

APR 03 2008

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	MT-07-1431-JuPaD
)		
7	WARREN WYATT WIEGAND and)	Bk. No.	07-60620
	CAMILLE ANITA WIEGAND,)		
8)		
	Debtors.)		
9	_____)		
)		
10	ROBERT G. DRUMMOND,)		
	Chapter 13 Trustee,)		
11)		
	Appellant,)		
12)		
	v.)	O P I N I O N	
13)		
	WARREN W. WIEGAND; CAMILLE A.)		
14	WIEGAND,)		
)		
15	Appellees.)		
16	_____)		

Argued and Submitted on March 18, 2008
at Helena, Montana

Filed - April 3, 2008

Appeal from the United States Bankruptcy Court
for the District of Montana

Hon. Ralph B. Kirscher, Chief Bankruptcy Judge, Presiding.

Before: JURY, PAPPAS, and DUNN, Bankruptcy Judges.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 JURY, Bankruptcy Judge:
2

3 Chapter 13 trustee¹ Robert G. Drummond appeals the
4 bankruptcy court's order overruling his objection to confirmation
5 of the debtors' chapter 13 plan on the ground that debtors
6 improperly calculated their current monthly income. Debtors,
7 following the format and instructions of Official Bankruptcy Form
8 22C² ("Form 22C"), deducted business expenses from Warren
9 Wiegand's self-employed income, which resulted in below-median
10 income entitling debtors to a thirty-six month applicable
11 commitment period.

12 We hold that a chapter 13 debtor engaged in business may not
13 deduct ordinary and necessary business expenses from gross
14 receipts for the purpose of calculating current monthly income as
15 defined under § 101(10A).³ Rather, such deductions are
16

17 ¹ Unless otherwise indicated, all chapter, section and rule
18 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
19 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

20 ² Form 22C is titled "Chapter 13 Statement of Current
21 Monthly Income and Calculation of Commitment Period and
22 Disposable Income." Chapter 13 debtors are required to use Form
23 22C pursuant to Rule 1007(b)(6).

24 ³ Section 101(10A) provides: "The term 'current monthly
25 income'-(A) means the average monthly income from all sources
26 that the debtor receives . . . without regard to whether such
27 income is taxable income, derived during the 6-month period
28 ending on-(i) the last day of the calendar month immediately
preceding the date of the commencement of the case if the debtor
files the schedule of current income required by section
521(a)(1)(B)(ii); or (ii) the date on which current income is
determined by the court for purposes of this title if the debtor
does not file the schedule of current income required by section

(continued...)

1 authorized under § 1325(b)(2)(B) and, therefore, are to be
2 subtracted from current monthly income when calculating
3 disposable income pursuant to § 1325(b)(2).⁴ To the extent that
4 Part I of Form 22C requires a business debtor to calculate
5 current monthly income by subtracting ordinary and necessary
6 business expenses from gross receipts, we hold that Part I of
7 Form 22C is inconsistent with § 1325(b)(2).

8 We REVERSE and REMAND for further proceedings consistent
9 with this opinion.

10 I. FACTS

11 The facts are undisputed. Debtors filed their joint chapter
12 13 petition on May 31, 2007, and filed their Schedules, Statement
13 of Financial Affairs and Form 22C on June 15, 2007. Debtor
14 Warren Wiegand operated a trucking business. Debtors' original
15 Form 22C reflected his monthly business income on line 3c as
16 \$1382, after gross receipts on line 3a of \$6192 were reduced by
17 ordinary and necessary business expenses of \$5175 on line 3b.⁵

18
19 ³(...continued)
20 521(a)(1)(B)(ii)"

21 ⁴ Section 1325(b)(2)(B) provides: "For purposes of this
22 subsection, the term 'disposable income' means current monthly
23 income received by the debtor . . . less amounts reasonably
24 necessary to be expended . . . (B) if the debtor is engaged in
business, for the payment of expenditures necessary for the
continuation, preservation, and operation of such business."

25 ⁵ Debtors filed an amended Form 22C which reflected a lower
26 monthly business income of \$1017 based on greater expenses. They
27 also amended their Schedules I and J. After the plan
28 confirmation hearing, for reasons not relevant to the decision
here, they also amended their plan to provide for payments of
\$298 for three months and \$135 for thirty-three months.

1 Debtors' Form 22C calculated below-median income at lines 15 and
2 16. Therefore, they filled in the three-year commitment period
3 box at line 17.

4 Debtors filed a thirty-six month chapter 13 plan which
5 provided for monthly payments of \$298. The trustee objected to
6 confirmation of their plan on the ground that debtors incorrectly
7 calculated their current monthly income in Part I of Form 22C,
8 thus proposing a plan not in compliance with § 1325(b)(1).⁶ The
9 trustee argued that debtors' business deductions, which included
10 payments on loans and home insurance, reduced their annualized
11 current monthly income to below median, erroneously allowing them
12 to apply the shorter three-year commitment period. Additionally,
13 the trustee maintained that the deduction of business expenses in
14 calculating current monthly income would render § 1325(b)(2)(B)
15 superfluous, as it would allow debtors to deduct those expenses a
16 second time.

17 The bankruptcy court overruled the trustee's objections at
18 the plan confirmation hearing. It entered an order on September
19 24, 2007, followed by a Memorandum Decision dated October 9,
20 2007. In its written decision, the bankruptcy court examined
21 sections of the Internal Revenue Code ("Tax Code"), United States

22
23 ⁶ Section 1325(b)(1) provides: "If the trustee or the
24 holder of an allowed unsecured claim objects to the confirmation
25 of the plan, then the court may not approve the plan unless, as
26 of the effective date of the plan—(A) the value of the property
27 to be distributed under the plan on account of such claim is not
28 less than the amount of such claim; or (B) the plan provides that
all of the debtor's projected disposable income to be received in
the applicable commitment period beginning on the date that the
first payment is due under the plan will be applied to make
payments to unsecured creditors under the plan."

1 Supreme Court case law, and Personal Income Tax Form 1040 to
2 arrive at its conclusion that a chapter 13 business debtor may
3 deduct ordinary and necessary business expenses from gross
4 receipts to calculate current monthly income as defined by
5 § 101(10A).

6 The trustee timely appealed.

7 **II. JURISDICTION**

8 The bankruptcy court had subject matter jurisdiction
9 pursuant to 28 U.S.C. § 1334 over this core proceeding under
10 § 157(b)(2)(L). We have jurisdiction under 28 U.S.C. § 158.

11 **III. ISSUE**

12 Whether a chapter 13 debtor engaged in business can deduct
13 ordinary and necessary business expenses from gross receipts for
14 the purpose of calculating his or her current monthly income as
15 defined by § 101(10A).

16 **IV. STANDARD OF REVIEW**

17 We review issues of statutory construction and conclusions
18 of law de novo. Ransom v. MBNA Am. Bank, N.A. (In re Ransom),
19 380 B.R. 799, 802 (9th Cir. BAP 2007).

20 **V. DISCUSSION**

21 The primary question before us is whether a self-employed
22 chapter 13 debtor should follow Form 22C⁷ and deduct ordinary and
23 necessary business expenses from gross receipts or follow the
24

25 ⁷ Part I of Form 22C requires a business debtor to arrive
26 at his or her current monthly income by subtracting ordinary and
27 necessary business expenses from gross receipts. Thus, the form
28 is structured for a debtor engaged in business to use net
business income rather than gross. The trustee asserts that Form
22C is wrong as inconsistent with the Code.

