

**MAR 16 2006**

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

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In re:	)	BAP No.	SC-05-1126-PaMaS
	)		
GEORGIA RAY KINGRY,	)	Bk. No.	03-11143
	)		
Debtor.	)		
_____	)		
JAMES M. KINDER,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
GEORGIA RAY KINGRY; THOMAS H.	)		
BILLINGSLEA, JR., Trustee,	)		
	)		
Appellees.	)		
_____	)		

Argued and Submitted on February 24, 2006  
at San Diego, California

Filed - March 16, 2006

Appeal from the United States Bankruptcy Court  
for the Southern District of California

The Honorable James W. Meyers, Bankruptcy Judge, Presiding.

\_\_\_\_\_  
Before: PAPPAS, MARLAR and SMITH, Bankruptcy Judges.

\_\_\_\_\_  
<sup>1</sup> This disposition is not appropriate for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

1 Creditor James M. Kinder ("Kinder") appeals from an order of  
2 the bankruptcy court approving a modification of the confirmed  
3 chapter 13<sup>2</sup> plan of debtor Georgia Ray Kingry ("Kingry"). Because  
4 the bankruptcy court did not make adequate findings of fact  
5 concerning whether Kingry's plan modification was proposed in good  
6 faith, we VACATE the bankruptcy court's order and REMAND for  
7 further proceedings.

8 **FACTS**

9 Kingry, age 60, filed a chapter 13 petition on December 15,  
10 2003, together with a proposed plan (the "Original Plan"). The  
11 Original Plan provided that Kingry would make payments of \$575 per  
12 month to Thomas H. Billingsley, Jr., the chapter 13 trustee  
13 ("Trustee"), for a period of not less than three years. This  
14 payment stream would provide full payment of all secured and  
15 administrative claims, and provide a 70 percent distribution to  
16 Kingry's unsecured creditors, including Kinder.<sup>3</sup> The Original  
17 Plan was confirmed by the bankruptcy court on January 27, 2004.

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19 <sup>2</sup> Unless otherwise indicated, all chapter, section, and  
20 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
21 1330 and to the Federal Rules of Bankruptcy Procedure, Rules  
22 1001-9036, prior to the effective date of the Bankruptcy Abuse  
Prevention and Consumer Protection Act of 2005 ("BAPCA"), Pub.  
L. 109-8, 119 Stat. 23 (Apr. 20, 2005).

23 <sup>3</sup> On April 20, 2004, Kinder commenced an adversary  
24 proceeding against Kingry, No. 04-90127, in which he alleged that  
25 Kingry was indebted to Kinder under a state court judgment for  
26 \$20,000, including \$18,000 in punitive damages, based upon  
27 Kingry's fraudulent tender to him of a non-sufficient funds check,  
28 and for wrongful conversion of a motor vehicle. In the adversary  
proceeding, Kinder alleged that his judgment debt was excepted  
from discharge in Kingry's bankruptcy case under § 523(a)(2). Of  
course, under § 1328(a), debts based upon fraud could be  
discharged if Kingry successfully completes her chapter 13 plan  
payments. Recognizing that it lacked merit, Kinder abandoned the  
adversary proceeding, which was dismissed by the bankruptcy court  
on December 22, 2004, for lack of prosecution.

1           On May 21, 2004, Kingry moved to modify the Original Plan to  
2 reduce the payments from \$575 to \$420 per month. This proposal  
3 had the effect of reducing the distribution to unsecured creditors  
4 to zero. The motion was opposed by the Trustee on the grounds  
5 that Kingry was unemployed and could not make the payments as  
6 listed in the modified plan. Kinder also objected to the proposed  
7 modification on three grounds: (1) Kingry listed Kinder's debt at  
8 \$1,000 rather than the \$20,000 claimed by Kinder; (2) Kingry made  
9 one payment on her debt the day after filing the chapter 13  
10 petition and thus waived her rights to file for chapter 13 relief;  
11 and (3) Kingry's plan is not in good faith because Kingry was  
12 employable and received a substantial annuity. On July 13, 2004,  
13 the bankruptcy court denied the May 21, 2004, motion.<sup>4</sup>

14           On September 16, 2004, Kingry again moved to modify the  
15 Original Plan on the same terms as in the May 21, 2004, motion.  
16 Kingry submitted a Declaration in Support of Motion to Modify  
17 Chapter 13 Plan (the "Kingry Declaration") together with copies of  
18 amended Schedules I and J showing her current income and expenses.  
19 In the Kingry Declaration, she states that her request to reduce  
20 monthly payments from \$575 to \$420 and reduce the plan allowance  
21 for allowed unsecured creditors from 70 percent to zero is  
22 justified by changes in her financial circumstances. According to  
23 the Kingry Declaration, those changes included: (1) a change from  
24 full-time employment to a three-day per week job; and (2) an  
25 increase in her rent payments.

26 \_\_\_\_\_  
27           <sup>4</sup> The minute order does not explain the bankruptcy court's  
28 reasons for denying the motion. There is no transcript of the May  
21, 2004, hearing included in the excerpts of the record.

1           The amended Schedules I and J, filed with the bankruptcy  
2 court on October 8, 2004, are consistent with the statements in  
3 the Kingry Declaration. The rent payments increase from \$699 to  
4 \$755 per month. Kingry's projected income declines from \$2,520.33  
5 to \$2,071.38 per month, while her total projected expenses  
6 increase from \$1,651.00 to \$1,945.00. Although the total expenses  
7 increase, the schedules projected a reduction in some items,  
8 including home maintenance, clothing, laundry and dry cleaning,  
9 recreation, health and car insurance. Under the amended  
10 Schedules, the estimated excess of income over expenditures is  
11 \$420.38, which is consistent with Kingry's motion to reduce her  
12 monthly plan payments to the Trustee to \$420.00.

13           On October 4, 2004, Kinder also filed an objection to  
14 Kingry's September 16, 2004, proposed plan modification. In his  
15 Addendum to Objection,<sup>5</sup> Kinder repeats many of the allegations  
16 originally appearing in his complaint in the adversary proceeding,  
17 as well as the objections he earlier raised in opposition to the  
18 May 21, 2004, modification motion. Kinder alleged that: (1) he  
19 held a judgment debt of \$20,000, including punitive damages for  
20 intentional torts; (2) Kingry listed her debt to Kinder at only  
21 \$1,000 and that was fraud on the court; and (3) Kingry had failed  
22 to demonstrate that she is minimizing her expenses and engaging in  
23 "belt tightening." Although in the Addendum to Objection Kinder  
24 repeats his claim that Kingry owes him a debt for \$20,000 that

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26           <sup>5</sup> The excerpts of record of Kinder's objection does not  
27 include the "Addendum to Objection to Confirmation of Proposed  
28 Modification to Chapter 13 Plan" ("Addendum to Objection")  
referenced in the objection. However, the Panel deemed it  
appropriate to obtain a copy of this pleading directly from the  
docket of the bankruptcy case.

1 includes punitive damages, Kinder does not repeat the allegation  
2 of the complaint that Kingry's debt to him is nondischargeable.

3 On February 15, 2005, Trustee objected to the September 16,  
4 2004, motion to modify the plan arguing: (1) that the modification  
5 was not submitted in good faith, in that Kingry was seeking to  
6 reduce her working hours without showing that she was no longer  
7 able-bodied or had dependents that would preclude her from working  
8 a normal week; and (2) that Kingry lacked the ability to make the  
9 payments proposed in the modified plan.<sup>6</sup>

10 A hearing on the motion to modify the plan was conducted by  
11 the bankruptcy court on February 16, 2005. Kingry and the  
12 Trustee appeared through counsel and Kinder appeared pro se. No  
13 additional evidence or testimony was offered by the parties at the  
14 hearing, although all parties were heard and argued their  
15 respective positions.

16 After considering the parties' arguments, the bankruptcy  
17 court recited its decision on the record. Concerning the  
18 challenge made by both the Trustee and Kinder to Kingry's good  
19 faith, the bankruptcy judge discussed whether Kingry should be  
20 required to "maximize [her] employment effort" as argued in the  
21 objections by observing:

22 I think there's going to be [a] case that's  
23 going to come into this court. It's going to  
24 test the question of whether to get the  
25 advantage of chapter 13, the debtor would be

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25 <sup>6</sup> Trustee had also moved to dismiss the chapter 13 case  
26 because Kingry had failed to make plan payments. The bankruptcy  
27 court never acted on the motion to dismiss. However, at the  
28 hearing on the motion to modify the plan held on February 16,  
2005, Trustee indicated that he would only urge dismissal if the  
court denied the motion to modify the plan. Transcript of hearing  
(February 16, 2005) at 8.

1 required to go out and maximize their  
2 employment effort. I don't think this is the  
3 appropriate case. I think you get to a  
4 certain age. I've already reached that age.  
5 I think many of the people in this courtroom  
6 or some of the people in this courtroom have  
7 already reached that age who are already  
8 beyond the average age of retirement and I'm  
9 not sure this is a good case to make a test  
10 case of what power this court has to require  
11 people to work more than - at least on a  
12 temporary basis. I think there are certain  
13 advantages to a debtor to get full-time work  
14 even when they're in a chapter 13 so I have  
15 to think that if that is something that is  
16 available and the debtor feels healthy enough  
17 to - should perhaps engage in full-time work.  
18 And the quarterly reports will help reflect  
19 that. I think under these facts and  
20 circumstances that I am inclined to approve  
21 the modified plan along with the additions  
22 that we discussed [quarterly income reports  
23 and pay stubs required from Kingry and tax  
24 returns] and that will be the order of the  
25 court.

14 Transcript of hearing (February 16, 2005) at 15-16 (emphasis  
15 added).

16 After a further exchange with Kinder in which Kinder again  
17 expressed his doubt that Kingry's health prevented her from  
18 working more hours, the bankruptcy court amplified the basis for  
19 its ruling:

20 I did not base this on some concern about the  
21 debtor's medical ability to work full time.  
22 I'm assuming she could work more hours than  
23 she is working. That's not what I ruled. I  
24 ruled, given her age, that I don't think we're  
25 in a position to require her to do more if  
26 she's doing enough to support the modified  
27 plan so it's feasible. On the other hand, I  
28 think that given her level of income, this is  
the most she can be expected to pay over the  
course of these proceedings. You mentioned  
living expenses, payment to the trustee, and  
these are the things she has to deal with. We  
all know that most people like to have a few  
luxuries so that's the incentive to work  
harder and that will be reflected in these  
quarterly reports and the court has retained

1 jurisdiction to revisit the question at any  
2 appropriate time once it's brought to the  
3 court's attention by an interested party based  
4 upon this quarterly report and the tax returns  
and with that I think we've said everything  
that's going to be said today on this issue  
and that's the order of the court.

5 Transcript of hearing (February 16, 2005) at 17-18.

6 The bankruptcy court entered its order granting Kingry's  
7 motion and approving the modification of Kingry's plan on March  
8 21, 2005. Kinder timely filed this appeal on April 1, 2005.

#### 9 JURISDICTION

10 The bankruptcy court had jurisdiction to approve a  
11 modification of a confirmed chapter 13 plan under 28 U.S.C.  
12 §§ 1334 and 157 (b) (1) and (2) (L). This Panel has jurisdiction  
13 over this appeal under 28 U.S.C. § 158(b) (1).

#### 14 STANDARD OF REVIEW

15 The bankruptcy court's rulings with respect to plan  
16 modification are reviewed for abuse of discretion. Sunahara v.  
17 Burchard (In re Sunahara), 326 B.R. 768, 772 (9th Cir. BAP 2005);  
18 Powers v. Savage (In re Powers), 202 B.R. 618, 621 (9th Cir. BAP  
19 1996). An abuse of discretion is "a plain error, discretion  
20 exercised to an end not justified by the evidence, a judgment that  
21 is clearly against the logic and effect of the facts as are  
22 found." Rabkin v. Oregon Health Sciences University, 350 F.3d  
23 967, 977 (9th Cir. 2003).

24 Whether a plan modification has been proposed in good faith  
25 by the debtor is a question of fact, and the bankruptcy court's  
26 findings on that issue are reviewed for clear error. Downey Sav. &  
27 Loan Ass'n v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir.  
28 1987).

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**ISSUE**

Did the bankruptcy court abuse its discretion in approving the modification of the plan?

**DISCUSSION**

Modification of a confirmed chapter 13 plan is authorized by § 1329(b) (1), which provides, in part:

At any time after confirmation of the plan, but before the completion of payments under such plan, the plan may be modified, upon request of the trustee . . . , to --

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan; . . . .

11 U.S.C. § 1329(a) (1).

Modification of a confirmed plan involves, essentially, a new plan confirmation, and the modified plan must comply with the statutory requirements for confirmation of a plan. Max Recovery, Inc. v. Than (In re Than), 215 B.R. 430, 434 (9th Cir. BAP 1997). Under § 1329(b) (1), "the [confirmation] requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section." One of these requirements, § 1325(a) (3), requires that a plan (or in this case, a modification to a confirmed plan) be proposed by the debtor in good faith. Kinder argues here that Kingry's proposed modification was not proposed in good faith.<sup>7</sup>

The burden of establishing that a plan is submitted in good faith is on the debtor. Fidelity & Casualty Co. Of New York v.

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<sup>7</sup> Trustee did not appeal the bankruptcy court's order. In its brief, Trustee's position is that the bankruptcy court did not abuse its discretion in approving the modification. Trustee's Opening Br. at 3.



1 Warren (In re Warren), 89 B.R. 87, 93 (9th Cir. BAP 1988).

2 Further, the bankruptcy court has an independent duty to determine  
3 that a chapter 13 plan is proposed in good faith. Villanueva v.  
4 Dowell (In re Villanueva), 274 B.R. 836, 841 (9th Cir. BAP 2002).

5 "As good faith under § 1325(a)(3) is neither defined by the  
6 statute nor explained in legislative history, courts in this  
7 circuit have adopted a multi-factor, case-by-case approach to the  
8 good faith inquiry." In re Villanueva, 274 B.R. at 841. It has  
9 long been the test in this circuit that the bankruptcy court  
10 review the totality of the circumstances in deciding whether good  
11 faith has been shown. Goeb v. Heid (In re Goeb), 675 F.2d 1386,  
12 1390 (9th Cir. 1982).

13 The BAP has developed a list of factors to be considered by  
14 the bankruptcy court in determining good faith, which include, but  
15 are not limited to: (1) the amount of the proposed payments and  
16 the amount of the debtor's surplus; (2) the debtor's employment  
17 history, ability to earn, and likelihood of future increases in  
18 income; (3) the probable or expected duration of the plan; (4) the  
19 accuracy of the plan's statements of the debts, expenses and  
20 percentage of repayment of unsecured debt, and whether any  
21 inaccuracies are an attempt to mislead the court; (5) the extent  
22 of preferential treatment between classes of creditors; (6) the  
23 extent to which secured claims are modified; (7) the type of debt  
24 sought to be discharged, and whether any such debt is  
25 dischargeable in chapter 7; (8) the existence of special  
26 circumstances such as inordinate medical expenses; (9) the  
27 frequency with which the debtor has sought relief under the  
28 Bankruptcy Code; (10) the motivation and sincerity of the debtor

1 in seeking chapter 13 relief; and (11) the burden which the plan's  
2 administration would place upon the trustee. In re Warren, 89  
3 B.R. at 93.

4 The Ninth Circuit has taken a more general approach in  
5 reviewing whether a debtor's plan is proposed in good faith.  
6 Factors it has relied upon include the substantiality of proposed  
7 plan payments; whether the debtor has misrepresented facts in the  
8 plan; whether the debtor has unfairly manipulated the Bankruptcy  
9 Code; and whether the plan is proposed in an equitable manner. In  
10 re Goeb, 675 F.2d at 1390.<sup>8</sup> And "[w]hile there is no substantial  
11 repayment requirement in the Ninth Circuit, In re Goeb, 675 F.2d  
12 at 1389, the debtor's proposed plan term and percentage payment to  
13 unsecured creditors are factors the court may consider in  
14 determining good faith. In re Warren, 89 B.R. at 93. Nominal  
15 payment by the debtor does not necessarily constitute bad faith.  
16 Id. at 93." In re Villanueva, 274 B.R. at 841.

17 There is no requirement that a debtor demonstrate that she  
18 has experienced a substantial, unanticipated change in  
19 circumstances to justify a modification proposing a reduction in  
20 plan payments. In re Powers, 202 B.R. at 622. And § 1329(b)(1)  
21 does not incorporate the requirements in § 1325(b)(1) that, if  
22 challenged, the debtor show that all of her projected disposable  
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24 <sup>8</sup> In resolving the similar issue of whether a debtor has  
25 engaged in "bad faith" as cause for dismissal of a chapter 13  
26 case, the court has instructed bankruptcy courts to consider:  
27 whether the debtor misrepresented facts in a petition, unfairly  
28 manipulated the Bankruptcy Code in the plan, or otherwise filed  
the petition or plan in an inequitable manner; the debtor's  
history of filings and dismissals; whether the debtor only  
intended to defeat state court litigation; and whether egregious  
behavior is present. Leavitt v. Soto (In re Leavitt), 171 F.3d  
1219, 1224 (9th Cir. 1998).

