In the United States Bankruptcy Court

for the Northern District of Iowa

ROBERT COLE LEE and KATHERINE M. LEE *Debtor(s).*	Bankruptcy No. 97-00791F Chapter 13

DECISION RE: CONFIRMATION OF PROPOSED PLAN

Robert and Katherine Lee filed their Third Amended Plan on January 26, 1998 (docket no. 21). The standing trustee objected, making various comments about the plan and asking that debtors be compelled to contribute their disposable income to the plan (docket no. 23). Hearing on confirmation was held February 25, 1998 in Fort Dodge. This is a core proceeding. 11 U.S.C. § 157(b)(2)(L).

When debtors filed their petition, Robert Lee was cemetery supervisor for Webster City, and Katherine Lee had been a convenience store clerk for about one month. They scheduled combined monthly net income of $1,624.12 (docket no. 1, Schedule I). They scheduled monthly expenses of $2,135.74 (docket no. 1, Schedule J). Although they were spending more each month than they earned, they proposed an initial plan in which they paid the trustee $100.00 per month (docket no. 1, Plan). Their schedule of expenses included charitable contributions of $10.00 per month (docket no. 1, Schedule J) and telephone expenses of $150.00 per month. In addition to paying $100.00 per month to the trustee, they initially proposed direct payments to four creditors holding secured claims.

Debtors filed various amended plans. Prior to filing their Third Amended Plan, Katherine Lee got a better job. Her net pay is now $1,650 per month. Previously it was $414.18. The couple's combined monthly net income is now $2,859.94. At the time they filed the pending plan, they also filed a new schedule of current monthly expenditures (docket no. 20, Schedule J).

Five monthly expenditures changed from the initial filing of the schedule. Telephone expense increased from $150.00 to $186.00; home maintenance changed from $75.00 to $100.00; medical expenses increased from $50.00 to $260.00; life insurance was added in the amount of $40.06; and the couple's monthly charitable contributions increased from $10.00 to $160.00.

Medical expenses increased because Mr. Lee can now afford prescribed medication for depression and high cholesterol. Charitable contributions increased because the couple can now afford to make a greater contribution to their church. The increase includes a $70.00 annual payment for religious education classes for their children. Amended Schedule J does not include tuition expense of $28.00 every two weeks for computer training for Mr. Lee. He recently signed up for the training.

The new schedules of income and expenses showed excess income of $263.00. Based on their change in income, debtors proposed to make $200.00 in monthly payments to the trustee. As in previous plans, the new plan provides for direct payments to a secured creditor holding a mortgage against Lees' home. Lees will surrender collateral to two other creditors. Also, they have sold one of their cars and paid off the car loan, freeing another car from the same security interest. Under the plan, all of debtors' payments to the trustee, after the payment of administrative expenses, will be paid to unsecured creditors. Lees have scheduled approximately $45,000 in unsecured debt, not including the unsecured claims of any undersecured creditors.

Carol Dunbar objected to the plan and initially directed the court's attention to the increased monthly expenses. She made particular mention of the fact that excess income is now $263.00, but the debtors devote only $200.00 to the plan. Carol Dunbar did not attend the hearing. At the outset of the hearing, James McCarthy, debtors' attorney, announced that debtors and Mrs. Dunbar had settled their dispute and that debtors would orally amend the plan to make monthly payments of $263.14 to the trustee.

Notwithstanding the settlement, the court required evidence from the debtors as to their disposable income. The court has an independent duty to review plans for compliance with the Code. In re Northrup, 141 B.R. 171, 172 (N.D. Iowa 1991).

The court's concern focuses on the debtors' telephone and charitable expenses. The phone bills include Internet service costing $14.95 per month and the cost of three cellular phones. Mr. Lee uses the cell phones for his work, but he is not required to have them. Mrs. Lee carries one because she has seizures. There is no breakout as to the cost of these phones.

Lees say that as their income has improved, they want to tithe to their church. Mr. Lee testified that the $160 per month donation to the church is about 5 per cent of the couple's gross monthly income. Lees have no significant history of tithing. Mrs. Lee says they have tried to tithe for about a year. They were not tithing at the time they filed bankruptcy.

Because the trustee objected to the plan, the court may not approve it unless debtors pay unsecured creditors in full or

> the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

11 U.S.C. § 1325(b)(1).

> "[D]isposable income" means income which is received by the debtor and which is not reasonably necessary to be expended--(A) for the maintenance or support of the debtor or a dependent of the debtor....

11 U.S.C. § 1325(b)(2)(A).

I agree that a debtor's chapter 13 budget should be evaluated in light of the proposed plan and that "[s]ome discretionary expenses are necessary for maintenance and support." Matter of Anderson, 143 B.R. 719, 721 (Bankr. D. Neb. 1992). "The reasonableness of proposed discretionary expenses must be evaluated in light of debtors' income and Chapter 13 Plan payments." Id.

With these propositions in mind, I find that debtors' proposed expenses for phone service and for charitable contributions are excessive. Phone service of $186.00 per month is not reasonably necessary for the debtors. Basic phone service, some long distance, some Internet service, and cellular phone service on account of Mrs. Lee's medical condition should not require the expenditure of $186.00 per month.

I find also that debtors' proposed charitable contributions are not reasonably necessary. Since the filing of their petition and initial plan, debtors' net income has increased 76 per cent from $1,624.12 to $2,859.94. As a result, debtors agree to increase plan payments to the trustee by 163 per cent, but debtors propose to increase charitable contributions by 1500 per cent. They have never tithed before, and their church recommends, but does not unconditionally demand, tithing (Exhibit A). The debtors' increased net income should permit some increase in discretionary expenditures, including charitable giving. In this case, however, the increase is not reasonably necessary.

Because the amended plan violates § 1325(b)(1), it will not be confirmed. Although it would be helpful to the debtors for me to advise as to what level of phone and charitable expenses would be acceptable, I will not give such advice.

A further proposal is the prerogative of the debtors. Once made, a proper functioning of the Chapter 13 system requires a critical examination of expenditures by the standing trustee. If a trustee merely accepts the debtors' calculations of disposable income and recommends confirmation based upon it, debtors will be without useful guidance as to what proposals might be confirmed by the court. At the hearing, the court was informed that the trustee recommended confirmation of the plan, as amended, to increase payments to $263.14. It is difficult to rely on recommendations which the court does not perceive to be based on thorough examinations of the disposable income issue and serious negotiations between the parties. The debtors are left to propose a new plan, if they so desire, and the confirmation process will start anew.

IT IS ORDERED that confirmation of the debtors' Third Amended Plan is denied.

SO ORDERED THIS DAY OF MARCH 1998.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order by U.S. mail to debtors, James McCarthy, Carol Dunbar and U.S. Trustee.