

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
RICHARD LEE DETTMAN and) CASE NO. 06-30368 HCD
CHERYL MAE DETTMAN,) CHAPTER 13
)
DEBTORS.)

Appearances:

George Livarchik, Esq., attorney for debtors, 424 Broadway Street, Chesterton, Indiana 46304; and
Debra L. Miller, Chapter 13 Trustee, 100 East Wayne Street, P.O. Box 11550, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 25, 2007.

Before the court is the Objection to Confirmation of Debtors' Second Amended Plan, filed by the Chapter 13 Trustee Debra L. Miller, in opposition to the second amended Plan of the debtors Richard Lee Dettman and Cheryl Mae Dettman. The Trustee's objection, pursuant to 11 U.S.C. § 1325(b)(1)(B), contends that the debtors improperly claimed a deduction for a vehicle they own free and clear of liens. Following hearings on the matter, the parties filed stipulated facts and briefs on the question whether a debtor who owns a vehicle outright is entitled to deduct a vehicle ownership expense when calculating deductions to current monthly income. Following the briefing period, the court took the matter under advisement.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(L) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil

Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

The parties have stipulated to the underlying facts. The debtors are a married couple who live in LaPorte County, Indiana. Mr. Dettman is a salesman; Mrs. Dettman is disabled. On April 14, 2006, the debtors filed their voluntary chapter 13 petition, their schedules, and their chapter 13 plan.¹ On July 6, 2006, the Trustee timely filed an objection to confirmation of the plan. The debtors twice amended their plan, and the Trustee twice objected to its confirmation. At the confirmation hearing, it was clear that the one remaining objection to confirmation of the debtors' proposed plan was the debtors' claim of a vehicle ownership expense on Official Form B22C for a vehicle that the debtors own free and clear of any liens.²

Official Form B22C, the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, is a summary of the debtors' income and expenses, and is filed along with the debtors' schedules. In this case, the debtors' income exceeds the median income in the state of Indiana, and the Dettmans thus are categorized as above-median debtors.³ Accordingly, they must propose a chapter 13 plan with a commitment period of 5 years, pursuant to § 1325(b)(4), and must determine their disposable income in accordance with § 1325(b)(3). Section 1325(b)(3) directs the debtors to follow the "means test" of § 707(b)(2),

¹ This case therefore is governed by the new provisions found in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").

² The parties have agreed to the following immaterial modifications: (a) the debtors will promptly turn over all net bonuses to the Trustee when they receive the bonus, along with proof thereof; (b) the minimum to general unsecured creditors in Class 8 of the Second Amended Plan is \$5,656.00, plus all net bonuses; and (c) the plan payment will increase as necessary to properly fund the plan as confirmed.

³ On Form B22C, the debtors reported an annualized income of \$64,601.52 on line 15. The median income for a two-member Indiana household is \$48,183.00.

and Form B22C sets forth the step-by-step method for calculating the current monthly income, deductions, and disposable income under § 707(b)(2).

In completing the means test, on Line 28 of Form B22C the debtors claimed a “transportation ownership/lease expense” deduction for one vehicle, using the standard allowed amount of \$471.⁴ Consistent with that claim, on Schedule B the debtors listed an ownership interest in one vehicle, the 1996 Mercury Sable. However, on Schedule J the debtors listed no car payment. The debtors explained that they own an 11 year-old car with many operational-cost problems: The engine light stays on, the rear axle emits a strange noise, and it needs new shocks, tires, and other repairs.

The debtors contend that they are entitled to deduct the applicable Internal Revenue Service (“IRS”) Local Standard deduction for vehicle ownership costs, even though they have no car payment. They urge the court to follow the bankruptcy court decisions that have reached that result: *In re Grunert*, 353 B.R. 591 (Bankr. E.D. Wis. 2006); *In re Farrar-Johnson*, 353 B.R. 224 (Bankr. N.D. Ill. 2006); and *In re Fowler*, 349 B.R. 414 (Bankr. D. Del. 2006). According to the debtors, those courts based their decisions on the plain language of the statute, policy considerations, and the legislative history. The courts treated the Local Standards deductions for vehicle ownership as fixed allowances for anyone who had a car, rather than as caps on actual expenses.

The Trustee’s position is that the statutory provision (and the IRS Standards, as incorporated into the provision) does not allow debtors a transportation ownership cost deduction when the debtors do not have a payment obligation on the vehicle. She relies on *In re Hardacre*, 338 B.R. 718 (Bankr. N.D. Tex. 2006), *In re McGuire*, 342 B.R. 608 (Bankr. W.D. Mo. 2006), and cases following them.

⁴ On Line 27, the debtors also claimed a standard deduction of \$327.70 for two cars for which they pay the operating expenses. They explained that Richard Dettman is responsible for part of the operating costs of a second vehicle, one owned by his employer but driven by him. Mr. Dettman submitted a wage stub which indicated that he was charged \$632.35 for the personal use of the company car in 2005. The Trustee has not disputed this deduction.

Discussion

When a chapter 13 trustee objects to the confirmation of a debtor's plan, the Bankruptcy Code instructs the court concerning its duties.