1 income is devoted to making plan payments under the modified plan.  
2 In re Sunahara, 326 B.R. at 781-782. Instead, a debtor's  
3 circumstances, and her proposal to deal with them in the modified  
4 plan, are considered in the context of the good faith analysis.  
5 Id.

6 The Ninth Circuit has emphasized the importance of the  
7 bankruptcy court considering all relevant factors in determining  
8 good faith. The court has warned that "[the] bankruptcy courts  
9 cannot substitute a glance [at one good faith factor] for a review  
10 of the totality of the circumstances . . . . If "the [bankruptcy]  
11 court below did not inquire adequately into whether the [debtor]  
12 acted in good faith, we must reverse and remand. . . ." In re  
13 Goeb, 675 F.2d at 1391.

14 In this case, Kinder and the Trustee argued to the bankruptcy  
15 court that Kingry's proposed modification to her plan failed the  
16 good faith test in part because she did not establish that she  
17 could no longer work full-time, was no longer able-bodied, or that  
18 she had dependents that would preclude her from working a normal  
19 schedule. Kinder also argued that a modification that resulted in  
20 no payment on his unsecured claim was unfair since his debt was  
21 allegedly based upon Kingry's fraud.

22 The bankruptcy court disposed of these arguments in its  
23 comments at the conclusion of the hearing. As the excerpts from  
24 the hearing transcript reflect, the bankruptcy court appeared  
25 hesitant through its ruling to, in effect, compel a debtor to work  
26 full-time. The court noted that Kingry's willingness and ability  
27 to work could be demonstrated over the term of the plan and could  
28 be monitored by the Trustee, the court and concerned creditors by

1 requiring her to submit periodic income reports to Trustee. The  
2 court indicated that "under these facts and circumstances," the  
3 modification should be approved. Then, in response to further  
4 comments by Kinder, the court summarized its ruling by saying:

5 I did not base this on some concern about the  
6 debtor's medical ability to work full time.  
7 I'm assuming she could work more hours than  
8 she is working. That's not what I ruled. I  
9 ruled, given her age, that I don't think we're  
10 in a position to require her to do more if  
11 she's doing enough to support the modified  
12 plan so it's feasible.

13 Transcript of hearing (February 16, 2005) at 17.

14 As noted above, Kingry had the burden of proving that her  
15 modification was submitted in good faith, In re Warren, 89 B.R. at  
16 93, something which the bankruptcy court must determine based on  
17 the totality of circumstances. In re Goeb, 675 F.2d at 1390. To  
18 do so, the case law directs the bankruptcy court to analyze a  
19 variety of factors. These cases also indicate that the bankruptcy  
20 court abuses its discretion if its focus is but a single factor.

21 Here, in response to Kinder's and Trustee's concerns about  
22 Kingry's ability, and willingness, to work full time, the  
23 bankruptcy court seemed to focus upon but a single factor,  
24 Kingry's age. A fair interpretation of the court's comments is  
25 that the court concluded that, given Kingry's age, it could not  
26 force Kingry to work more hours than she was willing to work.  
27 And, in particular, the bankruptcy court made it clear that it was  
28 not relying upon Kingry's health as a reason to support her  
29 decision to work only part-time.

30 To the extent that the bankruptcy court concluded it could  
31 not evaluate Kingry's good faith by considering the amount of

1 hours Kingry was willing to work while in chapter 13, it was  
2 incorrect. Indeed, Kingry's work history and ability to earn,  
3 together with her sincerity and motivation, are two of the Warren  
4 factors. In re Warren, 89 B.R. at 93. And Kingry's decision to  
5 work less than full-time, assuming her health allowed her to work  
6 more hours, is surely a relevant fact under the Goeb approach in  
7 deciding whether she was treating her creditors "equitably" in her  
8 modified plan. In re Goeb, 675 F.2d at 1390. Based upon our  
9 review of the record, while Kingry's age was one consideration in  
10 the analysis,<sup>9</sup> it certainly was not the only, nor even necessarily  
11 the most important, factor the bankruptcy court should have  
12 considered in its overall good faith review.

