404(a).

19 (a) The district court of a district in which is filed a
20 case laying venue in the wrong division or district shall
21 dismiss, or if it be in the interest of justice, transfer
22 such case to any district or division in which it could have
23 been brought.

28 U.S.C. § 1406(a).

24 A district court may transfer a case or proceeding under
25 title 11 to a district court for another district, in the
26 interest of justice or for the convenience of the parties.

28 U.S.C. § 1412.

27 ² It has been held that §§ 1404 and 1406 comfortably
28 coexist with § 1412 and apply in bankruptcy cases. See In re
Petrie, 142 B.R. 404, 406 (Bankr. D. Nev. 1992). We need not
take a position, as the relevant standards in this case are the
same.

1 A timely notice of appeal, however, may be the basis for
2 granting leave to appeal an interlocutory order, even without a
3 separate motion for leave to appeal. Fed. R. Bankr. P. 8003(c).

4 A timely notice of appeal was filed on November 18, 2004.
5 We later issued a Clerk's Order questioning finality, which
6 precipitated the filing of a motion for leave to appeal on
7 December 17, 2004, which we granted. Our order granting leave to
8 appeal related back to the timely filing of the notice of appeal.

9 The differentials in these various dates potentially make a
10 difference because appellate jurisdiction ordinarily terminates
11 when the transfer motion is granted and the papers are entered in
12 the transferee court's docket. Lou v. Belzberg, 834 F.2d 730,
13 733 (9th Cir. 1987) (28 U.S.C. § 1292); accord, e.g., In re Sosa,
14 712 F.2d 1479, 1480 (D.C. Cir. 1983); In re Nine Mile Ltd., 673
15 F.2d 242, 243 (8th Cir. 1982); In re SW Mobile Homes, Inc., 317
16 F.2d 65, 66 (5th Cir. 1963).

17 Once the transferee court receives and docketes the case
18 files, the transferor court generally loses jurisdiction over the
19 case, as does the transferor court's appellate court. Lou, 834
20 F.2d at 733 (28 U.S.C. § 1404); accord, Wilson v. City of San
21 Jose, 111 F.3d 688, 692 (9th Cir. 1997).

22 There are two exceptions to this so-called "docketing rule."
23 First, an appellate court's jurisdiction resulting from a timely
24 notice of appeal filed before the transferee court docketes the
25 matter is not terminated upon completion of the transfer. Lou,
26 837 F.2d at 733. Second, even after docketing in the transferee
27 court, mandamus remains available to require the transferor court
28 to vacate a transfer order if the transfer was too hasty. NBS

1 Imaging Sys., Inc. v. United States Dist. Ct., 841 F.2d 297, 297-
2 98 (9th Cir. 1988). The first exception applies here.

3 We obtained jurisdiction over this appeal as of November 18,
4 2004, by virtue of the filing of the timely notice of appeal
5 before the transferee court docketed the matter. It makes no
6 difference that a motion for leave to appeal was not filed and
7 granted until later. A bankruptcy appellate court is entitled to
8 treat the timely notice of appeal as the equivalent of a motion
9 for leave to appeal. Fed. R. Bankr. P. 8003(c).

10 Similarly, it is a red herring that the bankruptcy court
11 granted the motion for stay pending appeal on November 24, 2004,
12 after the papers were docketed in the transferee court.
13 Appellate jurisdiction had attached when the timely notice of
14 appeal was filed. Lou, 834 F.2d at 733. This makes it
15 unnecessary to consider questions of mandamus over a too-hasty
16 transfer. NBS Imaging Sys., Inc., 841 F.2d at 298.

17 Concluding we have jurisdiction under 28 U.S.C. § 158(a)(3),
18 we proceed to consider the merits.

19
20 II

21 Appellant's first argument is that the venue objection was
22 waived when the chapter 13 trustee did not file a separate motion
23 to dismiss in addition to asserting improper venue as an
24 objection to plan confirmation.

25 Specifically, it is contended that it is insufficient for
26 the trustee to have asserted improper venue in an objection to
27 plan confirmation filed three days after the meeting of creditors
28 at which the debtor testified regarding facts pertinent to venue

1 and even suggested the possibility of transfer. Appellant does
2 not contend that this assertion of improper venue was untimely.
3 Rather, she contends that a separate motion under Rule 1014(a)
4 was required. Fed. R. Bankr. P. 1014(a). We are not persuaded
5 that Rule 1014(a) is the exclusive method of questioning venue.

6 The venue question was formally raised and squarely
7 litigated. The appellant responded to the objection with a brief
8 defending her choice of venue, accompanied by a supporting
9 declaration asserting that she had not relinquished her
10 California domicile when she moved to Georgia in 1999.³ The
11 confirmation hearing itself focused on venue, the argument of the
12 chapter 13 trustee being that venue was improper and that the
13 case belonged in the Northern District of Georgia. The court
14 agreed and ordered transfer.

15 The premise of appellant's argument is that Rule 1014(a),
16 which provides the procedure for transfers involving venue
17 issues, permits only a "timely motion of a party in interest."
18 Fed. R. Bankr. P. 1014(a). This argument contradicts the
19 Bankruptcy Code and ignores other available procedures for
20 contesting venue.

21 First, the court has the power to transfer a case sua sponte
22 under 11 U.S.C. § 105(a) notwithstanding the reference in Rule
23 1014(a) to a motion by a party in interest: "No provision of
24 this title providing for the raising of an issue by a party in
25

26 ³ Since appellant was content with her declaration and did
27 not seek to testify at the hearing, she waived any issue
28 regarding the manner in which this evidence was taken. See Fed.
R. Bankr. P. 9014(d) ("Testimony of witnesses with respect to
disputed material factual issues shall be taken in the same
manner as testimony in an adversary proceeding.").

1 interest shall be construed to preclude the court from, sua
2 sponte, taking any action or making any determination necessary
3 or appropriate to enforce or implement court orders or rules, or
4 to prevent an abuse of process.” 11 U.S.C. § 105(a); Wilson v.
5 Reed (In re Wilson), 284 B.R. 109, 111 (8th Cir. BAP 2002) (sua
6 sponte transfer). When § 105(a) is employed by a court, the
7 crucial question is whether the process utilized fairly placed
8 appellant on notice of what was at stake and afforded an
9 opportunity to respond. That requirement was plainly satisfied
10 in this instance.

11 In addition, while Rule 1014(a) provides an independent
12 method for raising a venue question early in the case, it need
13 not be construed as the sole procedural mechanism for
14 accomplishing that purpose.

15 It is, as here, permissible to object to venue in a timely
16 objection to plan confirmation. An objection to chapter 13 plan
17 confirmation is a “contested matter” governed by Rule 9014. Fed.
18 R. Bankr. P. 3015(f) (“An objection to confirmation is governed
19 by Rule 9014.”). All parties in interest are implicated and
20 entitled to be heard on the question of confirmation.

21 It is a misconception that defensive matters, such as
22 improper venue, cannot be raised in Rule 9014 contested matters.
23 To be sure, Federal Rule of Civil Procedure 12(b), which is
24 incorporated by the bankruptcy adversary proceeding rules, does
25 not apply in contested matters. Compare Fed. R. Bankr. P. 9014,
26 with Fed. R. Bankr. P. 7012(b), incorporating Fed. R. Civ. P.
27 12(b)-(h). The consequence, however, is merely that the
28 defensive matters that otherwise could be raised either by motion

1 or asserted in an answer must, in a contested matter, be asserted
2 directly in the opposition. This result could hardly be
3 otherwise, as it would be extraordinary and nonsensical to hold
4 that defects in jurisdiction, process, venue, and entitlement to
5 relief could not be asserted defensively in a contested matter.

6 Improper venue is the proper subject of a Rule 12(b)(3)
7 motion that may be raised in the opposition to a contested
8 matter. Although Rule 9014 does not authorize a Rule 12(b)(3)
9 defense to be asserted by separate motion, there is no impediment
10 to asserting improper venue in defense of a contested matter, so
11 long as it is raised in a timely fashion.

12 Since objections to venue need to be resolved early in a
13 case and may be waived if not timely raised, the key question is
14 whether the procedure the chapter 13 trustee utilized to question
15 venue - objection to plan confirmation - was timely.

16 Chapter 13 is designed to have plan confirmation proceedings
17 occur relatively early in the case. The plan must be filed
18 within fifteen days after the chapter 13 filing. Fed. R. Bankr.
19 P. 3015(b). It follows that objections to confirmation are
20 generally in order early in the life of a chapter 13 case, which
21 is the logical point at which venue questions should be raised.
22 This case fits that pattern.

23 In short, the venue issue was timely raised and in a
24 procedurally correct manner.

25
26 III

27 The principal substantive question is whether appellant has
28 a California domicile, which is the sole possible basis for venue

1 under the facts of this case. The question subdivides into the
2 question of what law governs the determination of "domicile" and,
3 then, how the applicable law regards the appellant.

4
5 A

6 The parties incorrectly assume that state law, here
7 California law, controls the meaning of "domicile" in the basic
8 bankruptcy venue statute, 28 U.S.C. § 1408(1).⁴ It does not.

9
10 1

11 The meaning of a term such as "domicile" in a federal
12 statute ordinarily presents a federal question to be determined
13 under federal common law unless Congress unambiguously adopts
14 state law. Cf. 13B WRIGHT & MILLER § 3612; Kantor v. Wellesley
15 Galleries, Ltd., 704 F.2d 1088 (9th Cir. 1983).

16
17 ⁴ The bankruptcy venue statute provides:

18 Venue of cases under title 11

19 Except as provided in section 1410 [venue of cases
20 ancillary to foreign proceedings] of this title, a case
21 under title 11 may be commenced in the district court for
22 the district -

23 (1) in which the domicile, residence, principal place
24 of business in the United States, or principal assets in the
25 United States, of the person or entity that is the subject
26 of such case have been located for the one hundred and
27 eighty days immediately preceding such commencement, or for
28 a longer portion of such one-hundred-and-eighty-day period
than the domicile, residence, or principal place of
business, in the United States, or principal assets in the
United States, of such person were located in any other
district; or

(2) in which there is pending a case under title 11
concerning such person's affiliate, general partner, or
partnership.

28 U.S.C. § 1408.

1 venue statute. We conclude that Congress did not so intend.

2
3 a

4 It is, of course, fundamental that federal bankruptcy
5 statutes are enacted pursuant to the power of Congress to
6 establish "uniform Laws on the subject of Bankruptcies throughout
7 the United States." U.S. CONS., ART. 1, § 8. Since the
8 Constitution requires uniformity, it follows that the presumption
9 of uniformity particularly applies to bankruptcy legislation.

10 To be sure, much about bankruptcy does turn on state law.
11 Property interests, in the absence of a particular federal
12 interest that requires a different result, are created and
13 defined by state substantive law. Butner v. United States, 440
14 U.S. 48, 55 (1979). Most debts are likewise governed by
15 substantive state law. Cf. 11 U.S.C. § 101(5). Bankruptcy
16 trustees can rely on "applicable," i.e. state, law to avoid
17 transfers. 11 U.S.C. § 544(b)(1). Debtors may invoke state law
18 exemptions, and Congress has gone so far as to authorize states
19 to supplant the uniform debtor's exemptions from property of the
20 estate. 11 U.S.C. § 522(b)(1).

21 While these and other invocations in the Bankruptcy Code of
22 "applicable law" and "applicable nonbankruptcy law" make the
23 determination of substantive state law questions a matter of
24 bankruptcy routine, the overall structural theme of the
25 Bankruptcy Code is nevertheless one of uniform federal law.

1 b

2 The venue provision applicable to the Bankruptcy Code was
3 enacted as 28 U.S.C. § 1472(1) in the Bankruptcy Reform Act of
4 1978. Pub. L. No. 95-598, § 241, 92 Stat. 2669 (Nov. 6, 1978)
5 (repealed 1984). It was re-enacted in 1984 in its current form
6 as § 1408(1) without substantial change.⁵ Pub. L. No. 98-353,
7 § 102(a), 98 Stat. 334 (July 10, 1984).

8 The legislative history of the 1978 act explained that the
9 venue provision was derived from § 2 of the Bankruptcy Act of
10 1898 and from former Bankruptcy Rule 116. S. Rep. No. 95-989,
11 95th Cong. 155 (1978); H. Rep. No. 95-595, 95th Cong. 446 (1977).

12 The 1898 version was couched in terms of jurisdiction. It
13 provided that courts of bankruptcy had original jurisdiction to
14 "adjudge persons bankrupt who have had their principal place of
15 business, resided, or had their domicile within their respective
16 territorial jurisdictions for the preceding six months or the
17 greater portion thereof." Bankruptcy Act of 1898, § 2, 30 Stat.
18 544, codified at 11 U.S.C. § 11(a)(1) (repealed 1979).

19 The 1973 version that appeared as Bankruptcy Rule 116
20 treated the matter solely as a question of venue: "A petition by
21 or against a natural person may be filed in the district where
22 the bankrupt has had his principal place of business, residence,
23 or domicile for the preceding six months or for a longer period
24 thereof than in any other district." Bankruptcy Rule 116, 411
25 U.S. 1012 (1973). The Advisory Committee explained that the
26 shift from jurisdiction to venue resulted from settled case law
27

28 ⁵ A comma was deleted and "180" was spelled out.

1 that Bankruptcy Act § 2 related primarily to venue, even though
2 phrased in terms of jurisdiction. Bankruptcy Rule 116, advisory
3 committee note; 1 JAMES WM. MOORE, COLLIER ON BANKRUPTCY ¶¶ 2.13 & 2.16
4 (14th ed. 1976).

5
6 c

7 Judicial treatment of domicile as a federal question for
8 purposes of bankruptcy venue dates back to 1898.

9 The choice of domicile as a basis for proceeding under the
10 1898 statute did not occur upon a blank slate. Federal courts
11 had long since adopted domicile as a proxy for "citizenship"
12 under the diversity jurisdiction. E.g., Morris v. Gilmer, 129
13 U.S. 315, 328 (1889) (Harlan, J.); Briggs v. French, 4 F. Cas.
14 117, 118 (C.C.D. Mass. 1835) (No. 1,871) (Story, Circuit
15 Justice). To this day, domicile remains the benchmark for
16 citizenship for purposes of diversity jurisdiction. See, e.g.,
17 Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001);
18 RESTATEMENT (SECOND) CONFLICT OF LAWS (1988 Revisions) § 11, cmt. o
19 ("Domicil for diversity of citizenship purposes is governed by
20 federal law and may differ from domicil in the local law of a
21 state.") ("RESTATEMENT"); 13B WRIGHT & MILLER § 3611.

22 When, from the outset of the Bankruptcy Act of 1898, the
23 courts relied on the settled body of federal decisions
24 interpreting domicile for purposes of federal jurisdiction to
25 determine bankruptcy domicile, they were operating in the
26 mainstream of federal jurisprudence. In re Filer, 108 F. 209,
27 211 (S.D.N.Y. 1900); In re Williams, 99 F. 544, 545-46 (D. Wash.
28 1900). This remained the case through 1978.

1 Williamson v. Osenton, 232 U.S. 619, 625 (1914) (Holmes, J.);
2 Kanter, 265 F.3d at 857; 13B WRIGHT & MILLER § 3612.

3 Everyone has a domicile and nobody has more than one
4 domicile at a time. RESTATEMENT § 11. Once established, domicile
5 continues until superseded by another domicile. Id., § 19. One
6 may reside in one place and be domiciled in another. Holyfield,
7 490 U.S. at 48.

8 For adults, a domicile of choice is established by
9 simultaneous physical presence in a place and an intention to
10 remain there. Id. at 48; Kanter, 265 F.3d at 857; RESTATEMENT
11 § 15.

12 The modern rule is that a wife retains capacity to acquire
13 domicile of choice independent of her spouse. RESTATEMENT § 21.⁷

14 We conclude that Congress did not intend domicile in the
15 bankruptcy venue statute to differ from these general rules.

