

Final Denial entered in case with untimely budget filed on eve of confirmation showing spouse's new job acquired four months earlier with an increase in expenses in the exact amount of the new income

Case: 10-61216 *McQueen*

Docket: Confirmation Docket on 5/18/11 Tyler Docket

Facts: The below-median income debtors testified at their 341 meeting that the husband was on the verge of obtaining a new job. Based upon that testimony, Trustee requested that the debtors amend their budget to reflect the new job when obtained. Thereafter, after an initial denial order entered, the debtors' amended plan was filed and the Trustee filed his Trustee's Report two and half weeks prior to Court thereby continuing his objection of the need of the debtors to file their amended budget to reflect the new job. On the Friday before confirmation, the debtors filed an amended budget disclosing for the first time that the husband had obtained a new job approximately four months earlier, thereby increasing their household income by \$2,700 with an increase in their household expenses by the exact amount. In a series of e-mail exchanges with debtors' counsel, the Trustee was able to confirm/suspect that some of the "new" expenses (in excess of \$1,000) did not exist and that others were inflated. The Trustee advised debtors' counsel that he would maintain the budgetary objections and raise the new objection that the amended plan was proposed in bad faith. By e-mail at approximately 10:00 p.m. on the night before Court, the Trustee received an e-mail from debtors' counsel confirming that confirmation should be denied.

Ruling: Neither the debtors or their attorney appeared in Court the next morning. Upon the Trustee advising the Court of the e-mail exchanges and of the Trustee's objections to confirmation, the Court entered a final denial order and a dismissal order later that day.

Result: Budgets need to be filed timely and accurately. In this case, an amended budget filed on the Friday before Court advising the Court, the Trustee, and the creditors of a new job (with the corresponding increase in income and corresponding increase in expenses) four months prior is not timely. A budget that increases expenses by the exact amount of the increase in income is, in the Trustee's opinion, proposed in bad faith and will draw an objection. There are a few exceptions. An unemployed debtor will have an increase in transportation expenses and other expenses as a result of the new employment. In addition, if the original budget, due to lack of income, reflected unrealistic low expenses that no one could reasonable live on, the Trustee will not object to a budget that increases these expenses to reasonable levels. Neither of these exceptions applied to this case.