

# Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
VINCENT A. DIAL ) CASE NO. 10-10017  
MELISSA D. DIAL )  
)  
Debtors )

## DECISION AND ORDER

At Fort Wayne, Indiana, on June 8, 2010.

The matter before the court involves confirmation of the debtors' proposed chapter 13 plan and the trustee's objection thereto. The dispute is over how much 11 U.S.C. § 1325(b) requires the debtors to pay in order to fund a confirmable proposed plan. The debtors' income has increased from the months just prior to the petition. The trustee believes that their payments should be based on their current income, whereas, the debtors believe that their payments should be based upon their lower, historical level of income during the months just prior to the date of the petition.

The Supreme Court and the Seventh Circuit have clarified that when determining how much § 1325(b) requires a debtor to pay the trustee, the inquiry is a forward-looking one. See, Hamilton v. Lanning, 560 U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_ (2010); In re Turner, 574 F.3d 349 (7th Cir. 2009). The court should not consider either income or expenses that the debtor does not actually have. Id. This case is the mirror image of Lanning. While Lanning holds that debtors are not required to pay the trustee income they do not have, because income declined after filing the petition, in this case, where debtors' income has increased since filing the petition, debtors argue that they are not required to pay the trustee income they do have. Accepting that argument would require the court to ignore both the Supreme Court and the Seventh Circuit's forward-looking approach to the issue.

Confirmation of the debtors' proposed chapter 13 plan is DENIED. Any further plan shall be filed within fourteen (14) days.

SO ORDERED.

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