16
17 4

18 When a person's domicile is in doubt, the difficult question
19 is usually whether the individual had the requisite subjective
20 intent. This enquiry is "essentially factual" in a sense that
21 requires consideration of all the circumstances. Lew, 797 F.2d
22 at 750; accord Cury v. Prot, 85 F.3d 244, 251 (5th Cir. 1996);
23 13B WRIGHT & MILLER § 3612; 15 MOORE'S § 102.36[1].

24
25 ⁷ The 1988 Revision to the Restatement reworded the rule
26 to: "The rules for the acquisition of a domicil of choice are the
27 same for both married and unmarried persons." RESTATEMENT § 21.
28 The old common-law rule had been that a wife takes her husband's
domicile. During the twentieth century the rule declined to a
mere presumption and by 1988 was abandoned altogether. Id., cmt.
a (old common-law rule "is clearly inconsistent with contemporary
views relating to the legal position of married women").

1 One's own declarations regarding intent are pertinent but
2 ordinarily will be substantially discounted by the court when
3 inconsistent with objective facts. Coury, 85 F.3d at 251; Lew,
4 797 F.2d at 750; 13B WRIGHT & MILLER § 3612; 15 MOORE'S § 102.36[2].
5 The Supreme Court has noted that a declaration regarding intent
6 for purposes of domicile "is, of course, to be given full and
7 fair consideration, but is subject to the infirmity of any self-
8 serving declaration, and may frequently lack persuasiveness or
9 even be contradicted or negated by other declarations and
10 inconsistent acts." Dist. of Columbia v. Murphy, 314 U.S. 441,
11 456 (1941) (tax domicile).

12
13 B

14 In this instance, the debtor's sole evidence that she had
15 never relinquished her California domicile was her declaration to
16 that effect. Objective facts supported the contrary inference of
17 domicile in Georgia. After her spouse died, she remained in
18 Georgia. She owned a house in Georgia. Her social security
19 payments were directed to Georgia. The purpose of the bankruptcy
20 filing was to rescue the Georgia residence from mortgage default.

21 This objective evidence suggested that the debtor had, while
22 residing in Georgia, formed the requisite intent to remain there
23 indefinitely. The evidence further supported an inference that
24 having changed her domicile from California to Georgia, she did
25 not succeed in changing it back to California during her thirty-
26 day contract position during which she stayed with a friend.

27 While the court could have chosen to believe the debtor's
28 testimony that she had not relinquished her California domicile

1 in the face of other objective evidence suggesting a Georgia
2 domicile, it gave greater weight to the objective evidence.
3 Either conclusion was a permissible view of the evidence.

4 Where there are two permissible views of the evidence, the
5 fact finder's choice between them cannot be clearly erroneous.
6 Anderson v. Bessemer City, 470 U.S. 564, 574 (1985); Duckett v.
7 Godinez, 109 F.3d 533, 535 (9th Cir. 1997).

8 Hence, the court's ruling that the debtor's domicile was in
9 Georgia at the time of the filing was not clearly erroneous.

10
11 IV

12 Even if the trial court erred on the domicile issue and
13 venue was actually proper in California, such an error would be
14 harmless because a discretionary change of venue was permitted
15 under 28 U.S.C. § 1412.⁸ The transfer issue was raised by the
16 court during the hearing; the debtor's counsel agreed that
17 transfer to Georgia was an option.

18 We are not permitted to reverse for reasons that do not
19 affect the substantial rights of the parties. 28 U.S.C. § 2111;
20 Fed. R. Bankr. P. 9005, incorporating Fed. R. Civ. P. 61.
21 Moreover, we can affirm for any reason supported by the record.
22 Ditman v. California, 191 F.3d 1020, 1027 n.3 (9th Cir. 1999);
23 Com-1 Info, Inc. v. Wolkowitz (In re Maximus Computers, Inc.),

24
25 ⁸ Section 1412 provides:

26 A district court may transfer a case or proceeding
27 under title 11 to a district court for another
28 district, in the interest of justice or for the
convenience of the parties.

