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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

IN RE:	)	
	)	
STEPHANIE A. BROOKS,	)	Bankr. No. 12-82224
	)	
Debtor-Appellee.	)	
	)	
MICHAEL D. CLARK,	)	
Chapter 13 Trustee	)	
Appellant,	)	
	)	14-CV-1031
v.	)	
	)	
STEPHANIE A. BROOKS,	)	
Debtor-Appellee.	)	

O R D E R

This matter is now before the Court on Appellant, Michael D. Clark as Chapter 13 Trustee's ("Trustee") Appeal from the Order of the Bankruptcy Court finding the debtor, Stephanie A. Brooks ("Debtor"), was permitted to fully exclude her child support income from the calculation of disposable income. For the reasons state herein, the decision of the Bankruptcy Court is AFFIRMED.

Jurisdiction and Standard of Review

District courts are to apply a dual standard of review when considering a bankruptcy appeal. The findings of fact of the Bankruptcy Judge are reviewed for clear error, while the conclusions of law are reviewed *de novo*. *In re Midway Airlines*, 383 F.3d 663, 668 (7th Cir. 2003); *In re Smith*, 286 F.3d 461, 465 (7th Cir. 2002); *In re Yonikus*, 996 F.2d 866, 868 (7th Cir. 1993); *In re Ebbler Furniture and Appliances, Inc.*, 804 F.2d 87, 89 (7th Cir. 1986); *see also*, Bankruptcy Rule 8013.

Procedural Background

On October 4, 2012, Debtor commenced her bankruptcy case by filing a petition under Chapter 13 of the Bankruptcy Code. (Bankr. Case[1], ECF No. 1). Appellant Michael Clark was appointed the trustee. On October 15, 2012, Debtor filed her Amended Chapter 13 Plan wherein she proposed to pay the Trustee $100.00 per month for sixty months to allocate to her creditors in accordance to proposed plan. (Bankr. Case, ECF No. 13). The Trustee opposed the confirmation of the Amended Chapter 13 Plan contending that the Debtor had failed to commit all of her projected disposable income as required by 11 U.S.C. § 1325(b)(1)(B) and § 1325(b)(3). (*See e.g.* ECF No. 1-2; *see also* Bankr. Case, ECF No. 41). The Trustee specifically held the position that the Debtor has improperly excluded her monthly child support income of $400.00 from her disposable income. *Id*.; (*see also* Bankr. Case, ECF No. 25 "Form 22C"). The Debtor has two minor children under her care. (ECF No. 1-2 at 8). On July 23, 2013, Bankruptcy Judge Thomas Perkins held an evidentiary hearing on the matter. (ECF No. 1-2 at 3, Bankruptcy Judge summarized that "[ ] the primary dispute was the line 54 on the form 22C which purported to deduct $400 for child support as reasonably necessary to be expended for the debtor's children."). On September 12, 2013, Judge Perkins issued his Opinion concluding that the Debtor's deduction of the $400 in monthly child support was allowable. (Bankr. Case, ECF No. 45). Notably, the Debtor's Amended Chapter 13 Plan was approved with a payment of $459.00 per month for sixty (60) months. Bankr. Case, ECF No. 53. The Trustee brings this action pursuant to 28 U.S.C. § 1334 arguing that:

> [T]he Bankruptcy Court err[ed] in denying the Chapter 13 Trustee's objection to confirmation of the Amended Chapter 13 Plan;

[1] *In RE: Stephanie Arlene Brooks*, ILCD Bankr. Case No. 12-82224.

> [T]he Bankruptcy Court err[ed] in allowing the debtor to completely exclude her child support income in the calculation of disposable income;
>
> [T]he Bankruptcy Court err[ed] in applying differing interpretations of the phrase "reasonably necessary to be expended" in the two instances it appears in 11 U.S.C. § 1325(b)(2); and
>
> [T]he Bankruptcy Court erred in relying on a state court child support award to determine the expenses reasonably necessary to be expended pursuant to 11 U.S.C. § 1325(b)(2).

(ECF No. 3 at 2). This Order follows.

