

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division**

FILED
2007 APR -4 PM 3:30
CLERK OF COURT
NORTHERN DISTRICT OF OHIO

In Re:

In Proceedings Under Chapter 13

**CHARLES J. JUSTAVICK
KAREN A. JUSTAVICK**

Case No.: 07-17880

Debtors.

JUDGE RANDOLPH BAXTER

MEMORANDUM OF OPINION AND ORDER

The matter before the Court is the Trustee's Objection to the Confirmation of Debtors Charles J. and Karen A. Justavick's Chapter 13 Plan. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2), with jurisdiction conferred under 28 U.S.C. §§ 157 and 1334 and General Order No. 84 of this District. Upon examination of the evidence admitted, and a review of the record generally, the following factual findings and conclusions of law are hereby rendered:

*

On October 16, 2007 (the "Petition Date"), the Debtors filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division. On December 7, 2007, the Trustee filed an objection to the Debtors' proposed plan based upon the Debtor's claim of a multiple vehicle ownership allowance on their Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (commonly referred to as "Form 22C") and the lack of evidence for child support. A

confirmation hearing on was held on January 24, 2008 in order to resolve the Trustee's objection.

The Debtors' family income is \$75,790.00 per annum. There is no dispute that the Debtors' income is higher than the applicable median family income for a similarly situated family. As above median income debtors, Debtors were required to complete the expense portion of Form 22C.

The Debtors' Petition reflects ownership of four vehicles: a 1997 Chevrolet Astrovan, a 1985 Pontiac Parissien, a 1971 Chevrolet Cheyenne, and a 1999 Chevrolet Malibu. None of the vehicles is encumbered by liens. On Form 22C, the Debtors show monthly disposable income of \$147.98 which includes deductions of \$471.00 (line 28) and \$332.00 (line 29) for vehicles that have no encumbrances. This is in addition to the \$362.00 deduction for transportation operation expense on line 27 of Form 22C.

**

The Trustee contends that the Debtors are not allowed to take a deduction for transportation ownership/lease expense if the Debtors do not own a vehicle subject to a note and lien or lease agreement. The Trustee asserts that if such expenses were disallowed the Debtors' monthly disposable income would be \$950.98, which would yield a payout to unsecured creditors of \$57,058.80 over a 60 month period. The Trustee urges the Court to adopt this position and disallow the \$471.00 and \$332.00 transportation ownership/lease expenses.

The Debtors' contend that the relevant portion of the means test regarding multiple vehicles is identical in Chapter 7 and Chapter 13 bankruptcies. Thusly, the Debtors assert that since the two relevant sections are identical, the vehicle deduction

issue has been resolved by this Court when it allowed for the vehicle deductions in its ruling in an earlier Chapter 7 case, *In re Charles and Lisa Billie* 367 B.R. 586 (Bankr. N.D. Ohio, 2007).

The dispositive issue before this Court is whether Chapter 13 Debtors are permitted to claim the car ownership expense described in the IRS local standards when calculating disposable income under Sections 1325(b)(2) and 707(B)(2)(A)(II)(I) where the Debtor owns the vehicles free and clear of liens.

11 U.S.C. §1325 (b)(2)

(b)(2) For purposes of this subsection, the term “disposable income” means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended--

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of “charitable contribution” under section 548(d)(3) [FN1] to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; 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)(3)

(b)(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than--

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) 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. § 707 b)(2)(A)(ii)(I)

(b)(2)(A)(ii)(I) 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 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. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

The Trustee's objection to the confirmation of Debtors' plan alleges that the Debtors are not devoting all disposable income to their unsecured creditors for the applicable period as required by 11 U.S.C. § 1325(b)(1)(B). The Trustee's objection is centered on the deductions taken for transportation.

The Trustee submits that a debtor may not take the deduction for vehicles that are unencumbered by debt and urges the Court to apply its holding in *In re Coffin*, 06-13141

(Bankr. N.D. Ohio, Dec. 8, 2006). In *Coffin*, a Chapter 13 case, the Court quoted the *Internal Revenue Manual*, Section 5.12.1.7 (05-01-2004) as follows:

If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense.

