

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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IN RE:

VICKY JONES MYRACLE,  
  
Debtor.

BK #89-10204-WHB  
Chapter 13

WILLIAM HENRY HOPPER and  
JEWEL RAY HOPPER,  
  
Debtors.

BK #92-12665-B  
Chapter 13

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MEMORANDUM OPINION AND ORDER

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In these Chapter 13 cases, contested matters that involved common issues of law were heard on the same day, June 23, 1993. The issues presented in these contested matters are core pursuant to 28 U.S.C. §157(b)(2)(A), (L) and (O).

MYRACLE CASE

In the case of Vicky Jones Myracle, the Chapter 13 petition was filed on February 3, 1989, and a plan was confirmed by an order dated April 5, 1989. Subsequent to the bar date for filing claims, a separate order was signed on July 19, 1989, fixing the percentage to be received by unsecured creditors in the confirmed Chapter 13 plan at four percent. The plan was confirmed as a sixty month plan. The debtor has continued to pay into the plan, and disbursements have been made by the Chapter 13 Trustee pursuant to the plan. One unsecured creditor, holding security on a vehicle, appeared in the plan.

The Trustee filed a motion to modify the confirmed plan, so as to increase the percentage of payments to unsecured creditors. The Trustee's motion relied upon the fact that the debtor had recently been involved in an automobile accident for which she would be receiving compensation. The Court in fact has entered an order on June 23, 1993, approving the employment of an attorney to represent the debtor in that civil

litigation. The Trustee's motion also recites that the one secured claim in the plan has been paid in full leaving only unsecured claims at this time. See Order dated May 27, 1993, deleting the one secured creditor. The Trustee asserts that because of the debtor's changed circumstances, specifically the automobile accident injury, the debtor is in a position to pay an increased percentage to unsecured creditors without increasing the monthly payments into the plan. At the hearing on the Trustee's motion, which the debtor opposed, it was stated by counsel for the debtor and by the Trustee that sufficient funds have been paid into the plan to pay the four percent to unsecured creditors, although the plan payments have been made for approximately fifty months, less than the originally anticipated sixty months. The early payment to unsecured creditors was made possible due to another person assisting the debtor in payment of the secured debt.

In this case, the certainty or amount that the debtor will receive from the automobile accident injury is unknown. It is unknown whether the personal injury litigation will be resolved before the expiration of the sixty months for which this plan was confirmed. While it is known that she will have certain exemptions to preserve a portion of any recovery, it may be possible that she will recover in excess of her exemptions and any attorney fees approved. The question therefore is whether this debtor may be forced to remain in a confirmed Chapter 13 plan, with that plan being modified over the debtor's objection so as to increase the percentage payable to unsecured creditors.

The Trustee's motion in the Myracle case was noticed to all creditors and to the debtor, and the motion was filed as a motion to modify the plan after confirmation to increase payments to unsecured creditors. The Court notes that §1329 of the Bankruptcy Code governs modification of plans after confirmation, and procedurally, this motion is properly before the Court. When this motion was heard, no creditors appeared nor did any interested parties other than the debtor, debtor's counsel and the Chapter 13 Trustee appear.

The facts of the Myracle case determine the outcome of the Trustee's motion. This is generally true in Chapter 13 cases, as it is true in most bankruptcy issues. The debtor points the Court to a recent decision from the United States District Court for the Northern District of Illinois, In the Matter of Casper, 1993 WL

154517, 24 BCD 452 (N.D. Ill. 1993), that reversed the Bankruptcy Court's decision at 153 B.R. 544 (Bankr. N.D. Ill. 1993). The District Court held in Casper that when the debtor had paid sufficient funds to the Chapter 13 Trustee to satisfy the confirmed plan's requirement of a ten percent distribution to unsecured creditors, the debtor had satisfied the requirements of 11 U.S.C. §1328(a), notwithstanding that such payments were made prior to the expiration of the sixty month period for which the plan was confirmed. That Code section provides that the debtor shall receive a discharge "[a]s soon as practicable after completion by the debtor of all payments under the plan," and the Casper District Court construed this statutory requirement to be satisfied when the debtor completed payments to the Trustee in a sufficient amount to satisfy his or her percentage obligation to each class of creditors. In contrast, Judge Robert E. Ginsberg held in In re Powers, 140 B.R. 476, 481 (Bankr. N.D. Ill. 1992) that completion of payments occurs when the plan's payments have been distributed by the Trustee to creditors.

Under either standard for determining when the plan payments have been completed, this debtor has completed the plan payments. That is, it was represented to the Court that this debtor had paid sufficient funds to the Chapter 13 Trustee to satisfy the four percent distribution to unsecured creditors, that the secured creditor class had been paid in full, and that the unsecured creditors had received their four percent distribution from the Trustee. Section 1329(a) prohibits modification after "completion of payments under" a confirmed plan. See also Lundin, CHAPTER 13 BANKRUPTCY, §3.38 at 6-95 (1992). Merely because this particular debtor has the possibility of receiving a postfiling and postconfirmation recovery from an automobile accident is not sufficient justification for requiring the debtor to continue making payments into a Chapter 13 plan that has been completed under the terms of that confirmed plan. Allowing a postconfirmation modification of this particular plan would enable unsecured creditors to reap a windfall from the potential recovery from this debtor's automobile accident or from the continuing payments by the debtor after the unsecured creditors have received the original percentage established by this Court's order. The original percentage was determined based upon the requirements of §1325(a)(4) of the Code and a motion to modify this plan after completion of plan payments is untimely. In summary, the Court holds that Vicky Jones

Myracle has completed her payments under the confirmed plan. As a result, her confirmed plan may not be modified upon the Chapter 13 Trustee's motion. Rather, the Trustee should complete distributions, if any need to be made, and should prepare this case for discharge of the debtor. The debtor may cease further payments to the Chapter 13 Trustee.

#### HOPPER CASE

As to the Hoppers, the facts are strikingly different from the Myracle case. First, the Court notes that the petition was not filed until December 16, 1992, and the plan was not confirmed until February 3, 1993. The plan contains a provision that payments will be made for forty-eight months. The order providing for seven percent payments to unsecured creditors was not signed by the Court until April 30, 1993. Obviously, the debtors have not been in this case for the period of time as Ms. Myracle has been in Chapter 13. Nor have these debtors completed payments under the plan as has Ms. Myracle. The Hoppers' confirmed plan contains provision for four secured creditors, for a special class of one unsecured creditor to receive one hundred percent of its claim, and for numerous unsecured creditors to receive seven percent of their allowed claims.

In this case, the debtors tragically lost their home and all of its contents to a fire. The fire insurance carrier paid the secured claim of the home mortgagee in full and paid \$26,950.00 to the debtors for their personal property loss. This was in addition to a payment of \$2,611.00 to the debtors for their living expenses incurred as a result of the fire. At the hearing on the debtors' motion to determine distribution of insurance proceeds, the Court ordered, with consent of the Chapter 13 Trustee, that the debtors should receive \$7,843.00 in cash from the insurance proceeds, representing the amended exemptions claimed by the debtors. At issue is the balance of the \$26,950.00 held by the Chapter 13 Trustee.

It was represented to the Court that the debtors are current in their ongoing Chapter 13 plan payments and that the debtors desire to obtain all of the proceeds of the \$26,950.00 held by the Chapter 13 Trustee for the purposes of replacing their personal property lost in the fire and purchasing a mobile home to place on the

lot where their house burned. However, it was also represented to the Court in the motion filed by the debtors that the debtors are presently living in Florida because Mr. Hopper is currently working in that area.

Procedurally, the motion before the Court is a motion filed by the Hoppers seeking the Court's determination of the distribution of the insurance proceeds and requesting that the \$26,950.00 be released to the debtors. The Court notes that the debtors' motion was noticed to all creditors; however, the motion was not styled as a motion seeking postconfirmation modification of the plan. This Court has previously held that strict compliance with §1329 is required, and that Code section requires notice to all affected creditors of any intended postconfirmation modification. In re Lynch and In re Woods, 109 B.R. 792 (Bankr. W.D. Tenn. 1989). The Court is not satisfied that creditors in this recently confirmed plan were sufficiently put on notice that the Hoppers' motion would be a modification of the confirmed plan. The only justification for the insurance carrier making a payment to the debtors in the amount of \$26,950.00 is that this payment represents their loss of personal property. Obviously, the debtors held personal property in excess of the value originally anticipated or scheduled by the debtors.<sup>1</sup> The debtors' Chapter 13 petition schedules \$3,500.00 in household goods and \$500.00 in wearing apparel. The seven percent distribution to unsecured creditors was determined by the Chapter 13 Trustee, in part, on reliance upon §1325(a)(4)'s requirement that unsecured creditors receive not less than they would receive in a Chapter 7 liquidation. These debtors had personal property, in excess of their allowable exemptions, that would be available to unsecured creditors in a Chapter 7 liquidation, and it would be contradictory to the requirements of §1325(a)(4) to now allow the debtors to withdraw funds that would otherwise be available to unsecured creditors, without, at a minimum, requiring the debtors to formally file and notice to all creditors a motion to modify their confirmed plan.

Therefore, in the Hoppers Chapter 13 case, the Court has partially granted the debtors' motion so as to allow payment by the Chapter 13 Trustee to the debtors of the \$7,843.00 in amended exemptions claimed by the debtors; however, the debtors' motion is denied to the extent that the debtors seek to withdraw the balance

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<sup>1</sup> There was no proof on the nature of the insurance coverage, which may have provided replacement cost coverage. This partially could explain the vast difference in scheduled value and insurance benefits.

of the personal property loss proceeds held by the Trustee. This denial is without prejudice to the debtors filing a motion to modify their confirmed plan, which motion would require specificity as to how the debtors intend to utilize any additional funds, how the debtors propose to treat all classes of creditors in a modified plan, and how the debtors propose to assure that unsecured creditors will receive the equivalent of any funds, over and above their exemptions, that the debtors seek to obtain from the Chapter 13 Trustee. Pending any such modification motion by the debtors, the debtors are required to continue to make their ongoing Chapter 13 plan payments, and the Chapter 13 Trustee will continue to make distributions accordingly from the ongoing plan payments. Should the debtors default in a plan payment, the Chapter 13 Trustee may utilize the insurance proceeds on hand to make ongoing plan payments to creditors, but the Chapter 13 Trustee shall otherwise hold the balance of the insurance proceeds pending further orders of this Court concerning the distribution of those proceeds. Should the debtors fail to timely file a motion to modify, the Chapter 13 Trustee may move the Court for a further order concerning distribution of the balance of the insurance proceeds.

IT IS THEREFORE ORDERED that:

1. The Trustee's motion to modify the confirmed plan is denied in the Myracle case, and that case should be prepared for discharge and closing; and
2. The debtors' motion in the Hopper case, except to the extent of distribution of the exempt funds, is denied without prejudice to the debtors filing a motion to modify their confirmed plan.

SO ORDERED this 8<sup>th</sup> day of July, 1993.

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WILLIAM HOUSTON BROWN  
UNITED STATES BANKRUPTCY JUDGE

cc:

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