

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF IOWA

In the Matter of

MARILYN SUE WOOLRIDGE,

Case No. 86-3280-C

Debtor.

ORDER ON TRUSTEE'S OBJECTION TO CONFIRMATION OF PLAN

On February 24, 1987 the trustee's objection to confirmation of plan filed on February 9, 1987 came on for hearing before this court in Des Moines, Iowa. Denis Y. Reed appeared on behalf of the debtor. Joe W. Warford, the trustee, appeared on behalf of himself. At the close of the hearing the debtor was given two weeks to submit documentation of the monthly expenses which generated the trustee's objection. On March 6, 1987 the matter was considered fully submitted.

The debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on December 15, 1986. A Chapter 13 plan was originally filed on December 15, 1986 and later amended on February 5, 1987. The debtor's amended plan proposes payments of \$302.00 per month for 48 months with unsecured creditors to receive ten cents on the dollar. On February 19, 1987 the debtor filed an amended family budget detailing expenses and income.

For his objection to confirmation of the plan, as amended, the Chapter 13 trustee contends that the plan does

not represent the debtor's best effort. The trustee asserts that the debtor's monthly food and home repair expenses are excessive and should each be reduced by \$25.00 per month. The trustee further asserts that \$1,000 of an expected \$2,000 income tax return should be turned over to the trustee, thereby allowing a greater dividend to be paid to unsecured creditors.

A bankruptcy court will not confirm a Chapter 13 plan unless the requirements set forth in 11 U.S.C. section 1325(a) are met. Section 1325(a)(3) requires the plan to have been proposed in good faith. Since the Code does not define "good faith", the court must consider a variety of circumstances in each case. See In re Estus, 695 F.2d 311, 314-315 (8th Cir. 1982). Such circumstances include: income, expenses necessary to maintain a minimum standard of living, foreseeable extraordinary expenses, amount of debt included in plan, nature of debts included in plan, and proposed compromise. See, In re Syrus, 12 B.R. 605, 606 (Bankr. Kan. 1981).

The determination of whether the instant plan is proposed in good faith should logically begin with an analysis of the debtor's monthly budget and proposed plan. The debtor's plan declares a summary of debts totalling \$22,994.60 and proposes to pay \$302.00 each month for a term of 48 months. The debtor's amended monthly budget projects a total monthly income of \$1,718.67 and total monthly expenses of \$1,416.75. The debtor supports herself and one minor child on her income.

The debtor estimates a monthly food expense of \$294.00 and a monthly home repair expense of \$79.00.

The Chapter 13 trustee first contends that the debtor's monthly food expense of \$294.00 is an excessive allowance for a family of two. To support her projected budget the debtor submitted photocopies of checks written to local grocery stores in 1985 and 1986. In addition the debtor states she pays \$21.00 per month for school lunches for her child and \$40.00 per month for lunches for herself at work.

This court finds that the debtor's monthly budget which forms the basis of her Chapter 13 plan does not represent the debtor's best effort. A monthly food expense of \$294.00 for a family of two is clearly overstated. See In re Kress, 57 B.R. 874, 876 (Bankr. N.D. 1985)(\$500 per month is excessive food expense for family of four); Matter of Strong, 26 B.R. 814, 817 (Bankr. N.D. Ind. 1983)(\$550 per month is sufficient food expense for family of six).

Accordingly a reduction of the debtor's projected food expense by \$25.00 per month is warranted. \$269.00 per month is more than sufficient to provide for the debtor and her son and will satisfy the good faith requirement under the Code.

The trustee next objects to the debtor's projected monthly home repair expense of \$79.00. In support of her calculations the debtor has submitted photocopies of various repair expenditures in 1985 and 1986. Review of those expenses reveals several items of an extraordinary nature or items which are unlikely to occur on a monthly basis. The

high cost of replacement of a water heater, a garage door and a stove-range-microwave unit has elevated the monthly repair averages relied upon by the debtor. Thus, the court finds \$79.00 per month to be an unreasonable allowance for foreseeable home repairs. A reduction of the debtor's home repair expense by \$25.00 per month would satisfy the good faith requirement under the Code. The court notes that unforeseen expenses may warrant a modification of a Chapter 13 plan pursuant to 11 U.S.C. section 1329.

Finally, the trustee has objected to the debtor's failure to include \$1,000 to be received as an income tax refund in her projected monthly income. The debtor's amended family budget does incorporate the tax refund or \$166.67 per month in her projected income. Thus, this aspect of the trustee's objection has been resolved.

WHEREFORE, based on the foregoing analysis, the court finds that the amended plan does not represent the debtor's best effort and does not satisfy the good faith requirement of 11 U.S.C. section 1325.

THEREFORE, the trustee's objection to confirmation of plan is hereby sustained and confirmation of the debtor's amended plan is hereby denied. The debtor shall have 20 days in which to submit an amended budget and plan conforming to this opinion.

Signed and filed this 28th day of April, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE