

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF IDAHO**

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**In Re**

RONALD D. STANSELL,

**Debtor.**

**Bankruptcy Case**

**No. 08-00716**

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**MEMORANDUM OF DECISION**

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**Appearances:**

Joseph F. Ammirati, Nampa, Idaho, Attorney for Debtor.

Kathleen A. McCallister, Kuna, Idaho, Chapter 13 Trustee.

**Introduction**

The issue presented in this chapter 13<sup>1</sup> case is whether § 1325(b)(4)(A)(ii) of the Bankruptcy Code, a provision added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

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<sup>1</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101 - 1532, and all rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001 - 9037.

“BAPCPA”, Pub. L. 109-8, 119 Stat. 23 (2005), requires that a debtor include the income earned by his deceased spouse during the six months prior to the filing of the debtor’s bankruptcy petition in determining the “applicable commitment period” for the debtor’s plan. An analysis of this issue yields an odd result, indeed.<sup>2</sup>

### **Facts and Procedural Background**

Debtor Ronald Stansell (“Debtor”) is a widower. His former spouse, Sonda Stansell, passed away on March 8, 2008. Shortly thereafter, on April 17, 2008, Debtor sought relief under chapter 13 of the Bankruptcy Code. In the schedules filed with his petition, Debtor estimated his gross monthly income at \$3,000 and his monthly expenses at \$1,911.<sup>3</sup> *See* Docket No. 1.

As required by Rule 1007(b)(6), Debtor completed and filed an

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<sup>2</sup> The parties stipulated to the material facts and submitted briefs. After a hearing, the Court took the issues under advisement. Having considered the record, the parties’ arguments, and the applicable law, this Memorandum disposes of the issues, and to the extent required by the Rules, constitutes the Court’s findings of fact and conclusions of law. *See* Rules 9014, 7052.

<sup>3</sup> This expense figure does not include payroll deductions for taxes and social security, which Debtor listed as \$814 per month. Debtor’s net monthly income, as computed on Schedule J, is \$275.

Official Form 22C (the “Form”) to detail his current monthly income, and to calculate the applicable commitment period for his proposed chapter 13 plan. He checked the box at Line 1 indicating that he was “unmarried” and, as instructed, completed only Column A (“Debtor’s Income”).<sup>4</sup> Using the \$3,000 monthly income as a starting point, Debtor calculated that his annualized current monthly income was \$36,000. In this calculation, Debtor did not include any portion of his former spouse’s earnings. However, during the six months preceding Debtor’s bankruptcy filing, it is stipulated that his former spouse received gross income from her employment of \$7,662. The median family income for a one person household in Idaho is \$37,347. Since Debtor’s annual income, as shown in the Form he prepared, was below the median amount, Debtor checked the box indicating the applicable commitment period for his plan was three years. *See* Docket No. 4.

On the same day he filed his petition, schedules, and the Form,

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<sup>4</sup> For unmarried debtors, the Form instructs in bold font: “**Complete only Column A (“Debtor’s Income”) for Lines 2-10.**”

Debtor filed his proposed chapter 13 plan. Docket No. 11. In it, consistent with the applicable commitment period indicated in the Form, Debtor proposed to make 36 monthly payments of \$275 to the trustee for distribution to his creditors.

Chapter 13 trustee Kathleen McCallister (“Trustee”) objected to Debtor’s plan, arguing that it suffered from several deficiencies. Docket No. 27. At the confirmation hearing, Trustee conceded that all deficiencies had been addressed or resolved, with one exception – the required term of the plan. Trustee argued that because Debtor’s income, when combined with that of his deceased spouse, exceeded the median income for a single person in Idaho, the Code required him to propose a 60-month plan. Debtor argued that he need not count his late-wife’s income in determining his applicable commitment period, and that his 36-month plan should be confirmed.

It is this contest the Court addresses below.

### **Discussion**

A.

Section 1325 of the Bankruptcy Code governs confirmation of a debtor's chapter 13 plan. In particular, if the holder of an allowed unsecured claim or the trustee objects to confirmation, the Court may not confirm a debtor's proposed plan unless:

- (A) the value of the property to be distributed under the plan on account of such [unsecured] 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 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).

Debtor's proposed plan will not pay unsecured creditors in full. As a result, if the plan is to be confirmed, Debtor must show that "all of his projected disposable income to be received during the applicable commitment period" will be paid to Trustee.

