

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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MARGARET BAILS  
*Debtor(s).*

Bankruptcy No. 98-02717-C  
Chapter 13

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### ORDER RE CONFIRMATION OF DEBTOR'S PLAN

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This matter came before the undersigned on October 27, 1998 for hearing on confirmation of Debtor's Chapter 13 Plan. Debtor Margaret Bails appeared with Attorney David Nadler. Carol Dunbar appeared as Chapter 13 Trustee. John Schmillen represented the U.S. Trustee. After the presentation of evidence and argument, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(L).

#### STATEMENT OF ISSUES

U.S. Trustee and Chapter 13 Trustee both object to confirmation of Debtor's plan, focusing on a \$100 "gift to friend" Debtor listed as a monthly expense on Schedule J. They assert this amount should be dedicated to Debtor's plan payment. Debtor states she feels a moral and religious obligation to send \$100 per month to her friend, Ronald Downs, Sr., who is a prisoner in a federal penitentiary.

#### FINDINGS OF FACT

Debtor proposes a 41-month plan paying \$299 per month. Unsecured creditors will receive approximately 24.2% of their claims compared to approximately 23.8% which would be available through liquidation in a Chapter 7 case. On Schedule J, Debtor lists an expense of \$100 per month as a gift to a friend. At the §341 meeting and the confirmation hearing, Debtor indicated she sends \$100 per month to Ronald Downs, Sr., a prisoner at the Federal penitentiary in Fort Leavenworth who is serving a life sentence for murder. Debtor's counsel stated at the hearing that Debtor feels a moral and religious obligation to provide this support to Mr. Downs. According to Debtor, Mr. Downs uses the \$100 per month to pay for his phone calls to her and to purchase hobby supplies.

Debtor does not list any dependents on Schedule I. Trustees argue Mr. Downs is not Debtor's dependent under §1325(b)(2)(A). Mr. Downs is not related to Debtor by blood or marriage. As a federal prisoner, Mr. Downs' basic needs, maintenance and support are provided by the penitentiary. Since the \$100 payment is not reasonably necessary for the support of a "dependent," Trustees assert that amount should be included in Debtor's plan payments for the benefit of her creditors.

Debtor argues the \$100 monthly payment is necessary for her support as part of her telephone expenses. She is not able to speak to Mr. Downs unless he calls her. Mr. Downs does not have the money to call Debtor unless Debtor sends him the money. Debtor further argues Mr. Downs is her "dependent" under §1325(b)(2). She also asserts her constitution right of association is compromised

if she is not allowed to continue to receive Mr. Downs' phone calls.

### DISPOSABLE INCOME

Under §1325(b)(1)(B), if a Chapter 13 debtor proposes to pay less than the full amount of all claims and the trustee objects, 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 a dependent of the debtor. 11 U.S.C. §1325(b)(2)(A).

Whether income is "reasonably necessary" and whether an individual is a "dependent" of the debtor under §1325(b)(2) are open to interpretation. One court has stated that "reasonably necessary" for support of the debtor contemplates the debtor's physical wellbeing, not spiritual or moral wellbeing. Waguespack v. Rodriguez, 220 B.R. 31, 34 (W.D. La. 1998). Courts allow some nonnecessary, discretionary spending, the reasonableness of which must be evaluated in light of the debtors' income and Chapter 13 plan payments. In re Cavanaugh, 175 B.R. 369, 374 (Bankr. D. Idaho 1994). Debtors, however, have no right to more discretionary income merely because they wish to use some of it to make gifts or charitable donations. Id. at 374-75. Generally, all charitable contributions, both secular and sectarian are included as disposable income under §1325(b). In re Tessier, 190 B.R. 396, 403 (Bankr. D. Mont. 1995). The reasonableness of such types of discretionary spending must be determined on a case-by-case basis, by considering the totality of the circumstances. In re Andrade, 213 B.R. 765, 771 (Bankr. E.D. Cal. 1997).

