UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

IN RE:

BRYAN D. MOLINA **CASE NO. 14-21469**
ELIZABETH A. MOLINA
DEBTORS

IN RE:

JAMES R. CORNETT **CASE NO. 14-21578**
LINDA M. CORNETT
DEBTORS

ORDER

These cases raise a narrow but recurring question on the calculation of the means test formula in chapter 7. Debtors Molina and Debtors Cornett (collectively, "the Debtors"), in completing their respective means test forms, both claimed vehicle operation expenses $400 greater than the amount authorized by the Internal Revenue Service's (IRS) Local Standards, based on an "older-vehicle allowance" they claim is provided by an Internal Revenue Manual. The Court holds that the older-vehicle allowance is not deductible in the means test because the means test only incorporates the IRS's National and Local Standards, not the entirety of the Internal Revenue Manual. The Debtors' vehicle operation expense deductions are overclaimed and when the correct deduction is applied, the Debtors' cases are presumptively abusive under the means test.

Facts and Procedural History

The Debtors filed voluntary petitions under chapter 7 in October 2014. Both the Molinas and the Cornetts claimed "vehicle operation expenses," on Form B22A, line 22A, of $888 per

month to operate two cars. The then-prevailing Local Standards for the South Census Region provided a monthly allowance of $488 per month for debtors operating two cars. The Debtors also claimed vehicle ownership expenses on Form B22A, lines 23-24 ("Ownership Expenses").

The U.S. Trustee filed motions to dismiss for abuse in the Debtors' cases. [Doc. 19 in Case No. 14-21469; Doc. 14 in Case No. 14-21578.] In these motions, the U.S. Trustee argued that the Debtors' vehicle operation expense deductions were overclaimed by the amount of an older-vehicle allowance which was not applicable in the Debtors' cases, and that, upon correcting for this error, the Debtors' cases were presumptively abusive under the means test formula. In the alternative, the U.S. Trustee argued that if the presumption of abuse did not arise, the totality of the Debtors' financial circumstances demonstrated abuse.

The Debtors, both represented by the same counsel, filed identical responses to the U.S. Trustee's motions to dismiss. The Court heard argument on the U.S. Trustee's motions, at which counsel for the Debtors and the U.S. Trustee both represented that the issues with respect to the two motions were identical. The Court took the motions under submission.

Analysis

Section 707(b)(1) of the Code provides that the Court may dismiss or, with the debtor's consent, convert a case filed under chapter 7 if it finds that the granting of relief under chapter 7 would be an abuse. 11 U.S.C. § 707(b)(1). Section 707(b)(2)(A)(i) directs that in determining whether granting a debtor relief under chapter 7 would be an abuse, the Court shall presume abuse if a debtor's current monthly income, less certain standardized deductions, exceeds a certain amount. 11 U.S.C. § 707(b)(2)(A)(i). This formula is colloquially known as the means test. The means test instructs debtors to subtract from their current monthly income two principal categories of expenses. The first is the monthly expense amounts specified under the

IRS National and Local Standards; the second is a debtor's actual monthly expenses for certain categories that the IRS specifies as "Other Necessary Expenses." 11 U.S.C. § 707(b)(2)(A)(ii)(I).

If the presumption of abuse arises under the means test, a debtor may only rebut that presumption by demonstrating "special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." 11 U.S.C. § 707(b)(2)(B)(i). If the presumption does not arise, or is rebutted, § 707 instructs the Court to consider, in assessing abuse, whether a debtor filed his petition in bad faith, or whether the totality of the circumstances of a debtor's financial situation demonstrates abuse. 11 U.S.C. § 707(b)(3).

In these cases, the U.S. Trustee disputes the Debtors' claimed amount under the National and Local Standards for their vehicle operating expenses. The Debtors assert that, in addition to the $488 per month for debtors operating two cars contained in the Local Standards themselves, they may claim an "older vehicle allowance" of an additional $200 per car, for cars that are either six years old or have more than 75,000 miles. The U.S. Trustee, however, argues that this older-vehicle allowance is not available to these Debtors who claim vehicle Ownership Expenses.

The U.S. Trustee cites *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61 (2011), in support of his position. *Ransom*, while supporting the result requested by the Trustee, does not support the U.S. Trustee's rule. In *Ransom*, the Supreme Court held that a debtor who does not make loan or lease payments may not claim the Ownership Expense deduction under the means test. *See Ransom*, 562 U.S. at 80. In reaching this result, the Court noted that debtors who have paid off their car loans, but still incur other expenses in operating the cars they own, can deduct those expenses under the vehicle operating expense deduction. *Id.* at 71-72. *Ransom* does not

say (or suggest) that a debtor who is eligible to claim the vehicle Ownership Expense deduction is ineligible to claim a vehicle operating expense deduction. To the contrary, the Court's opinion indicates that the two deductions play different and complementary roles–one covering loan and lease payments and the other covering insurance and maintenance costs. Moreover, *Ransom* does not discuss, or even mention, an older-vehicle allowance.

The real question in these cases is not the details of the older-vehicle allowance's application, but whether § 707 allows debtors to deduct it under any circumstance. The subject of whether debtors can deduct the older-vehicle allowance under the heading of the vehicle operating expense has come under increased judicial scrutiny in recent years, and almost all the courts that have considered the issue have concluded debtors may not take the allowance. *See In re Sires*, 511 B.R. 719 (Bankr. S.D. Ga. 2014); *Drummond v. Luedtke (In re Luedtke)*, 508 B.R. 408 (B.A.P. 9th Cir. 2014); *In re Sisler*, 464 B.R. 705 (Bankr. W.D. Va. 2012). The reasons are simple.

The Code authorizes the deduction of, as relevant here, "applicable monthly expense amounts specified under the National Standards and Local Standards." 11 U.S.C. § 707(b)(2)(A)(ii)(I). The Local Standards' vehicle operating expense authorizes a flat deduction for all cars, regardless of age or mileage. The Internal Revenue Manual's discussion of the Local Standards, on which the Supreme Court relied in *Ransom* in construing the vehicle Ownership Expense, likewise says nothing about the older-vehicle allowance. *See* I.R.M. 5.15.1.9 (2014).

The older-vehicle allowance makes its only appearance in the Manual in a chapter that "provides procedures for collection employees to follow when considering a taxpayer's proposal to compromise." I.R.M. 5.8.1.1 (2013). In a subsection of this chapter entitled "Transportation

Expenses," the Manual instructs "[e]mployees investigating OICs [offers in compromise]" to first allow "the full operating costs portion of the local transportation standard"–that is, the vehicle operating expense specified in the Local Standards. I.R.M. 5.8.5.22.3 (2013). The Manual further provides:

> In situations where the taxpayer has a vehicle that is currently over six years old or has reported mileage of 75,000 miles or more, an additional monthly operating expense of $200 will generally be allowed per vehicle (up to two vehicles when a joint offer is submitted).

Id. This guidance to IRS collections employees forms no part of the Local Standards. Indeed the Manual, by its own terms, treats the Local Standards' vehicle operating cost deduction and the suggested older-vehicle allowance as distinct, instructing collections employees to first deduct the former and then the latter. The Manual's example of the allowance's application, referring to "the standard of $231 per month plus $200 per month operating expense (because of the age of the vehicle)," reinforces the distinction. *Id.*

While the Manual speaks for itself, *Ransom* further supports the inapplicability of the Manual's guidance to IRS employees on the means test operating expense category. In *Ransom*, the Court relied on the Manual's guidance that the Ownership Expense is unavailable to debtors that own their cars free and clear. But the Court hastened to add that "the IRS's guidelines . . . of course cannot control if they are at odds with the statutory language," *Ransom*, 562 U.S. at 72, and that § 707 "does not incorporate or otherwise import the IRS's guidance." *Id.* at 73 n.7 (internal quotation marks omitted). Accordingly, § 707 does not incorporate the older-vehicle allowance. Further, the Manual's discussion of the older-vehicle allowance cannot control because it would be at odds with § 707's limitation of the vehicle operating expense deduction to the monthly expense amount specified in the National and Local Standards. Applying the

Manual's older-vehicle allowance would not interpret the National and Local Standards; it would "*supplement* the National Standards and Local Standards." *Luedtke*, 508 B.R. at 415.

For these reasons, the older-vehicle allowance is not deductible under the vehicle operating expense deduction as the Debtors claim. When the Debtors' means tests are corrected for this error, the presumption of abuse arises in the Debtors' cases. The Debtors may rebut the presumption of abuse, but only by showing special circumstances in the manner described under § 707(b)(2)(B). The U.S. Trustee's arguments under § 707(a)(3), which only apply in cases where the presumption of abuse does not arise or is rebutted, are not ripe for decision.

The Debtors shall have fourteen days within which to take action consistent with this order; otherwise, the within cases shall be dismissed.

Signed By:
Tracey N. Wise
Bankruptcy Judge
Dated: Wednesday, March 11, 2015
(tnw)