The Debtor contends the subject deduction is acceptable as was construed in this Court's decision in *Billie*, supra. In *Billie*, this Court held:

Therefore, pursuant to 707(b)(2)(A)(ii)(I), the Debtors who own two vehicles are permitted to take a vehicle ownership expense for both vehicles...notwithstanding the vehicle being owned free and clear of any liens or encumbrances....
This Court's previous ruling in *In re Coffin*, Case No. 06-13141 (Bankr. ND. Ohio Dec. 8, 2006), upon further consideration is not followed.

The Trustee attempts to make a distinction between the two decisions because the *Coffin case*, where the deduction was not allowed, was a Chapter 13 bankruptcy case. The *Billie case*, where the deduction was allowed, was a Chapter 7 bankruptcy case.

In order to ascertain whether the deductions should be allowed, the starting point should be the statutory language of 11 U.S.C. §§ 1325 (b)(2), and 707(b)(2)(A)(ii)(I). As stated by this Court in *Billie*, “[i]t is a familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.” *Billie*, at 590 quoting *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.* 447 U.S. 102, 108; 100 S.Ct. 2051, 2056, 64 L.Ed. 2d 766 (1980).

When a statute's language is plain, the sole function of the court, at least where the disposition required by the text is not absurd, is to enforce it according to its terms.

Hartford Underwriters Ins. Co. v. Union Planters Bank N.A., 530 U.S. 1, 6 (2000). A plain reading of the statutory language of 11 U.S.C. §§ 1325(b)(2), 1325(b)(3) and 707(b)(2)(A)(ii)(I), according to their terms, indicate that the vehicle deduction for a Chapter 13 case should be the same as the deduction for a Chapter 7.

Section 707(b)(2)(A)(ii)(I) provides in pertinent part:

(ii)(I) 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 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. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts.

11 U.S.C. § 707 b

Debtors whose income is classified as above median income, meaning their income exceeds the median family income for the applicable state and size of household, are allowed to deduct certain expenses that have been developed by the IRS. Id. Transportation costs are divided into two categories for car owners: (1) vehicle operation/public transportation expense; and (2) transportation ownership/lease expense.

Transportation ownership costs are fixed on a national basis at \$471 for the first car and \$332 for the second car. The standard deduction applicable to a particular debtor for operating costs is dependent upon the area of debtor's residence. In the Cleveland, Ohio region, a debtor who owns two vehicles is permitted to deduct \$362 per month as operating costs. See <http://www.usdoj.gov/ust/eo/bapcpa/20080317/meanstesting.htm>.

Section 1325 (b)(2), provides that disposable income is based upon the “current monthly income” less specified adjustments, less reasonable necessary expenses. For debtors whose income, as in the instant case, exceeds the applicable median family income, § 1325(b)(3) clearly states that reasonably necessary expenses “shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2).” The calculation for the deductions in a Chapter 13 is referenced to the calculation for a Chapter 7 case. Thusly, the formula for how to ascertain the vehicle deduction is the same in a Chapter 13 case as it is in a Chapter 7.

It is acknowledged that Courts are evenly split over whether the vehicle deduction can be taken for vehicles that are owned “outright”. Some Courts have determined that there can be no vehicle deduction for above-medium income debtors who have no encumbrances on their vehicles. See, *In re Wilson*, 2008 WL 681102 (8th Cir. BAP (Ark.) Mar 14, 2008); *In re Brown*, 376 B.R. 601 (Bankr. S.D. Tex. Oct 16, 2007); *In re Talmage*, 371 B.R. 96 (Bankr. M.D. Pa. June 28, 2007); *In re Howell*, 366 B.R. 153 (Bankr. D. Kan. Apr 26, 2007); *In re Slusher*, 359 B.R. 290 (Bankr. D. Nev. Jan 17, 2007).

