

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

IN RE:)
)
ZACHERY JAMES LANE and)
CHRISTINA NOELLE MITCHELL,) Case No. 19-13490
)
Debtors.)

ORDER OVERRULING OBJECTION TO CONFIRMATION
BASED ON 11 U.S.C. § 1325(a)(8)

The court has reviewed the chapter 13 trustee’s objection (doc. 78) to the debtors’ amended chapter 13 plan (doc. 72) filed in this case and his supporting brief (doc. 83). The trustee objects to the plan because it provides for preconfirmation postpetition domestic support obligation (DSO) arrears to be paid through the plan with the consent of the DSO creditor.¹ For the reasons discussed below, the court overrules the objection with conditions.

Neither the court nor the parties have been able to locate any authority on the issue of whether the confirmation requirement of 11 U.S.C. § 1325(a)(8) that all postpetition DSO be current may be waived with the consent of the DSO creditor and postpetition preconfirmation DSO paid through the plan. Section 1325(a)(8) provides in pertinent part that “the court shall confirm a plan if . . . the debtor has paid all [DSO] that first become payable after the date of the filing of the petition”

The Eleventh Circuit has not addressed whether the provisions of § 1325(a) are mandatory, that is, whether the bankruptcy court still has discretion to confirm a plan if those provisions are not strictly satisfied. “The majority of courts addressing whether satisfaction of §

¹ The trustee points out that the consenting creditor here is the Virginia Department of Social Services (which filed proofs of claim), not the debtor’s ex-spouse. The court presumes that the Department is representing the interests of its client, the ex-spouse, and the distinction raised by the trustee does not affect the court’s analysis herein.

1325(a) is necessary for confirmation . . . have found that the requirements of § 1325(a) are mandatory and must be met prior to confirmation.” See *In re Brownlee*, CV 15-01109-HB, 2016 WL 241250, at *2 (Bankr. D.S.C. Jan. 20, 2016). The minority view is “that § 1325(a) is not a requirement to confirmation and if a proposed [c]hapter 13 plan does not meet the requirements of § 1325(a), but appears to be meritorious, the court has discretion to confirm the plan.” See *id.* at *2 n.6; see also 8 *Collier on Bankruptcy* ¶ 1325.01 (Richard Levin & Henry J. Sommer eds., 16th ed.) (“it is not clear that the standards set forth in section 1325(a) are requirements that must be met in every case before a plan can be confirmed”). The Bankruptcy Court for the Northern District of Alabama followed the minority view in *In re Britt*, 199 B.R. 1000 (Bankr. N.D. Ala. 1996).

As the Eleventh Circuit “ha[s] long observed, the cornerstone of the bankruptcy courts has always been the doing of equity.” See *In re Kulakowski*, 735 F.3d 1296, 1301 (11th Cir. 2013). In this respect, the court believes that the minority view achieves equity in the specific situation presented here where the DSO creditor has expressly consented to the inclusion of the postpetition preconfirmation DSO in the plan. However, the court also agrees with the trustee that the inclusion of the postpetition preconfirmation DSO in the plan should not be to the detriment of the other creditors. The court thus overrules the trustee’s objection on the condition that the debtors’ plan payments are increased to the amount necessary for the unsecured creditors to receive what they would have received had the postpetition preconfirmation DSO not been included in the plan.

The court emphasizes that this ruling applies only to the facts of this case, where the DSO creditor has expressly consented to the payment of postpetition DSO through the plan. The court

will continue to deny confirmation of plans where the debtor is otherwise not current on his or her postpetition DSO.

The court requests that the trustee's office reset this case for a confirmation hearing so that the trustee may calculate the new payment amount and may file an amended objection if there are any additional issues that need to be resolved prior to confirmation.

Dated: May 11, 2020


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE