

Court allowed below median income debtors to continue to send children to private school based upon the facts of this case

Case: 11-10577 *Peno*

Docket: Trustee's Confirmation Docket on 12/7/11 Beaumont Docket

Facts: The only issues before the Court were whether the \$630.00 per month expense on the Debtors' budget relating to the private school for two of the Debtors' children was a reasonable and necessary expense and whether the plan as proposed was feasible based upon the Debtors' current income and expenses. The Debtor Husband is a self employed mechanic and the Debtor Wife is a housewife. The Debtors are below median income debtors. The last two profit and loss statements as filed with the Court indicated that the Debtors' gross income from the business had dropped from the estimate as contained in the budget. However, the Debtors were current on their Chapter 13 plan payments and their post-petition mortgage payments. Otherwise, the Debtors' budget was very modest, with no expense items for cell phones, recreation, and charitable contributions. The Debtors testified that they were behind on all of their bills (pre-petition mortgage payments, car payments, etc.) when they filed their case.

The Debtors testified that they wanted to maintain their children in private school for three reasons: first, so that the children would receive a Christian based education at the Christian private school; second, so the children would be safe from the apparent problems with the public schools in the Port Arthur Independent School District (drugs, violence, ranked in the bottom 5% of schools in the State of Texas); and finally, the Debtors use their income tax refund (consisting primarily of earned income credit) each year to pay for the private school.

Ruling: The Court held that the evidence presented indicated that there was a compelling reason for the children to be enrolled in a private school due to the apparent problems with the public schools in the Port Arthur Independent School District. The Court did not put much weight in the Debtors' desire to have their children to receive a Christian based education. The Court found feasibility of the plan in that the Debtors were in fact current on their plan payments and post-petition mortgage payments as well as the Debtors' ability to make the private school tuition expense from their tax refunds every year. The Court did reiterate the general position that private school expenses are not reasonably and necessary expenses without a compelling reason for such.

Result: Private school expenses will continue to draw an objection from the Trustee as not reasonable and necessary. The Court's ruling reiterated that this is a case by case determination. The Debtors' attorney did a good job in presenting the testimony and other evidence to the Court outlining the problems with the Port Arthur School District. Exhibits included the 2011 District Accountability summary for Port Arthur School District as well as news paper articles about the violence and other problems in its schools.