NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE ANGELA DAWN GALLAGHER, Debtor.	BAP No. KS-07-051
COMMUNITY AMERICA CREDIT UNION, Appellant, v. WILLIAM GRIFFIN, Trustee, ANGELA DAWN GALLAGHER, and NEBRASKA FURNITURE MART, Appellees.	Bankr. No. 06-22047 Chapter 13 ORDER AND JUDGMENT*

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

Before CLARK, CORNISH, and MICHAEL, Bankruptcy Judges.[1]

CORNISH, Bankruptcy Judge.

Community America Credit Union ("Creditor") appeals the bankruptcy court's Order Confirming Chapter 13 Plan ("Confirmation Order") in the case of Angela Dawn Gallagher ("Debtor"). Creditor objects to the Confirmation Order

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

[1] The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

because it does not provide for payment of postpetition interest on a vehicle purchased by Debtor within 910 days prior to filing bankruptcy. Because we believe the bankruptcy court erred in interpreting the so-called "hanging paragraph" of 11 U.S.C. § 1325,[2] we reverse.

I. BACKGROUND

On October 29, 2005, Debtor purchased a vehicle for her personal use, borrowing money from Creditor and giving Creditor a lien on the vehicle. The purchase took place within the 910 day period preceding Debtor's filing of her Chapter 13 petition, which occurred on December 11, 2006. Debtor's proposed Chapter 13 Plan provided that the amount of Creditor's secured claim was $11,534.15, and that Debtor would retain the vehicle, paying Creditor $100 per month for 57 months.[3] Creditor filed a proof of claim in the amount of $12,070.43, and objected to the proposed Chapter 13 Plan, in part, because it did not provide for any interest on Creditor's claim.[4] The bankruptcy court denied Creditor's objection, but ordered the "Claim of Community America Credit Union to be paid in full without post-petition interest."[5] The bankruptcy court then entered its Confirmation Order.[6] Creditor brings a timely appeal.

II. APPELLATE JURISDICTION

This Court has jurisdiction to hear timely-filed appeals from "final judgments, orders, and decrees" of bankruptcy courts within the Tenth Circuit,

---

[2] Unless otherwise indicated, all future statutory references are to the Bankruptcy Code, Title 11 of the United States Code.

[3] *See* Chapter 13 Plan, *in* Appellant's App. at 40.

[4] *See* Continuing Objection to Confirmation of Proposed Amended Chapter 13 Plan, *in* Appellant's App. at 52.

[5] *See* Minute Sheet dated April 5, 2007, *in* Appellant's App. at 55.

[6] *See* Order Confirming Chapter 13 Plan, *in* Appellant's App. at 56.

unless one of the parties elects to have the district court hear the appeal.[7] Creditor's notice of appeal was timely filed within ten days of entry of the Order. Neither party elected to have this appeal heard by the United States District Court for the District of Kansas. The parties have therefore consented to appellate review by this Court.

A decision is considered final "if 'it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'"[8] An order confirming a Chapter 13 plan is a final, appealable order under 28 U.S.C. § 158(a).[9] Thus, the decision of the bankruptcy court is final for purposes of review.

III. STANDARD OF REVIEW

The parties do not dispute any facts in this case. At issue is the interpretation of § 1325. The bankruptcy court's interpretation of a statute raises a question of law, subject to *de novo* review.[10] *De novo* review requires an independent determination of the issues, giving no special weight to the bankruptcy court's decision.[11]

IV. ANALYSIS

The bankruptcy court did not issue a memorandum opinion expressing its rationale for overruling Creditor's objection. But this trial judge has done so in past cases involving the same 910-claim interest issue. Therefore, presumably, the

---

[7] 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-1.

[8] *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

[9] *In re De Anda-Ramirez*, 359 B.R. 794, 796 (10th Cir. BAP 2007); *Citifinancial Auto v. Hernandez-Simpson*, 369 B.R. 36, 39 (D. Kan. 2007).

[10] *In re Overland Park Fin. Corp.*, 236 F.3d 1246, 1251 (10th Cir. 2001).

[11] *Salve Regina Coll. v. Russell*, 499 U.S. 225, 238 (1991).

bankruptcy court denied postpetition interest based on the reasoning it previously set forth in *In re Wampler*.[12] In *Wampler*, the bankruptcy court ruled that the hanging paragraph of § 1325(a) prevented a 910-claim from being an "allowed secured claim." Therefore, it held that a plan did not have to treat it in the manner specified in §1325(a)(5)(B)(ii), and payment of interest on such claim is not required. We respectfully disagree.

The so-called "hanging paragraph" of § 1325(a) was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") and provides as follows:

> For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day [sic] preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing[.][13]

Section 506(a)(1) provides in part that:

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim.[14]

The question before this Court is whether the hanging paragraph of § 1325 prevents a 910-claim from being treated as an "allowed secured claim" under § 506(a)(1), including the accrual of postpetition interest.

This very issue on appeal has been litigated rather extensively in the nation's bankruptcy courts, with the majority of courts concluding that a debtor

---

[12] 345 B.R. 730 (Bankr. D. Kan. 2006).

[13] 11 U.S.C. § 1325(a).

[14] 11 U.S.C. § 506(a)(1).

must treat a 910-claim as an "allowed secured claim" in the full amount of the loan balance on the petition date.[15] The issue has now reached many of the appellate courts, and has very recently been addressed in *In re Wilson*,[16] a published opinion of this Court, as well as in *Citifinancial Auto v. Hernandez-Simpson*,[17] a published opinion of the United States District Court for the District of Kansas. Because we agree with both the result and the analysis in these earlier decided cases, we see no reason to duplicate efforts and repeat their analysis here. Those courts correctly concluded that a debtor must pay the full amount of the claim, plus interest at the "prime-plus" rate prescribed by *Till v. SCS Credit Corp*.[18] As quoted by both the *Wilson* and *Citifinancial Auto* courts:

> The existence of a claim is usually determined by non-bankruptcy substantive law, whereas valuation of that claim is determined by § 506. A purchase money security interest is secured through the parties' contract and applicable perfection statutes and is secured without operation of the Code. A creditor's secured status is not erased without any further adjudication merely because the hanging paragraph makes the § 506 valuation mechanism inapplicable to 910-day vehicle claims.[19]

Applying this sound reasoning, the bankruptcy court's Confirmation Order is at odds with the result reached by these courts because it does not provide for payment of interest on Creditor's 910-claim.

V. CONCLUSION

Therefore, the Confirmation Order of the United States Bankruptcy Court

---

[15] *See In re Wilson*, KS-06-126, 2007 WL 2405284, at *4 (10th Cir. BAP August 24, 2007); *see also id.* at *2 n.11.

[16] *Id.*, 2007 WL 2405284.

[17] *Citifinancial Auto v. Hernandez-Simpson*, 369 B.R. 36 (D. Kan. 2007). Additionally, the issue has been addressed by the Bankruptcy Appellate Panel of the Sixth Circuit in *In re Taranto*, 365 B.R. 85, 89-91 (6th Cir. BAP 2007).

[18] 541 U.S. 465, 479-80 (2004) (interest must be paid to achieve the present value of the claim).

[19] *In re Montoya*, 341 B.R. 41, 44 (Bankr. D. Utah 2006) (footnote omitted).

for the District of Kansas is reversed and remanded for further proceedings consistent with this Order and Judgment.