

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:	:	
	:	
FRANCES SCARBOROUGH,	:	CIVIL ACTION NO. 05-4548
	:	
Appellant,	:	
	:	
v.	:	
	:	
CHASE MANHATTAN MORTGAGE	:	
CORP.,	:	
	:	
Appellee.	:	

MEMORANDUM

BUCKWALTER, S. J.

April 20, 2006

Frances Scarborough (“Debtor” or “Appellant”) appeals the decision of the Bankruptcy Court, which denied confirmation of Debtor’s amended Chapter 13 plan and dismissed Debtor’s bankruptcy case with prejudice. Presently before the Court are Appellant’s Brief (Docket No. 4) and Appellee’s Brief (Docket No. 7). For the reasons set forth below, the appeal is denied.

I. BACKGROUND

A. Procedural History

On October 31, 2001, Debtor filed a bankruptcy petition under Chapter 13. Debtor commenced an adversary proceeding during her bankruptcy case for the purpose of bifurcating Chase Manhattan Mortgage Corporation’s claim into a secured claim and an unsecured claim. The Bankruptcy Court denied Debtor’s request for bifurcation on October 14,

2003. Debtor appealed that judgment, but the District Court affirmed the Bankruptcy Court's ruling. Currently the bifurcation matter is on appeal before the Third Circuit Court of Appeals.

With respect to the instant appeal, on December 20, 2004, the Bankruptcy Court granted Debtor a final continuation of her Chapter 13 confirmation plan and scheduled a hearing on Debtor's sixth proposed Chapter 13 plan. At that hearing, which was held on December 28, 2004, the Bankruptcy Court considered Debtor's sixth proposed Chapter 13 plan and Debtor's seventh proposed Chapter 13 plan, which was filed on December 27, 2004. In addition to providing documents concerning her income, expenses and proposed payments under the plan, Debtor testified at the hearing. At the December 28, 2004 hearing, the Bankruptcy Court also considered a motion by the Chapter 13 trustee to dismiss Debtor's case and a motion by Chase Manhattan Mortgage Corporation for relief from the automatic stay, or in the alternative, to dismiss Debtor's case.

The Bankruptcy Court, in a Memorandum and Order of July 21, 2005, denied confirmation of Debtor's Chapter 13 plan. Further, the Bankruptcy Court dismissed Debtor's bankruptcy case and barred Debtor from filing a Chapter 13 petition within 180 days of the Order.

Debtor, who is *pro se*, appeals the decision of the Bankruptcy Court and states the issues as follows: "1. Does the Appellant's income support the financial ability to make payments under the plan, pursuant to 11 U.S.C. § 1325(a)(6), resolving any feasibility issues and allowing confirmation of plan. 2. Plan feasibility and plan confirmation cannot be resolved until Appellant's appeal is resolved which is pending in the [Third Circuit]" (Appellant's Br. 7.)

B. Bankruptcy Court's Findings of Fact and Conclusions of Law

With respect to her income, Debtor listed employment, social security disability, rent payments and child support as her streams of income. On her amended Schedule J for her seventh proposed plan, Debtor wrote that her total income was \$3019.00 per month.¹ At the December 28, 2004 hearing, Debtor testified that she was employed as a substitute secretary for the School District of Philadelphia, from which she collected \$1,215.00 monthly. Debtor had been working at this job for five weeks. She did not know if her employment would continue over the summer. Debtor also testified that she received Social Security disability payments of \$1,175.00 monthly, but she said that these payments would decrease after an interim period because of her employment income from the School District of Philadelphia

In addition to her employment income and Social Security income, Debtor testified that she received rental payments and child supports payments. Debtor said that she received rental income of \$550 monthly from a tenant, but she did not provide proof of payment or source of income for the tenant. Debtor also testified that she received child support payments of \$360.00 per month. According to Debtor, \$160.00 of the monthly child support came directly from Charles Beasley's employer pursuant to court order but the rest of the \$360.00 was paid voluntarily. Debtor failed to provide evidence of payment or source of income with respect to the child support payments.

With respect to Debtor's expenses, in her seventh amended Chapter 13 plan, Debtor listed her monthly expenses as totaling \$1,218.00. Debtor testified at the hearing that she would need to spend \$6,000.00 for dental treatment in the near future. In her proposed plan,

1. Debtor claimed her excess income was \$2,800.00 per month.

Debtor failed to explain how she would pay that dental expense, listing her monthly medical and dental expenses at only \$10.00.

With respect to her proposed payments under her proposed Chapter 13 plan, Debtor provided “for payment to secured creditor Chase Manhattan of mortgage arrears in the amount of \$36,053.00, payment of the Trustee’s commission, and a pro rate distribution to unsecured creditors.” ®. at 36.) According to the Bankruptcy Court, Debtor’s sixth “amended [C]hapter 13 plan provide[d] for tiered payments to the Trustee as follows: \$50.00 per month for months 1-24; \$103.00 per month for months 25-36; \$500.00 per month for months 37-42; \$1,593.00 per month for months 43-48; \$2,040.00 per month for months 49-60.” ®. at 36.) In her seventh amended plan, Debtor proposed the following payment schedule: \$50.00 per month for months 1-24; \$108.00 per month for months 25-36; \$500.00 per month for months 37-41; \$1,620.00 for month 42; \$1801.00 per month for months 43-60. ®. at 27.) Debtor was in the 38th month of her plan as of December 7, 2004.

