UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
JAMES J. SANDERCOCK and MARTHA W. SANDERCOCK	:	
Debtors	:	Bankruptcy No. 03-36260F

....

MEMORANDUM

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Two related matters are before me in this chapter 13 case. First, the debtors are seeking confirmation of their second amended chapter 13 plan, as modified on November 22, 2004. The standing chapter 13 trustee, William C. Miller, Esquire, objects to confirmation on the ground that the debtors' plan does not meet the requirements of 11 U.S.C. § 1325(b)(1). Second, the trustee seeks dismissal of this case because of the debtors' inability to propose a confirmable plan.

A consolidated evidentiary hearing was held, and the following facts were proven.

I.

The debtors filed for bankruptcy protection under chapter 13 on November 7, 2003. The debtor/husband is employed by McCollister's Transportation Systems, Inc. and earns about $4,200 per month in gross wages, or approximately $50,000 per year. The debtor/wife is employed as a pharmacist by the CVS corporation and earns roughly $5,300 per month in gross salary, or about $63,600 per annum. Their annual income exceeds

$113,000. After deductions for taxes and insurance, their combined monthly take-home pay was disclosed in their bankruptcy Schedule I to be precisely $7,289.97.

The debtors have two daughters aged 11 and 13. Together, the family resides in rental property located at 3030 Church Road, Lafayette Hill, Pennsylvania. 10/19/04 Hearing at 12:36.[1] The debtors rent this four bedroom residence—formerly used as a parsonage—from St. Peter's Lutheran Church, at a monthly rental of $1,450. 11/30/04 Hearing at 5:51. They moved to Lafayette Hill in 2001 from Collegeville, Pennsylvania, in part because they both were raised in the Lafayette Hill area and their parents still live nearby. Id. at 5:45.

Mr. Sandercock's employer is located in Burlington, New Jersey, and given his duties, the debtor/husband estimated that he averages about 100 to 150 miles of driving daily. Id. at 5:52. Mrs. Sandercock's pharmacy duties are located in Trappe, Pennsylvania, necessitating about a 25-mile daily drive. 10/19/04 Hearing at 12:36. Although there are CVS pharmacies closer to her home, Mrs. Sandercock testified that she rejected transferring because she would lose seniority rights. 11/30/04 Hearing at 6:26. Those rights enable her to choose a work-day schedule that coincides with her daughters' school schedule. Id.

The debtors' children attend Penn Christian Academy in Norristown, Pennsylvania. 10/19/04 Hearing at 12:41. The children have attended this school since kindergarten. 11/30/04 Hearing at 6:15. Both debtors are religious, and they selected this

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[1]All references to testimony given at the hearings are to the audio recordings of the hearings that took place on October 19, 2004 and November 30, 2004, denoting the hour and minute at which the testimony took place.

school as consistent with their religious beliefs, moral values and because of its small class size.

Beginning in January 2003, the debtors began to tithe to their church. Prior to that date, they had made smaller donations. Id. at 6:10-6:11.

In 2003, the debtors decided that they needed to replace their two automobiles. On August 30, 2003, they replaced their 1996 Honda Odyssey (a seven-passenger minivan) by buying—primarily for Mrs. Sandercock's use—an eight-passenger 2003 Honda Pilot SUV. The purchase price was $30,600, plus $1,179 for the extended service contract. Ex. D-1. They made no downpayment, and signed loan documents financing this purchase over a six-year period. Their monthly loan payments of $567.33 commenced on October 14, 2003 (less than one month prior to their bankruptcy filing).[2]

On September 6, 2003, they replaced their 1998 Nissan Altima by purchasing a 2001 Toyota Camry sedan, to be used primarily by Mr. Sandercock. The purchase price for this vehicle was $16,321.40, offset by a trade-in allowance of $4,500. Ex. D-2.[3] The net purchase price was financed over a 42-month period, with monthly payments of $315.87 beginning on October 6, 2003.

Mr. Sandercock testified that he selected these two vehicles for their reliability and features. He was uncomfortable with the thought of his wife driving a used car, as it might not be reliable. See 11/30/04 Hearing at 5:56. He chose the eight-passenger Honda Pilot because of its all-wheel drive feature, because he planned to use

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[2]Indeed, Mr. Sandercock acknowledged first consulting with bankruptcy counsel in August or September, 2003. 11/30/04 Hearing at 6:19.

[3]It appears from the installment sales agreement that the trade-in allowance encompassed both the Odyssey and the Altima.

occasionally its storage capacity in connection with his employment, and because the Odyssey could carry seven passengers and his wife was involved sometimes with car-pooling arrangements.[4] See id. at 6:00.