Factual Overview

It is undisputed in this case that the Debtor's current monthly income exceeds the applicable state median for a household of three persons. As noted above, the Trustee outlines four areas the Bankruptcy Judge erred, but this case can be narrowed to the review of one issue, that is, did the Bankruptcy Court properly approve the Amended Chapter 13 Plan which excluded Debtor's $400.00 in child support payments from her disposable income. (Bankr. Case, ECF No. 25, p. 7).

By way of additional background on the specific expense in the record related to the Debtor's children, the Debtor testified that she spent approximately $1,600.00 on gifts (birthdays/holidays) for her children during the year. (ECF No. 1-2 at 9). The Debtor also testified that she incurred additional school-related expenses for her children including school registration ($100), latchkey programs ($205/month), school lunches ($140/month), pictures ($70), field trips ($50), sports ($50, $45, $175), and supplies ($200). (ECF No. 1-2 at 9, 11-13). The Debtor also had babysitting expenses ($450/month) and camp ($600) during the summer. (ECF No. 1-2 at 10). Finally, Debtor testified that she had expenses (gas) to transport her children to their father's residence and school in Sunnyland ($140/month). (ECF No. 1-2 at 11).

On cross-examination, Debtor conceded that her entire latchkey expense for 2012 was $502.25, and the total for babysitting was $795. (ECF No. 1-2 at 15 and 17).

Discussion

Since the Trustee objected to the confirmation of the plan in the bankruptcy proceeding, the Bankruptcy Court could not approve the plan unless, as of the effective date of the plan -

> (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

11 U.S.C. § 1325(b)(1)(B). In its analysis, the Bankruptcy Court had to use the "means test" under § 1325(b)(3) to determine the debtor's disposable income relative to the debtor's proposed Chapter 13 plan. Notably, Form 22C (entitled: "Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income" hereinafter "Form 22C") is often referred to, or utilized as, the Chapter 13 "means test."

Although the Bankruptcy Code does not define "*projected* disposable income," "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—[ ]." 11 U.S.C. § 1325(b)(2). Both Parties acknowledge that the focus of this appeal is on the Bankruptcy Court's interpretation of the exclusion from disposable income of "child support payments [ ] for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child" under 11 U.S.C. § 1325(b)(2). (*See* ECF No. 3 at 6; *see also* ECF No. 4 at 2-3).

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The Trustee's position is straightforward. The Trustee argues that the debtor should not be entitled to exclude the child support payments that are otherwise included in the standardized expense component of the means test computation. (*See* ECF No. 3 at 11; *see also* Form 22C, lines 24A, 24B, and 25A and Bankr. Case, ECF No. 45 at 8). The Trustee's argument concisely states is that "[t]he children's food, clothing, personal care, health care, utilities and lodging expense are all included in the claimed standards" and should not be properly *included* in these expenses and also have child support payments (intended for these expenses) *excluded* from the income. (ECF No. 3 at 11). The Trustee surmises that it is duplicative for the Debtor to deduct the expenses as a standardized expense and also exclude the child support income. *Id*.; *see also* Form 22C, lines 24A, 24B, 25A and 54. The Trustee further notes that the $400.00 of child support is not *de minimis* to the various creditors over the 60-month Chapter 13 plan period. (ECF No. 3 at 11, noting that the total would amount to $24,000).

The difficulty with the Trustee's position is that it is hard to reconcile with the plain language of the statute. The Bankruptcy Judge explained that the exclusions under 11 U.S.C. § 1325 include three types of payments: child support, foster care payments and disability payments for a dependent child. *See* Form 22C, line 54. These exclusions are only subject to two conditions. First, that the payments are in accordance with nonbankruptcy law, and second,

that the payments are excludable only to the extent reasonably necessary to be expended on the child. 11 U.S.C. § 1325(b)(2).