The Code does not define "dependent" in §1325(b)(2)(A). An apparent majority view on the issue defines dependent as a person who is supported financially by the debtor and who reasonably relies upon such support. In re Gonzales, 157 B.R. 604, 609 (Bankr. E.D. Mich. 1993). Gonzales clarified that "the more pertinent question is whether it is reasonable under the circumstances for the court to permit the debtor to undertake the obligation of supporting the would-be dependent." Id. One court distinguished between payments to needy or nonneedy, and legal or nonlegal, dependents. In re Attanasio, 218 B.R. 180, 233 (Bankr. N.D. Ala. 1998).

In In re Duncan, 201 B.R. 889, 897 (Bankr. W.D. Pa. 1996), the court found four adult children and two grandchildren were not the debtor's dependents, noting they were not listed as dependents on the debtor's tax return or on Schedule I. In In re McKean, 81 B.R. 9, 11 (Bankr. W.D. Tex. 1987), the court declined to incorporate current social theory into current legal theory, leaving to Congress to define "dependent" to encompass the facts of the case. The debtor argued her co-tenant and the co-tenant's daughter were dependents. Id. The court noted these individuals were not in any way related to the debtor. Id.

Courts are unlikely to approve a debtor's support of persons for whom the debtor has no legal obligation, as opposed to "moral" obligation, to provide support. In re Mastromarino, 197 B.R. 171, 178 (Bankr. D. Me. 1996) (finding no legal obligation to support domestic partner and partner's four children); In re Clements, 185 B.R. 903, 909 (Bankr. M.D. Fla. 1995) (finding no legal obligation to support 32-year old daughter, a recovering alcoholic, or adult sister with cerebral palsy residing in nursing home); In re Davidoff, 185 B.R. 631, 635 (Bankr. S.D. Fla. 1995) (finding paying daughter's car lease payments and \$1,000 to adult children inappropriate). Bankruptcy courts have likewise refused to approve payments made under "moral" obligations in other contexts. See In re Guerrero, 225 B.R. 32, 37 (Bankr. D. Conn. 1998) (finding no benefit to debtor from fulfilling moral or family obligation for purposes of fraudulent transfer analysis); Rothe v. Luetje (In re Luetje), Adv. No. 97-

9109S, slip op. at 11 (Bankr. N.D. Iowa April 27, 1998) (finding debtor had ability to pay under §523 (a)(15) where she voluntarily remained a homemaker, without outside employment, in order to be "on call" for 12-year old stepson with "special needs").

Generosity to others must have limits. Attanasio, 218 B.R. at 233. Debtors may not discharge personal liability to creditors so funds will be of use to another. Davidoff, 185 B.R. at 635. Creditors are not required to contribute to a debtor's voluntary support of others. In re Richmond, 144 B.R. 539, 542 (Bankr. W.D. Okla. 1992).

One court has stated that to grant voluntary expenses priority over existing personal obligations to creditors would permit debtors unilaterally to subordinate creditors to certain personal lifestyle choices. Mastromarino, 197 B.R. at 178. In that case, the debtor chose to live with and support his domestic partner and her four children. In Duncan, the court stated it was commendable that the debtors chose to support four adult children and two grandchildren, but it should not be at the expense of creditors. 201 B.R. at 897; see also A. Mechele Dickerson, Lifestyles of the Not-So-Rich or Famous: The Role of Choice and Sacrifice in Bankruptcy, 45 Buff. L. Rev. 629 (1997).

### FIRST AMENDMENT

Debtor argues the Court may not constitutionally apply §1325(b)(1)(A) in a manner which infringes upon her First Amendment right to freedom of association. She asserts the \$100 per month she gives Mr. Downs, part of which he spends to telephone her, provides her with her only opportunity to speak to him. Debtor asserts that if the Court refuses to approve of this monthly gift, her right to freedom of association is compromised.

The right of association is constitutionally protected in two distinct senses. Roberts v. United States Jaycees, 468 U.S. 609, 617 (1984). The freedom of expressive association consists of the right to associate for the purposes of engaging in activities specifically protected by the First Amendment, i.e., speech, assembly, petition for the redress of grievances, and the exercise of religion. Id. at 618. Debtor does not allege any expressive purpose to her association with Mr. Downs.

