

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

LYNN A. MARTIN and
DEBBIE K. MARTIN

Bankruptcy No. 93-51892XS

Debtor(s).

Chapter 13

ORDER RE: CONFIRMATION HEARING

The debtors, Lynn A. Martin and Debbie K. Martin, seek confirmation of their proposed chapter 13 plan. Hearing was held on March 2, 1994.

The plan proposes payment of \$607.00 per month to the trustee for four years, although the debtors state that their intention was to propose payment of \$613.00 per month. For purposes of this decision, the latter figure will be used. Under the plan, the debtors would pay the trustee \$29,424.00. Ten per cent of this amount, or \$2,942.00, would go to the trustee for her fees, and it is estimated that \$400.00 would go to the debtors' attorney. This would leave a balance of \$26,082.00 for distribution to creditors. Of this amount, \$21,789.00 would be paid to priority tax claimants, leaving a remaining amount of \$4,293.00 for general unsecured creditors. The debtors have scheduled approximately \$34,000.00 in unsecured debts, with \$4,231.00 of that amount listed as "disputed."

Both debtors are employed. Their combined monthly take-home pay is \$4,001.00. They estimate their monthly living expenses at \$3,388.00. These expenses include \$250.00 per month for clothing and \$150.00 per month for recreation and entertainment. Mrs. Martin is store manager and decorating consultant for Creative Carpets in Sioux City. She says her monthly clothing expense is approximately \$150.00 because she is expected to dress professionally in working with the public. Mr. Martin is a salesman for U. S. Supply. He has no special clothing requirements.

The monthly entertainment expense includes money given to the debtors' 11-year old son for entertainment, but it appears the bulk of it is spent on the son's participation in youth hockey. This sport is expensive in its equipment requirements and because the son is on the "travelling team." He plays in out-of-town tournaments which take the family away from home overnight on weekends. Money is spent on hotels and motels and on meals for the tournaments.

The couple's other form of entertainment is attending hockey games and watching television at home. They rent movies and also subscribe to two pay television channels. Because both debtors work, they eat dinner out five to six nights per week, but that cost is part of the debtors' food budget.

No creditors have objected to the plan. However, the court has an independent obligation to be sure that the proposed plan complies with the Bankruptcy Code. In re Northrup, 141 B.R. 171, 172 (N.D. Iowa 1991).

The court will not confirm the debtors' plan as it considers that it was not proposed in good faith. Over the plan's four-year period, debtors would be paying their unsecured creditors \$4,293.00. This is not their best effort especially when the court considers their monthly expenditures on clothing and recreation. The court does not accept the explanation that a \$250.00 per month clothing allowance is necessary primarily because of Mrs. Martin's job. She has been in her position for two to three years. Presumably, she would have built up some wardrobe in that time. Continued spending at the rate of \$3,000.00 per year for clothes over the life of the plan is extravagant.

Also, although the debtors give reasons for the entertainment budget of \$150.00 per month, the court does not find the reasons completely acceptable. Although it is healthy and beneficial for the debtors' son to play hockey, it may not be necessary for him to be on the travelling team, or if he is, it might be worked out so that the debtors need not attend every out-of-town tournament. And if debtors are unable to pay their creditors, they give little justification for expenditures such as subscription to premium cable television stations.

In all, the debtors give the impression of persons not willing to reduce their recreational lifestyle in order to pay their creditors. The figures show as much: over four years, the unsecured creditors would receive \$4,293.00 while at the same time, the debtors would spent \$19,200.00 on themselves for clothing and recreation. Such a plan is not proposed in good faith and will not be confirmed. 11 U.S.C. § 1323(a) (3).

IT IS ORDERED that confirmation of the debtors' plan, filed January 31, 1994, is DENIED.

SO ORDERED ON THIS 3rd DAY OF MARCH, 1994.

William L. Edmonds
Chief Bankruptcy Judge