11 USC §1325(b)(2)(A)
Disposable income
Dependent

In re Steven Young 697-61826-fra13

12/10/97 FRA Unpub.

The Debtor owns and shares his house with a co-tenant, whom the Debtor described as a "domestic partner." The partner is a full-time student and works only occasionally. In computing disposable income to determine the amount of his plan payment, the Debtor deducted the entire amount of his house payment as well as the amount spent for food, medical, utilities, etc. for the household. A creditor objected on the ground that only the expenditures relating to the Debtor himself could be used to calculate disposable income. The creditor also objected to several expenses with had increased substantially in the ten weeks between the time the petition was filed and the date of conversion to Chapter 13.

11 U.S.C. § 1325(b)(2) defines disposable income as income received by the debtor which is not reasonably necessary to be expended for the support "of the debtor or a dependent of the debtor." No definition is given for "dependent." The court examined definitions made by other courts and held that for purposes of § 1325, a dependent is "an individual whom the debtor has a legal duty to support, or who is actually and reasonably dependent on the debtor."

Applying its definition to the facts of the case, the court held that the Debtor's partner is not a dependent. The Debtor has no legal duty to support the partner. Further, the partner is an adult who is capable of working. The debtor did not meet his burden of proving dependency. The debtor also failed to prove the reasonableness of the other expenditures objected to. Confirmation of the plan was denied and debtor was ordered to submit a modified plan in which disposable income is calculated using only those expenditures reasonably necessary for the debtor's support.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

IN RE	)	
	)	Case No. 697-61826-fra13
STEVEN L. YOUNG,	)	
	)	
Debtor.	)	MEMORANDUM OPINION

An unsecured creditor, Timberline Community Bank, has objected to the Debtor's Chapter 13 Plan of Reorganization on the ground that he has not committed all of his disposable income to the Plan as required by 11 U.S.C. § 1325(b)(1)(A). For the reasons that follow, confirmation of the Debtor's Plan is denied.

BACKGROUND

The debtor owns his house with a co-tenant "not as joint tenants, but with right of survivorship." This form of ownership is used in an attempt to create a type of joint tenancy in real property as a result of the Oregon legislature having abolished joint tenancies in real property.[1] In testimony, it was determined that the co-tenant is an adult, is not employed, and attends school full time. The Debtor originally filed a Chapter 7 petition, but converted to Chapter 13 about 2½ months later. He pays most, if not all, of the monthly household expenses including the mortgage payment, home maintenance and insurance costs, and heat and utility payments. In determining the amount of disposable income he has available to make plan payments, the Debtor appears to have deducted the full amount of these payments.[2] Timberline argues that the Debtor's co-tenant is responsible for ½ of these costs and the Debtor cannot include the full amount on Schedule J, the schedule listing current expenditures of the debtor. Additionally, Timberline objects to certain claimed expenditures that increased without explanation from the Schedule J filed with the Chapter 7 petition to the Schedule J filed when the case was converted, including costs for telephone, food, medical and dental, and transportation.

<u>DISCUSSION</u>

A. Disposable Income Test

(b) (1) If the trustee or the holder of an

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[1] With the abolition of joint tenancies, ownership of real property in Oregon is limited to tenancy in common, life estate, and, for a married couple, tenancy by the entirety.

[2] With the exception of the mortgage payment. Debtor's original Schedule J filed with his Chapter 7 petition listed a mortgage payment of $858. The Schedule J filed when the case was converted to Chapter 13 and from which the monthly payment was calculated shows a monthly mortgage payment of $429, one-half of the total payment.

> allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—
>
> > (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
> >
> > (B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.
>
> (2) For purposes of this subsection, "disposable income" means income which is <u> of the debtor</u> received by the debtor and which is not reasonably necessary to be expended—
>
> > (A) for the maintenance or support of the debtor or a dependent of the debtor; and
> >
> > (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