Trustee does not dispute that Debtor proposes to commit all of his disposable income to making monthly plan payments. Instead, her

objection to confirmation targets Debtor's suggestion that a 36-month commitment period applies in his case. She argues that, for the plan to be confirmed, Debtor must propose an additional 24 payments, for a total of 60 months.

B.

Presumably to ensure that debtors who could afford to do so paid more to their creditors, in BAPCPA, Congress changed the manner in which the mandatory term of a chapter 13 plan is determined. Specifically, the applicable commitment period for a chapter 13 plan is three years (*i.e.*, 36 months), or:

not less than 5 years, if *the current monthly income of the debtor and the debtor's spouse combined*, when multiplied by 12, is not less than—

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner[.]

11 U.S.C. § 1325(b)(4)(A)(ii) (emphasis added). As can be seen from the highlighted text, to determine the applicable commitment period for a plan, the Code requires the Court to consider the “current monthly income

of the debtor and the debtor's spouse combined." Trustee and Debtor disagree about the intended meaning of this Code provision, and about the definition of "current monthly income" for these purposes.

Debtor insists that § 1325(b)(4)(A)(ii) should be construed to require that, for a debtor's spouse's income to be included in the calculation of the applicable commitment period, a spouse must actually exist on the date a debtor files the bankruptcy petition. Since in this case Debtor's spouse passed away shortly before he commenced the case, Debtor argues he is not required to combine her income with his own when calculating his current monthly income and the applicable commitment period for his plan. Trustee disagrees, arguing strenuously that the meaning of current monthly income as used in this Code provision is plain, and that the statute expressly requires that the income of Debtor's deceased spouse be included in the applicable commitment period calculation.

Again, the decision whether to include or exclude Debtor's deceased wife's income in calculating Debtor's current monthly income is critical. If her income is not included, Debtor is a below median income debtor, the

applicable commitment period for his plan will be three years, and his proposed plan can be confirmed. However, if the spouse's income is included, it will push Debtor over the median income threshold, the applicable commitment period increases to five years, and Debtor's plan must be rejected.

The issue presented by this case is one of first impression in this District. However, the Court benefits from the opinions of several other bankruptcy courts, in both published and unpublished decisions. *See, e.g., In re Dugan*, 2008 WL 3558217 (Bankr. D. Kan., Aug. 12, 2008); *In re Borders*, 2008 WL 1925190 (Bankr. S.D. Ala., Apr. 30, 2008); *In re Grubbs*, 2007 WL 4418146 (Bankr. E.D. Va., Dec. 14, 2007); *In re Beasley*, 342 B.R. 280 (Bankr. C.D. Ill. 2006); *In re Quarterman*, 342 B.R. 647 (Bankr. M.D. Fla. 2006). Each of these courts discussed the extent to which the income of a non-filing spouse must be included in the calculation of the applicable commitment period.

While there is guidance available in the case law generally addressing the issue before the Court, each of these decisions involve

married debtors who elected, for whatever reason, to file their respective bankruptcy petitions alone, and not as a joint filing with their spouses. The case at bar is admittedly different, as it involves an unmarried debtor with no option to choose whether to file individually or jointly. Unfortunately, neither the Court nor the parties have discovered any decisions addressing facts similar to those of Debtor's case. Still, the analysis and reasoning employed in these other decisions is instructive.

For example, in one such decision, *Grubbs*, the bankruptcy court engaged in a particularly thoughtful analysis of the Code provisions at issue here. In that case, the debtor was married, but chose to file her petition individually. On Form 22C, she reported both her monthly income, as well as that of her non-filing spouse. When calculating her applicable commitment period under Part II of that form, she took a marital adjustment on Line 13. The reason for the adjustment was to exclude that portion of her non-filing spouse's income that was not regularly contributed towards the expenses of the debtor's household. Because of this adjustment, the debtor's annualized income was below the

median income level, resulting in a three-year commitment period. The trustee objected, contending that the applicable commitment period should be five years. According to the trustee, the debtor should not have been allowed to take a marital adjustment, and that without it, the debtor's annualized income was above the median income level.

Ultimately, the bankruptcy court overruled the trustee's objection and confirmed the plan. *In re Grubbs*, 2007 WL 4418146 at \*5. In doing so, it reasoned that § 1325(b)(4)(A)(ii) directs a court to consider the "current monthly income of the debtor and the debtor's spouse." *Id.* at \*2. It noted that "current monthly income" is itself a defined term. In § 101(10A)(A), the Code defines "current monthly income" as the "average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable" derived in the six month period prior to filing the bankruptcy petition. Based upon this definition, the *Grubbs* court observed that,

a debtor's spouse has no current monthly income

except in a joint case. In a single case, current monthly income applies solely to that income derived by the debtor. The definition of “current monthly income” includes income received by the debtor’s spouse only when the debtor has filed a joint case with his or her spouse. Because the debtor’s spouse has no current monthly income, the applicable commitment period will be based only on the debtor’s current monthly income.

