



SO ORDERED.

SIGNED this 17 day of July, 2006.


JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

**RICHARD D. SCHMUTZ,
BRENDA S. SCHMUTZ,**

Case No. 06-40480-7

Debtors.

**ORDER DENYING DEBTORS' MOTION TO RECONSIDER ORDER
DENYING APPLICATION FOR WAIVER OF CHAPTER 7 FILING FEE**

On June 6, 2006, Debtors filed an Application for Waiver of the Chapter 7 Filing Fee.¹ On June 14, 2006, the Court denied that request,² instead permitting Debtors to pay the required fee in installments. Debtors have now filed an "Appeal and Brief of Debtors as to the Order Denying Application for Waiver of Chapter 7 Filing Fee."³ The Court has treated this as a Motion to

¹Doc. 2.

²Doc. 9.

³Doc. 17.

Reconsider its order, and has also considered the submission by the Office of the United States Trustee on this matter.⁴

Standard of Review

The legal standard for granting a motion for reconsideration is narrow. “A motion for reconsideration should be granted only to correct manifest errors of law or to present newly discovered evidence.” *Adams v. Reliance Standard Life Ins. Co.*⁵ “Such motions are not appropriate if the movant only wants the Court to revisit issues already addressed or to hear new arguments or supporting facts that could have been presented originally.”⁶ The Court denies the request for reconsideration because the Court did not incorrectly decide the law, nor did Debtors present any newly discovered evidence. In addition, under a totality of circumstance standard, Debtors have not shown they are not able to pay the filing fee in installments.

Analysis

As part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,⁷ Congress added a provision to the United States Code that permits a bankruptcy court, pursuant to the procedures prescribed by the Judicial Conference of the United States, to waive the filing fee in individual debtors’ Chapter 7 cases filed after October 17, 2005. Pursuant to 28 U.S.C. § 1930(f), a bankruptcy court may waive the filing fee in an individual debtor's case under Chapter 7 if “the court determines that such individual has income less than 150 per cent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in

⁴Doc. 19. The Trustee takes no position on this issue, but instead merely provides a summary of existing law on the subject of *in forma pauperis* requests.

⁵225 F.3d 1179, 1186 n.5 (10th Cir. 2000) (internal quotations omitted).

⁶*Id.*

⁷Pub. L. No. 109-8, 119 Stat. 23 § 418 (Apr. 20, 2005).

accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. Debtors have the burden, by a preponderance of the evidence, to demonstrate that the Court should waive the filing fee.⁸

The Court must first determine whether these Debtors have income as reported on Line 16 of Schedule I, not including governmental non-cash assistance, such as food stamps or housing subsidies, of less than 150% of the poverty guidelines last published by the United States Department of Health and Human Services applicable to a family of two. For these Debtors, their monthly income must thus be less than \$1,650 in order to meet the 150% of the HHS Poverty Guidelines. Debtors admit, in their Statement of Current Monthly Income and Means Test Calculation,⁹ that their average monthly income for the six calendar months prior to filing the bankruptcy case was \$2,582, and that annualized, the income was \$30,984 under 11 U.S.C. § 707(b)(7). Their application indicates their net monthly income was \$2,002 as of the date of filing, and that is the amount shown on Line 16 of Schedule I.¹⁰ Accordingly, as of the date of filing, their monthly income exceeded the guidelines by \$350 a month.

Debtors indicate that this monthly income will be received only through August, 2006, and that the income is for the completion of Ms. Schmutz' 2005-2006 teaching contract, the work for which she completed in May, 2006. As of the date of filing, and the date requesting reconsideration, neither Debtor is employed and neither is sure what income may be received in the future through substitute teaching, or otherwise. Debtors make no argument that they are mentally or physically

⁸*In re Nuttall*, 334 B.R. 921, 923 n.4 (Bankr. W.D. Mo. 2005).

⁹Doc. 14.