1 Code, which provides that business deductions are taken from the
2 debtor's current monthly income to arrive at disposable income
3 under § 1325(b)(2). The question is easily answered when Form
4 22C is directly at odds with § 1325(b)(2)(B), the substantive
5 Code provision that governs the deduction of business expenses.
6 As aptly noted by another court in addressing this same question,
7 when an Official Bankruptcy Form conflicts with the Code, the
8 Code always wins. In re Arnold, 376 B.R. 652, 653 (Bankr. M.D.
9 Tenn. 2007).

10 Choosing between Form 22C and § 1325(b)(2) can have a
11 significant impact on the applicable commitment period as set
12 forth under § 1325(b)(4)⁸ because, in certain instances,
13 deducting business expenses to compute current monthly income
14 will place some business debtors at below-median income,
15 entitling them to the three-year, rather than five-year,
16 applicable commitment period. Additionally, some debtors may use
17 the deductions once to compute their monthly current income and
18 then again, to determine their disposable income under
19 § 1325(b)(2).

20 To determine when a chapter 13 debtor should take business
21 deductions, we start with the plain meaning rule and examine the

22
23 ⁸ Section 1325(b)(4) sets forth the parameters for
24 determining the applicable commitment period. Generally, it is
25 three years. However, it is five years if the combined current
26 monthly income of the debtor and the debtor's spouse multiplied
27 by twelve, is not less than the median family income in the
28 applicable state, as adjusted for the number of household
members. We have found the applicable commitment period to be a
temporal requirement, requiring certain debtors to have chapter
13 plans longer than three years. Fridley v. Forsythe (In re
Fridley), 380 B.R. 538, 544 (9th Cir. BAP 2007).

1 statutory language in §§ 101(10A) and 1325(b)(2). If the
2 statutory language is clear, we must apply it by its terms unless
3 to do so would lead to absurd results. United States v. Ron Pair
4 Enters., Inc., 489 U.S. 235, 241-42, 109 S. Ct. 1026, 103 L. Ed.
5 2d 290 (1989). We also engage in statutory interpretation by
6 taking a holistic approach that strives to implement the policies
7 behind the enactment of the Bankruptcy Abuse Prevention and
8 Consumer Protection Act ("BAPCPA") and harmonize the provisions
9 of the Code. See Hough v. Fry (In re Hough), 239 B.R. 412, 414
10 (9th Cir. BAP 1999) (noting that we not only look to the language
11 of the statute itself, but also to "the specific context in which
12 that language is used, and the broader context of the statute as
13 a whole") (citation omitted).

14 Current monthly income is defined in § 101(10A) as the
15 "average monthly income from all sources that the debtor receives
16 . . . without regard to whether such income is taxable income,
17 derived during the 6-month period" before the dates specified in
18 § 101(10A)(A)(i) & (ii).⁹ § 101(10A). While the Code defines
19 current monthly income, it does not define "income."

20 Nonetheless, we conclude that the plain language of the statute
21 demonstrates that the bankruptcy court's reliance on the Tax Code
22 and Form 1040 to determine the meaning of income under § 101(10A)
23 was misplaced. The phrase "without regard to whether such income
24 is taxable income" in § 101(10A) reflects a clear congressional
25 intent that Tax Code concepts for determining taxable income are

26
27 ⁹ Excluded from the definition of current monthly income
28 are benefits received under the Social Security Act and certain
other payments. § 101(10A)(B).

1 inapplicable to a determination of current monthly income.
2 Further, with the enactment of BAPCPA, Congress imported the
3 Internal Revenue Service Standards into § 707(b)(2).¹⁰ Yet, no
4 such reference is made in connection with the definition of
5 current monthly income. Finally, the statute's plain language
6 does not make specific reference to deductions, business or
7 personal, of any kind. Arnold, 376 B.R. at 654.