*Id.* (citations omitted). In other words, by virtue of the § 101(10A) definition, a non-filing spouse, has no “current monthly income” for purposes of § 1325(b)(4). This Court agrees.

However, the *Grubbs* court was also quick to qualify its conclusion by acknowledging that while the non-filing spouse has no current monthly income, that portion of the non-filing spouse’s income that was regularly contributed to the household expenses of the debtor during the relevant six-month time frame is included as part of the debtor’s current monthly income. *See* § 101(10A)(B)<sup>5</sup>. Thus, a non-filing spouse’s income may, or

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<sup>5</sup> Section 101(10A)(B) provides that current monthly income “includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependants . . . .”

may not, depending upon the facts, be included in calculating the applicable commitment period. *In re Grubbs*, 2007 WL 4418146 at \*3.

The *Grubbs* court emphasized that its interpretation of § 1325(b)(4)(A)(ii) was consistent with the instructions included on Form 22C. *Id.* at \*4. By instructing married debtors to complete the columns for themselves as well as their spouses, but then allowing them to take a deduction for income not regularly contributed to household expenses, the Form does not run afoul of the statute.

The result in *Grubbs* is also consistent with the discussion of this issue in the leading treatise on bankruptcy. *See* 8 Collier on Bankruptcy ¶ 1325.08[5][d] (Lawrence P. King ed., 15th ed. rev. 2007). There, the authors explain, “by definition, income of a nondebtor spouse not paid to the debtor’s household expenses is not current monthly income.” *Id.* They reason that, if such were not true, then even the income of a nondebtor spouse who contributes nothing to the debtor’s household, would be captured in determining the debtor’s current monthly income. *Id.*

Including the nondebtor spouse’s income in such circumstances, which

income may, as a practical, be unavailable to the debtor, would make no policy sense. *Id.*

C.

In this case, like the non-filing spouse in *Grubbs*, Debtor's deceased spouse has, by definition, no current monthly income to "combine" with Debtor's current monthly income for purposes of § 1325(b)(4)(A)(ii). But that conclusion does not save Debtor under the facts as presented here because it does not resolve whether any portion of Debtor's deceased spouse's income was regularly contributed to Debtor's household expenses during the six-months prior to his bankruptcy filing that would be counted as part of Debtor's own current monthly income.

In the case of debtors who are married at the time their petition is filed, the Form adequately addresses this point by instructing debtors to include all of the income of their spouses, and then by later instructing them to remove (*i.e.*, "adjust") whatever portion of the non-filing spouse's income that is not regularly contributed to the debtor's household prior to determining the applicable commitment period. This approach to

completing the Form is unsatisfactory, however, in the case of unmarried debtors because the option of taking the marital adjustment does not apply to them.

This does not mean that the instructions on the Form are incorrect or at odds with the Code. It simply means that a different approach to completing the Form is required by unmarried debtors. Instead of including all income received by the debtor as well as the debtor's non-filing spouse, and then *deducting* on Line 13 that portion of the income which is not paid on a regular basis towards debtor's household expenses as a married debtor would do, an unmarried debtor must list his or her own income, and then *add to it* any amounts regularly received by the debtor from another entity for the household expenses of the debtor on Line 7.

In this case, the stipulated facts and other evidence does not reveal how much, if any, of Debtor's former spouse's income was regularly contributed to household expenses. Trustee attempts to bridge this gap by arguing that Debtor and his former spouse must have combined their

income to meet household expenses, because it was not until after his spouse died and her income was no longer available that Debtor filed his bankruptcy petition. However, Trustee's argument is conjecture, not proof. Absent an evidentiary foundation to support Trustee's position, the Court is unwilling to speculate about whether Debtor did, or did not, have access to his former wife's income,<sup>6</sup> or about the factors that precipitated the bankruptcy filing.

In general, a debtor carries the burden of proving that a proposed plan complies with each of the statutory requirements of confirmation. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *Itule v. Heath (In re Heath)*, 182 B.R. 557, 560 (9th Cir. B.A.P. 1995). However, in the context of an objection under § 1325(b), the objecting party has the initial burden of supporting its objection with satisfactory evidence before the ultimate burden of persuasion shifts to the debtor. *Heath*, 182 B.R. at 560-61.

