

Interesting cases/rulings/comments from the Court from the 8/24/11 Tyler Docket:

Confirmation Docket:

11-20067 *Brickett*: Facts: The above-median debtor had proposed a plan that allowed the Debtor to pay for the Debtor's unemployed girlfriend's car and storage building. The Trustee objected to the plan in that it failed to provide all of the Debtor's projected disposable income to the plan by the Debtor's paying for this car and storage building. Without the necessity of a hearing, the Debtor decided to request an initial denial of the confirmation of the proposed plan.

Ruling: The Court did not have an opportunity to rule on the issue since the Debtor requested an initial denial of the proposed plan.

Result: Although the Court did not have an opportunity to rule upon the issue, I think that, in light of the Court's ruling in the case noted below, the Court would have denied confirmation of the proposed plan in that funds were being diverted from the benefit of the unsecured creditors to pay for a car and storage building for someone who was not a member of the Debtor's household. The Trustee will be carefully reviewing plans that provide for payment of vehicles and other items for third parties that are not members of the debtors' household.

11-20132 *Weir*: Facts: This case involved an above median income debtor who was proposing to pay for three vehicles through the plan. One vehicle was being used by the Debtor to go to and from work (the Trustee had no objection to that vehicle). One vehicle was driven by the Debtor's unemployed ex-wife who was now living in the Debtor's house (the Debtor and his ex-wife were attempting to reconcile). The third vehicle was driven by the Debtor's 18 year daughter to go to and from college (that she had not yet started) and to help drive her siblings to and from high school (band practice, football practice, and other school activities). The Trustee objected to the necessity of the third vehicle, arguing that the third vehicle was only a convenience. The Debtor argued that the third vehicle was necessary based upon the facts of the case.

Ruling: After hearing the testimony of the Debtor, the Court denied confirmation of the plan, thereby agreeing with the Trustee that the third vehicle was a convenience, not a necessity. The Court, in dictum, appeared to question the necessity of providing a vehicle for the ex-wife who was not a party to the Debtor's household.

Result: As noted above, the Trustee will be looking closely at cases that provide for the payment of third vehicles or other items being paid through the plan that do not appear to be a necessity for the effective reorganization of the debtors' finances (although such vehicles or other items would be convenient to have), especially in cases filed by above median income debtors that must be in a 60 month plan. The payment for such third vehicles or other items cannot be made at the expense of the unsecured creditors. The Trustee also believes that the Court's comments also answers in the negative the question raised in the first case on whether the debtor may pay for a vehicle and other items for a girlfriend or other non-member of the debtor's household.

Modification Docket:

09-60014 *Lehr*: Facts: These Debtors were originally represented by attorney Brandon Lane. The Debtors, for whatever reason, needed to modify the terms of their confirmed plan. Mr. Lane, as their original attorney, is no longer practicing law and was not available to represent them in the modification. The Debtors retained William Lively, Jr. who prepared and filed the motion to modify. In the motion to modify, Mr. Lively requested attorney's fees in the amount of \$800.00. In that the requested fees were higher than what was normally charged in a motion to modify in the Eastern

District of Texas, the Trustee requested that this matter be placed on the call docket for approval of the attorney's fees.

Ruling: The Court approved the \$800.00 fees without the necessity of the attorney preparing and filing a formal fee application.

Result: An attorney that takes over another attorney's case and, as a result of such, does more work in reviewing the case, will be able to charge a reasonable fee for the subsequent services rendered due to the additional work in reviewing the case. In this case, the fees of \$800.00 for the motion to modify was approved by the Court due to the additional work performed by the attorney in order to prepare the motion to modify.