

of the Bankruptcy Code. The Debtor has not previously filed with this Court a petition for relief under any chapter of the Bankruptcy Code.

In her schedules the Debtor lists total liabilities in the amount of \$152,229.55. The actual claims filed in this case total \$145,524.45, consisting of at least \$103,444.98 in unsecured non-priority claims. The BWC has a claim against the Debtor as a result of the ruling of the Industrial Commission revoking the Debtor's award of permanent total disability and a declaring an overpayment as a result of the Debtor's fraud (the "IC Ruling"). A copy of the IC Ruling is attached as an Exhibit to BWC's proof of claim. In its proof of claim, BWC lists an obligation owing from the Debtor in the amount of \$68,470.47.

According to the testimony of the Debtor, she has certain physical limitations which prevent her from working full time. The Debtor testified that as of August 4, 2004 she works approximately 27 hours per week as a receptionist at a local motel. She is paid \$6.50 per hour for her work as a receptionist. In addition, the Debtor cleans a home approximately two (2) times per month. The Debtor also receives Social Security Disability ("SSD") payments. The Debtor indicated that she is mindful that her entitlement to SSD payments can be reduced if she earns income in excess of a particular dollar amount. According to counsel, the Debtor can earn \$830 gross per month without compromising her eligibility for SSD payments. Therefore, the Debtor testified that she limits the number of hours she works each month in order to not jeopardize her eligibility for SSD payments.

On November 15, 2004, the Debtor filed amended Schedules I and J to correctly reflect her income. On Amended Schedule I the Debtor lists her net monthly income as

\$1,541, consisting of \$641 in net wages,¹ \$160 in other income from housekeeping and \$740 in SSD payments. During the evidentiary hearing, the Debtor testified that Amended Schedule I is accurate to the best of her ability to create a snapshot of her income. On Amended Schedule J, the Debtor lists expenses totaling \$1,260.89. The Debtor testified that Amended Schedule J is accurate. Each month the Debtor's income is approximately \$280 in excess of her expenses.

The Debtor proposes to pay to the Trustee \$250 per month for 60 months in order to provide her creditors with a 5% distribution on their claims. Under the Debtor's plan, the BWC will be treated the same as all of the Debtor's other unsecured creditors.

The Debtor owns a 1994 Commodore Mobile Home (the "Mobile Home"), valued in her schedules at \$18,000. The Mobile Home is the Debtor's primary residence in which she has claimed an exemption of \$5,000. There also appears to be a secured claim against the Mobile Home in the approximate amount of \$3,250. *See* Schedule D. Thus, the Court finds there is approximately \$9,750 in non exempt equity in the Mobile Home.

II. Conclusions of Law

The BWC argues that the Debtor's plan should not be confirmed because it fails to satisfy the requirements of § 1325(a)(1)² and (3) of the Bankruptcy Code. The BWC

¹ Based on the Debtor's testimony that she works 27 hours per week at \$6.50 per hour, the Debtor likely earns gross income of \$175.50 per week or \$754.65 per month. The Debtor testified that her hours vary to some extent. Nonetheless, she testified that if her hours as a receptionist were to increase she would stop cleaning houses in order to ensure that she does not earn income that would jeopardized her receipt of SSD payments.

² BWC argued in its Objection that the Debtor did not have regular income (as required by § 109(e) to fund the plan. At the evidentiary hearing in this matter, the Debtor testified that she has a steady job from which she earns \$641 in net

suggests that the Debtor's lack of good faith is evidenced by her proposal to pay a minimal amount to BWC with respect to its claim for the overpayment of benefits (which may be nondischargeable in a chapter 7 case).

Under § 1325(a)(3) of the Bankruptcy Code, the court shall confirm a plan if, *inter alia*, it is proposed in good faith and not by any means forbidden by law. Because the Debtor's plan would pay a minimal amount to BWC with respect to its claim for the overpayment of benefits which may not be dischargeable in a chapter 7 case, the Debtor's plan draws more scrutiny from the Court. *See Hardin v. Caldwell (In re Caldwell)*, 895 F.2d 1123, 1126 (6th Cir. 1990) ("A Chapter 13 plan which proposes to repay only a small portion of a debt which could not be discharged under Chapter 7 deserves 'particular scrutiny.'")

The Debtor bears the burden of proving her good faith. *In re Caldwell*, 895 F.2d at 1126. The Sixth Circuit has directed courts to analyze several factors to determine whether a debtor's Chapter 13 plan is proposed in good faith. *Caldwell*, 895 F.2d at 1126; *Ed Schory & Sons, Inc. v. Francis (In re Francis)*, 273 B.R. 87 (6th Cir. BAP 2002)(finding five year plan was proposed in good faith and could be confirmed, notwithstanding that debtor through the payment of a relatively modest dividend would discharge debt excepted from discharge in prior chapter 7 case). The factors to be analyzed are:

- (1) the amount of the proposed payments and the amount of Debtor's surplus;
- (2) Debtor's employment history, ability to earn and likelihood of future increase in income;

wages per month. Therefore, BWC's argument with respect to §§ 109(e) and 1325(a)(1) is mooted. BWC also argues without citation to authority that the Debtor should be required to establish that she is not at risk of losing her SSD payments for the same reason that she lost her award of permanent and total disability. The Debtor testified that she limits the number of hours she works so as not to jeopardize her SSD payments.

- (3) the probable or expected duration of the plan;
- (4) the accuracy of the plan's statements of the debts, expenses and percentage repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court;
- (5) the extent of preferential treatment between classes of creditors;
- (6) the extent to which secured claims are modified;
- (7) the type of debt sought to be discharged and whether any such debt is nondischargeable in Chapter 7;
- (8) the existence of special circumstances such as inordinate medical expenses;
- (9) the frequency with which Debtor has sought relief under the Bankruptcy Reform Act;
- (10) the motivation and sincerity of Debtor in seeking Chapter 13 relief;
- (11) the burden which the plan's administration would place upon the trustee; and
- (12) whether Debtor is attempting to abuse the spirit of the Bankruptcy Code.

In re Caldwell, 895 F.2d at 1126-27; *In re Francis*, 273 B.R. at 91.

Based on these factors and the totality of the circumstances,

The bankruptcy court must ultimately determine whether the debtor's plan, given his or her individual circumstances, satisfies the purposes undergirding Chapter 13: a sincerely-intended repayment of pre-petition debt consistent with the debtor's available resources. The decision should be left simply to the bankruptcy court's common sense and judgment.

Metro Employees Credit Union v. Okoreeh-Baah (In re Okoreeh-Baah), 836 F.2d 1030, 1033 (6th Cir. 1988).

The Court has considered each of the twelve factors. The Debtor's plan proposes to pay to the Trustee \$250 per month over 60 months creating a 5% distribution to her creditors. The Debtor appears to propose to use all of her disposable income in order to fund a 60 month plan. Second, the Debtor appears to have limited earning potential and is not likely to see an increase in her earned income in the future. In addition, the Debtor must keep her earned income below a certain level so as not to lose her SSD payments. The first, second and third factors weigh in favor of finding that the Debtor's plan was proposed in good faith.

The Court believes that the Debtor's schedules are complete and truthful to the best

of the Debtor's knowledge. The Debtor filed an amended schedule I and J in order to update the information contained therein. In addition, the Debtor's plan does not propose to treat unsecured creditors differently or to modify the claims of secured creditors (except by agreement). The fourth, fifth and sixth factors weigh in favor of finding that the Debtor's plan was proposed in good faith.

Similarly, most of the remaining factors weigh in favor of finding that the Debtor's plan was proposed in good faith. The Debtor has not previously filed a bankruptcy petition in the Northern District of Ohio. The timing of her bankruptcy appears to be at least in part related to the BWC claim. However, the BWC claim only represents 66% of the Debtor's unsecured debt. It is easy to believe that, notwithstanding the BWC claim and given the Debtor's limited earning potential, the Debtor was in financial distress and would some day have arrived as a debtor in this Court. The Court finds the Debtor's motivation and sincerity to be genuine and consistent with the spirit of the Bankruptcy Code.

The only factor which weighs against a finding of good faith is that the Debtor, through her chapter 13 plan, is seeking to discharge a debt to BWC that would not be dischargeable in a chapter 7. However, the fact that a debtor seeks to discharge an otherwise nondischargeable debt is not, *per se*, evidence of bad faith. *In re Francis*, 273 B.R. at 92.

During the hearing, BWC's counsel argued that the Debtor's attempt to save her home is indicia of the Debtor's lack of good faith. The Court disagrees. Chapter 13 allows a debtor to pursue a "superdischarge" and to preserve certain assets, provided that the debtor meets the requirements of Bankruptcy Code § 1325. In this case, the Debtor has proposed to contribute all of her disposable income to her plan over five years. This is not indicia of her lack of good faith.

III. Conclusion

Given the totality of the circumstances in this case and based on a review of the record before it, the Court finds that the Debtor's plan was proposed in good faith and is capable of being confirmed. The Objection of the State of Ohio Bureau of Workers' Compensation is overruled.

IT IS SO ORDERED



Marilyn Shea-Stonum
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2005, the foregoing Order

was sent via regular U.S. mail to:

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