8 In contrast to the statutory definition of current monthly
9 income, § 1325(b)(2) is plain and unambiguous with specific
10 reference to deductions for business expenses. This section
11 provides that disposable income means current monthly income
12 received by the debtor less amounts reasonably necessary for
13 support and maintenance of the debtor and the debtor's
14 dependents. § 1325(b)(2)(A). For a debtor engaged in business,
15 current monthly income can be further reduced by the payment of
16 expenditures necessary for the continuation, preservation, and
17 operation of the business. § 1325(b)(2)(B). We can conclude
18 from the statutory language that the specificity of
19 § 1325(b)(2)(B) controls – business deductions are to be taken
20 from a debtor's current monthly income to arrive at the debtor's
21 disposable income. BFP v. Resolution Trust Corp., 511 U.S. 531,
22 537, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994) (noting that
23 "Congress acts intentionally and purposely when it includes
24 particular language in one section of a statute but omits it in
25 another") (citation omitted).

26
27 ¹⁰ This section makes specific reference to the National
28 Standards issued by the Internal Revenue Service.

1 Further, although § 1325(b) (2) was amended under BAPCPA,
2 subsection (B) remained unchanged. Under prior law, business
3 expenses were deducted from "income received by the debtor" to
4 determine disposable income. Under BAPCPA, the phrase current
5 monthly income was introduced into § 1325(b) (2), but the
6 reduction of business expenses remained intact. We presume that
7 business expense deductions under § 1325(b) (2) (B) continue to be
8 a factor in arriving at a debtor's disposable income under
9 BAPCPA. See Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ
10 L.L.C.), 371 B.R. 412, 424 (9th Cir. BAP 2007).

11 Statutes should also "not be construed in a manner which
12 robs specific provisions of independent effect." County of Santa
13 Cruz v. Cervantes (In re Cervantes), 219 F.3d 955, 961 (9th Cir.
14 2000) (citation omitted). Interpretations that would render a
15 statutory provision surplusage or a nullity should be rejected.
16 Id. If business expenses are deducted from gross receipts to
17 determine a chapter 13 debtor's current monthly income, then
18 there would be no need for § 1325(b) (2) (B), which provides for
19 the same deductions.

20 We conclude that § 1325(b) (2) plainly and unambiguously
21 requires a debtor to deduct business expenses from current
22 monthly income. Thus, our inquiry ends. "[T]he sole function of
23 the courts is to enforce [the statute] according to its terms."
24 Ron Pair Enters., Inc., 489 U.S. at 241 (citation omitted). This
25 mandate compels us to conclude that Form 22C ought to be changed
26
27
28

1 to comply with the statute.¹¹

2 We also observe that our plain meaning interpretation is not
3 absurd because the Code is replete with rules and requirements
4 that impact sole proprietors differently than wage earners. For
5 example, an individual chapter 13 debtor in business may be
6 expected to have more debt associated with his or her operation
7 than someone who works for wages. That the "profit" from the
8 business does not exceed what another makes in salary does not
9 relieve the sole proprietor from the debt limits for eligibility
10 for chapter 13 relief. It may be that Congress simply did not
11 want those persons generating significant revenues through a
12 business to have access to three-year chapter 13 plans.

13 14 VI. CONCLUSION

15 For the reasons stated herein, we REVERSE the bankruptcy
16 court's order overruling the trustee's objection to confirmation
17 and REMAND for further proceedings consistent with this opinion.

18
19
20
21
22

¹¹ Until Form 22C is changed, one possible solution is for
23 below-median debtors to subtract the business deductions allowed
24 under § 1325(b)(2)(B) on Schedule J from their current income.
25 Above-median debtors should fill out the remainder of Form 22C
26 and utilize the Internal Revenue Service standards under
27 §§ 1325(b)(3) and 707(b)(2)(A)(ii)(I) for "Other Necessary
28 Expenses," as specified in the Internal Revenue Service Financial
Analysis Handbook. Arnold, 376 B.R. at 654-55. We leave open
the possibility that bankruptcy courts may take other approaches
to redress the inconsistency of Form 22C with Code §§ 101(10A)
and 1325(b)(2)(B).