

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

CASE NO. 04-6524-3P3

DENNIS GALLOWAY and
DENISE GALLOWAY

Debtor.

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

This Case is before the Court upon Debtors' Motion for Confirmation of their Fourth Amended Plan and the Chapter 13 Trustee's Objection to Confirmation of the Plan. After a hearing held on April 5, 2005 the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On June 25, 2004, Debtors filed for Chapter 13 bankruptcy relief.

2. Debtors' allowed unsecured claims total \$108,527.99.

3. Debtors' original Schedule I and J, reflected Debtors' net monthly income as \$6,208.88, and their monthly expenses as \$3,316.00.

4. Debtors' original Chapter 13 Plan provided for a monthly plan payment of \$2,8884.69. Under Debtors' original plan, \$1,000.00 per month would go towards unsecured claims, for a total distribution of \$36,000 to unsecured creditors.

5. On December 4, 2004, Debtors filed amended Schedules I and J. Debtors' Amended Schedules I and J, reflect a monthly net income of \$6,026.88 and expenses of \$4,186.00. Debtors' monthly expenditures are as follows:

Electricity and Heating	\$260.00
Telephone	\$29.00
Cell phones	\$146.00
Cable	\$111.00
Home maintenance	\$350.00
Food	\$1,190.00

Clothing	\$150.00
Laundry and dry-cleaning	\$15.00
Medical and dental	\$260.00
Transportation	\$450.00
Recreation and entertainment	\$150.00
Charitable Contributions	\$40.00
Life Insurance	\$50.00
Child's school activities	\$60.00
Daughter's activities	\$150.00
Hair and beauty care	\$50.00
Lawn maintenance	\$15.00
Pest Control	\$10.00
Pet expenses	\$50.00
Pool expenses	\$50.00
Vehicle maintenance	\$400.00
Attorney's Fees	\$100.00
Wife's Teaching expenses	\$30.00
Support of Family	\$70.00

6. Debtor Husband also has \$1,215.05 per month automatically deducted from his pay checks for insurance. Included in this amount are expenses related to Debtors' adult son. These expenses, figured on a pro rata basis, include: \$90.10 for car insurance, \$28.52 for dental insurance, \$199.59 for health insurance and \$14.24 for vision insurance.

7. On April 5, 2005, the Court held a confirmation hearing on Debtors' Fourth Amended Chapter 13 Plan. Debtors' Fourth Amended Plan proposes a monthly plan payment of \$1,926.19, which decreases the distribution towards unsecured claims to \$75.00 per month, for a total distribution of \$2,700.00 to unsecured creditors.

8. The Chapter 13 Trustee objects to Confirmation of Debtors' Fourth Amended Plan on the basis that Debtors are not placing all their disposable monthly income into the plan payments as required by 11 U.S.C. § 1325.

9. Debtor Husband testified at the confirmation hearing that he and his wife filed an Amendment to Schedule J because their monthly expenses had increased due to some unforeseen situations. The increased expenses primarily include: transportation, dental work, home maintenance, vehicle maintenance and payment to their attorney.

12. At the confirmation hearing the Chapter 13 Trustee argued that Debtors could afford at least \$1,000.00 per month towards their unsecured claims and that their monthly expenses were unusually high for Chapter 13 Debtors.

13. The Chapter 13 Trustee also argued at the hearing that Debtors have no legal duty to support a twenty-one (21) year old son, nor do they have any obligation to pay their sixteen (16) year old daughter's car insurance.¹

14. At the hearing, Debtor Husband agreed that the support of family payment of \$70.00 per month and his wife's teaching expenses of \$30.00 per month could be deleted.

CONCLUSIONS OF LAW

Disposable income must be applied to Debtors' Chapter 13 Plan as required by §1325(b)(1)(B). § 1325 provides:

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

....

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan. Disposable income is defined in § 1325:

(b)(2) For the purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended--

(A) for the maintenance or support of the debtor or a dependent of the debtor[.]
11 U.S.C. § 1325 (b)(1)(B)

In the instant case, Debtors have two children, one minor, sixteen (16) year old daughter and one adult, twenty-one (21) year old son. Although Debtors may feel a moral obligation to

¹ Debtors' Amended Schedule I reflects a \$226.00 per month increase in their automobile insurance as a result of Debtors adding their daughter to the insurance policy.

continue to support their adult, unemployed son, there is no legal responsibility to do so. Debtors' creditors should not have to carry the burden of paying for Debtors' adult son's car insurance, dental insurance, health insurance and vision insurance. These expenses, figured on a pro rata basis, include \$90.10 for car insurance, \$28.52 for dental insurance, \$199.59 for health insurance and \$14.24 for vision insurance, for a total of \$332.45 per month.

Another expense the Court finds to be unnecessary is car insurance in the amount of \$226.00 per month for Debtors' sixteen (16) year old daughter. Debtors' daughter's ability to drive the family car is not necessary for either her or the Debtors' maintenance or support. If it is important enough to her to be able to drive the family car she can do what the majority of other teenagers do, and get a part time job to pay for the car insurance. Debtors argue that pursuant to their insurance company's policy that she must remain on the policy. However, the Court disagrees with this assertion. The policy reads in pertinent part: "An *operator* (emphasis added) with a driving permit for one year or more must be rated on the policy." Allstate Property and Casualty Co. Manual © 2004, last modified January 7, 2005. Although Debtors' daughter obviously would like to operate the family car there is no necessity for her to do so. If she is not going to operate the car there is no need for her to be on the policy. As stated above, if she wishes to drive the car she can secure a part time job in order to pay for the car insurance. Debtors' filed this case in order to save their home, however, in order to be successful the luxuries that Debtors' and their children were previously enjoying prior to the filing of their petition have to be cut out.

In addition to the expenses referred to above, the Court finds that some of Debtors' monthly expenses need to be reduced to a more reasonable amount. These expenses include Debtors' \$111.00 cable and internet bill, \$146.00 cell phone bill and \$1,190.00 food bill. The Court finds a more reasonable amount for these items would be as follows: \$50.00 for cable and internet, \$60.00 for cell phone expenses and \$1,000.00 for Debtors' food bill. The Court will also delete the \$60.00 listed for child's school activities as \$150.00 is already listed for daughter's activities. These reductions will result in an additional \$397.00 of disposable income.

Therefore, in accounting for the expenses deleted for Debtors' adult son in the amount of \$332.45, the disallowance of car insurance for Debtors' minor daughter in the amount of \$226.00,

the reduction in Debtors' monthly expenses in the amount of \$397.00, and the deletion of \$30.00 for the wife's teaching supplies and \$70.00 payment for support of family, the Court finds that Debtors' have an additional \$1,055.45 per month in disposable income to pay to their unsecured creditors. In adding the additional \$1,055.45 per month to Debtors' current proposed plan payment of \$1,926.19, the Court finds Debtors' must propose a plan payment of at least \$2,981.64 in order to satisfy the requirements of 11 U.S.C. § 1325.

CONCLUSION

Based upon the above, the Court will sustain the Chapter Thirteen Trustee's Objection to Confirmation of Debtor's Chapter 13 Plan, and will allow Debtors to amend their plan within two (2) weeks of the date of this order. The Court will enter a separate order that is consistent with these Findings of Fact and Conclusions of Law.

Dated this 16 day of May, 2005 in Jacksonville, Florida.

/s/ George L. Proctor
George L. Proctor
United States Bankruptcy Judge

cc:
Debtors
Mamie L. Davis
Christopher DeMetros