13 The amount Kingry was paying her unsecured creditors under  
14 the modified plan, in this case zero, was another important factor  
15 for the bankruptcy court to consider under these facts. While  
16 there is no requirement that she pay a substantial amount to her  
17 creditors, the fact that she was proposing to pay unsecured  
18 creditors nothing deserved consideration by the bankruptcy court.

19 In addition, Kinder argued that Kingry lacked good faith  
20 because the modified plan would pay him nothing on his alleged  
21 fraud claim, which he contended would be excepted from discharge  
22 in a chapter 7 case. The bankruptcy court should have addressed  
23 this argument in making its decision.

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25 <sup>9</sup> We are aware of no case law forbidding a bankruptcy court  
26 from considering the age of a chapter 13 debtor in determining  
27 that debtor's ability to make plan payments and good faith. In  
28 other, similar contexts, the debtor's age is often a critical  
factor. For example, it is a significant Brunner factor in  
determining whether a partial, full or no discharge is appropriate  
in determining "undue hardship" in student loan cases. See, e.g.,  
Gonzalez v. Davis (In re Davis), 323 B.R. 732, 736 (9th Cir. BAP  
2005); In re Birrane, 287 F.R. 490, 499 (9th Cir. BAP 2002).

1           The Ninth Circuit reviewed a similar argument in Lawrence  
2 Tractor Co. v. Joseph S. Gregory (In re Gregory), 705 F.2d 1118  
3 (9th Cir. 1983). There, Gregory, a chapter 13 debtor, owed  
4 Lawrence \$16,540.58 as the result of a state court judgment  
5 finding that Gregory had committed an embezzlement. Lawrence did  
6 not file a complaint to determine the dischargeability of his  
7 claim against Gregory until two months after the bankruptcy court  
8 confirmed Gregory's chapter 13 plan. The Ninth Circuit ruled that  
9 the debt would be discharged because, having permitted the plan  
10 confirmation order to become final, Lawrence was precluded from  
11 raising an objection in subsequent proceedings. In re Gregory,  
12 705 F.2d at 1121. However, the court observed in a footnote:

13                     The facts presented to this court suggest that  
14                     Gregory's plan might have been vulnerable to  
15                     challenge on the absence of good faith ground.  
16                     Bankruptcy courts have held that although the  
17                     use of Chapter 13 to obtain the discharge of  
18                     debts nondischargeable under chapter 7 by  
19                     itself is not sufficient to prove bad faith,  
20                     it is a factor to be considered with others  
21                     (citations omitted).

22 In re Gregory, 705 F.2d at 1120, n. 4 (emphasis added).

23           The record shows Kingry may be accomplishing something  
24 through her plan modification that she might not be able to  
25 achieve in a chapter 7 case: discharge of Kinder's debt for actual  
26 fraud. How a plan treats potentially nondischargeable debt is one  
27 of the Warren factors. It is also relevant to the equitable  
28 analysis prescribed under Gregory. Because the bankruptcy court  
apparently did not consider Kinder's argument in its decision, we  
cannot know whether this factor, or the other various Warren  
factors, were considered by the bankruptcy court in deciding

1 "under these facts and circumstances," that the modification  
2 should be approved.

3 In this circuit, a trial court's findings must be  
4 sufficiently explicit on the ultimate issues to allow an appellate  
5 court to understand clearly the basis of the trial court's  
6 decision, and to enable the reviewing court to determine the  
7 grounds on which the trial court relied in making its decision.  
8 Louie v. United States, 776 F.2d 819, 822-23 (9th Cir. 1985). As  
9 observed above, in a chapter 13 case, if the bankruptcy court does  
10 not adequately explain whether the debtor is proposing a plan in  
11 good faith, we must remand to the bankruptcy court for further  
12 findings. In re Goeb, 675 F.2d at 1391. In this case, other than  
13 Kingry's age, it unclear from its decision what other factors the  
14 bankruptcy court might have considered in finding that the  
15 modification had been proposed in good faith. As a result, the  
16 bankruptcy court's decision to approve the modification must be  
17 remanded for a more complete explanation as to the basis for its  
18 ruling.

19 **CONCLUSION**

20 The order of the bankruptcy court granting Kingry's motion  
21 and approving the modification of Kingry's confirmed chapter 13  
22 plan is **VACATED** and this case is **REMANDED** to the bankruptcy court  
23 for further proceedings consistent with this decision.

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