This Court, however, firmly believes that the more prudent approach is articulated by the line of cases holding that the debtor can take the transportation ownership expense for vehicles that are owned free and clear by the debtor. See, *In re Grunert*, 353 B.R. 591 (Bankr. E.D. Wis., Nov 20, 2006); *In re Swan*, 368 B.R. 658, (Bankr.. N.D. Cal. Apr 18, 2007); *In re Zaporski*, 366 B.R. 758 (Bankr. E.D. Mich. Apr 17, 2007); *In re Clark*, 2008 WL 444565 (Bankr. E.D. Wis. Feb 14, 2008); *In re Farrar-Johnson*, 353 B.R. 230 (Bankr. N.D. Ill. 2006). Notably, this analysis is consistent with other rulings from this

District. See, *In re Crews*, Case No. 06-13117 (N.D. Ohio, February 23, 2007); *In re Hambleton*, Case No 06-15255 (February 23, 2007), where it was accepted that an above-medium income Chapter 13 debtor can take a transportation ownership expense on Form 22C for vehicles they own free and clear of any liens.

Section 103 of the Bankruptcy Code, 11 U.S.C. § 103, is instructive as to which Chapters of the Code interrelates with other Code Chapters. Therein, it is noted that Subchapter I of Chapter 7 applies only in Chapter 7 cases. Section 707 of Chapter 7 falls within Subchapter I. Notwithstanding, the 2005 Bankruptcy Reform Act (BAPCPA) clearly and expressly correlates § 1325 (b)(3) of Chapter 13 with § 707(b)(2) of Chapter 7 in determining reasonable monthly expenses under the Means Test. “Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.” *Morton v. Mancari*, 417 U.S. 535, 550-551, 94 S.Ct. 2474, 2482, 41 L.Ed.2d 290, 301 (1973).

Thusly, until the Congress amends § 103 and/or § 1325(b) of the Code, this Court will construe this provision in view of Congress’s later enactment, §1325(b)(3), to conclude that the Congress intended no means test distinction between the allowances of expense deductions under Chapter 7 and Chapter 13 cases. Indeed, the Trustee’s Brief in Support of Trustee’s Objection to Confirmation acknowledges that “pursuant to Section 1325 of the Bankruptcy Code, the Debtor’s disposable income is to be determined in accordance with Section 707 of the Bankruptcy Code....”

The Trustee argues that deductions should be disallowed because of the negative effect on how much the unsecured creditors will receive. While this may be a legitimate

concern, it is the function of the Court to fairly construe the express language of a statute where such language is unambiguous.

This Court's determination that the subject deductions should be the same in Chapter 13 as in Chapter 7 is additionally supported by the fact that the relevant portion of the means test form regarding multiple vehicles is identical for both Chapters. The language of the Statement of Monthly Income and Means Test Calculation, Form B22A, line 24 used for Chapter 7 bankruptcies is exactly the same as the Statement of Monthly Income and Means Test Calculation Form 22C, line 29 that is used for Chapter 13 bankruptcies. It is only reasonable to conclude that Congress intended the two identical forms to have identical interpretations.

This Court has previously held that, "pursuant to § 707(b)(2)(A)(ii)(I), the Debtors who owns two vehicles is permitted to take a vehicle ownership expense for both vehicles ... notwithstanding the vehicle being owned free and clear of any liens or encumbrances." *Billie* at 591. Since § 1325(b)(3) expenses shall be determined in accordance with § 707(b)(2), it would be inconsistent to disallow the ownership expense for multiple vehicles that are owned free and clear in a Chapter 13 bankruptcy when the same expense is allowed in a Chapter 7 bankruptcy. Therefore, the Debtors are allowed to take the Form 22C deductions of \$471.00 (line 28) and \$332.00 (line 29) for vehicles that have no encumbrances.

As was determined in *Billie*, the ruling in *In Re Coffin*, supra, is not followed herein and is hereby expressly overturned.

Accordingly, the Trustee's objection to confirmation of the Debtors Plan regarding the subject expense deductions is hereby overruled. The confirmation hearing will proceed for a determination of the remaining feasibility issue. Each party is to bear its respective costs.

IT IS SO ORDERED.

Dated, this 4th day of
April, 2008



**Judge Randolph Baxter
United States Bankruptcy Court
Northern District of Ohio**