28 U.S.C. § 1412.

1 278 B.R. 189, 196 (9th Cir. BAP 2002). Accordingly, if the
2 transfer satisfies the standards of § 1412, we could not reverse.

3 The § 1412 statutory standards for transferring a bankruptcy
4 case invoke the “interest of justice” and “convenience of the
5 parties,” but, unlike the general federal transfer statute, do
6 not expressly include convenience of witnesses. Compare 28
7 U.S.C. § 1412, with id. § 1404(a); 1 COLLIER ¶ 4.04[3]. Whether,
8 however, this distinction makes any difference in the end is
9 debatable.

10 The analysis of any combination of “interest of justice” and
11 “convenience of parties” under § 1412 is inherently factual and
12 necessarily entails the exercise of discretion based on the
13 totality of the circumstances, which may include considerations
14 regarding witnesses and the presentation of evidence.

15 Thus, a typical laundry list of non-exclusive factors, which
16 usually adds up to a totality-of-circumstances analysis, takes
17 witnesses into account: (1) proximity of creditors to Court; (2)
18 proximity of debtor to Court; (3) proximity of witnesses
19 necessary to administration of estate; (4) location of assets;
20 (5) economic and efficient administration of case; (6) need for
21 further administration if liquidation ensues. See Puerto Rico v.
22 Commonwealth Oil Ref. Co. (In re Commonwealth Oil Ref. Co.), 596
23 F.2d 1239, 1247 (5th Cir. 1979), cited with approval, In re Enron
24 Corp., 274 B.R. 327, 343-49 (Bankr. S.D.N.Y. 2002); 1 COLLIER
25 ¶ 4.04[4][a][ii].

26 Such factors, however, when distilled to their essence,
27 reveal that they are mere secondary tools facilitating the
28 ultimate § 1412 analysis, which entails a balancing of due

1 process concerns of assuring appropriate access to the court for
2 all parties in interest against the economic and efficient
3 administration of the case. While it may be economically
4 efficient for those in control of a bankruptcy case to administer
5 it in a location that handicaps parties in interest, the
6 integrity of the bankruptcy process requires that the natural
7 enemies have reasonable access to the court. Cf. 1 COLLIER
8 ¶ 4.04[4][a][ii].

9 In this instance, those considerations support a Georgia
10 venue over a California venue. The debtor concedes that she is a
11 Georgia resident, which also necessarily follows from her need to
12 ground her California filing on a theory of domicile. Her
13 property, both real and personal, is located in Georgia. Her
14 financial accounts are located in Georgia. Her primary creditor
15 was the mortgagee on her Georgia mortgage. The rest of her
16 creditors are mainly either Georgia or national creditors.

17 These connections warrant a conclusion that a Georgia venue
18 optimally suits the persons best situated to monitor the chapter
19 13 case, to be heard regarding the terms of the chapter 13 plan,
20 and to protect their interests if the case becomes a chapter 7
21 liquidation. It also suits the debtor who continues to reside in
22 Georgia, who, like most of her creditors, would otherwise have to
23 travel to California for a court appearance. Indeed, the debtor,
24 at her meeting of creditors, raised the possibility of transfer.
25 The court, the chapter 13 trustee, and the debtor's counsel all
26 addressed the question of transfer during the hearing.

27 In short, since transfer of the case to the Northern
28 District of Georgia was plainly permissible under § 1412, the

1 court did not abuse its discretion in ordering a transfer.

2 It follows that any error with respect to the determination
3 of domicile does not affect substantial rights and is harmless.

4
5 CONCLUSION

6 The bankruptcy court did not err when it transferred the
7 debtor's bankruptcy case to the Northern District of Georgia.
8 The debtor's subjective intent to remain a domiciliary of
9 California is inconsistent with her actions - specifically, the
10 overwhelming majority of the debtor's contacts are with Georgia.
11 Further, the debtor had ample notice of the trustee's intent to
12 challenge the debtor's case on venue grounds. Because the
13 debtor's domicile lies in Georgia, the court did not err when it
14 transferred her case. Further, even if the debtor's domicile was
15 in California, the court had discretion on this record to order
16 transfer. AFFIRMED.