

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: Charles Robert-Tarik Collins, Debtor

**No. 5:06-bk-72089
Ch. 13**

ORDER

Before the Court is an Objection to Confirmation of Plan As Amended Pre-Confirmation on 06/20/2007 filed by the chapter 13 trustee in this case on July 5, 2007. The Court held a hearing on October 17, 2007, at which time the Court took the matter under advisement and gave all parties until December 14, 2007, to submit post-trial briefs. For the reasons stated below, the Court overrules the trustee's objection.

Jurisdiction

This Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(L). The following order constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

Position of the Parties

On September 21, 2006, the debtor filed his chapter 13 bankruptcy petition, chapter 13 plan, and official form B22C, otherwise known as "the means test." Subsequently, the debtor filed two amended means tests. On the original and first amended means tests, the debtor used the applicable median income and the local standards for an Arkansas resident. On the second amended means test, the debtor used the applicable median income and the local standards for a Florida resident. Using either state's median family income, the debtor is an above median income debtor. However, the use of Florida's local standards in calculating the deductible expenses allowed on the means test results in a lower projected disposable income to be paid to unsecured creditors. The trustee

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by S Miller

objected to confirmation of the debtor's chapter 13 plan and asserted at hearing that the plan does not provide for all of the debtor's projected disposable income. The trustee's position is that the debtor was an Arkansas resident at the time of the bankruptcy filing, and, therefore, must use the Arkansas local standards to compute his deductible expenses, which would result in more disposable income available to unsecured creditors. The debtor argues that because he resided in Florida on the date he filed his bankruptcy petition, he must use the Florida local standards.

Background

In July 2006, the debtor lived in Centerton, Arkansas. That same month, he was told by his employer, Eastman Kodak Company, that to remain employed by Kodak he had to move to the southeast region of the United States. The debtor testified that he agreed to move to Naples, Florida, on August 1, 2006, and flew to Naples the following week. The debtor found a place to live within two days of arriving in Naples, signed a lease, and flew back to Arkansas. The debtor testified that he vacated his home in Arkansas on August 7, and his furniture was delivered to his home in Naples on August 18. The debtor forwarded his mail to his Florida address around August 6 or 7. He also set up telephone and internet service, though he had not changed his automobile license plate tags, driver's license, or voter registration. The debtor noted on his Schedule I, filed with the bankruptcy petition, that "Client is being transferred to Florida at the end of September" and on Schedule J that "Debtor is moving to Florida in 2 weeks, Expenses are anticipated." However, according to the debtor's testimony, he was living in Florida by the end of August 2006.

The debtor filed bankruptcy on September 21, 2006. The debtor's bankruptcy petition listed his home address in Centerton, Arkansas, although the debtor testified that he did not consider the Centerton address to be his correct address. The debtor testified that his bankruptcy attorney had his new address in Florida and he did not know why the

Arkansas address was listed on his petition.¹ He also stated that he did review his petition and schedules, but he did not notice he was still listed as living in Centerton.

The debtor's original means test was filed with the debtor's bankruptcy petition. On line 16, the debtor listed his state of residence as Arkansas. On line 20, the debtor listed a current monthly income of \$4721.86. Finally, on line 56, the debtor listed the total of all deductions allowed under the means test as \$4346.62. On February 12, 2007, the debtor filed an amended means test in which the debtor's state of residence and current monthly income remained the same, but the debtor listed an increased rent expense on line 26.² On October 4, 2007, the debtor filed a second amended means test. The debtor's current monthly income remained the same. However, on line 16, the debtor changed his state of residence to Florida and on line 56, the total amount of deductions rose to \$4960.82. The change was the result of the debtor using the local standards for Florida on lines 24 and 25 to calculate his expenses on the second amended means test.

The debtor's chapter 13 plan provides that non-priority unsecured claimants would be paid "[a] PRORATA dividend from funds remaining after payment of all other classes of claims" However, the trustee stated in her brief that based on the current proposed plan distribution and second amended means test figures, unsecured creditors would not receive a distribution at all. The debtor's plan also states that the debtor would be surrendering his house in Centerton, Arkansas. On June 20, 2007, the debtor filed an amendment to his chapter 13 plan, which added an addendum stating:

1. Debtor moved immediately after the filing of his bankruptcy. Debtor's Means test is skewed due to client living in Naples, FL. Debtor's

¹ Debtor's counsel explained that the software used to complete the first two means tests would not allow counsel to use debtor's Florida address on the petition.

² The debtor testified that the increased rent expense was because he did not know how much his rent would be in Naples when he first discussed his bankruptcy petition and schedules with his attorneys, and because he thought he might have a roommate.

intention at time of filing was to reside in Naples, FL, which has a much higher cost of living. Debtor did not receive a raise, however. Debtor is receiving Arkansas pay, but paying Naples, FL costs.

Findings of Fact and Conclusions of Law

Pursuant to 11 U.S.C. 1325(b), a chapter 13 plan must meet one of two requirements in order to be confirmed over the trustee's objection:

- (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
- (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Because the debtor's chapter 13 plan does not propose to pay the unsecured creditors in full, the debtor must pay all of his projected disposable income throughout the applicable commitment period in order for the plan to be confirmed. A chapter 13 debtor's "disposable income" is determined by taking the debtor's "current monthly income" and subtracting amounts reasonably necessary for the debtor's maintenance and support. 11 U.S.C. § 1325(b)(2).³ In this case, it is undisputed that the debtor is an above median income debtor. Section 1325(b)(3) provides that, for above median income debtors, "[a]mounts reasonably necessary to be expended . . . shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)" 11 U.S.C. § 1325(b)(2). Section 707(b)(2), states in pertinent part:

The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service *for the area in which the debtor resides*, as in effect on the date of

³ "Disposable income" is defined, in relevant part, as "current monthly income received by the debtor . . . less amounts reasonably necessary to be expended--(A)(i) for the maintenance or support of the debtor or a dependent of the debtor . . . (ii) for charitable contributions . . . and (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business." 11 U.S.C. § 1325(b)(2).

the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent.

11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added).

The computation required by 11 U.S.C. § 707(b) is made on official form B22C, the means test, which is required by Federal [Interim] Rule of Bankruptcy Procedure 1007(b)(6). The means test should provide a “snapshot of [a debtor’s] finances” as they existed on the date of filing and should not be amended to reflect subsequent changes in a debtor’s circumstances. *In re Ellringer*, 370 B.R. 905, 910 (Bankr. D. Minn. 2007). Amendments to the means test are appropriate to the extent that they correct inaccuracies, miscalculations, or similar errors. *In re Kelvie*, 372 B.R. 56, 58 (Bankr. D. Idaho 2007).

Although the debtor’s petition, original means test, and the first amended means test stated that Arkansas was his state of residence, the debtor’s testimony at trial was credible, unrefuted, and sufficient for the Court to conclude that the debtor did reside in Florida on the date of filing, and that the second amended means test reflected his circumstances as they existed on the date of filing. On September 21, 2006, the debtor had a job in Florida and was living in Florida with internet access, telephone service, and his furniture. He testified that he vacated his house in Arkansas around August 7, 2006. There are no facts from which this Court could conclude that the debtor had a residence in Arkansas that he could physically inhabit or live in for any period of time, or that he had any intention to do so.

For purposes of 11 U.S.C. § 1325(b)(3), which incorporates § 707(b)(2), the Court finds that at the time of filing, the debtor resided in Florida, and the debtor’s use of the Local Standards applicable to a Florida resident is permitted. For that reason, the trustee’s objection to confirmation is overruled to the extent it is based on the debtor’s use of Local Standards applicable to Florida residents on the means test.

IT IS SO ORDERED.

February 19, 2008

DATE



BEN T. BARRY
UNITED STATES BANKRUPTCY JUDGE

cc: Emily Henson and Jack L. Martin, attorneys for the debtor
Joyce Bradley Babin, chapter 13 trustee
All creditors and interested parties