B. <u>Meaning of “Dependent</u>”

Under the disposable income test shown above, an expenditure can be used to calculate disposable income only if it is reasonably necessary for the maintenance and support of the debtor or a dependent of the debtor, or it is a necessary business expense. The Bankruptcy Code, however, does not define the term “dependent.” Various courts have grappled with this issue and have noted that Congress has defined the term in a number of non-bankruptcy contexts. See Leslie Womack Real Estate, Inc. v. Dunbar (In re Dunbar), 99 B.R. 320, 324 (Bankr. M.D. Louisana 1989). The court in Dunbar, in noting that Congress specifically defines the term when it is used in a particular manner, stated the canon of statutory construction that, “unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.” Id (quoting Perrin v. United States, 444 U.S. 37, 42 (1979)). Using this approach, the Dunbar court adopted the meaning for dependent as a “person who reasonably relies on the debtor for support and whom the debtor has reason to and does support financially.” Id. Other bankruptcy courts have adopted this or similar definitions. See In re Rigdon, 133 B.R. 460 (Bankr. S.D. Ill. 1991); In re Gonzales, 157 B.R. 604 (Bankr. E.D. Mich. 1993). In Gonzales, the court added the additional “clarification” that the court must determine “whether it is reasonable under the circumstances for the court to permit the debtor to undertake the obligation of supporting the would-be dependent.” Gonzales at 609. Determining the reasonableness of the obligation for support would be dependent on a case-by-case analysis of the circumstances of each case.

The Gonzales court noted that the definition adopted by it and other courts is consistent with what appears to be the majority view. For purposes of defining the term "dependent" in the context of 11 U.S.C. § 1325(b), I will adopt the definition as outlined above.

C. Is Debtor's Co-Tenant a Dependent

The Dunbar court listed several relevant questions in an analysis of dependency, including the length of time the claimed dependent has resided in the household, the reason the claimed dependent is residing in the household, and whether the dependent is in fact necessitous. Dunbar at 326 n. 3. The Debtor has the burden of proof on all matters of confirmation, including § 1325(b). See In re Chinichian, 784 F.2d 1440, 1444 (9th Cir. 1986). Thus, in order to claim expenditures for items of support which would ordinarily be the responsibility of the Debtor's co-tenant, Mr. Hebner, the Debtor must offer sufficient evidence to convince the Court that Mr. Hebner is and should be considered a dependent for purposes of § 1325(b)(2). The Debtor has not met his burden in that regard. Mr. Hebner is an adult, apparently capable of working, who attends school full time. No compelling reasons were given as to why he should be considered a dependent of the Debtor and the Debtor's unsecured creditors made to subsidize Mr. Hebner's education. Accordingly, I hold that for purposes of 11 U.S.C. § 1325(b)(2), Mr. Hebner cannot be categorized as a dependent of the Debtor and Schedule J expenses cannot include any expenditures made by the Debtor for the support and maintenance of Mr. Hebner.

D. Reasonableness of Other Expenditures

Disposable income is defined as income less expenditures reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor. § 1325(b)(2). The Code does not define what constitutes reasonably necessary expenditures for maintenance or support, although it would not include expenditures for the acquisition of luxury goods or services. One definition that has been used for "reasonably necessary" is based on a standard of "adequacy, supporting the basic needs 'not related to [the debtor's] former status in society or the lifestyle to which he is accustomed." In re Cardillo, 170 B.R. 490, 491 (Bankr. D. N.H. 1994)(citing In re Sutliff, 79 B.R. 151, 157 (Bankr. N.D.N.Y. 1997). It is not necessary that the debtor prove that every item of expense is reasonably necessary, but when a creditor objects to a particular item, the debtor must address the issue. In re Selden, 116 B.R. 232 (Bankr. D. Or. 1990), aff'd, 121 B.R. 59 (D. Or. 1990). As noted previously, the burden of proof is on the debtor with regard to § 1325; the debtor must therefore offer sufficient evidence to prove the reasonableness of those expenditures objected to. See In re Chinichian, 784 F.2d at 1444.

Timberline objected to a number of expenditures on Schedule J as being excessive, most of which increased substantially in the 2½ months between the time that the bankruptcy petition was first filed and the time of the conversion to Chapter 13. The burden is on the Debtor to justify the reasonableness of those expenditures. [DID THE DEBTOR OFFER ANY EXPLANATION FOR SUCH THINGS AS THE JUMP IN FOOD AND MEDICAL AND DENTAL, OR WERE THEY INCREASED TO ACCOUNT FOR EXPENDITURES MADE ON BEHALF OF THE CO-TENANT?]

CONCLUSION

Only those expenses reasonably necessary for the maintenance or support of the Debtor may be used in calculating disposable income for purposes of § 1325(b), as Mr. Hebner does not qualify as a dependent under that section. Consequently, expenditures on Schedule J will have to be reduced to eliminate those relating to Mr. Hebner. A modified Plan should be filed within 21 days in which disposable income is calculated using only expenditures on Schedule J which are reasonably necessary for the maintenance or support of the Debtor. An order consistent with this opinion will be entered.

FRANK R. ALLEY, III
Bankruptcy Judge