There is no dispute that the child support payments in this case are being made in accordance with nonbankruptcy laws. *See* Bankr. Case, ECF No. 45 at 5; *see also* 750 ILCS 5/505(a). The Bankruptcy Court also noted that child support payments made under the Illinois statute are required to be "reasonable and necessary." 750 ILCS 5/505(a) ("[T]he court may order either or both parents owing a duty of support to a child of the marriage to pay an amount *reasonable and necessary* for his support, without regard to marital misconduct.") (Emphasis added); *see also* Bankr. Case, ECF No. 45 at 6. The Trustee takes issue with the Bankruptcy Court's reliance of the Illinois statue because a finding based simply on the Illinois statute is inconsistent with Section 1325(b)(3) which requires that "amounts reasonably necessary to be expended under paragraph (2) . . . shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2) [for above-median debtors]." (See ECF No. 3 at 9); *see also* 11 U.S.C. § 1325(b)(3). But, the Trustee's review of section § 1325(b)(3) fails to consider that "paragraph (2)," that which is subject to the application of 707(b)(2), excludes "[ ]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" from consideration of "disposable income." 11 U.S.C. § 1325(b)(2).

To best illustrate, the Court would note that the statute provides:

> 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
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> **(ii)** for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) 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
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> **(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)(2). (Emphasis added). The expenditures listed under sections (A)(i)-(ii) and (B) above would be subject to 11 U.S.C. § 707(b)(2); however, this is only in consideration of expenditures to be excluded from amounts of "disposable income," which has no application for the child support payments, because they are specifically excluded. The Court finds no difficulty in accepting the Bankruptcy Court's finding that the reasonableness and necessity of child support payments is determined under Illinois state law when the State Court enters an order finding imposing a duty of support for "an amount reasonable and necessary for [the child]." The Bankruptcy Court also independently examined the reasonableness of the payments and determined that "[t]his case, where each child is receiving $200 per month from their father, is a far cry from being an abusive situation where a debtor is unfairly taking advantage of the income exclusion for child support payments to the detriment of creditors [ ]" and that "[i]n light of the [Debtor's] circumstances, a monthly child support payment of $400 for two children is not excessive." (ECF No. 45 at 11-12).

In addition to the finding of reasonableness of the child support payments, the Bankruptcy Court determined that "the plain meaning of the parenthetical exclusion ["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"] is better reflected" by excluding the child support payments from the Debtor's income. Bankr. Case, ECF No. 45 at 10. And this Court agrees.

As noted in the Bankruptcy Court's opinion "[d]isposable income was intended to be determined as a 'simple and straightforward matter of arithmetic.'" Bankr. Case, ECF No. 45 at 9 *citing In re Farrar-Johnson*, 353 B.R. 224, 232 (Bankr.N.D.Ill. 2006). The practical application of calculation is demonstrated in the straightforwardness of Form 22C. Under the Trustee's interpretation, a bankruptcy court would be required to undergo an additional exercise of parsing out the child's share of expenses contained on lines 24A, 24B and 25A of Form 22C, despite the fact that the plain language of statute allows for the exclusion from the income side if the child support meets the "pursuant to nonbankruptcy law" and "reasonable and necessary" criteria. Trustee's historical recount of the bankruptcy law pre-and post-Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, is helpful, but does not concur with the "simple and straightforward" application of the statute, as it appears Congress intended. (*See* ECF No. 3 at 6-7).

Finally, the Bankruptcy Court noted that the statute provides an ability to prevent abuse "[i]f the trustee or objecting creditor can establish that all or part of such payments are truly excessive under the circumstances [because] the reasonable necessity standard provides a basis to deny all or part of the claimed exclusion." Bankr. Case, ECF No. 45 at 12. The Court finds that this application is the most consistent with the intent of Congress as reflected in the statute. As noted above, the Bankruptcy Court examined the child support payments in this light, determining that the payments were not excessive.

In summary, this Court agrees with the Bankruptcy Court that the reasonableness and necessity of child support payments is determined under Illinois state law when the State Court enters an order finding imposing a duty of support. Under bankruptcy statute, this amount is then excludable under 11 U.S.C. § 1325(b)(2), unless the trustee (or creditor) demonstrates that the child support payments are not "reasonably necessary to be expended for such child." *Id*. That has not been done in this case. Debtor receives monthly child support income of $400.00 for her two children and the record presented to the Bankruptcy Court demonstrates that these payments are reasonably necessary to be expended for these children.

Conclusion

For the reasons stated herein, the Order of the Bankruptcy Court is affirmed. This matter is now terminated.

ENTERED this 21st day of July 2014.

/s/ Michael M. Mihm
Michael M. Mihm
U.S. District Court Judge