

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

WAYNE EDWARD STROUD,

CASE NO. 00-12150-WSS

Debtor.

Chapter 13

ORDER ON TRUSTEE'S OBJECTIONS TO CONFIRMATION

This matter came on for hearing on the Chapter 13 Trustee's objections to the Debtor's amended Chapter 13 plan. Herman Padgett represented the Debtor, and Jeffrey Hartley represented J.C. McAleer, the Chapter 13 Trustee (hereinafter "the Trustee"). The Debtor's plan included an \$87,000.00 debt for child support arrearage (hereinafter referred to as "the support debt"). The Debtor indicated that he owed the support debt to the State of Massachusetts. The Debtor proposed to pay \$1,731.00 per month for a zero percent plan.¹ This plan will not pay the support debt in full over the life of the plan. The support debt would be paid the same percentage amount as other unsecured claimants. The Debtor's plan also included the following provision: "PURSUANT TO 11 U.S.C. SECTION 523(A)(8) EXCEPTING DEBTOR'S STUDENT LOANS FROM DISCHARGE WILL IMPOSE AN UNDUE HARDSHIP ON DEBTOR AND DEBTOR'S DEPENDENTS, CONFIRMATION OF DEBTOR'S PLAN SHALL CONSTITUTE A FINDING TO THE EFFECT THAT THE DEBT IS DISCHARGEABLE." The Trustee objected to the Debtor's amended plan on grounds that the support payment must be paid in full over the life of the plan as a priority claim, and that the

¹The Trustee recommended that the Debtor pay \$1,825.00 after certain adjustments for preference payments.

Debtor cannot discharge his student loan obligation by including the above-quoted provision in his chapter 13 plan.

On August 2, 2000, the United States Bankruptcy Court for the Southern District of Alabama entered an *en banc* order on the treatment of priority debts in chapter 13 plans for this district in *In James Augusta Hall*, Case No. 98-12573, August 2, 2000. The Court held that a chapter 13 plan must provide for payment of all priority claims in full during the life of the chapter 13 plan as required by 11 U.S.C. § 1322(a)(2), unless a creditor consents to other treatment. If the debtor is unable to pay the full amount of the priority debts, the chapter 13 plan can still be confirmed if all excess funds over preference payments are dedicated to payment of the maximum amount of priority debt possible.

The Debtor maintains that he is not required to pay the \$87,000.00 support in full over the life of his chapter 13 plan because the payment falls under the exception in §507(a)(7)(A), which provides that debts for child support are not priority claims to the extent that the debt “is assigned to another entity, voluntarily, by operation of law, or otherwise.” The Debtor presented no documentation to show that the claim had been assigned to the State of Massachusetts. Therefore, the Court finds that the Debtor has failed to prove that the support claim has been assigned, and is no longer a priority claim under §507(a)(7). The Court finds that the Trustee’s objection regarding the Debtor’s treatment of the support debt is due to be sustained.

The second ground for the Trustee’s objection was the Debtor’s inclusion of a provision in his plan which sought to discharge his student loan debt upon confirmation of his plan. The Debtor relies on Andersen v. UNIPAC-NEBHELP, (In re Andersen) 179 F.3d 1253 (10th Cir. 1999), which held a similar provision in a confirmation order to be *res judicata* to any collateral

challenge arising after completion of the Debtor's plan and discharge. The Bankruptcy Court for the Western District of Oklahoma recently held that the Tenth Circuit's holding in Andersen is limited to its unusual fact situation, and should not be construed to allow a debtor to include language in his chapter 13 plan that would discharge his student loan debt without an adversary proceeding. See In re Hensley, 249 B.R. 318, 321-22 (Bankr. W.D. Ok. 2000); In re Conner, 242 B.R. 794 (Bankr. D. N.H. 1999); In re Fox, 249 B.R. 140 (Bankr. S.C. 2000). As the other bankruptcy courts, this Court finds that the Debtor cannot include the provision regarding the student loans in his chapter 13 plan, and thereby discharge the debt. The proper procedure for determining dischargeability of student loan debt is an adversary proceeding.

Based on the foregoing, the Court finds that the Trustee's objections are due to sustained, and the Debtor shall have 20 days from the date of this order to submit a modified plan. It is therefore

ORDERED that the Chapter 13 Trustee's objections to the Debtor's amended Chapter 13 plan are **SUSTAINED**, and the Debtor shall have 20 days from the date of this order to submit an amended plan.

Dated: August ____, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE