

# In the United States Bankruptcy Court

## for the Northern District of Iowa

BYRON JOE DEDRICKSON and  
KARLA JEAN DEDRICKSON

*Debtor(s).*

Bankruptcy No. X90-00240F

Chapter 13

### ORDER DENYING CONFIRMATION OF PROPOSED PLAN

Debtors seek confirmation of their proposed chapter 13 plan filed February 12, 1990 and amended May 17, 1990. Cheryl J. Dedrickson, Byron Dedrickson's former wife, has objected to confirmation. Hearing was held on September 13, 1990 in Fort Dodge, Iowa. The court now issues its ruling including findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

Cheryl J. Dedrickson is the former wife of Byron Joe Dedrickson. The couple was divorced in Kansas in 1986. The dissolution decree imposed a support obligation on Byron for his two children from the marriage. It required monthly support payments and obligated Dedrickson to pay one-half of all of the children's uninsured medical expenses and to provide for their health insurance. In October, 1989, the obligation was modified by the Kansas District Court to increase the monthly payments to \$800.00 (\$400.00 per child per month).

In the plan of reorganization, Byron Dedrickson concedes that the child support obligation is not dischargeable. The plan does not propose to effect the monthly payments or insurance requirements. The plan, however, provides "[t]hat there shall be no modification of the Debtor's obligation pursuant to this court order [Kansas decree] during the period of time that the Chapter 13 Plan is in effect."

Cheryl Dedrickson objects to this provision of the plan arguing that it is contrary to the provisions of chapter 13 and "is an attempt to secure a stay of further proceedings in the State Court where none is statutorily provided for, and would deprive the creditor of her statutory remedy for modification of child support for changes in financial conditions.

The court does not accept Cheryl Dedrickson's argument that the Bankruptcy Code does not provide a stay against support modification during the pendency of a chapter 13 after confirmation. Title 11, § 362(a)(1) provides that the filing of a bankruptcy petition operates as a stay, applicable to all entities, of the commencement or continuation of judicial proceedings against the debtor. The stay protecting the debtor from such proceedings continues until the earliest of the closing of the case, the dismissal of the case, or the time at which discharge is granted or denied. 11 U.S.C. § 362(c)(2). Section 362(b)(2) is not an exception to the stay which permits actions seeking post-petition child support modification. Stringer v. Huet (In re Stringer), 847 F.2d 549, 552 (9th Cir. 1988). Confirmation of a chapter 13 plan does not dissolve the stay which protects the debtor. Therefore, even after confirmation of a proposed plan, Cheryl Dedrickson must seek relief from the automatic stay in order to seek a modification of the dissolution decree. [\(1\)](#)

Byron Dedrickson has asked the court to approve a plan which contains a provision which would prevent Cheryl Dedrickson from seeking any modification of child support during the pendency of the chapter 13. The court agrees with Cheryl Dedrickson that a plan containing such a provision cannot be confirmed.

In order to gain confirmation, a proposed plan must comply with the provisions of chapter 13 and with other applicable provisions of Title 11. 11 U.S.C. § 1325(a)(1). Byron Dedrickson has an obligation to support his children. If the obligation is not dischargeable, it remains modifiable under state law. The ability of a debtor to cap for any period the amount of his or her child support obligation, despite the changing needs of the child would amount to a partial discharge of a non-dischargeable debt. Debtors' effort to prevent any attempt at modification of the child obligation

during the pendency of the chapter 13 plan is a violation of 11 U.S.C. § 1328(c)(2). The plan is, therefore, not confirmable.

Finally, the court notes that the case trustee had no objections to the proposed plan nor has any other creditor or party-in-interest. If the debtors choose to modify the proposed plan by striking the offending paragraph, the court will confirm the plan without further hearing. If the debtors so choose, they should file an amended plan without the objectionable provision, and serve it upon the case trustee, the U. S. Trustee, and the attorney for Cheryl Dedrickson. Proof of service should be filed, and if no objections to the amended plan are filed within 20 days after service, this court will enter its order confirming the plan.

### **ORDER**

IT IS ORDERED that confirmation of the proposed plan filed by the debtors on February 12, 1990 and amended on May 17, 1990 is denied.

SO ORDERED ON THIS 21<sup>st</sup> DAY OF SEPTEMBER, 1990.

William L. Edmonds  
Chief Bankruptcy Judge

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1. Whether Cheryl Dedrickson must obtain relief from the stay in order to take action against property, will depend on whether the property is property of the debtor or of the estate. This is often a difficult question about which there is no agreement among bankruptcy courts. It is a question that need not be decided now.