The debtors initially filed a chapter 13 plan that proposed to pay the trustee $325 per month for 36 months. Payments on two vehicle loans, neither of which were in arrears, would be made directly to the lenders and not through the chapter 13 trustee. These two lenders are the only secured creditors. Thus, all the payments tendered to the trustee were to be distributed to their unsecured creditors (after deduction of the trustee's commission). In response to the trustee's motion to dismiss, the debtors amended their chapter 13 plan, increasing their proposed monthly payments from $325 to $425. Their Amended Chapter 13 Plan provided payments of "$2,600 for months 1-8, inclusive," (averaging $325 per month) and then $425 per month for months 9 through 36.

On October 29, 2004, the debtors filed a Second Amended Chapter 13 Plan. This plan repeated the terms of the Amended Chapter 13 Plan, insofar as the payment of $2,600 covering the first eight months of the plan, followed by payments of $425 per month; however, this second amended plan increased the length of the plan to 60 months. Thereafter, on November 22, 2004, they filed an "Addendum to Second Amended Chapter 13 Plan," proposing to pay an additional $800 with their final payment under the plan, "so as to cure the shortfall in payments during months 1 through 8. . . ."

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[4]See http://www.edmunds.com/used/2003/honda/pilot/100076606/review.html?tid=edmunds.u.options.leftsidenav..12.Honda (describing the features of the Honda Pilot and the passenger capacity of the Honda Odyssey). See Richards v. Cable News Network, Inc., 15 F. Supp. 2d 683, 691 (E.D. Pa. 1998) (taking judicial notice of existence of various websites); Fed. R. Bankr. P. 9017, incorporating, inter alia, Fed. R. Evid. 201.

Accordingly, the debtors' present proposed plan, as modified, see 11 U.S.C. § 1323(b) (a chapter 13 plan modified prior to confirmation becomes the plan), in essence proposes 60 monthly payments of $425 to the trustee, totaling $25,500. All of these payments would be distributed to unsecured creditors, after payment of the trustee's commission. However, the total unsecured debt is quite extensive, thus the dividend to creditors would be small.

The debtors scheduled 16 unsecured creditors on Schedule F. All of these debts represent credit card obligations. A total of 15 unsecured proofs of claim have been filed, totaling $197,147.29.[5] See Claims Register. None of these claims have been objected to, and so they are all deemed allowed. 11 U.S.C. § 502(a). Accordingly, after deduction of the trustee's commission—about 7%—the debtors' latest proposed plan would afford a dividend to unsecured creditors of only 12%. See Debtor's Brief at p.2 (unpaginated).

Mr. Sandercock explained that he used various credit cards extensively in order to supplement his income after 1995, when his earnings began declining.[6] 10/19/04

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[5]One secured proof of claim was filed by American Honda Finance Corporation in the amount of $34,016.60. Toyota Motor Credit Corp. filed a secured proof of claim in the amount of $11,516.31.

[6]He testified that he voluntary left his employment with Beacon Transfer and Storage Co. and was hired to sell sunrooms, believing his income would increase. The opposite occurred and in 2000 he earned only $12,000. He eventually became reemployed in the moving and storage industry.

Mr. Sandercock's income apparently was decreasing even before the first job change. He testified to the following annual salaries before his involvement with sunrooms:

1994 - $55,000
1995 - $39,000
1996 - $36,000
1997 - $30,000

(continued...)

Hearing at 12:27-12:33. He believes that a significant component of these outstanding obligations represent accrued interest and fees. Mrs. Sandercock testified that she was unaware of these extensive credit charges prior to the debtors' bankruptcy filing. 11/30/04 Hearing at 6:43. Indeed, she noted her anger with her husband when he declined to purchase an entertainment unit option for her new Honda SUV. Id.

II.

The only objection to confirmation of the debtors' proposed chapter 13 plan, as amended and modified, was filed by the chapter 13 trustee. The trustee's sole basis for this objection is 11 U.S.C. § 1325(b) of the Bankruptcy Code, referred to as the "disposable income test." This statutory provision, adopted in 1984 (and amended in 1996 and 1998), was added in part to address chapter 13 cases in which debtors may have limited non-exempt assets but significant disposable income. See 2 Bankruptcy, § 9-13 (Epstein, et. al, 1992).

Section 1325(b) provides:

> (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan–

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[6](...continued)
1998 - $26,000
1999 - $23,000
The first year in the new job, Mr. Sandercock only earned $12,000. In 2001, he increased his income to $35,000, and in 2002 made $32,000. He returned to the moving industry in a salaried position in 2003, earning $47,930 that year. See 10/19/04 Hearing at 12:31-12:33.

> (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
> (B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.
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> (2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended–
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> (A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made; and
> (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

The provisions of this subsection apply in this bankruptcy case because the chapter 13 trustee filed an objection and the debtors' proposed chapter 13 plan promises to repay unsecured creditors only a 12% dividend. Therefore, the debtors' plan may only be confirmed if they contribute all of their "disposable income" for a three year period:

> Because the trustee has objected to the Debtors' plans and the plans would not repay the unsecured creditors in full, the plans can be confirmed only under § 1325(b)(1)(B), requiring all of the debtors' projected disposable income to be applied to unsecured debts for three years. Disposable income, for individuals not engaged in business such as Anes and the Tierney's, is that income "not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor. . . ." Id. § 1325(b)(2)(A).

In re Anes, 195 F.3d 177, 180 (3d Cir. 1999); see In re Freeman, 86 F.3d 478 (6th Cir. 1996); In re Solomon, 67 F.3d 1128 (4th Cir. 1995).

As the statute instructs, disposable income refers to "income . . . not reasonably necessary . . . for the maintenance or support of the debtor or a dependent of the debtor. . . ." 11 U.S.C. § 1325(b)(2)(A). Accordingly, it is a function of the debtors' income as well as their reasonable monthly living expenses.

> This determination [of disposable income] is a two step process. First, the court must project the debtor's income over the next three years. . . . As a practical matter, unless there are changes [in projected income] which can be clearly foreseen, the court must simply multiply the debtor's current monthly income by 36 and determine whether the amount to be paid under the plan equals or exceeds that amount. Section 1329(a) [dealing with post-confirmation plan modifications] provides a mechanism to deal with any unforeseen changes in the debtor's income situation. . . .

8 Collier on Bankruptcy, ¶ 1325.08[4][a] (15th ed. rev. 2004) (footnotes omitted); see In re Anderson, 21 F.3d 355 (9th Cir. 1994).[7]

Once the chapter 13 debtors' income over the 36 period is determined, "[e]xpenses 'reasonably necessary' . . . for the maintenance or support of a debtor or a dependent' are deducted from the debtor's gross income to determine the debtor's 'projected disposable income.'" 5 Norton Bankruptcy Law and Practice 2d § 122:10 at 122-101 (2004) (footnote omitted). In this contested matter, the trustee accepts that the debtors' projected monthly income for the 36 month period—$7,289.97— has been

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[7]In disputes under section 1325(b), an initial burden of production falls on the objecting trustee or unsecured creditor to show that the debtors are not applying all of their disposable income to the plan for three years. In re Fries, 68 B.R. 676, 685 (Bankr. E.D. Pa. 1986). If that burden is satisfied, then the debtor bears the ultimate burden of persuasion on the question of disposable income. Id.; see also In re Heath, 182 B.R. 557, 561 (B.A.P. 9th Cir. 1995). The debtors here have not disputed that the trustee's initial burden has been satisfied. Instead, they contend that their ultimate burden has been demonstrated.

accurately disclosed. The issue that divides these parties concerns the debtors' anticipated monthly expenses.

The trustee maintains that certain monthly expenses projected by these debtors are not reasonably necessary for maintenance and support, and therefore must be included in calculating the debtors' disposable income. With reference to the debtors' Amended Schedule J, Ex. T-1, the specific expenses challenged by the trustee are: the debtors' charitable contributions of $949.00 (their monthly tithe); the debtors' monthly vehicle loan payments of $883.20, especially the $567.33 monthly payment for the Honda SUV; and the debtors' private school expenses, $735.00 per month in tuition and $30.00 in monthly fees. Moreover, given the amount of these monthly expenses, the trustee contends that the amendment of the plan from 36 to 60 months does not cure the problem. See generally In re Elrod, 270 B.R. 258 (Bankr. E.D. Tenn. 2001):

> The disposable income test requires the debtors to commit to the plan all their disposable income for 36 months. 11 U.S.C. § 1325(b)(2). The debtors' proposed plan will be $900 short of satisfying this requirement after the first 36 months of the plan, (based on the court's assumption that $25 of the monthly payment to Citifinancial is disposable income). But the proposed plan calls for 60 months of payments. Can the plan satisfy the disposable income test by paying the shortage in the additional 24 months of the plan? Other courts have held that if the debtor's payments after the first 36 months will pay the shortage plus interest, then the plan passes the disposable income test. Interest is added because unsecured creditors would not receive the money in the first 36 months of the plan.

In applying the statutory framework of section 1325(b), Congress provided little guidance for determining when expenses are "reasonably necessary." See, e.g., In re

Goewey, 185 B.R. 444, 446 (Bankr. N.D.N.Y. 1995). In general though, a court should evaluate the debtors' expenses on a case-by-case basis, giving consideration to all of the circumstances surrounding the debtors and their chapter 13 case. See, e.g., In re Smith, 207 B.R. 888, 890 (B.A.P. 9th Cir. 1996); In re Bauer, 309 B.R. 47, 50 (Bankr. D. Idaho 2004). Debtors should not continue prepetition, spendthrift lifestyles at the expense of their creditors. See In re McNichols, 249 B.R. 160, 168 (Bankr. N.D. Ill. 2000); 2 Bankruptcy, § 9-13 (Epstein, et al. 1992). Thus, reasonably necessary expenses "means adequate, but not first class, and luxury items are excluded." In re McNichols, 249 B.R. at 169 (citing In re Nicola, 244 B.R. 795, 797 (Bankr. N.D. Ill. 2000)).

In applying this general approach, some courts have noted the following principles:

> The Devine Court [In re Devine, 1998 WL 386380, at *6 (Bankr. E.D. Pa.1998)] arrived at the following three overarching principles [regarding reasonably necessary expenses]:
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> > One, debtors are supposed to make a substantial effort toward the payment of debts in their plan that may require sacrifices on their part. Two, the role of the courts is to develop norms for support, which implicitly means that courts must evaluate debtors' budgets to determine what is and is not necessary for support and maintenance. Three, a debtor's plan may be confirmed even in the absence of a large return to creditors provided that the debtor's effort is substantial within his capabilities.
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> Sarasota's objections highlight the difficulties accompanying judicial scrutiny into the reasonableness of a debtor's living

expenses. Bankruptcy law does not impose an ascetic existence upon a Chapter 13 debtor. "A court determining the debtor's disposable income is not expected to, and should not, mandate drastic changes in the debtor's lifestyle to fit some preconceived norm for [C]hapter 13 debtors. The debtor's expenses should be scrutinized only for luxuries which are not enjoyed by an average American family." In re Navarro, 83 B.R. 348, 355 (Bankr. E.D. Pa. 1988) (quoting 5 Collier on Bankruptcy ¶ 1325.08[4][b] at 1325-48 to 1325-49 (15 ed.1987)). Determining whether expenses are "reasonably necessary," however, is an inherently subjective task. While spending on essentials such as food, clothing and shelter is clearly permissible, the "reasonably necessary" inquiry becomes considerably more difficult when a court must evaluate more discretionary spending, such as entertainment and recreation expenses. In fact, courts are often quite candid about their discomfort in attempting to craft a standard for what discretionary expenses are "reasonably necessary." In re Devine, 1998 WL 386380, at *7; Navarro, 83 B.R. at 355 ("In general, 11 U.S.C. § 1325(b) should not be considered a mandate for a court to superimpose its values and substitute its judgment for those of the debtor on basic choices about appropriate maintenance and support."); In re Woodman, 287 B.R. 589, 592 (Bankr. D. Me. 2003) (noting that practice of branding certain kinds of expenditures as never reasonably necessary "can clothe subjective moral judgments with the force of law"). Evaluating the reasonableness of a given expense while avoiding a critique of a debtor's lifestyle choices is not a simple task. Thus, the Navarro Court stated that it was appropriate to amend a debtor's budget when one of four factors was present:

> (a) the debtor proposes to use income for luxury goods or services; (b) the debtor proposes to commit a clearly excessive amount to non-luxury goods or services; (c) the debtor proposes to retain a clearly excessive amount of income for discretionary purposes; (d) the debtor proposes expenditures which would not be made but for a desire to avoid payments to unsecured creditors.

Sarasota, Inc. v. Weaver, 2004 WL 2514290, *2, *4 (E.D. Pa. 2004); see also In re Rothman, 204 B.R. 143, 158 (Bankr. E.D. Pa. 1996); In re Stein, 91 B.R. 796, 802 (Bankr. S.D. Ohio 1988).

Other courts reach a similar result by focusing upon the debtors' non-essential expenditures as a whole, rather than focusing upon them singly. As explained in a reported decision:

> Even non-discretionary expenditures such as for food and shelter can reflect discretionary lifestyle choices. Thus a debtor whose monthly car payment exceeds that which is reasonably necessary is in reality making a discretionary expenditure to the extent of the excess. . . . No matter where the "fat" is hidden, such discretionary expenditures typically have more to do with enhancing one's quality of life, acquiring spiritual fulfillment or just simply relaxing and enjoying oneself, than with subsistence. Since no two people have the same tastes, interests or philosophical dispositions, these discretionary costs can run the gamut from making charitable donations to buying a ticket for a tractor-pull event.
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> By lumping all discretionary expenses together, whether they derive from categories more commonly thought of in subsistence terms or from categories commonly thought of as clearly discretionary in nature, the bankruptcy judge will often obviate the need to pass judgment on specific expenditures, that is to say, micromanage the details of a debtor's life. . . . The disposable-income test is designed to balance the interest of creditors with the interest of the debtor in obtaining a fresh start. Thus the proper methodology is to aggregate all expenses projected by the debtor which are somewhat more discretionary in nature, and any excessive amounts in the relatively nondiscretionary line items such as food, utilities, housing, and health expenses, to quantify a sum which, for lack of a better term, will be called "discretionary spending."

