

Re: Cases from the 12/7/11 Beaumont Docket

To the Bar:

Below is a summary of the cases that I feel were significant from the last Beaumont docket. This Memorandum will be posted as "12/7/11 Beaumont Docket" under the tab entitled "Trustee's e-mails" on my website at www.ch13tyler.com.

Confirmation Docket:

11-10577 *Pena*: **Facts:** The only issues before the Court were whether the \$630.00 per month expense on the Debtors' budget relating to the private school for two of the Debtors' children was a reasonable and necessary expense and whether the plan as proposed was feasible based upon the Debtors' current income and expenses. The Debtor Husband is a self employed mechanic and the Debtor Wife is a housewife. The Debtors are below median income debtors. The last two profit and loss statements as filed with the Court indicated that the Debtors' gross income from the business had dropped from the estimate as contained in the budget. However, the Debtors were current on their Chapter 13 plan payments and their post-petition mortgage payments. Otherwise, the Debtors' budget was very modest, with no expense items for cell phones, recreation, and charitable contributions. The Debtors testified that they were behind on all of their bills (pre-petition mortgage payments, car payments, etc.) when they filed their case.

The Debtors testified that they wanted to maintain their children in private school for three reasons: first, so that the children would receive a Christian based education at the Christian private school; second, so the children would be safe from the apparent problems with the public schools in the Port Arthur Independent School District (drugs, violence, ranked in the bottom 5% of schools in the State of Texas); and finally, the Debtors use their income tax refund (consisting primarily of earned income credit) each year to pay for the private school.

Ruling: The Court held that the evidence presented indicated that there was a compelling reason for the children to be enrolled in a private school due to the apparent problems with the public schools in the Port Arthur Independent School District. The Court did not put much weight in the Debtors' desire to have their children to receive a Christian based education. The Court found feasibility of the plan in that the Debtors were in fact current on their plan payments and post-petition mortgage payments as well as the Debtors' ability to make the private school tuition expense from their tax refunds every year. The Court did reiterate the general position that private school expenses are not reasonable and necessary expenses without a compelling reason for such.

Result: Private school expenses will continue to draw an objection from the Trustee as not reasonable and necessary. The Court's ruling reiterated that this is a case by case determination. The Debtors' attorney did a very good job in presenting the testimony and other evidence to the Court outlining the problems with the Port Arthur School District. Exhibits included the 2011 District Accountability summary for Port Arthur School District as well as news paper articles about the violence and other problems in its schools.

11-90230 *Ferguson*: **Facts:** These below median income debtors enjoy to occasionally gamble. At their 341 meeting, the Debtors testified they intended to continue to gamble. The Trustee objected to the plan that they failed to dedicate all of their projected disposable income due to this gambling. The Trustee and the Debtors reached an agreement that an additional provision be added to the confirmation order that any gambling winnings be turned over to the Trustee.

Ruling: The Court rejected the proposed language in the confirmation order in that such implicitly authorizes the Debtors to gamble. Instead, the Court substituted the following provision in the confirmation order:

The Debtors are not authorized to utilize estate funds for gambling purposes during the pendency of the plan. Any future gambling winnings procured in the plan period by the Debtors will be dedicated to the Plan and added to the plan base as a sanction for the violation of this prohibition.

Result: The Trustee believes that the Court's rejection of the language contained in the original confirmation order along with the out-right prohibition of the use of estate funds for gambling purposes in the new provision is evidence of the Court's support of the proposition that gambling (with the risk of losses associated therewith) is not a reasonable and necessary expense and possible evidence of bad faith in the prosecution of their bankruptcy.

Dismissal Docket:

11-10646: *Davis*: **Facts:** This case was filed on 11/1/11 for the purported purpose of stopping a foreclosure on the Debtor's home. At that point, the Debtor failed to file any schedules, plan, statements, or other documents with the Court. The Debtor failed to provide the Trustee with any documentation that the Trustee requests of every Debtor prior to her 341 creditors' meeting. The Debtor failed to make any plan payments to the Trustee. The Trustee filed his Motion to Dismiss with Prejudice for 120 days. The Debtor filed her response to the Motion to Dismiss, thereby indicating that she did not oppose the dismissal of the case but did oppose the dismissal of the case with prejudice for 120 days. The attorney for the Debtor, who is not a regular filer in the Eastern District of Texas, talked by telephone both to the Trustee's Staff Attorney and Trustee, thereby requesting that the dismissal with prejudice be waived. Upon the Trustee's refusal to waive the request with prejudice, the attorney for the Debtor accused the Trustee of "loosing" the Debtor's home to foreclosure. The attorney for the Debtor indicated that she and the Debtor would appear in Court to oppose the dismissal of the case with prejudice.

Ruling: The Court dismissed the case with prejudice for re-filing bankruptcy for a period of 120 days. Neither the Debtor or her attorney appeared to oppose the dismissal of the case.

Result: The Trustee will not waive his request for the dismissal of a pre-confirmed case with prejudice for 120 days. Exception: Based upon past rulings of the Court, the Trustee will waive the 120 day prejudice period where the debtor is a pro se debtor and the debtor is in Court requesting that the prejudice period be waived so the debtor can hire an attorney to re-file his or her case. The argument that the Trustee has cost the Debtor in this case the Debtor's home (assuming that the mortgage

company forecloses on the house during the next 120 days) is ridiculous. If the house is foreclosed upon, the Debtor is the cause for losing her home based upon the Debtor's failure to prosecute her bankruptcy once the case was filed.

Trustee's Miscellaneous Docket:

11-10136 *McCleskey*: **Facts:** The plan, as confirmed, provided for the Trustee to cure the secured arrears claim of the home owners' association dues owed on the Debtor's home. The home owners' association (incorrectly) filed a priority claim for these arrears. The Trustee, in his Trustee's Recommendation Concerning Claims (TRCC), noted that he was not going to pay the home owners' association in that no secured claim was filed and further noted that there was a priority claim filed by the home owners' association that was not provided for in the plan. The Debtor objected to the TRCC, thereby contending that the TRCC should be amended to provide for the payment of the priority claim.

Ruling: Judge Parker approved the TRCC as filed, noting that the Debtor's remedy was to object to the priority claim to reclassify such as a secured claim. The Judge noted that the objection to claim should, however, be very specific on the facts so that the Judge will understand what is going on with the objection.

Result: Judge Parker has consistently held that the TRCC is not a modification of the terms of the confirmed plan but simply a reconciliation of the claims as filed with the terms of the confirmed plan.

John J. Talton
Chapter 13 Trustee
Eastern District of Texas