

**"Not For Publication in West's Bankruptcy
Reporter."**

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)
)
DANYA MASON,) Case No. 01-02194
) (Chapter 13)
)
Debtor.

DECISION REGARDING CONFIRMATION OF DEBTOR'S PLAN

Under the court's consideration is the Chapter 13 plan filed by the debtor, Danya Mason. On the evidence proffered by Mason, Mason's tuition of \$250.00 per month is not an allowable expense when computing her disposable income. Accordingly, the court must deny confirmation of her plan because the plan does not provide that all of her disposable income for the three years of the plan "will be applied to make payments under the plan." 11 U.S.C. § 1325(b)(1)(B).

Mason is a part-time student at the University of the District of Columbia, where she is taking classes in the dental hygiene program during the evening. Although she is currently employed in a dentist's office, it is not a requirement of employment that she receive the dental hygiene degree from the university. If the \$250.00 of tuition is allowed as an expense, Mason's disposable income would be \$145.00 per month. Mason has proposed to pay a total of \$6,912.00 over 36 months at \$192.00 per month. On the other

hand, if the tuition expense is not allowable, her disposable income is \$395.00 per month, which comes to \$14,220.00 over 36 months, an amount greater than what Mason's plan proposes. Although the trustee is agreeable to a plan that provides for \$14,220.00 over 36 months, or, alternatively, \$15,000.00 over 60 months, the debtor declines to propose such a plan.

With respect to confirmation of a Chapter 13 plan that does not propose to pay the full value of the allowed unsecured claims in the case, 11 U.S.C. § 1325 provides in relevant part:

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

. . .

(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 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 . . .

Mason has no dependents. Thus, under § 1325(b)(2)(A), Mason's tuition expense may be considered in computing her disposable income only if the expense is "reasonably necessary" for her

"maintenance or support."

Two bankruptcy courts have addressed whether a debtor's own educational expenditures (as distinguished from the educational expenses of a debtor's children)¹ should be characterized as discretionary and thus not allowed. In In re Gonzales, the court concluded that the debtor's educational expenses are entirely discretionary and cannot be portrayed as something that the debtor could not do without. 157 B.R. 604, 609 (Bankr. E.D. Mich. 1993) (determining that this type of expenditure was the debtor's investment in herself, and investment expenses are generally not appropriately considered in computing disposable income). Looking at the facts before it, the court ultimately reasoned that the debtor's discretionary spending, which included her tuition, was excessive. See id. at 611. Additionally, in In re Mathes, the debtor's scheduled expenditure of \$375.00 per month for tuition was not reasonably necessary for his support. 1996 WL 1055813 at *2, *3 (Bankr. D. Minn. 1996) ("This expenditure

¹ Mason has cited three cases to support her position that tuition should be considered an allowable expense: In re Nicola, 244 B.R. 795 (Bankr. N.D. Ill. 2000); In re Bottelberghe, 253 B.R. 256 (Bankr. D. Minn. 2000); and In re Riegodedios, 146 B.R. 691 (Bankr. E.D. Va. 1992). These three cases, however, found that the tuition of the debtor's children was a reasonable expense, but did not address the issue of the tuition of the debtor herself.

may not be a luxury, but it simply does not contribute to meeting his *current* needs for sustenance.”) (Italics in original.) Both of these cases considered that the educational classes taken were not required by the debtor’s current employer as necessary to retain employment.

Looking at the facts presently before the court, Mason’s tuition is not an allowable expense. Rather, it is a discretionary expense that she can live without. During the hearing on February 15, 2002, Mason’s counsel conceded that this educational degree was not a requirement for Mason’s retention of employment, but rather was for her possible future earning potential. While the court commends Mason for attempting to better herself through further education, this expenditure does not help Mason meet her current needs for sustenance. It is instead an investment in her future. Accordingly, the \$250.00 expense for tuition may not be utilized as a reduction when computing her net disposable income.²

² In computing net disposable income, a debtor is often allowed, without objection, modest amounts for such incidents of life as newspapers, magazines, and entertainment. Almost never is an objection made to such expenditures, aimed at securing some enjoyment out of life, if the aggregate amount of such incidentals is not excessive. Here, \$250.00 per month for classes is, even standing alone, not a modest amount: it is a substantial sum intended as an investment in Mason’s future, not merely a minor sum intended for her intellectual

The court will deny confirmation because Mason has made an inadequate showing that the plan will utilize all of the debtor's disposable income. The court will enter an order under F.R. Civ. P. 52(c) (incorporated by F.R. Bankr. P. 7052, and made applicable here by F.R. Bankr. P. 9014) denying confirmation based on the inadequacy of the debtor's proffered evidentiary case.

Dated: March 5, 2002.

S. Martin Teel, Jr.
United States Bankruptcy Judge

stimulation. Moreover, Mason already has budgeted generous monthly amounts of \$75.00 for grooming, \$75.00 for laundry and dry cleaning, and \$75.00 for recreation and entertainment.

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