In re Gonzales, 157 B.R. 604, 608-09 (Bankr. E.D. Mich. 1993) (citations and footnote omitted); accord, e.g., In re Butler, 277 B.R. 917, 921 (Bankr. N.D. Iowa 2002); In re Devine, 1998 WL 386380, at *6 (Bankr. E.D. Pa. 1998).

III.

The chapter 13 trustee objects to confirmation of the Sandercocks' latest amended plan by challenging their projected expenses both individually and collectively. As mentioned above, he contends that the private school expenses, charitable contribution, and SUV loan expenses are separately unnecessary and unreasonable. In addition, the trustee argues that "these expenses combined, when viewed in the context of the debtors' substantial debt, and their proposed plan payment, create questions" regarding compliance with the disposable income test. Trustee's Brief, at 5.

I need only review two of these challenged expenses to resolve this contested matter.

A.

In In re Navarro, 83 B.R. 348 (Bankr. E.D. Pa. 1988), I held that religious school expenditures of $100 per month involving a debtor's minor child should not be included as disposable income for purposes of section 1325(b)(1). Under the particular facts of that case, I accepted that a parochial school education could be reasonably

necessary for the support of the minor child. A similar conclusion was reached in In re Nicola, 244 B.R. 795, involving parochial school expenses of $260 per month.

Conversely, in In re Weiss, 251 B.R. 453, 462 (Bankr. E.D. Pa. 2000), private school expenses of $760 monthly were found to violate the disposable income test. "The Debtor offered no persuasive testimony that would justify spending $760.00 per month to send his children to private schools. The Debtor's five-year-old son and eight-year old son would clearly appear capable of attending public school in the safe, suburban setting of the Debtor's home as an alternative to private schooling." Id. Similarly, in In re MacDonald, 222 B.R. 69 (Bankr. E.D. Pa. 1998), an out-of-state parochial school expense of $175 was found not to be a reasonably necessary expense.

As with other projected monthly expenses, the reasonableness of private school expenses, including parochial schools, must be considered on a case-by-case basis. The reasons for incurring the expense, the amount of the expense, the availability and quality of other educational school choices, the amount of proposed plan payments, and the percentage of distribution to unsecured creditors, will be among the factors considered in applying the disposable income test to this expenditure. See In re Watson, 309 B.R. 652, 660-61 (B.A.P. 1st Cir. 2004); In re Webb, 262 B.R. 685, 690-91 (Bankr. E.D. Tex. 2001).

For example, in Univest-Coppell Village, Ltd. v. Nelson, 204 B.R. 497 (E.D. Tex. 1996), a creditor posed a challenge under section 1325(b) to the $395 monthly tuition paid by the chapter 13 debtors to send their daughter to Liberty Christian School. The district court explained the debtors' justification for this expenditure:

> If the fifteen-year-old daughter did not attend the private Liberty Christian School in Denton, she would likely attend a public school, Ryan High School, in Denton, where her older sister attended (R. 25). The daughter in question is "adamant" about refusing to transfer from Liberty Christian School to Ryan High School in Denton (R. 38). Debtor Allison Nelson, a trained speech therapist with twenty years' practice, also testified as to the intransigence of her "very mature" fifteen-year-old daughter concerning transferring to a public school. In addition, it is extremely important to Mrs. Nelson that her daughter was only the first (high school) freshman to have "made the cheerleading squad." "She's on the cheerleading squad, and that's very important to her." (R. 47). Mrs. Nelson also stated that her high school freshman daughter is in honors courses at Liberty Christian School, which she is not certain are offered at the public school, and "psychologically" the private school is beneficial to her (R. 52).

Id., at 497-98. Despite this explanation, the district court was "not persuaded the tuition expenses for a private high school are reasonably necessary" under section 1325(b), given the relative quality of education provided by the local public high school. Id., at 500.

In In re Watson, 309 B.R. 652, the bankruptcy appellate panel sustained an appeal from an order denying confirmation of a chapter 13 plan. The trustee had opposed confirmation due to the debtors' "$735 monthly expense for private religious school tuition." Id., at 657. The debtors' reasons for incurring this expenditure were noted as follows:

> Mr. Watson further testified that he, his wife, and both children are practicing Roman Catholics who attend church every Sunday and during all of the holy days of obligation. Id. at 7-8. Mr. Watson testified that he is actively involved in church ministry, and that his children have been assisting at mass since the third grade. Id. at 8-9. Mr. Watson explained that the Appellants have always sent their children to Catholic schools

> because they value the importance such schools place on God. Id. at 7. The tuition is less than fifteen percent of the Appellants' gross annual income.

Id., at 657.