Rather, Debtor asserts the right of intimate association, which she argues encompasses the right to associate with another, even for social purposes. The constitution affords certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the government. Id. The Court in Roberts sketched a continuum of relationships, with family associations at one end and business associations at the other; relationships between these poles may make greater or lesser claims to constitution protection. Id. at 619-20; Bush v. Dassel-Cokato Bd. of Educ., 745 F. Supp. 562, 568 (D. Minn. 1990). Intimate relationships to which the Court has accorded constitutional protection include marriage, the begetting and bearing of children, child rearing and education, and cohabitation of relatives. Board of Directors v. Rotary Club, 481 U.S. 537, 545 (1987). The First Amendment protects relationships which presuppose "deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." Roberts, 468 U.S. at 619-20.

In Vieira v. Presley, 988 F.2d 850, 853 (8th Cir. 1993), the plaintiff argued that friendships and acquaintances deserve constitutional protection. The court noted that there is no established law whether or not associations with friends and acquaintances are sufficiently intimate to be entitled to the constitutional protection of freedom of association. Id. An Iowa court considered the right of association as it applies to relatives of an imprisoned criminal. Navin v. Iowa Dep't of Corrections,

843 F. Supp. 500, 504 (N.D. Iowa 1994). It stated that "[p]rison necessarily disrupts the normal pattern of familial association, so lawful imprisonment can hardly be thought a deprivation of the right of relatives to associate with an imprisoned criminal." Id.

### CONCLUSIONS OF LAW

Based on the foregoing, the Court concludes Debtor's plan does not satisfy the disposable income test of §1325(b)(2)(A). Debtor's monthly \$100 gift to her friend in prison is not reasonably necessary for her support. Making the gift is not necessary for Debtor's physical, as opposed to moral, wellbeing. Debtor's total payments under her Chapter 13 plan provide unsecured creditors with barely more than they would receive in a Chapter 7 liquidation. Debtor proposes 41 monthly payments, although the Code authorizes up to 60 monthly payments. If Debtor's \$100 gift to Mr. Downs was dedicated to plan payments, unsecured creditors could receive approximately one-third more than they would with the proposed \$299 monthly payments. Under all the circumstances, the \$100 monthly gift is not reasonably necessary for Debtor's support and is not a reasonable discretionary expense.

Mr. Downs is not Debtor's dependent for purposes of §1325(b)(2). Debtor is not related to Mr. Downs by blood or marriage. She has no legal obligation to provide for his support. She does not list Mr. Downs as a dependent on her tax returns or on Schedule I. Mr. Downs is not "needy" as the federal penitentiary provides for his maintenance and support. In the circumstances, Debtor's monthly payment to Mr. Downs is purely voluntary and not based on any recognizable obligation to provide support. The Court will not approve these payments. Creditors rights should not be subordinated to Debtor's wish to make voluntary payments to Mr. Downs.

The record does not disclose any more intimate relationship between Debtor and Mr. Downs than mere friendship. The constitutionally protected right to intimate association has not been extended to relationships between friends. Furthermore, any restriction on association between Debtor and Mr. Downs arises from his lawful imprisonment, not from the Bankruptcy Code's disposable income requirement. Refusing to confirm Debtor's plan based on her wish to gift Mr. Downs \$100 per month does not infringe on a constitutionally protected right.

**WHEREFORE**, objections to confirmation of plan by U.S. Trustee and Chapter 13 Trustee are **SUSTAINED**.

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

**FURTHER**, Debtor is granted 14 days from the date of this Order to amend her plan to eliminate this objection. If no plan amendment is timely filed within this time period, this case will be dismissed without further notice or hearing.

**SO ORDERED** this 30th day of November, 1998.

PAUL J. KILBURG

Paul J. Kilburg  
U.S. Bankruptcy Judge