

Motion to Modify withdrawn by Debtors after Court declined to confirm modification that reduced term of confirmed plan from 60 months to 49 months while paying nominal dividend to unsecured creditors

Case: 10-10294 *Zickefoose*

Docket: Trustee's Modification Docket on 8/15/12 Beaumont Docket

Facts: The Chapter 13 Plan of these below median income Debtors was originally confirmed by the Court on 7/14/10 thereby providing for the Debtors to make monthly plan payments to the Trustee over a 60 month term' Chapter 13 plan to allow the Trustee to pay attorney's fees, a priority child support claim, and certain secured claims as set forth therein. The plan also provided for a nominal dividend to the unsecured creditors (less than \$400.00). There was no non-exempt property requiring a higher dividend pursuant to the Best Interests of Creditors Test. The case was subsequently modified twice for various reasons. The plan stayed as a 60 month plan with nominal dividend to the unsecured claims. The Debtors filed a third motion to modify for the stated purpose of removing payments to the mortgage holder on the mobile home in that the underlying mobile home was traded in and the mortgage paid off and the Debtors' parents financed a new mobile home for the debtors. In that motion to modify, the Debtors proposed to reduce the term of the plan from 60 months to 49 months, thereby maintaining a minimum dividend to the unsecured creditors. Upon meeting the objections raised by the Trustee, the Trustee recommended confirmation of the modified plan with a new modification order to be submitted in 14 days from the 6/6/12 Beaumont docket. On 6/21/12, the Court set aside the oral confirmation of the proposed modified plan, thereby noting the following:

The Court, following such review, finds sufficient cause to vacate its previous oral order confirming the modified plan and to reset the hearing to consider the Modification Motion to the August 15, 2012 Chapter 13 docket in Beaumont in order to provide an opportunity to the Debtor(s) to present through evidence and argument the basis under which confirmation of the modified plan, which proposes to reduce the prescribed term of the previously-confirmed plan substantially while paying virtually nothing to the class of unsecured creditors, is supported by the Bankruptcy Code and Rules, including the requirement that the modified plan be proposed in good faith. The Debtor(s) may present testimony, if necessary, for the proper presentation of its case.

**Ruling:** The Court did not actually rule upon the pending Motion to Modify in that the Debtors withdrew the Motion. The Debtors' financial situation had changed substantially for the worst since the filing of the Motion, thereby requiring the Debtors to rework their budget and, presumably, file a new motion to modify the plan. Although no evidence was presented at the hearing on the issue of the Debtors' alleged bad faith and no ruling was made due to the withdrawal of the underlying Motion, Judge Parker did make a number of comments. Judge Parker stated that a debtor has no absolute right to modify the terms of the confirmed plan and that the debtor must still demonstrate the debtor's changed circumstances to justify the modification, the debtor's good faith, and the reason for reducing the current term of the plan while maintaining a minimum dividend to the unsecured creditors. The Debtors, under the current plan they were operating under, were bound to make 60 monthly plan payments. The Debtors must have a reason to reduce the term of the plan.

**Update on Case:** The Debtors subsequently filed a new Motion to Modify, such being confirmed on 7/1/13, thereby retaining a 60 month term.

**Effect on Trustee's Procedures:** In that the applicable commitment period for above median income debtors is 60 months (unless such a debtor proposes to pay the unsecured claims in full plus interest), the Judge's comments only applies to below median income debtors. Effective immediately, the Trustee will begin reviewing motions to modify filed in below median income debtor cases that propose to reduce the term of the plan to determine the effect, if any, on the dividend of the unsecured creditors.

If the proposed motion to modify proposes to reduce the term of the plan and reduce the dividend to the unsecured creditors, the Trustee will object to the modified plan as being proposed in bad faith.

If the proposed motion to modify proposes to reduce the term of the plan and maintain a nominal dividend to the unsecured creditors, the Trustee will object to the modified plan as being proposed in bad faith.

There may be other fact situations that will cause the Trustee to object to a modification for bad faith. The Trustee anticipates that a number of motions to modify will need to be tried in order to determine the boundaries of reducing the terms of a plan for a below median income debtor through a motion to modify.