Here, it would appear that the brief testimony of Debtor, an

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<sup>6</sup> It is certainly plausible that Debtor completed the Form correctly in this case and Line 7 is left blank because none of his late spouse's income was regularly contributed to his household expenses.

affidavit, or a few bank statements would have been sufficient to satisfy Trustee's burden, but alas, no such proof appears in the record. The stipulation of facts merely recites how much income Debtor's deceased spouse received – it does not address what happened to those funds after receipt.

But the issue of statutory interpretation raised in this case was a novel one, and the parties could not reasonably have anticipated how the Court would decide it. Under these circumstances, rather than overrule her objection and confirm Debtor's plan, the Court schedule an additional hearing on confirmation, at which Trustee may present evidence as to how much, if any, of Debtor's former spouse's income was regularly contributed to the household expenses of Debtor. Assuming she is able to submit enough evidence to show that Debtor's combined income would exceed the Idaho median, the burden will shift to Debtor to demonstrate that his plan satisfies the requirements of § 1325(b).

D.

While the Court's conclusions are compelled by the plain meaning of

§§ 101(10A) and 1325(b)(4)(A)(ii), let there be no misunderstanding that the Court is cognizant of the odd, perhaps bizarre, results these conclusions yield in a case such as this.

It is indisputable that whatever income may have been contributed to Debtor's household in the past by his late-wife will not be available to him to use during the term of the plan to make payments to Trustee. Since Debtor's spouse is dead, it would seem the amount of income she received, or that the couple received, during the six months prior to Debtor's bankruptcy is irrelevant to Debtor's ability to pay his debts going forward.<sup>7</sup> In addition, requiring Debtor to extend the term of his plan under these circumstances means that there may be two more years during which some unanticipated financial emergency may render him unable to complete his

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<sup>7</sup> If this were a chapter 7 case, the inclusion of Debtor's deceased wife's income in calculating Debtor's currently monthly income to determine his eligibility for relief would result, at worst, in a presumption of abuse. 11 U.S.C. § 707(b). In other words, Debtor would be able to show, and the Court would have some discretion to agree, that his late wife's income should not prejudice his right to seek relief under the Bankruptcy Code. No such discretion is given the Court under chapter 13, a chapter where debtors hope to pay some or all of their debts.

plan and receive a discharge. The Court is simply unable to discern any legitimate public policy promoted by requiring Debtor to propose a five-year plan in this case.<sup>8</sup>

But the wisdom of the current bankruptcy policy is of no moment here, as the Ninth Circuit has aptly, and firmly instructed the bankruptcy courts that it is the role of Congress, not the courts to amend statutes. *See Maney v. Kagenveama (In re Kagenveama)*, 541 F.3d 868, 875 (9th Cir. 2008) (“If the changes imposed by BAPCPA arose from poor policy choices that produced undesirable results, it is up to Congress, not the courts, to amend the statute.” citing *Lamie v. United States Tr. (In re Lamie)*, 540 U.S. 526, 542 (2004)). Because, under the Code as written, the Court lacks any discretion in how Debtor’s current monthly income is computed, the Court is helpless

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<sup>8</sup> Perhaps the last, best hope for debtors such as this one, short of Congressional reform of the Code, is that described in *Colliers*. The authors “[hope] that trustees will not invoke section 1325(b) to demand a five-year plan based on income that in reality is unavailable to the debtor.” 8 *Collier on Bankruptcy* ¶ 1325.08[5][d] (Lawrence P. King ed., 15th ed. rev. 2007). This Court also hopes that the District’s chapter 13 trustees will carefully consider the facts and exercise appropriate discretion before significantly burdening a deserving debtor’s ability to obtain relief under the Code.

to intervene on Debtor's behalf, even though the facts of this case, and equity, seem to favor confirming his plan.

### **Conclusion**

In summary, the Court concludes that, for purposes of determining the applicable commitment period for his plan under § 1325(b)(4)(A)(ii), only the amount of Debtor's deceased wife's income received during the six months prior to the filing of his bankruptcy case that was actually contributed to pay Debtor's household expenses is includable in his current monthly income. A further confirmation hearing will be scheduled at which, assuming the issues are not resolved, the parties should be prepared to present evidence and testimony.

Dated: October 16, 2008



Honorable Jim D. Pappas

United States Bankruptcy Judge