The appellate court rejected this explanation as sufficient to render the expense reasonably necessary:

> In the instant case, the Appellants have failed to demonstrate, or even argue, that either of their children require private schooling due to particular educational needs, or that the public school alternative cannot adequately meet their children's educational needs. Instead, the Appellants only demonstrated a mere preference for private schooling based on the family's strongly held religious beliefs. Such a preference, while apparently sincere, is not sufficient to render the expense of private school tuition reasonably necessary.

Id., at 661.

In this dispute, the Sandercocks have demonstrated only their strongly held religious beliefs and their preference to continue to educate their two children in a parochial school. They do not contend that the public schools of suburban Whitemarsh Township (where they live in Lafayette Hill) are inadequate or inferior in quality to the parochial schools: "[The debtors] acknowledged that the local schools were of a comparable academic stature (unlike parochial schools vs. inner city [sic] public schools)." Debtors' Brief, at 3 (unpaginated). Rather, they prefer the parochial school due to its religious, "ethical," "moral" and "non-materialistic values." Id.

Given the monthly private school expenses involved, $765, the amount proposed to be paid to creditors, only $425 per month, and the dividend to creditors,

merely 12%, this justification is insufficient to render this expense reasonably necessary. Indeed, I note that these debtors went to the very same public school system and emerged with the very religious, moral and ethical values they wish to (and likely will) impart to their children.

Accordingly, based upon the evidence presented, I agree with the chapter 13 trustee that this expense should be included in the debtors' disposable income. See In re Lynch, 299 B.R. 776 (W.D.N.C. 2003).

B.

I reach the same conclusion as to the debtors' vehicle expenses.

The trustee, in his post-hearing memorandum, does not question the debtors' justification for replacing their two vehicles in 2003. Nor does he challenge the debtors' purchase of a used Toyota Camry for approximately $16,000.[8] He does, however, object to their purchase of an eight-passenger Honda Pilot SUV for $32,506, less than three months prior to their filing for bankruptcy, around the time Mr. Sandercock was consulting with

[8]He states: "The purchase of a used Toyota Camry for approximately $300 per month was not unreasonable." Trustee's Brief, at 4.

bankruptcy counsel and while they had approximately $200,000 in outstanding credit card debt.[9]

While a chapter 13 debtor's expenses connected with financing or leasing a traditional "luxury automobile" will usually run afoul of the disposable income test, see, e.g., In re McGovern, 278 B.R. 888, 899 (Bankr. S.D. Fla. 2002) (involving a leased Audi A6); In re Gibson, 142 B.R. 879 (Bankr. E.D. Mo. 1992) (involving a new Corvette and a new Cadillac); In re Rogers, 65 B.R. 1018 (Bankr. E.D. Mich. 1986) (involving a Corvette), as with the other expenses, the question of reasonableness must be determined with regard to all facts. In this instance, the evidence demonstrates that the debtors' purchase of the large Honda SUV was largely motivated by a desire not to alter their lifestyles.

To the extent that Mrs. Sandercock needed a new vehicle to travel to her job, even one with all-wheel drive, there were a number of five-passenger, reliable choices available to her costing one-third less in price.[10] A new, reliable five-passenger vehicle should meet almost all of the needs of a family of four.[11] But Mrs. Sandercock was

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[9]The trustee complains: "However, the purchase of a brand new [sic] Honda Pilot, at a price of over $30,000, when debtors had almost $200,000 in debt, was not reasonable. . . . Without a lot of additional effort, debtors could have easily saved themselves $200 per month or more." Trustee's Brief, at 4.

[10]In 2003, Honda, Subaru, and Toyota—Mr. Sandercock's preferred manufacturers—sold five-passenger all-wheel drive SUVs for about $20,000, depending upon style and options. Financing $20,000 on the same terms as the debtors obtained in Ex. D-1—72 months at 5.94% interest—results in monthly payments of only $330.89, for a savings of about $240 monthly over the Honda Pilot.

[11]If Mr. Sandercock had occasional need to use a van for his employment, his employer might provide one; or one could be leased for the day.

unaware of their financial plight, and Mr. Sandercock wanted to replace their seven-passenger minivan with a vehicle of comparable size and at least comparable, if not greater, quality. Thus, the debtors chose the Honda Pilot SUV,[12] and incurred monthly loan costs of $567.33. This expense, incurred just prior to the debtors' bankruptcy filing, payable for the duration of this bankruptcy case and greater than the debtors' proposed monthly payments to their creditors, was not necessary for Mrs. Sandercock's employment. Nor would

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[12]In 2003, Honda Pilots had a MSRP from $26,900 to $32,520. See http://auto.consumerguide.com/auto/new/reviews/summ/index.cfm/id/23085. It was sold in only two trim styles: the "LX and upscale EX models." See http://auto.consumerguide.com/auto/new/reviews/full/index.cfm/id/23085. The MSRP for the LX model was $26,900. The MSRP for the EX model, without options, was $29,270. See http://www.carbuytip.com/car-reviews/2003_Honda_Pilot.html.

