

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: )  
 )  
CATHY LEAN JONES, ) Case No. 20-10704  
 )  
Debtor. )

ORDER SUSTAINING TRUSTEE'S OBJECTION TO CONFIRMATION AND  
ORDERING DEBTOR TO FILE AN AMENDED PLAN WITHIN 14 DAYS

This case came before the court on the chapter 13 trustee's objection to confirmation (doc. 15). For the reasons discussed herein, the court sustains the objection and orders the debtor to file an amended plan within 14 days.

In the debtor's chapter 13 plan, she proposes to retain and pay for two vehicles: a 2012 Nissan Altima and a 2011 Toyota Rav4. The chapter 13 trustee objects to the debtor's retention of the Altima under the plan because her adult son drives the vehicle and the trustee contends that it is not necessary for an effective reorganization. The debtor and her attorney confirmed to the court that the debtor's 31-year-old son drives the Altima, but the debtor argues that the son contributes to the plan payment.

The court construes the trustee's objection as an objection that the debtor's plan has not been proposed in "good faith." *See, e.g., In re Jackson*, No. 11-42528-JJR-13, 2012 WL 909782, at \*2 (Bankr. N.D. Ala. Mar. 16, 2012). The Eleventh Circuit "has set forth a non-exhaustive list of factors relevant to whether a plan was proposed in good faith[,]" commonly referred to as the *Kitchens* factors. *See In re Brown*, 742 F.3d 1309, 1316-17 (11th Cir. 2014). The court determines good faith on a case by case basis using a "totality of the circumstances" approach. *See, e.g., id.* The debtor bears the burden of showing that her "plan was proposed in good faith." *See, e.g., In re Jackson*, 2012 WL 909782, at \*2.

Having reviewed the *Kitchens* factors and the totality of the circumstances here, the court finds that the debtor did not propose the plan in good faith. The plan exposes the debtor and creditors to unnecessary risks and expenses unrelated to the requirements of debtor rehabilitation. In this district, debtors in chapter 13 cases fail to complete their payments (and therefore fail to pay liens and fail to obtain discharges) in about 50% of cases based on their own inability to pay and other problems that occur during the pendency of a case. See *In re Solis*, 356 B.R. 398, 413-14 (Bankr. S.D. Tex. 2006). The court in *In re Solis* accurately summed up the problems associated with a debtor parent paying for a vehicle for an adult child in a chapter 13 plan under these circumstances:

By including her son's car in this plan solely as an accommodation to him, and by proposing a plan that is feasible only if her son [contributes to it], Debtor has made her plan dependent not only on the vicissitudes of her own income and expenses but also on the vicissitudes of her son's income and expenses and the vagaries of his payments to her. Debtor *at least* doubles the risk that she will not be able to complete the payments required by the plan. The Court believes that the additional risk is unnecessary, unreasonable, and inappropriate in this case because it is simply not necessary to include the son's car in the plan to preserve property of the estate, to facilitate a financial reorganization, or to satisfy Debtor's legal obligations to her dependents.<sup>1</sup>

*Id.* at 414 (emphasis in original). That court then denied confirmation because the plan was not proposed in good faith. See *id.* at 414-15.

The same analysis applies here. The debtor has not proven the practical necessity for the Altima, which she does not use in any way. See, e.g., *In re Hicks*, No. 10-41855-JJR-13, 2011 WL 2414419, at \*7 (Bankr. N.D. Ala. 2011) (finding lack of good faith in chapter 13 plan that, among other things, paid for unnecessary vehicles); see also *In re Winslett*, No. 08-07850-HB,

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<sup>1</sup> In this respect, this court has approved plans that propose to pay for vehicles driven by dependent children still in school. However, the good faith analysis is fact-intensive and that is not the situation here.

2010 WL 5112171, at \*2 (Bankr. D.S.C. Feb. 19, 2010) (not allowing “ownership and operating expenses for more than one car, on account of adult children”).

Here, the proof of claim (no. 3) filed with respect to the Altima shows that the debtor’s son is a co-maker on the auto loan. The debtor can thus surrender her interest in the Altima in the plan and her son can make payments directly to the creditor if he wants to keep the vehicle. This factor, too, convinces the court that the debtor has not met the burden of proving that her plan is proposed in good faith. *See generally, e.g., In re Lewis*, 347 B.R. 769 (Bankr. D. Kan. 2006).

The court thus sustains the trustee’s objection to confirmation and orders that the debtor file an amended plan within 14 days of the date of this order. The case is reset for confirmation on August 13, 2020 at 1:30 p.m., Courtroom 2 West, 113 St. Joseph Street, Mobile, AL 36602. The court is not reaching any of the other issues raised in the trustee’s objection.

Dated: June 16, 2020

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE