

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
WILLIAM J. MILLER) CASE NO. 08-11472
PENNY A. MILLER)
)
Debtors)

DECISION DENYING CONFIRMATION

At Fort Wayne, Indiana, on October 20, 2008.

The open question in this chapter 13 case involves the confirmability of the debtor's proposed plan. A hearing was held on August 15, 2008, on the issues raised by confirmation and the trustee's objections thereto. At that hearing the parties agreed that the matter could be submitted to the court for a decision upon the parties' stipulation of fact and the briefs of counsel. As a result, the parties were directed to jointly file appropriate stipulations of fact within thirty days, with simultaneous briefs due thirty days thereafter and a further fifteen days for any replies. Order dated Aug. 18, 2008. Upon the expiration of the briefing period, the matter would be taken under advisement.

The deadline for the submission of joint stipulations of fact has come and gone. Debtors' counsel and the trustee have failed to file the required stipulations; neither have they sought an extension of time within which to do so. Furthermore, when neither the trustee nor debtors' counsel submitted a brief within the anticipated timeframe, the matter was taken under advisement on September 29, 2008. In the three weeks since that time, neither party has done anything in order to expand the record upon which the court is to base a decision. The court finds that they have waived the opportunity to submit further evidence or arguments with regard to the issues raised by

confirmation and the trustee's objections thereto.

The debtor bears the burden of proving that the proposed plan is worthy of confirmation. In re Chinichian, 784 F.2d 1440, 1443-44 (9th Cir. 1986). This principle makes it relatively easy to dispose of the issue before the court, which is confirmation. In the face of an objection, without evidence it is not possible for the debtor to prove that a plan meets the requirements for confirmation. See, 11 U.S.C. § 1325(a), (b). See also, Petro v. Mishler, 276 F.3d 375, 377-78 (7th Cir. 2002). Accordingly, confirmation of the proposed chapter 13 plan will be denied.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court