

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

**FILED**  
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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

**In Re:**

**In Proceedings Under Chapter 13**

**Delois Ricks**

**Case No.: 08-12362**

**Debtor.**

**JUDGE RANDOLPH BAXTER**

**MEMORANDUM OF OPINION AND ORDER**

The matter before the Court is the Trustee's objection to the confirmation of Debtor's Chapter 13 plan. The Court acquires core matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 157(b)(2), 28 U.S.C. § 1334, and General Order Number 84 of this District. After considering the parties' respective pleadings and conducting a hearing on confirmation, the Court rules as follows:

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The Debtor is not employed. She, instead, proposes to fund her Chapter 13 plan with monthly payments from her live-in son and excess student loan proceeds. Specifically, the Debtor's Schedule I indicates that she receives \$1,000.00 per month from her son and \$644.00 per month in excess student loan proceeds. Her monthly expenses total \$1,463.00 and her proposed monthly plan payment is \$177.00 per month. There is no provision for repayment of the Debtor's student loans in her plan, nor is any lending agency scheduled as a creditor. Debtor indicates in her supplemental briefs that she is a student at Bryant & Stratton College and should graduate in May 2009. Debtor further indicates that "after 2009 Debtor may have received enough education to land a job and will not need any further student loans." No additional

information regarding the Debtor's prospective employment is given.

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The Trustee alleges that because the Debtor is not employed, she is not an individual with regular income as required by 11 U.S.C. §109(e) and is therefore ineligible for bankruptcy relief. The Debtor alleges that her excess student loans and the monthly contributions from her son satisfy the requirements of 11 U.S.C. §109(e).

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The issue for the Court is whether Debtor's plan satisfies the requirements for confirmation found in 11 U.S.C. § 1325(a)(1) and (a)(3).

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Section 1325 of the Code sets forth the requirements for plan confirmation. The provisions of § 1325 at issue in this case are as follows:

- (a) Except as provided in subsection (b), the court shall confirm a plan if—
  - (1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title; . . . .
  - (3) the plan has been proposed in good faith and not by any means forbidden by law.

Section 109(e) defines who is eligible to be a debtor under Chapter 13 as follows:

- (e) Only an individual with regular income . . . may be a debtor under chapter 13 of this title.

Section 101(30) defines individual with regular income as an:

- (30) individual whose income is sufficiently stable and regular to enable such individual to make payments under chapter 13 of this title.

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A debtor seeking reorganization under Chapter 13 bears the burden of establishing that the plan complies with the statutory requirements for confirmation. *In re Petrella*, 230 B.R. 829, 832 (Bankr.N.D. Ohio 1999). Therefore, the Debtor must demonstrate by a preponderance of the evidence that her plan satisfies the requirements of 11 U.S.C. § 1325. *See Grogan v. Garner*, 498 U.S. 279 (1991)(preponderance of the evidence standard presumed to be applicable in civil actions between private parties.)

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Herein, the Debtor has failed to meet her burden to demonstrate that she has sufficiently stable and regular income to support confirmation of her Chapter 13 plan. Debtor has presented no evidence to establish that she is entitled to continue receiving the student loans. In fact, she states that after her anticipated graduation in May 2009, she will receive no additional student loans. As stated by the Trustee, the Debtor would have to seek leave of Court in order to borrow additional funds. As stated by the court in *In re Hanlin*, 211 B.R. 147, 148 (Bankr.W.D.N.Y. 1997), “an able bodied unmarried debtor whose only source of sustenance is what he can borrow and how much his parents will gift to him is not a person with ‘regular income’ under 11 U.S.C. § 109(e) and 101(30).”

While the Debtor has provided an affidavit from her son indicating that he resides with her and that his \$1,000.00 monthly contribution is for household expenses, this amount alone is insufficient to meet the Debtor’s living expenses and fund plan payments, as indicated on the Debtor’s Schedules I and J. The ability for the Debtor to fund the plan necessarily depends upon the excess student loans. Given these circumstances, the Court cannot conclude that the Debtor is an individual with regular income as required by 11 U.S.C. § 109(e). Accordingly, the Debtor

has not met her burden with respect to confirmation under 11 U.S.C. § 1325(a)(1).

An additional impediment to confirmation is whether the Debtor's plan was proposed in good faith as required by 11 U.S.C. § 1325(a)(3). The term "good faith" is not defined in the Bankruptcy Code and, in the Sixth Circuit, such determination requires consideration of the "totality of the circumstances." *Society National Bank v. Barrett*, 964 F.2d 588, 591 (6<sup>th</sup> Cir. 1992). The "critical issue is whether there is a sincerely-intended repayment of pre-petition debt consistent with the debtor's available resources." *Id.* at 592. Herein, the Debtor proposes to pay her unsecured creditors a 26% dividend, while remaining unemployed during college and fails to provide for repayment of her student loans. The court in *In re Kelly*, 217 B.R. 273, 275 (Bankr.D.Neb. 1997) concluded that a debtor's plan was not proposed in good faith where the debtor chose to be under-employed while in graduate school, failed to list over \$38,500.00 in student loans on his bankruptcy schedules and planned to fund his plan primarily with student loans. The court stated that "it is simply not equitable for the debtor to voluntarily remain under-employed, to obtain the benefit of an advanced college degree, and to discharge his obligations to creditors upon payment of a nominal dividend." *Id.* Given the circumstances herein, the Court cannot conclude that the Debtor's plan was proposed in good faith.

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Accordingly, confirmation of the Debtor's plan is hereby denied. The Trustee's objection thereto is hereby sustained. The Debtor's case is dismissed.

**IT IS SO ORDERED.**

Dated, this 33<sup>rd</sup> day of  
December 2008

  
JUDGE RANDOLPH BAXTER  
UNITED STATES BANKRUPTCY COURT