

SO ORDERED.

SIGNED this 16th day of October, 2017.



Catharine R. Aron

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In re:

SAUNDRA K. CALLOWAY,

Debtor

Case No. 17-10469

ORDER AND OPINION OVERRULING OBJECTION AND CONFIRMING PLAN

THIS MATTER came before the Court for hearing on September 19, 2017 (the “Hearing”), after due and proper notice, upon the Objection to Confirmation of Plan [Doc. #29] (“Objection”) filed by Christopher Bowles (“Mr. Bowles”), the ex-husband of Sandra Calloway (“the Debtor”). Brian Anderson appeared on behalf of Mr. Bowles, Gerald Schafer appeared on behalf of the Debtor, and Jennifer Harris appeared on behalf of the Chapter 13 Trustee (“the Trustee”). The Court received testimony from the Debtor and from Arlene Zipp. Having considered the Objection and the other matters of record in this case and having heard and considered the arguments of counsel, the court finds and concludes as follows:

BACKGROUND

Mr. Bowles is the Debtor's ex-husband. The two were married on April 7, 1997 and separated on January 28, 2007. An action for equitable distribution of the marital property was filed by Mr. Bowles on February 8, 2007 in the District Court of Guilford County as Case No. 07 CvD 245 ("Domestic Proceeding"). A trial was conducted in the Domestic Proceeding on February 14, 2017, February 16, 2017, and February 24, 2017. Shortly thereafter, the Honorable Judge Davis announced certain findings of fact and conclusions of law. Before the State Court could enter a final judgment in the matter, the Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on April 19, 2017, staying the Domestic Proceeding.

Prior to the bankruptcy filing, Judge Davis circulated a preliminary ruling to the parties via email, stating that he believed an unequal distribution of the marital assets in favor of Mr. Bowles would be equitable. According to Judge Davis' email, the Debtor was to pay Mr. Bowles a total of \$50,514 by means of monthly payments of \$300, due to the Debtor's liquidation of two Reed Elsevier retirement accounts. The two retirement accounts had values of just over \$9,000 and just over \$22,000¹, the liquidation of which deprived the marital estate of growth on those accounts.

Since the separation of Mr. Bowles and the Debtor in 2007, the Debtor has alone paid the mortgage, HOA dues, insurance, and property taxes for the real property located at 3841 Johnson Street, Unit D, High Point NC, 27265 (the "Real Property"), which Mr. Bowles and the Debtor own as tenants in common. As of the date of separation, the debt owed on the Real Property to Chase Mortgage totaled \$90,574 according to the Equitable Distribution Inventory Affidavit of Mr. Bowles and the Debtor. Since that time, the Chase debt has been reduced to \$67,614 as of the date of bankruptcy filing, solely due to the payments made by the Debtor.

¹ This is according to the testimony of Arlene Zipp. Ms. Zipp represented Mr. Bowles in the Domestic Proceeding.

The Debtor's proposed plan was filed on June 8, 2017 [Doc. # 26] (the "Plan") and provides for a plan payment of \$1,111 per month over a minimum of 36 months, with an estimated 0% dividend to general unsecured creditors. The Debtor listed Mr. Bowles as the only general unsecured creditor in this case. Mr. Bowles filed a proof of claim on August 17, 2017 for a priority unsecured debt in the amount of \$50,514.52.² The Debtor has not filed an objection to the proof of claim and stated at the Hearing that she does not contest the amount of the claim.

Mr. Bowles filed an Objection to Confirmation on June 30, 2017 [Doc. #29] and an Amended Objection to Confirmation on September 19, 2017 [Doc. #48], on the grounds that (I) the Debtor's marital obligations to Mr. Bowles constitute a domestic support obligation that must be paid in full through the Plan pursuant to 11 U.S.C. § 1322(a)(2), causing the plan to violate 11 U.S.C. §§ 1325(a)(1), (a)(3), and (a)(8), and additionally on the grounds that (II) the Plan was not proposed in good faith under 11 U.S.C. § 1325(a)(3).

ISSUE I

Whether the Plan violates 11 U.S.C. § 1322(a)(2), and, as such, cannot be confirmed.

DISCUSSION

In a Chapter 13 case, domestic support obligations are non-dischargeable, while other types of debt arising out of a separation or divorce, including property settlements or equitable distribution awards, are dischargeable. *In re Deberry*, 429 B.R. 532, 537 (Bankr. M.D.N.C. 2010). When an obligation underlying a claim is deemed a domestic support obligation pursuant to §523(a)(5), then the claim is entitled to priority treatment pursuant to §507(a)(1)(A), and any Chapter 13 plan must provide for its full payment over the life of the plan pursuant to § 1322(a)(2). *In re Johnson*, 397 B.R. 289, 295 (Bankr. M.D.N.C. 2008). If a plan does not

² The deadline for filing claims was August 20, 2017. Two other unsecured claims were filed. The NC Department of Revenue filed a proof of claim for an unsecured debt in the amount of \$6,053.31. The Debtor filed a proof of claim for Village North HOA for an unsecured debt in the amount of \$0.

provide for the payment in full of a domestic support obligation, then the Court cannot confirm the plan. *See* 11 U.S.C. § 1325(a)(1).

