

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                    |   |                       |
|--------------------|---|-----------------------|
| In re              | ) | Case No. 09-46536-399 |
|                    | ) |                       |
| David Wesley Hood, | ) |                       |
|                    | ) |                       |
| Debtor.            | ) | Chapter 13            |
|                    | ) |                       |

**CORRECTED<sup>1</sup> MEMORANDUM OPINION AND ORDER**

The issue before this Court is the appropriate use of the marital adjustment in the means test. Specifically, I consider whether a married debtor's computation of the applicable commitment period in Part II of his Form 22C may include a marital adjustment for his non-filing spouse. David Wesley Hood (the "Debtor") filed a Chapter 13 bankruptcy case and his First Amended Chapter 13 Plan proposed, among other things, to submit payments to the Trustee over a period of thirty-six months. John V. LaBarge, Jr., Standing Chapter 13 Trustee (the "Trustee"), objected to confirmation of the Debtor's Chapter 13 plan because the plan was not proposed in good-faith and did not constitute the Debtor's best effort to repay creditors in that the Debtor proposed a thirty-six month plan and the Debtor should be required to propose a sixty month plan.<sup>2</sup> Based upon a review of the record and after careful consideration, this Court makes the following findings of fact and conclusions of law.

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<sup>1</sup>The Memorandum Opinion and Order is corrected to omit the phrase "[i]t is further" at the end of the text on the last page of the document.

<sup>2</sup>This Memorandum Opinion and Order does not address any objections to confirmation of the Debtor's First Amended Chapter 13 Plan other than the Trustee's objection to the length of the plan.

## **BACKGROUND**

With the Debtor's petition for relief under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code"), he included his Form 22C. Form 22C includes a debtor's calculations for purposes of the means test and has seven parts. The Debtor claims marital deductions in two places; once in Part II and once in Part III. The function of Parts II and III of the Form 22C is to determine whether a debtor's family income is above the median income or below the median income for a family of the same size and in the same state.

The effect of the Part II calculation is to determine whether a debtor's Chapter 13 plan must have a commitment period of sixty months. If a debtor's annualized current monthly income for Bankruptcy Code Section 1325(b)(4) is above the median income, the debtor must commit to a sixty month plan. The effect of the Part III calculation is to determine the way in which a debtor must figure his disposable income. If a debtor's annualized current monthly income for Bankruptcy Code Section 1325(b)(3) is above the median income, he must complete Parts IV, V and VI of the Form 22C. If a debtor's Section 1325(b)(3) income is below the median, his expenses as set forth on his Schedule J are used to calculate his disposable income, and he does not complete Parts IV, V or VI of the Form 22C. Part VII of Form 22C is a debtor's verification of the information set forth in the document.

The Debtor's calculation is identical in Parts II and III of his Form 22C. The starting point of both Parts II and III is identical: Line 11 of Part I. Line 11 in Part I is the sum of all of the debtor's income and his spouse's income, regardless of whether the debtor's spouse also filed for bankruptcy relief. In both Parts II and III, the Debtor took

the amount from line 11, subtracted the amount of \$450 for a marital deduction and compared the resulting amount to the state median income for a family of seven in Missouri.<sup>3</sup>

The Debtor argues that he should be allowed to take a marital adjustment in Part II. Doing so results in his income being below the median and saving him from the requirement to commit to a sixty month plan. The Debtor also believes he should be allowed the same marital adjustment in Part III. Doing this results in an identical calculation: his income being below the median and providing that the expenses used for calculating his disposable income would be those set forth on his Schedule J.

The Trustee objected to the Debtor's plan on the basis that the Debtor's plan was not proposed in good faith and his proposed payment does not constitute his best effort to repay creditors, all because the Debtor improperly included a marital deduction in Part II of his Form 22C. If the Debtor had not claimed a marital deduction in Part II, his income would be above the median and he would be required to dedicate his disposable income to plan payments for sixty months. The Trustee did not object to the Debtor's marital deduction in Part III, which makes the Debtor's statement of his expenses set forth on his Schedule J the relevant numbers to use when calculating his disposable income.

## **DISCUSSION**

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1334(b), 157(b)(2)(A) and Local Rule 9.01(B) of the United States District Court for the Eastern

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<sup>3</sup>The Trustee does not dispute the amount or basis for the Debtor's marital deduction.

