In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

CHRISTINE E. BOYSEN	Bankruptcy No. 98-00784S
Debtor(s).	Chapter 13

ORDER RE: PROPOSED PLAN

The matter before the court is confirmation of the debtor's proposed chapter 13 plan. This is a core proceeding. Hearing was held April 21, 1998 in Sioux City. Alvin J. Ford appeared for the debtor. Michael Dunbar appeared for Carol F. Dunbar, the standing trustee.

Debtor filed her chapter 13 petition on March 20, 1998. In addition to secured debt, her schedules show unsecured debts in the amount of $17,255.86. These debts have been incurred since 1994 when she filed a petition in this court under chapter 7. Debtor has chosen now to file under chapter 13. Had she filed a chapter 7 petition at this time, she would not be eligible for a chapter 7 discharge. 11 U.S.C. § 727(a) (8).

Her plan proposes direct payments to her secured creditors. She owes debts secured by her mobile home, a lot and her car. She is apparently current in paying these secured debts. She proposes payments to the trustee of $5.00 per month over 36 months. After payment of the standing trustee's fee ($16.36), there would be available $163.64 over the life of the plan for pro rata distribution to allowed unsecured claims.

The standing trustee's only remaining objection to the plan is that it ought to be extended to 60 months in order for the debtor to show good faith. The debtor is willing to extend the plan to 60 months. This would make available to allowed unsecured claimants the net sum of $272.73 over five years.

I think the proposed payments over either period, 36 or 60 months, are virtually meaningless to creditors. If all scheduled unsecured creditors have allowed claims, the dividend would be less than one per cent per dollar (.009) of claim. If the plan duration were 60 months, the dividend would be one and one half per cent per dollar (.015), paid over five years. The significance of the plan payments over three or five years is shown by examining the dividends for the mean and median claim. The mean claim, if all unsecured claims are filed and allowed, would be $784.36. The total dividend for such a claim under a three-year plan would be $7.06. Under a five-year plan, it would be $11.77. The median claim is $151.76. Under a three-year plan, the dividend would be $1.37; over five years, it would be $2.28.

From the debtor's perspective, the plan payment is arguably significant.[(1)] The benefit to her for the plan payment is extraordinary. She has net earnings of $13,200 per year. She has tremendous motivation to pay $1.15 per week to discharge more than $17,000.00 in debt that would not be dischargeable in chapter 7.

Because of the extraordinary benefit to the debtor of a chapter 13 discharge, the consideration to creditors should be meaningful. If it is not, then the case is nothing more than a chapter 7 case disguised as a chapter 13 case. Congress contemplated benefits to creditors as well as to debtors in enacting chapter 13. In the legislative history of the Act, it is said that "[t]he benefit to creditors [of chapter 13] is self- evident; their losses will be significantly less than if their debtors opt for straight bankruptcy." H.R. Rep. No. 595, 95th Cong., 1st Sess. 118 (1977). Here the loss is not significantly less. It is more. Creditors receive a *de minimis* payment, as opposed to no dividend in chapter 7, but the balance of their claims are discharged. They would not be in chapter 7.

A plan must be proposed in good faith. 11 U.S.C. § 1325(a) (3). This one has not been. It is an abuse of the purpose and spirit of chapter 13. Education Assistance Corp. v. Zellner, 827 F.2d 1222, 1227 (8th Cir. 1987). It unfairly manipulates the Bankruptcy Code. *Id*. For inadequate consideration, it seeks to discharge debts all of which are nondischargeable in chapter 7.

Good faith must be evaluated on a case-by-case basis, considering the totality of circumstances. Handeen v. LeMaire (In re LeMaire), 898 F.2d 1346, 1353 (8th Cir. 1990). Furthermore, "good faith does not impose a rigid and unyielding requirement of substantial payment to unsecured creditors." United States v. Estus (In re Estus), 695 F.2d 311, 316 (8th Cir. 1982). Nonetheless, I conclude that in determining the good faith of debtor's proposal, I may consider the dischargeability of her debts in chapter 7 and whether the plan proposes any meaningful benefit to creditors. Without such benefit, I find there is an abuse of the spirit of chapter 13. It does not aid the debtor to say that these creditors are receiving more in the chapter 13 than they would in a chapter 7. Although the debtor's plan may satisfy the best interests test (11 U.S.C. § 1325(a) (4)), it still must be proposed in good faith.

Because of the minimal payment proposed, I find that the plan has not been proposed in good faith. It will not be confirmed.

IT IS ORDERED that confirmation of the debtor's proposed plan is denied.

SO ORDERED THIS 29th DAY OF APRIL 1998.

William L. Edmonds
Chief Bankruptcy Judge

1. It is curious, however, that although she is able to pay no more than $180 over three years, she was able to pay her attorney $325.00 prior to filing (Disclosure of Compensation, docket no. 2). Also, there is nothing in her expense budget showing the effect of emancipation and possible financial independence of her 18-year old daughter.