Although Debtor filed a plan which showed excess income sufficient to make the plan payments, the Bankruptcy Court found that Debtor’s evidence did not support the figures of the plan. The Bankruptcy Court found that Debtor’s income was overstated because her employment income or disability income would have to decrease. Further, the Bankruptcy Court concluded that Debtor understated her expenses by failing to increase them since her Chapter 13 petition was filed in 2001 and neglecting to increase her medical expenses due to her future dental treatment. Finally, the Court noted that Debtor failed to include any cushion for emergencies and had failed to make her previous plan payments when the amounts were only \$50.00 and \$100.00 per month.

After discussing that Debtor had the burden of proving that her amended Chapter 13 plan met the standards for confirmation under the Bankruptcy Code pursuant to 11 U.S.C. § 1325(a), including that the plan is feasible, the Bankruptcy Court concluded, after reviewing the evidence, that Debtor failed to meet her burden. The Bankruptcy Court cited Debtor's failure to provide adequate evidence supporting her income, supply accurate expense information, and include a cushion for emergencies as reasons for its conclusion.

In its Memorandum and Order, the Bankruptcy Court also dismissed Debtor's bankruptcy case pursuant to Bankruptcy Code § 1307(c)(1) and (5), concluding that Debtor did not have a realistic ability to propose a confirmable Chapter 13 plan and noting that Debtor had the benefit of bankruptcy protection for over four years. The Bankruptcy Court went on to rule that, before Debtor could file another Chapter 13 case, she had to demonstrate her ability to propose and perform a Chapter 13 plan, noting that the Bankruptcy Court had notified Debtor of this possibility in its Order of December 20, 2004.

II. STANDARD OF REVIEW

This Court has jurisdiction over appeals from final judgments, orders and decrees from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a). The Court reviews the Bankruptcy Court's "legal determinations *de novo*, its factual findings for clear error and its exercise of discretion for abuse thereof." In re Trans World Airlines, Inc., 145 F.3d 124, 131 (3d Cir. 1998) (citation omitted). "A finding of fact is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Casey v. Kasal, 223 B.R. 879, 883 (E.D. Pa. 1998) (internal quotations omitted) (citations omitted).

Debtor pursues this appeal *pro se*. The Court will liberally construe Debtor's brief and apply the applicable law regardless of whether Debtor specifically mentions it. Johnson v. Ogershok, 134 Fed. Appx. 535, 537 n. 4 (3d Cir. 2005) (citing Higgins v. Beyer, 293 F.3d 683, 688 (3d Cir. 2002)).

III. DISCUSSION

A. Debtor's Chapter 13 plan

The Debtor believes the Bankruptcy Court erred in denying confirmation of her Chapter 13 plan, arguing that her income was sufficient to prove feasibility.

Reviewing the record, Court believes that the record supports the Bankruptcy Court's findings. Thus the findings are not clearly erroneous.

With respect to the Bankruptcy Court's decision to deny confirmation of Debtor's Chapter 13 plan, the Court believes the Bankruptcy Court's decision was correct. Under 11 U.S.C. § 1325(a)(6), a Chapter 13 plan cannot be confirmed unless it is feasible. The Debtor bears the burden of proving that her plan is feasible. Meyer v. Hill (In re Hill), 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001) (citation omitted). Based on the findings of fact, the Court believes Debtor did not prove that her plan was feasible. Debtor overstated her income and understated her expenses. As a result, Debtor failed to show that her income was adequate to make the payments set forth in her sixth amended Chapter 13 confirmation plan and seventh amended Chapter 13 confirmation plan. Therefore, the Court affirms the Bankruptcy Court's decision to deny confirmation of Debtor's amended Chapter 13 plan.

B. Debtor's Request for Delay Pending the Third Circuit Decision

Debtor argues that the issues of plan feasibility and plan confirmation cannot be resolved until her appeal of the Bankruptcy Court's denial of her bifurcation request is ruled on by Third Circuit. The Court disagrees with Debtor's premise. Delaying this bankruptcy case pending the appeals process is not in the best interests of the parties. If the Third Circuit overturns the Bankruptcy Court's denial of Debtor's request for bifurcation, the Court will take the appropriate action.

IV. CONCLUSION

For the foregoing reasons, Debtor's appeal is denied. An appropriate order follows.

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CHASE MANHATTAN MORTGAGE	:	
CORP.,	:	
	:	
Appellee.	:	

ORDER

AND NOW, this 20th day of April, 2006, upon consideration of Appellant's Brief (Docket No. 4) and Appellee's Brief (Docket No. 7), it is hereby **ORDERED** that this appeal is **DENIED**.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.
RONALD L. BUCKWALTER, S.J.