

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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CINDEE S. FACION  
Debtor.

Bankruptcy No. 95-12089KC  
Chapter 13

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### ORDER RE: CONFIRMATION OF CHAPTER 13 PLAN

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On December 14, 1995, the above-captioned matter came on for hearing pursuant to assignment. Debtor appeared with Attorney Ray Terpstra. Also present was Trustee Carol Dunbar. The matter before the Court is Confirmation of Debtor's Plan. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(L).

Debtor proposes to fund her Chapter 13 Plan with \$200 monthly payments for 36 months. The only objection appearing in the file is Trustee's objection filed on the date of this hearing. Debtor requests the Court deny the objection as untimely. The Court has an independent duty to review proposed Chapter 13 plans for compliance with the Bankruptcy Code. In re Northrup, 141 B.R. 171, 172 (N.D. Iowa 1991). The Court concludes that the issues raised in Trustee's objection as well as any other issues regarding confirmability of Debtor's Plan should be considered on their merits.

Trustee objects to confirmation on several grounds. She states that Debtor's Schedule J lists certain unsecured creditors who are being paid by Debtor directly outside the plan. Debtor lists payments to Mastercard, Montgomery Wards and Norwest in the approximate amount of \$280 per month. Debtor explained that these are, in fact, obligations of her husband and that they are listed in Schedule J for informational purposes to establish the couple's expenditures per month. As Debtor's husband's income is also listed as a source of revenue on Schedule I, Debtor's counsel explained that he felt it appropriate that the husband's individual obligations also be listed. These are debts personal to Debtor's husband but are relevant to a determination of total available income for the family unit. The Court concludes that it is appropriate that these payments be treated as expenses and not payable through the Plan.

Trustee also objects to Debtor paying Farm Bureau Life and New York Life outside the plan. Debtor explained that there is little value left to the underlying insurance policies against which she has borrowed. She stated that the payments made, while they may be denominated as debt payments against secured loans made on the policies, are in effect minimum premium payments required to keep the basic life insurance in effect. The Court concludes that paying these creditors outside the plan is acceptable as it appears to be more in the nature of a monthly expense than a true debtor-creditor relationship.

Trustee also objects to confirmation based on the disposable income requirement of 1325(b)(1)(B). She asserts that as the unsecured creditors are not being paid in full, Debtor must dedicate all her disposable income to funding her plan. Pursuant to Schedule J, Debtor proposes to pay \$200 of the \$219.87 excess remaining after deducting the listed expenses from the income disclosed in Schedule I.

The Court considers that sufficient flexibility exists in the law regarding whether such small amounts of money need to be dedicated to the Plan if the Plan is fair and filed in good faith in all other respects. Under the circumstances, the \$19.87 per month hold back is not in and of itself unreasonable. It would be more appropriate, however, for Debtor to include the extra \$19 in her proposed monthly payment. More troublesome for the Court is Debtor's assertion of an expense of \$560 per month for charitable contributions for tithing to her church.

The Court raised this issue at the hearing, indicating a reluctance to confirm a Plan with that amount of money being paid to a charity each month. Over the course of the Plan, \$7,200 will be paid to unsecured creditors. During the same period of time, Debtor and her husband will be paying \$20,160 to charity. Accepting that Debtor and her husband tithe as part of their sincere religious commitment, the Court is nevertheless concerned about the amount of money being contributed as compared with the amount being paid to creditors.

Under 1325(b)(1), if the debtor proposes to pay less than the full amount of all claims, the plan must provide that all of the debtor's projected disposable income be dedicated to plan payments. "Disposable income" is defined as that which is not reasonably necessary to be expended for the maintenance or support of the debtor or debtor's dependants. 11 U.S.C. 1325(b)(2).

Recent decisions are instructive on the issue of charitable contributions in Chapter 13. The Court in In re Tessier, 1995 WL 736461, at \*1 (Bankr. D. Mont. Dec. 8, 1995), considered confirmability of a Chapter 13 plan which included a charitable contribution to the debtors' church of \$100.00 per month. The debtors proposed plan payments of \$300 per month which resulted in no payment to unsecured creditors. Id. at \*2. The court considered whether this violated the requirement of 1325(b)(1)(B) that debtors commit 100% of their disposable income to the plan. Id. at \*1. The debtors asserted that the Free Exercise Clause and the Religious Freedom Restoration Act ("RFRA") except their contributions from an earlier case's holding that religious offerings are not proper disposable net income expense items. Id.; In re Lees, \_\_\_ B.R. \_\_\_, 14 Mont. B.R. 181 (Bankr. Mont. 1995).

The court concluded in Tessier that the RFRA was unconstitutional and affirmed the holding in Lees that charitable contributions should be included in the debtors' disposable income for purposes of confirming their Chapter 13 Plan. Tessier, 1995 WL 736461, at \*11. It relied on the central holding of Employment Div. v. Smith, 494 U.S. 872, 886-87 (1990), and the majority rule among bankruptcy courts considering the issue that

only if 1325(b) applies 'neutrally to church and charitable donations,' does its interpretation not involve the Court in determining whether the debtors' personal commitment to making religious offerings is sufficient to create an exception to 1325(b), a task the Supreme Court found courts

incompetent to perform.

Tessier, 1995 WL 736461, at \*3. The court avoided the problem by adopting a construction of 1325(b) that includes as disposable income all charitable contributions, both secular and sectarian. Id.

Other courts have come to similar conclusions. The court in In re Cavanaugh, 175 B.R. 369, 374 (Bankr. D. Idaho 1994), noted that courts allow some discretionary spending for recreational items such as dinners out and newspapers, the reasonableness of which must be evaluated in light of the debtors' income and Chapter 13 plan payments. It concluded, however, that debtors have no right to more discretionary income merely because they wish to use some of it to make charitable donations. Id. at 374-75. In In re Lee, 162 B.R. 31, 42 (Bankr. N.D. Ga. 1993), the court determined that a monthly expense of \$350 as tithe for church was unreasonable and refused to confirm the Chapter 13 plan proposing monthly payments of \$227 to creditors. In In re McDaniel, 126 B.R. 782, 785 (Bankr. D. Minn. 1991), the court concluded that proposed monthly payments of \$540 to the debtors' church was excessive and refused to confirm the plan proposing monthly payments of \$600 to creditors.

Based on the foregoing, the Court concludes that Debtor's plan fails to meet the disposable income requirement of 1325(b)(1)(B). Debtor proposes to pay \$200 per month to creditors which will result in a minimal payout on unsecured claims. Under these circumstances, it is unreasonable to deduct \$560 per month from Debtor's available income for charitable contributions to her church in determining disposable income. If Debtor dedicated this amount to payments under the plan, unsecured creditors would receive a much larger return than they are receiving under Debtor's proposed payments. Debtor earns a substantial income and, from her schedules, it appears that she lives comfortably though not extravagantly. Based on all the circumstances, the Court concludes that including \$560.00 per month in Debtor's expenses for charitable purposes is not in conformance with 1325 of the Bankruptcy Code and the Plan cannot therefore be confirmed. Debtor should, however, be allowed a reasonable amount of time within which to propose an amended plan.

**WHEREFORE**, Trustee's Objections to Plan and Report to Court are SUSTAINED in part and DENIED in part.

**FURTHER**, Confirmation of Debtor's Chapter 13 Plan is DENIED.

**FURTHER**, Debtor is granted until January 12, 1996 within which to file an amended plan in conformance with this ruling.

**SO ORDERED** this 22nd day of December, 1995.

Paul J. Kilburg  
U.S. Bankruptcy Judge