If the trustee . . . objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan – . . . (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)(B). In this case, the Trustee claims that \$471 of the debtors' disposable income was not being applied to the plan payments because that amount was deducted as a vehicle ownership expense on Form B22C when they calculated their disposable income necessary to fund their chapter 13 plan. According to the Trustee, the debtors do not qualify for the vehicle ownership expense allowance pursuant to § 707(b)(2)(A)(ii)(I), which provides:

The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides. . . .

11 U.S.C. § 707(b)(2)(A)(ii)(I).

Courts usually begin their consideration of a new BAPCPA provision by parsing and interpreting the language in the provision. When construing a statute, the Supreme Court has set forth the bedrock principles: A court begins with the language of the statute; gives effect, if possible, to every clause and word in it; and declines to treat terms as surplusage. *See Duncan v. Walker*, 533 U.S. 167, 172-74, 121 S. Ct. 2120, 150 LED.2d 251 (2001) (citations omitted); *see also Alaska Dep't of Env'tl. Conservation v. EPA*, 540 U.S. 461, 489 n. 13, 124 S. Ct. 983, 157 LED.2d 967 (2004) ("It is, moreover, a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.") (internal citations omitted), *quoted in Square D Co. & Subsidiaries v. C.I.R.*, 438 F.3d 739, 745 (7th Cir. 2006). When the Supreme Court applied these principles to interpret another

provision of the Bankruptcy Code, it noted that the statute was awkward and ungrammatical but upheld the lower courts' conclusion that the plain language controlled. *See Lamie v. U.S. Trustee*, 540 U.S. 526, 534-35, 124 S. Ct. 1023, 1030-31, 157 LED.2d 1024 (2004). It also refused to read into the statute a word the appellants claimed to be inadvertently omitted because that interpretation would enlarge the statute beyond its intended scope. *See id.* at 538-39, 124 S. Ct. at 1032. This court's duty, therefore, is to enforce a statute according to its terms if it finds the provisions unambiguous.

Courts across the country are quite split on the meaning of this statute. Some have concluded that the language of the statute is clear but disagree about its plain meaning. One court, for example, stated that the terms "applicable" and "actual" mean that, "before the expense amount can be included in the debtor's allowed monthly expenses, . . . the debtor must actually have a loan or lease payment obligation." *Fokkena v. Hartwick*, __ B.R. __, 2007 WL 2350560, at *4 (D. Minn. Aug. 20, 2007). Another court, also convinced that the language of § 707(b)(2)(A)(ii)(I) is plain, determined that the terms "applicable" and "actual" mean that "the debtors could deduct the standard ownership expense for a vehicle they owned free and clear of liens." *In re Barrett*, 371 B.R. 855, __, 2007 WL 2021998, at *3 (Bankr. S.D. Ill. 2007) (citing its previous decision *In re Brand*, No. 06-31309, slip op. at 4 (Bankr. S.D. Ill. March 15, 2007)). Having reviewed the literature on this topic in depth, this court recognizes the difficulty of discerning the unambiguous meaning of this provision. *See, e.g., In re Cole*, 371 B.R. 454, 457 (Bankr. W.D. Wash. 2007) ("The only certainty is that courts' attempts to discern the plain meaning of the text have only revealed its patent ambiguity."). It notes that a number of courts are persuaded that the vehicle ownership deduction should be denied to "outright owners" based on the application of the IRS standards and manual. *See In re Cole*, 371 B.R. at 458 (listing cases, concluding that "because Congress referred the courts specifically to the IRS standards, the Court should be guided by how the IRS uses and employs those standards"); *see also In re Slusher*, 359 B.R. 290, 309 (Bankr. D. Nev. 2007); *but see In re Barrett*, 2007 WL 2021998, at *1 (finding that the language of the Internal Revenue Manual was not controlling and that § 707(b)(2)(A)(ii)(I) authorized the debtor to use the IRS standard expense deductions even if her actual expenses were less).

Many bankruptcy courts have addressed this issue since the enactment of BAPCPA. *See In re Lynch*, 368 B.R. 487, 490-91 (Bankr. E.D. Va. 2007) (listing cases allowing and disallowing the deduction). This court has reviewed the arguments of counsel, the cases cited by them,⁵ and the cases published even more recently, focusing in particular on the decisions of courts within the Seventh Circuit. It has considered the distinctions between “applicable” and “actual” in the statutory text and has compared the definitions of expense standards issued by the IRS. It has noted the policy considerations of Congress, in writing the bankruptcy amendments, and the implications arising from them. The court notes that only two decisions have issued from district courts reviewing bankruptcy court rulings: *Neary v. Ross-Tousey (In re Ross-Tousey)*, 368 B.R. 762 (E.D. Wis. 2007) and *Fokkena v. Hartwick*, ___ B.R. ___, 2007 WL 2350560, (D. Minn. 2007). Both of those district court decisions, which note the sharp divide in the bankruptcy courts, have reversed the bankruptcy courts’ determinations and have held that a debtor cannot take the vehicle ownership deduction if the debtor owns the vehicle free and clear.