¹⁰Debtors' Schedule I shows "current monthly gross wages" at \$2,582, but only \$2,002 "net monthly take home pay" after deduction of \$374 payroll taxes and social security, \$50 insurance, \$50 union dues, and \$103 for a 401K plan. Net pay is the correct amount for the Court to use in making this inquiry.

incapacitated from finding substitute employment, only that the prospects for earning income in excess of the 150% of poverty level is not good.

Debtors argue that the income now being received is akin to back wages and should be exempt under state law. Alternatively, they argue that the Court should deduct certain expenses from the wages earned for required medical exams previously taken and certain expenses. The Court does not agree with these contentions as a basis for waiving the filing fee. In addition, the statute allowing for waiver of filing fees requires both that their income be less than 150% of the poverty line and that they be unable to pay the fee in installments. Thus, the Court must also determine whether Debtors are “able” to pay the fee in installments, based on a totality of the circumstances.¹¹ The evidence before the Court is that Debtors also do not meet the second requirement of this statute.

First, Debtors’ Schedule J shows that they have \$87 a month in net income over expenses. That is more than the installment payment amount previously required by the Court. Thus, as long as they are receiving Ms. Schmutz’ salary, Debtors can make the installment payment the Court previously ordered without even minimizing normal expenses. Second, a review of their current expenditures disclosed on Schedule J further reflects likely excess expenses. The first place that Debtors may be able to minimize expenses to free up money for the installment payment is from the clothing category. For two debtors who do not work, and support no children, \$70 a month for clothing seems excessive. More importantly, for two debtors with no employment, \$500 a month for transportation seems even more excessive.¹²

¹¹*In re Nuttall*, 334 B.R. at 923.

¹²They have no car payments; Schedule D lists no secured creditors.

Debtors also reflect a monthly \$50 “regular expense from operation of business, profession, or farm,” at the same time they claim they have no employment. Finally, they included \$100 a month for charitable contributions. Although this Court would likely not base this decision on that \$100, alone, Debtors’ Schedule J goes on to state “We will not make as many charitable donations while unemployed.”¹³ The Court will take them at their word, and finds that from the clothing, transportation, “operation of business” or charitable contribution line items on their budget, which total \$720, they are able to pay the filing fee in installments.¹⁴

IT IS, THEREFORE, BY THE COURT ORDERED that Debtors’ “Appeal and Brief of Debtors as to the Order Denying Application for Waiver of Chapter 7 Filing Fee” is denied. Because the Application does reflect that Debtors, at the time of filing, had inadequate resources that day to pay the entire filing fee, the Court will continue to allow Debtors to pay the required filing fee in installments. Debtors will extend the deadline for paying the filing fee by altering the installment schedule previously entered.

IT IS, THEREFORE, ORDERED that Debtors pay the filing fee (\$299) in no more than four (4) installments of not less than \$74.75 each, with the first payment due within 20 days of this order, and every 30 days thereafter.

IT IS FURTHER ORDERED that all payments be made at the office of the Clerk of the U. S. Bankruptcy Court.

¹³If Debtors made no charitable contributions from June through August, they would have sufficient money from that line-item alone, to pay the filing fee, and they demonstrated their willingness to reduce this expense while unemployed.

¹⁴Debtors also show monthly expenses of \$500 for food for a family of two, as well as \$20 for laundry/cleaning, \$40 for medical/dental, \$20 for recreation, clubs and entertainment, \$40 for automobile insurance, as well as \$285 for rent (in Dighton, Kansas, a very small town), \$210 for utilities, and \$80 for telephone expense, for a total of \$1,915, against \$2,002 in net income.

IT IS FURTHER ORDERED that until the filing fee is paid in full, Debtors shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

IT IS FURTHER ORDERED that a copy hereof be served upon Debtors, as notice, pursuant to Fed. R. Bankr. P. 1017(b)(1), and that if the fees have not been paid within the time line set out above, this case will be dismissed without further notice.

IT IS SO ORDERED.

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