Judging by the price paid by the Sandercocks, $30,600 (exclusive of sales tax and extended warranty), I consider it likely that they purchased the higher-end EX model:

> All [2003] Pilots feature Honda's patented VTM-4 electronically controlled full-time all-wheel-drive system, a 240-horsepower V6 engine, and a five-speed automatic transmission.
>
> Two models are available: LX ($27,360); EX ($29,730).
>
> LX offers a range of standard equipment including air conditioning, cruise control, AM/FM stereo, in-dash CD player, driver and front passenger front and side airbags, power windows, mirrors and door locks.
>
> The EX raises the ante with standard aluminum alloy wheels, synchronized front and rear automatic climate control, a powerful seven-speaker stereo.
>
> Option packages include EX with leather interior trim ($30,980); EX with leather interior trim and rear entertainment system ($32,480); EX with leather interior trim and navigation system ($32,980). Prices do not include a $460 destination and handling charge.

http://www.nctd.com/review-intro.cfm?Vehicle=Honda_Pilot&ReviewID=1195.

purchase of a less expensive vehicle have involved a serious diminution of the debtors' lifestyle. See Rodenberg, Reasonably Necessary Expenses or Life of Riley?: The Disposable Income Test and a Chapter 13 Debtor's Lifestyle, 56 Mo. L. Rev. 617, 647 (Summer, 1991) ("Transportation, however, is one expense category where the courts can increase the dividend [to unsecured creditors by disallowing inappropriate vehicle expenses] with very little sacrifice by the debtor. This is possible because good, reliable, transportation is available at less than extravagant prices."). Thus, I conclude that the expense associated with financing the debtors' Honda Pilot SUV is not reasonably necessary under section 1325(b). See In re Reyes, 106 B.R. 155 (Bankr. N.D. Ill. 1989); see also In re Rybicki, 138 B.R. 225 (Bankr. S.D. Ill. 1992) (concluding that finance expenses involving a travel trailer were not reasonably necessary under section 1325(b)).

C.

The final issue posed by the trustee is more difficult but need not be resolved in light of my earlier conclusions. The trustee objects to the debtors' tithing expense of $949 per month, arguing that it is unreasonable under the particular facts of this case, noting that it began shortly before the debtors' bankruptcy filing and is more than twice as large as their proposed plan payments. The debtors respond that tithing is permitted under section 1325(b).

In In re Navarro, 83 B.R. at 356, I concluded in 1988 that tithing was not barred per se in chapter 13 cases, and should be treated as any other expense for purposes of section 1325(b). Whether it was reasonably necessary depended upon a number of considerations. Since that decision (with which some courts disagreed, see, e.g., In re Packham, 126 B.R. 603, 608 (Bankr. D. Utah 1991)), Congress enacted the Religious Liberty and Charitable Donation Act of 1998, which, in part, amended section 1325(b)(2)(A). Specifically, the statute now provides in relevant part:

> (2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—
>
> (A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made[.]

Since section 1325(b)(2)(A) was amended, courts have debated whether the 15% ceiling mentioned in subparagraph (A) is modified by the phrase "reasonably necessary" located earlier in paragraph (2). As explained in one decision:

> Unfortunately Congress did not place the RLDCA ["Religious Liberty and Charitable Donation Act of 1998"] charitable contribution "exemption" in a stand-alone subsection. The "exemption" was placed in subsection (b)(2)(A), which remains qualified by the phrase "reasonably necessary to be expended." Some courts write this off as a drafting oversight and find that a qualified contribution of less than fifteen percent of a debtor's gross income need not undergo "reasonably necessary" scrutiny. See Cavanagh, 250 B.R. [107] at 112 [B.A.P. 9th Cir.

> 2000]. Once qualified under § 548(d), a proposed charitable contribution expense becomes per se reasonably necessary and "exempt" from the "disposable income" objections of creditors and trustees. See id. "The clear and unmistakable message [of the RLDCA] is that the interests of creditors are subordinate to the interests of charitable organizations, and we must follow this mandate." Id. at 113.
>
> Other courts, however, find that, in addition to the § 548(d) qualifications and fifteen percent limit, a charitable contribution must also be itself "reasonably necessary" in order to be "exempted" from treatment as disposable income. See In re Buxton, 228 B.R. 606, 610 (Bankr. W.D. La. 1999). "The definition of 'disposable income' still contains the 'reasonably necessary' restriction . . . such [necessary] living expenses may include charitable contributions . . . [t]hose expenses, however, must still be determined by the court to be reasonable." Id. at 610 (italics original). The Buxton court reasoned that Congress did not intend to establish an automatic 15% "exemption," but rather intended to prevent courts from finding charitable contributions per se unreasonable. See id.

