

NOT FOR COMMERCIAL PUBLICATION

NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 06-12194
)
JON D. ZAPISEK,) Chapter 13
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION AND**
) **ORDER** (NOT FOR COMMERCIAL
) PUBLICATION)

The chapter 13 trustee objects to confirmation on the ground that the debtor Jon Zapisek is not devoting all of his disposable income to his unsecured creditors for the applicable commitment period, as required by 11 U.S.C. § 1325(b)(1)(B).¹ The debtor opposes the objection. For the reasons stated below, the objection is sustained.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

FACTS²

The debtor, unmarried, lives with his significant other, Rene Word, and their children. The debtor drives a 1993 Infinity that he owns free and clear of any liens or encumbrances. Ms.

¹ Docket 21.

² Joint stipulation of facts, docket 26. Neither party requested an evidentiary hearing.

Word drives a second vehicle; the debtor is not on the title to this vehicle and is not obligated on the note secured by a lien on the vehicle. Ms. Word is not employed and does not otherwise have any income. The debtor claims Ms. Word and their two children as dependents on his income tax returns.

The debtor filed an amended form B22C that shows a deficit of total monthly disposable income under 11 U.S.C. § 1325(b)(2). The debtor proposes to pay his unsecured creditors no more than a 5% dividend on their claims.

THE POSITIONS OF THE PARTIES

The trustee argues that the debtor has improperly deducted transportation and tax expenses on form B22C and, if those amounts are added back in, the debtor will be required to pay a significantly higher dividend to his unsecured creditors. These are the line items to which the trustee objects:³

(1) The debtor claims an allowance on lines 27 and 28 for the vehicle belonging to Ms. Word. On line 27, he claims an operating expense for the Infinity as well as for Ms. Word's car.⁴ The trustee argues that the debtor is not entitled to a deduction for the second vehicle because he is not on the title to this vehicle and is not an obligor on the note securing a lien on the vehicle. On line 28, the debtor claims an ownership/lease expense for Ms. Word's car.⁵ Again, the trustee argues that this is not a permissible expense.

In response, the debtor contends that he is entitled to take both deductions for the second vehicle under 11 U.S.C. § 707(b)(2)(A)(ii)(II) because Ms. Word uses the car to drive their

³ Docket 20.

⁴ See stipulation of fact nos. 7 and 8.

⁵ See stipulation of fact no. 8.

children to various places. He claims that Ms. Word's contributions in taking care of the children and household relieve the debtor from what he would otherwise have to pay in child care and other expenses and that if he and Ms. Word separated, the debtor would have to pay her child support, which would be a recognized deduction. The trustee replies that the section does not support the debtor's position and that the other arguments are hypothetical and irrelevant.

(2) The debtor claims an expense on line 30 for taxes in the amount of \$1,243.68. The trustee argues that the documents provided show that the number is overstated by \$178.00. The debtor does not argue anything in reply on this point.

DISCUSSION

Chapter 13 debtors are required to file a Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Form B22C). The calculations set forth in this form are known as the "means test." *See* 11 U.S.C. § 707(B). The dispute in this case is over how to calculate the debtor's expenses for purposes of this test.

The court will address the only argument made by the debtor and that is that 11 U.S.C. § 707(b)(2)(A)(ii)(II) establishes his ability to deduct amounts related to Ms. Word's vehicle.

That section states that:

In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

As the trustee correctly points out, this section does not support the debtor's position. First, the section is irrelevant to the transportation deduction. Second, the debtor did not provide any

evidence to show that either of his children falls into the category of “chronically ill, or disabled” or that he has any “actual expenses” necessitated by such a condition. Without that evidence, the statute is inapplicable. The trustee’s objection is sustained on this ground.⁶

The debtor did not provide any case support or legal argument for his related theory that the transportation expense can be used as a substitute for hypothetical child care or child support expenses and the court considers that argument waived.

The debtor did not oppose the trustee’s position that the debtor failed to provide documentation for the tax amount claimed. The trustee’s objection to this deduction is sustained for this reason.

CONCLUSION

For the reasons stated, the trustee’s objection to confirmation is sustained. The confirmation hearing is adjourned to **February 20, 2007 at 1:30 p.m.** for the debtor to file a second amended form B22C in accordance with this decision.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

⁶ The court need not address the question of whether a debtor may deduct a transportation ownership/lease expense for a vehicle that he owns free and clear of liens because that issue is not addressed by the debtor.