This court is persuaded by the clear reasoning of United States District Judge William C. Griesbach, of the United States District Court for the Eastern District of Wisconsin, in *Neary v. Ross-Tousey (In re Ross-Tousey)*. In reaching his conclusion – that the bankruptcy court erred in allowing the debtors to deduct automobile ownership expenses for vehicles on which they do not make monthly payments – he analyzed the statutory language in § 707(b)(2)(A)(ii)(I), the positions of other courts, and the purpose of the statute:

Congress has deemed transportation and car ownership to be among the necessities of life that a debtor is entitled to fund before he must pay back his creditors. Thus, the statute excludes these amounts from the monthly pot of money that the creditors can get their hands on. What’s important, therefore, is not *how many* cars a debtor owns, but how many cars he makes *payments* on every month – it is only the *payments* that affect the debtor’s ability to repay his creditors. The statute is only concerned about protecting the debtor’s ability to continue owning a car, and if the debtor *already* owns the car, the debtor is adequately protected. Section 707(b)(2)(A)(ii)(I) only achieves

⁵ The court notes that the three cases on which the debtors have relied (*In re Grunert*, 353 B.R. 591 (Bankr. E.D. Wis. 2006); *In re Farrar-Johnson*, 353 B.R. 224 (Bankr. N.D. Ill. 2006); and *In re Fowler*, 349 B.R. 414 (Bankr. D. Del. 2006)) themselves rely on Judge Eugene R. Wedoff’s erudite article, *Means Testing in the New World*, 79 Am. Bankr. L. J. 231 (Spring 2006). A scholarly disagreement with Judge Wedoff’s position is presented by Professor Gary Neustadter, who argued with equal force that the deduction should not be allowed to a debtor who owns a vehicle free and clear at the time of the petition. *See Neustadter, Gary, 2005: A Consumer Bankruptcy Odyssey*, 39 Creighton L. Rev. 225 (2006).

the statute's goal of protecting debtors' ability to fund the necessities of life when the debtor is actually shouldering a monthly auto expense. When the debtor has no monthly ownership expenses, it makes no sense to deduct an ownership expense to shield it from creditors.

In re Ross-Tousey, 368 B.R. at 766; *see also In re Howell*, 366 B.R. 153, 157 (Bankr. D. Kan. 2007) (“If a debtor does not own or lease a vehicle, the ownership expense is not ‘applicable’ to that debtor.”). Judge Griesbach also recognized “that disallowing the deduction in this case meets with BAPCPA’s goal of requiring creditors to be paid when possible.” *In re Ross-Tousey*, 368 B.R. at 767 (citing with approval *In re Howell*, 366 B.R. at 157 (“Allowing debtors to deduct from their disposable income a fictional ownership allowance would give debtors with unencumbered vehicles a windfall at the expense of their unsecured creditors.”)).

It is the view of this court that *In re Ross-Tousey* enforced the statute according to its terms and respected the goals of BAPCPA to balance the protection of life’s necessities for debtors and the repayment for creditors whenever possible. The decision recognized that the statute treated all debtors who make car payments the same – it allowed debtors to itemize other expenses with particularity but gave debtors the fixed vehicle deduction, at a flat rate, “whether a debtor drives a Mercedes or a Mercury.” *Id.* at 765.

This court follows the holding in *In re Ross-Tousey* that a debtor is allowed to deduct a vehicle ownership expense only if the debtor is making payments on the vehicle. Although it agrees with the courts frustrated by the poorly written amendments in BAPCPA, it recognizes its duty “to interpret the statute as Congress has written it.” *Fokkena*, __ B.R. __, 2007 WL 2350560, at *7. Accordingly, it determines that these debtors, who are making no car payments for their 1996 Mercury Sable, are not entitled to take the Local Standard deduction for a vehicle ownership expense on Line 28 of Form B22C.⁶

Because the debtors improperly claimed a deduction on Line 28 of Form B22C, their Amended Second Plan fails to meet 11 U.S.C. § 1325(b)(1)(B).

⁶ The court notes that the debtors may be entitled to a \$200 deduction based on the age of the vehicle. The IRS Transportation Standards allow an additional operating expense for a vehicle that is over six years old and/or has reported mileage of 75,000 or more miles. *See* Internal Revenue Manual, Part 5 (entitled Collecting Process), Ch. 8, § 5.8.5.5.2, Treatment of Non-Business Transportation expenses).

Conclusion

For the reasons stated above, the court sustains the Trustee's Objection to Confirmation of Plan filed by the Chapter 13 Trustee Debra L. Miller. Confirmation of the Second Amended Plan of the debtors Richard Lee Dettman and Cheryl Mae Dettman is denied. The debtors shall file a third amended chapter 13 plan no later than October 25, 2007. Failure to comply with this order will cause the above-captioned chapter 13 case to be dismissed pursuant to 11 U.S.C. § 109(g)(1) without further notice or hearing.

SO ORDERED.

Harry C. Dees, Jr., Chief Judge
United States Bankruptcy Court