In re Kirschner, 259 B.R. 416, 422 (Bankr. M.D. Fla. 2001).

Not surprisingly, the trustee in this dispute supports the Buxton approach while the debtors advocate the Cavanagh interpretation.[13] As the Third Circuit Court of Appeals instructed in interpreting a different bankruptcy law provision, determination of congressional intent from the "plain meaning" of a bankruptcy statute is not always simple or straight-forward. In re Price, 370 F.3d 362, 368-69 (3d Cir. 2004).

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[13]Although the Ninth Circuit Bankruptcy Appellate Panel in Cavanagh held that the plain language of section 1325(b) requires a bankruptcy court to permit charitable contributions of 15% or less, the court also opined that the amount and timing of a debtor's charitable contributions could be a factor in determining whether the chapter 13 plan was proposed in good faith under section 1325(a)(3). Id. 250 B.R. at 114, 115.

Were this tithing expense the only one challenged by the trustee, I would resolve the parties' dispute over the intended meaning of section 1325(b)(2)(A). However, I previously sustained the trustee's challenge to the debtors' parochial school and SUV loan expenses as not being reasonably necessary. In so doing, I evaluated all of the evidence presented and applied section 1325(b) with the purpose Congress intended. As thoughtfully expressed by one bankruptcy court:

> The sense of the § 1325(b)(2) definition [of disposable income] is not to leave a debtor with unbridled discretion to carve out for himself and family whatever lifestyle they may choose. How a debtor proposes or intends to carry on his post-confirmation lifestyle in the face of the Chapter 13 "super discharge" has a great bearing on the issue of his motivation, sincerity and whether the plan is proposed in the spirit of Chapter 13. Section 1325(b) is to be applied in a way that allows a debtor to "maintain a reasonable lifestyle while simultaneously insuring that he makes a serious effort to fulfill his obligations to pre-petition creditors by eliminating unnecessary or unreasonable expenses.". . . The key term is "reasonable lifestyle." Debtors need not be reduced to poverty and granted, some discretionary or recreational spending is not inappropriate, but courts are loathe to favor kindly expenditures which are for luxury goods or serve to perpetuate a luxury lifestyle. Greater scrutiny of a debtor's proposed lifestyle and his budgetary components is required where, as here, a fairly high-income Debtor is advancing a plan offering a niggling return to pre-petition creditors through a three-year plan.

In re Zaleski, 216 B.R. 425, 431 (Bankr. D.N.D. 1997).

The Sandercocks collectively earn more than $110,000 per annum, and take home about $7,300 per month after all wage deductions. After numerous opportunities to propose a viable chapter 13 plan, they concluded that they could afford no more than $425

per month, about 17% of their net pay, and propose to pay unsecured creditors a 12% dividend. For the reasons discussed above, and without consideration of their tithe, I conclude that they could reasonably afford to pay roughly three times that amount.

This deficiency in their proposed plan is not rectified by their recent willingness to increase the length of their plan from 36 to 60 months. Twenty-four additional payments of $425 do not compensate for the 36 months in which the debtors would be paying $760 for private school and approximately $240 in extra finance charges for the Honda Pilot. See In re Rose, 101 B.R. 934, 943 n.3 (Bankr. S.D. Ohio 1989); see also In re Pope, 215 B.R. 92, 94 n.4 (Bankr. S.D. Ga. 1997); compare In re McKown, 227 B.R. 487, 491 (Bankr. N.D. Ohio 1998).

Moreover, the length of time this confirmation process has been pending, the numerous plan amendments, and the representations made at the hearing that the debtors feel very strongly about the necessity of all their current expenditures makes the opportunity for further plan amendment futile.

Accordingly, for the reasons just stated, I shall issue an order denying confirmation of the debtors' latest proposed plan based upon 11 U.S.C. § 1325(b). Further, pursuant to 11 U.S.C. § 1307(c)(5), I shall dismiss this chapter 13 case. See, e.g., In re Wronke, 172 F.3d 54 (Table), 1998 WL 956310 (7th Cir. 1998); In re Wile, 310 B.R. 514, 519 (Bankr. E.D. Pa. 2004); In re McNichols, 255 B.R. at 877-78.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
JAMES J. SANDERCOCK and MARTHA W. SANDERCOCK	:	
Debtors	:	Bankruptcy No. 03-36260F

....

ORDER

....

AND NOW, this 20th day of January 2005, for the reasons stated in the accompanying memorandum, it is hereby ordered that the objections of the standing chapter 13 trustee to the debtor's second amended plan, as modified, are sustained and confirmation is denied. It is further ordered that this chapter 13 case is dismissed.

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BRUCE FOX
United States Bankruptcy Judge

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