

# NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
BILLY JOE GERSTORFF ) CASE NO. 08-14274  
MELISSA ANN GERSTORFF )  
)  
Debtors )

## DECISION DENYING CONFIRMATION

At Fort Wayne, Indiana, on June 11, 2009.

The open question in this chapter 13 case involves the confirmability of the debtors' proposed plan. The issues raised by confirmation and the trustee's objections thereto are scheduled to come before the court for trial on the June 16, 2009 at 3:00 p.m. See, Order dated May 11, 2009. The order scheduling trial required the parties to "jointly file appropriate stipulations of fact, witness and exhibit lists . . . no later than seven (7) days prior to the scheduled trial." Because the bar has demonstrated an increasingly common propensity to ignore the court's deadlines, the order went on to provide:

The failure to do so will constitute a waiver of the opportunity to submit evidence or arguments and may subject the matter to a summary disposition without further hearing.

The deadline has come and gone. Debtors' counsel and the trustee have failed to file the required joint submission; neither have they sought an extension of time within which to do so. Accordingly, the court finds that they have waived the opportunity to submit evidence or arguments with regard to the issues raised by confirmation and the trustee's objections thereto and it is appropriate to dispose of the matter without further hearing.

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. 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 and the trial thereon removed from the court's calendar. An appropriate order doing so will be entered.

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