District of Missouri. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

Section 1325 of the Bankruptcy Code established the requirements for confirmation of a Chapter 13 plan. 11 U.S.C. §1325. The minimum payments that a plan must make to unsecured creditors, after an objection to confirmation by an unsecured creditor or the case trustee, are set forth in Section 1325(b)(1). 11 U.S.C. §1325(b)(1). The Trustee objected to confirmation of the Debtor's Chapter 13 plan. Accordingly, under Section 1325(b)(1), the Debtor's plan must provide for either: (1) full payment to unsecured creditors; or (2) payment to unsecured creditors with "all of the [D]ebtor's projected disposable income to be received in the applicable commitment period." 11 U.S.C. §1325(b)(1). Unsecured creditors will not be paid in full under the Debtor's plan and, therefore, the Debtor is required to use his "projected disposable income" during the "applicable commitment period" for payment to unsecured creditors.

Part II of Form 22C relates to Bankruptcy Code Section 1325(b)(4). Section 1325(b)(4) defines the phrase "applicable commitment period," for a plan where the debtor does not make full payment to unsecured creditors, in pertinent part, as follows:

(4) for purposes of this subsection, the "applicable commitment period" -

(A) . . . shall be

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the **debtor and the debtor's spouse combined**, when multiplied by 12, is not less than -

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$575 . . . per month for each individual in excess of 4.

11 U.S.C. §1325(b)(4)(emphasis added).

When referring to the current monthly income of the Debtor and his spouse, the plain language of Section 1325(b)(4) uses the word “combined,” which specifically requires that the calculation of the applicable commitment period include a non-filing spouse’s entire income, as opposed to only the portion of her income that is attributed to payment of the household expenses of the debtor. *U.S. v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989)(absent situation where literal application of statute produces a result contrary to intention of drafters, plain meaning governs).

The Debtor cites to case law where bankruptcy courts in other districts relied on Section 101(10A)’s definition of “current monthly income” to include only payments made by a non-filing spouse for the household expenses of a debtor spouse in the computation of the “applicable commitment period” in Part II. See, e.g., *In re Grubbs*, No. 07-32822-KRH, 2007 WL 4418146, at \*2 - 5 (Bankr. E.D. Va. 2007). However, the Debtor’s argument and the cases he cites fail to give meaning to the word “combined” in Section 1325(b)(4). Congress’ inclusion of the word “combined” in Section 1325(b)(4) is controlling on interpretation of that section. See *U.S. v. Nordic Village, Inc.*, 503 U.S.30, 35 (1992)(statute should be construed so as to give effect to every word). It unequivocally instructs the Debtor to include his non-filing spouse’s entire income when calculating the applicable commitment period for his plan.

The Trustee did not object to the Debtor’s use of a marital adjustment in Part III of his Form 22C and we, therefore, do not rule on the propriety of it. However, we note that in contrast to Section 1325(b)(4), the statute upon which Part III of Form 22C is

based, Section 1325(b)(3), refers only to a **debtor's** income. Section 1325(b)(3) instructs a debtor regarding whether he should calculate his expenses using Parts IV, V and VI of Form 22C, or use the numbers on his Schedule J, when calculating his disposable income. According to Section 1325(b)(3), a debtor must calculate his expenses using Parts IV, V and VI "if **the debtor** has a current monthly income" greater than an amount calculated therein. 11 U.S.C. §1325(b)(3)(emphasis added).

The concept of a marital adjustment is not mentioned in Section 1325. Rather, it is discussed in the definition of "current monthly income" in Section 101(10A)(B).

Section 101(10A) states, in pertinent part, that:

The term "current monthly income" -

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) . . .

(B) includes and amount paid by any entity other than the debtor (or in a joint case, the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case, the debtor's spouse if not otherwise a dependent). . .

11 U.S.C. §101(10A).

Section 1325(b)(3) refers only to a **debtor's** current monthly income and it does not include the reference to the "current monthly income of the **debtor and the debtor's spouse combined**" as found in Section 1325(b)(4). While it may make sense to use the Section 101(10A)(B) marital adjustment in the Section 1325(b)(3) calculation, the language of Section 1325(b)(4) specifically refers to the "combined" income of the debtor and the debtor's spouse, rendering the Section 101(10A)(B) marital adjustment inapplicable to the calculation of the Debtor's "applicable commitment period."

For the foregoing reasons, it is hereby

**ORDERED** that the Trustee's Objection to Confirmation of the Debtor's First Amended Plan is hereby **SUSTAINED** to the extent that it pertains to the Debtor's failure to propose a sixty month plan. It is further

**ORDERED** that the Debtor may file a further amended plan consistent with this Memorandum Opinion and Order on or before **December 22, 2009**. It is further

**ORDERED** that failure by the Debtor to file an amended plan by **December 22, 2009** will result in dismissal of this case.

DATED: November 30, 2009

St. Louis, Missouri

  
Barry S. Schermer  
Chief United States Bankruptcy Judge

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