



Dated: 07/15/08

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE**

IN RE:)
)
BRENDA SUE RAY,) **CASE NO. 307-05330**
)
Debtor.) **CHAPTER 13**
)
) **JUDGE MARIAN F. HARRISON**
)

ORDER

This matter is before the Court upon the Trustee's objection to the debtor's Chapter 13 plan. The issue presented is whether 11 U.S.C. § 707(b)(2)(A)(iii) permits Chapter 13 debtors to deduct secured debt payments which were contractually due on the petition date to determine projected disposable income under 11 U.S.C. § 1325(b)(1)(B), even if the Chapter 13 plan extinguishes these secured debt payments through surrender of the collateral or by lien avoidance.

Based on the holding in *Hildebrand v. Kimbro (In re Kimbro)*, Case No. 07-8052, ___ B.R. ___, 2008 WL 2369141 (B.A.P. 6th Cir. June 12, 2008), the Court finds that the Trustee's objection to the debtor's Chapter 13 plan should be overruled.

I. FACTS

The relevant facts are stipulated by the parties. The debtor is an above-median debtor with Current Monthly Income in the amount of \$3,721.02. The debtor's annualized average income is \$44,652.24, which exceeds the applicable median income of \$43,487.00. The debtor's proposed plan provides for the surrender of her home and her vehicle and seeks to avoid the liens of several finance companies. On Official Form B22C, Line 47, the debtor nevertheless listed deductions for these contractual payments of secured debts. If these deductions are allowed, the debtor's proposed plan to pay a 44% dividend to unsecured creditors does not violate 11 U.S.C. § 1325(b). However, if these deductions are not allowed, the plan would need to provide for a 100% dividend to unsecured creditors in order to be confirmed.

II. DISCUSSION

The dispute here centers on how to interpret 11 U.S.C. § 707(b)(2)(A)(iii) in the Chapter 13 context. Section 1325(b)(3) deals with the deduction of expenses from a debtor's income in determining the amount available for payment to unsecured creditors and refers to 11 U.S.C. § 707(b)(2), which reads in relevant part:

The debtor's average monthly payments on account of secured debts shall be calculated as the sum of –

- (I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition.

11 U.S.C. § 707(b)(2)(A)(iii).

Recently, in *Hildebrand v. Kimbro (In re Kimbro)*, the Bankruptcy Appellate Panel for the Sixth Circuit Court of Appeals addressed the meaning of 11 U.S.C. § 707(b)(2) where the Chapter 13 debtors deducted a vehicle ownership expense for a second vehicle for which they were not indebted and did not make any payments. The Court held “that the plain meaning of 11 U.S.C. § 707(b)(2)(A)(ii)(I) allows the debtor to deduct the applicable ownership expense in the IRS Local Transportation Standard even if the debtor has no debt or lease expense” on the vehicle. ___ B.R. at ___, 2008 WL 2369141, at *5.

The facts of the present case differ in that the vehicle in question is being surrendered. However, the Court believes that the panel in *Hildebrand v. Kimbro (In re Kimbro)* would reach the same result.

III. CONCLUSION

Accordingly, the Court finds, based on *Hildebrand v. Kimbro (In re Kimbro)*, that expenses for secured debt payments may be deducted in determining a debtor’s projected disposable income for distribution to unsecured creditors even if the debt is extinguished by the Chapter 13 plan. In light of this finding, the debtor has committed all of her projected disposable income to the plan as required by 11 U.S.C. § 1325(b)(1)(B). Therefore, the

Trustee's objection to confirmation should be overruled, and the debtor's plan should be confirmed as proposed.

The Trustee shall submit an order confirming the debtor's Chapter 13 plan.

IT IS SO ORDERED.

**This Order was signed and entered electronically as indicated
at the top of the first page.**

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This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
United States Bankruptcy Court.