Mr. Bowles filed his claim as a priority debt in the amount of \$50,514.52. The Debtor indicated at the Hearing that she does not believe Mr. Bowles' claim is entitled to priority treatment, because it is not a domestic support obligation. The Debtor has not, however, filed an objection to Mr. Bowles' claim and has not proposed to separately treat the claim. Under 11 U.S.C. § 502(a), a claim is deemed allowed unless a party in interest objects to the claim. As such, at this time, Mr. Bowles' claim has been deemed allowed as a priority debt. The Debtor's Plan appropriately addresses the payment of priority and secured claims, indicating that they will be paid in full.³ Therefore, the Plan does not violate 11 U.S.C. § 1322(a)(2).⁴

ISSUE II

Whether the Debtor's Plan was filed in good faith under 11 U.S.C. § 1325(a)(3).

DISCUSSION

Section 1325(a)(3) of the Bankruptcy Code provides that a Court shall confirm a plan if, among other reasons, "the plan has been proposed in good faith and not by any means forbidden by law." Mr. Bowles has objected to confirmation of the Plan on the basis that it was not proposed in good faith. Once a creditor objects to confirmation based on lack of good faith pursuant to §1325(a)(3), the burden of proof then shifts to the Debtor to show why, by a preponderance of the evidence, that she proposed her Chapter 13 plan in good faith. *In re Stanley*, 441 B.R. 37, 40 (Bankr. M.D.N.C. 2010).

³ Specifically, page 2 of the Plan states: "The Debtor will pay THE GREATER OF the amount necessary to pay all allowed costs of administration, priority and secured claims in full, with the exception of continuing long term debts, or a minimum of 36 monthly plan payments, with the plan to be reviewed in twelve (12) months and periodically thereafter for plan payment adjustments."

⁴ If the Debtor disagrees as to the classification of Mr. Bowles' claim, an appropriate objection to claim should be filed.

In *Deans v. O'Donnell*, 692 F.2d 968, 972 (4th Cir. 1982), the Fourth Circuit held that determining whether a debtor has proposed a Chapter 13 plan in good faith requires an examination of the “totality of the circumstances” on a case-by-case basis. The Fourth Circuit also established factors that, while not exhaustive, should be considered in the good faith analysis. These factors include the percentage of repayment proposed to unsecured creditors, the debtor’s financial situation, the proposed plan length, the debtor’s employment history and future prospects, the nature and amount of unsecured debt in the case, the debtor’s prior bankruptcy filings, the debtor’s honesty in representing the facts, and any unusual or exceptional problems facing a particular debtor. *Deans*, 692 F.2d at 972. The Fourth Circuit later added the debtor’s prepetition conduct to its list of factors. See *Neufeld v. Freeman*, 794 F.2d 149 (4th Cir. 1986). Other courts have also considered factors such as the timing of the petition, how the debts arose, the debtor’s motive for filing, whether the debtor intended to defeat state court litigation, and whether certain debts could be discharged in a Chapter 7. See *Matter of Love*, 957 F.2d 1350, 1357 (7th Cir. 1992); *In re Chinichian*, 784 F.2d 1440, 1445 (9th Cir. 1986).

In this case, the Debtor’s pre and post-petition conduct with respect to the Real Property indicates that her Plan was proposed in good faith. While the Debtor made all of the mortgage, HOA, insurance, and property tax payments on the Real Property for over ten years and, in fact, proposes to continue making full monthly mortgage payments in her Plan, she accurately indicated on her schedules that she only has a one-half interest in the Real Property and has exempted only her one-half interest. She also indicated at the Hearing that she was willing to pay Mr. Bowles for his interest in the house. Thus, it is clear that the Debtor has not and is not now attempting to overstate her interests with respect to the Real Property. Instead, she has

proposed continued financial responsibility for a property which she owns jointly with Mr. Bowles, evidencing that she is not attempting any “game playing” in this proceeding.

Moreover, while Mr. Bowles asserts that the Debtor filed the case in bad faith to avoid repayment of his debt, the Court does not agree with this characterization of the Debtor’s motives. Though on the stand the Debtor seemed naïve or confused about her finances and the process of bankruptcy, she was facing a large judgment of \$50,514.52 when she filed her petition, and she had no means to pay it. Monthly, the Debtor makes \$1,168, of which \$982 comes from social security, and the other \$186 comes from her retirement income. The payments which Judge Davis suggested the Debtor make to Mr. Bowles were in the amount of \$300 per month. Despite her modest income, the Debtor has proposed a monthly plan payment in the amount of \$1,111. This figure includes payments on the Real Property but leaves the Debtor with little net income of her own for other necessary living expenses.⁵

The Trustee had no objection to confirmation of this Plan and stated that she has not seen any action or any proposal by the Debtor to indicate bad faith. This Court agrees, and finds that the Debtor has met her burden of proof with respect to the Plan. While the precise timing⁶ of the Debtor’s bankruptcy filing as well as the marital nature debt and low number of creditors, are factors that weigh slightly against good faith in this case, the Debtor’s conduct, schedules, modest income, proposed plan payments, and sincerity on the stand weigh more heavily in favor of her good faith in proposing the Plan. Accordingly, after consideration of the totality of the circumstances of the Debtor’s case, the Court concludes that the Objection should be **OVERRULED** and the Debtor’s Plan should be **CONFIRMED**.

⁵ While the Debtor has remarried, her current spouse only receives social security income and VA disability.

⁶ As previously stated, the Debtor filed her petition after the state court had made its preliminary findings against her, but before it could enter a final order.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
THAT the Objection is Overruled and the Plan is Confirmed.

END OF DOCUMENT

PARTIES TO BE SERVED

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