

In the United States Bankruptcy Court
for the

Southern District of Georgia at 2 O'clock & 36 min. P.M.
Savannah Division Date 10/3/94

FILED

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia JB

In the matter of:)
MONICA CONNORS)
Debtor)

Chapter 13 Case

Number 90-41343

MEMORANDUM AND ORDER
ON TRUSTEE'S MOTION TO INCREASE DIVIDEND

FINDINGS OF FACT

Debtor's case was filed July 20, 1990. Debtor's plan as originally filed was modified by virtue of an amended plan filed January 22, 1991, proposing a pro-rata distribution to unsecured creditors after payment of secured and priority claims and court costs. The plan was confirmed by Order dated March 26, 1991, and called for payments of \$385.00 per month for a period of 60 months, which payments were expected to yield a dividend of 13.69% to the unsecured creditors who had filed claims in her case. In September of 1993, apparently with the consent of General Motors Acceptance Corporation ("GMAC"), Debtor sold the motor vehicle which was pledged to secure a debt to GMAC for the sum of \$6,000.00. The effect of the lump sum payment to GMAC which resulted from the sale of the motor vehicle is that the actual amount remitted or paid to unsecured creditors will increase to 100% if the Debtor's

plan is not reduced in length or if the Debtor's payments are not reduced. Apparently the Debtor contacted the Trustee requesting that her plan be deemed completed at the end of approximately 40 months when the total amount paid to the unsecured creditors would equal the anticipated dividend at the time of confirmation of 13.69%. In response to this request the Trustee asked Debtor to provide an updated budget and upon review of the same filed a Motion seeking to have the Debtor's dividend to unsecured creditors increased to 100%.

At the hearing to consider the Trustee's Motion the evidence revealed that since the filing of the case Debtor changed jobs and has been promoted in her new job with Savannah Toyota on at least one occasion. The result was that her income has increased significantly and she is provided a demonstrator automobile to drive. It was the fact that she is now provided with transportation by her employer which led to her decision to sell the vehicle which she no longer needed for her personal transportation needs. The Debtor's amended budget reveals that she currently has excess income of \$272.32 after payment of all household expenses. However, included in her household expenses is \$100.00 per month in savings and approximately \$333.00 per month with which she funds private school tuition for her minor child. Under previous rulings of the Court neither of these expenditures can be deducted from a debtor's gross income in order to determine what the disposable income is for the purposes of 11 U.S.C. Section 1325 even though they represent

legitimate and, in many cases, necessary expenses of maintaining a household in the non-bankruptcy setting. In addition, Debtor acknowledged that she receives \$150.00 per month in child support from her ex-husband. This yields disposable income in her case of \$855.00 per month.

Debtor's counsel stipulates that there is no legal basis on which she could affirmatively seek to modify the terms of her plan inasmuch as her disposable income far exceeds the amount that the plan requires her to pay. Nevertheless, she argues that it is an "inequitable" result for the Debtor as a result of her diligence and good fortune to pay a higher dividend to her unsecured creditors. She argues that the Debtor could have simply kept the automobile, paid the same amount of money to the Trustee, and at the end of her case would have owned the vehicle free and clear, whereas if the motion is granted she will pay more to unsecured creditors and will own no vehicle at the conclusion of her case.

CONCLUSIONS OF LAW

I first note that neither party has formally requested a modification of the terms of the Debtor's plan. The Debtor concedes that she has no legal basis on which to modify the plan to shorten its term or to reduce her payments. The Trustee on the other hand, does not seek to force the Debtor to pay a higher amount per month even in light of her substantially increased disposable income. Rather, the

Trustee proposes that the Debtor be required to continue making her monthly payments of \$385.00 per month for the full term of the plan with the result that the dividend to unsecured creditors will be increased substantially beyond what was anticipated at the time of confirmation. The Debtor argues that, once the projected dividend of 13.69% is paid to creditors that she should be permitted to cease payments and obtain a Chapter 13 discharge.

11 U.S.C. Section 1327(a) provides:

The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

I have previously ruled that the effect of Section 1327 is that a debtor which obtains confirmation of a plan proposing a full five year payout cannot, absent showing grounds supporting a downward modification in the payments, "payout" a case earlier than 60 months. Matter of Judy Dacus Barber, et.al., and Roger Britton Mobley, et.al., Ch.13 Case Nos. 90-41331 and 90-40064, slip op. at 9-10 (Bankr. S.D.Ga. June 6, 1994).

While the facts in this case are somewhat distinguishable, I conclude

that the Code requires the same result. Without belaboring the point, the Debtor's disposable income far exceeds the amount called for by the Chapter 13 plan. As a result there is no basis on which Debtor may modify the terms of the plan and the circumstance, that is the sale of the motor vehicle, which results in a higher dividend to unsecured creditors is the inevitable byproduct of the decision to sell that vehicle.

Although the exhibit which is attached to the Order of Confirmation attempts to project the estimated dividend to unsecured claims, it frequently happens that this dividend increases or decreases over the life of the plan, particularly those which last as long as five years. Unless the debtor has proposed a 100% plan, the percentage established at confirmation is not a fixed number. For example, if a debtor makes payments at a rate faster or, because of default, slower than that anticipated at the time the projection is made, the interest which must be paid by the Trustee on secured claims will fluctuate and this fluctuation will affect the amount ultimately paid to unsecured creditors. Likewise, when property which is secured is removed from the estate as a result of sale, repossession, or foreclosure, the elimination of all or part of a secured claim and the interest which accrues on it will, even if an unsecured deficiency claim is added into the case, result in an alteration of the dividend which is ultimately paid. This case represents simply another variation of that pattern.

The Debtor could not be compelled to, but voluntarily proposed a five

year plan and the payment level was established, based on her disposable income at confirmation, at \$385.00 per month. In the absence of grounds for modification of the plan, payments in that amount must be maintained for the entire life of the plan. The fact that, because of the sale of the property, unsecured creditors will receive more than was originally projected is anything but inequitable. While Debtor argues that the rehabilitative purposes of Chapter 13 are not served by her being required to pay a higher dividend simply because she sold the motor vehicle, in fact the purposes of Chapter 13 are dual. One purpose is rehabilitation of the Debtor and the other is repayment of creditors.¹ Certainly, this later purpose of Chapter 13 is well-served by the result reached herein.

Accordingly, the Trustee's Motion is granted. Debtor is required to continue to pay the sum of \$385.00 per month to the Chapter 13 Trustee until a period of sixty (60) days from the date of confirmation or until all claims in her case are paid in full, whichever event occurs first.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 30th day of September, 1994.

¹ See e.g., In re Waldron, 785 F.2d 936, 940 (11th Cir. 1986); In re Kitchens, 702 F.2d 885, 887 (11th Cir. 1983).