SO ORDERED

SIGNED this 22 day of April, 2026.

Pamela W. McAfee
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:

JORDAN REESE CLARK
KADRI CLARK

DEBTORS

CASE NO.
25-00984-5-PWM
CHAPTER 13

ORDER SUSTAINING TRUSTEE'S OBJECTION TO CONFIRMATION

The matter before the court is the objection to confirmation filed by the chapter 13 trustee (Trustee) on March 4, 2026, D.E. 81, asserting that the chapter 13 debtors Jordan Reese Clark and Kadri Clark will be unable to make payments under the plan and that their plan is not proposed in good faith within the meaning of 11 U.S.C. § 1325(a)(3). A hearing took place in Raleigh, North Carolina on March 12, 2026 (the March Hearing), after which the court took the matter under advisement. After full consideration, and for the reasons that follow, the Trustee's objection is sustained.

PROCEDURAL BACKGROUND

Jordan Reese Clark and Kadri Clark filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code on March 18, 2025. The Bankruptcy Administrator (BA) filed a notice of presumed abuse on May 13, 2025, D.E. 24, and later a motion to dismiss the case for abuse

pursuant to 11 U.S.C. §§ 707(b)(1), (b)(2) and (b)(3) on grounds that the Clarks did not accurately state or calculate their income, that a proper calculation would create a presumption of abuse in the case, and that the totality of the circumstances demonstrated abuse. D.E. 31. An amended motion to dismiss expanded upon the bases for dismissal set forth in the original motion, contending, as relevant here, that the Clarks' records revealed what the BA characterized as unreasonable budgeting, extravagant spending, inaccurate schedules, and other markers of bad faith, with those records supporting his alternative motion to dismiss pursuant to § 707(b)(3). *Id.* at 15-18. The Clarks maintained that there was nothing lavish about their spending, such that their chapter 7 case did not constitute an abuse under any statutory provision. A hearing on that motion was conducted on October 14, 2025 (the October Hearing).

In an opinion entered on December 1, 2025,[1] the court allowed the BA's motion to dismiss pursuant to two alternative statutory provisions: Under § 707(b)(1), on grounds that proceeds from the Clarks' cryptocurrency sales should be included within the calculation of the Clarks' current monthly income, which gave rise to a presumption of abuse, and under § 707(b)(3), on grounds that the totality of the circumstances demonstrated abuse. The court permitted the debtors to convert their case from one under chapter 7 to a case under chapter 13, which they elected to do.

The case was converted to chapter 13 by order entered on January 13, 2026, D.E. 67. The Clarks filed their chapter 13 plan and Supplemental Schedules I and J on January 22, 2026, D.E. 75, 77, and their Statement of Current Monthly and Disposable Income (CMI Statement) on February 18, 2026, D.E. 78. The Clarks' Schedule I lists monthly gross income of $16,500 received by Mr. Clark from operation of a real estate business, with that amount being a monthly estimate

[1] This recitation of procedural history includes, without specific attribution, extensive excerpts from this court's prior order of December 1, 2025 (December Order), D.E. 60, because that order discussed the BA's concerns about and the facts pertaining to the Clarks' payment of their children's private school education costs. The same concerns are central to the Trustee's opposition to confirmation.

reflecting what the Clarks describe as seasonal fluctuation. D.E. 75 at 2. The Clarks list monthly expenses of $15,797.66, leaving $702.34 as monthly net income. *Id*. In their plan, the Clarks propose to make monthly plan payments of $700 and to pay their mortgages, car loans, and any other recurring payments directly. D.E. 77.

On February 25, 2026, the Trustee filed an objection to confirmation that substantially overlaps with the bases on which the BA originally sought dismissal of the case, particularly with respect to the BA's contention that the totality of the circumstances demonstrated abuse. As noted above, the BA's motion to dismiss focused on whether the Clarks' family budget was excessive or unreasonable, and on whether their schedules and statement of current income and expenses reasonably and accurately reflected their true financial condition. D.E. 60 at 23. In the objection presently before the court, the Trustee likewise contends that the plan is not proposed in good faith, and that under the circumstances of this case, the plan constitutes an abuse of the provisions, purpose or spirit of chapter 13 based on what the Trustee views as the Clarks' preference-based prioritization of private school tuition payments over payments to creditors.[2] A hearing on the objection took place on March 12, 2026, at which the Clarks appeared in response and opposition to the objection, and Mr. Clark provided further testimony.

EVIDENCE BEFORE THE COURT

The petition reflects and Mr. Clark testified during the October Hearing[3] that the Clarks are self-employed realtors who operate a real estate business, TCT Property Group, with Mr. Clark

[2] The objection also raised as an indicia of bad faith the Clarks' spending the entirety of their cryptocurrency holdings prepetition, but at the March Hearing, the Trustee focused on the Clarks' spending on private school tuition, and did not address or pursue the cryptocurrency argument. The court, likewise, will set aside this argument. The issues surrounding the purchase and sale of cryptocurrency are discussed at length in the December Order and are not repeated here.

[3] The procedural and factual history set forth in this order is based on the debtors' petition and schedules, and on Mr. Clark's testimony at both the October 14, 2025 and the March 12, 2026 hearings. The audio recording of the October Hearing is available at D.E. 59, and audio from the March Hearing is

as the 100% owner. The Clarks have three children now aged 11, 9, and 7. Prior to the bankruptcy filing, Mr. and Mrs. Clark operated their real estate business as The Clark Team.[4] That business was very successful in 2021 and 2022, during which time they were making "half a million dollars a year" and employed 18 individuals including five salaried employees plus commissioned real estate agents. Oct. Hrg. at 36:19 – 36:32. The Clarks' real estate business markets to affluent buyers, selling homes in the range of $500,000 and up in western Wake County. Mr. Clark attributes some of their success to marketing and client retention efforts including taking clients for boat tours and wine tastings on the lake, made possible through a membership in the Freedom Boat Club.

During their very successful years, the Clarks purchased their residence and two vehicles and enrolled the eldest of their three children at Cary Christian School (CCS), a private school operating in Cary, North Carolina. Specifically, in 2020 the Clarks purchased residential real property in Apex, North Carolina with a stated fair market value of $900,000 (although in October, Mr. Clark testified the value likely would be lower today due to new construction nearby). The Clarks purchased a 2021 GMC Yukon around October 2021, which is driven primarily by Mrs. Clark as their household vehicle, and a 2022 GMC Dodge Ram in February 2022, which Mr. Clark described as his work vehicle.

Mr. Clark testified that the bankruptcy filing was precipitated by loss of income and the pressure of increasing interest rates on their substantial debts, with that loss of income attributable in large part to a significant reduction in home sales both locally and across the country. Although

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at D.E. 82. Testimonial evidence is cited as "Oct. (or Mar.) Hrg. at [time from commencement of hearing]." Citation to exhibits refers only to exhibits introduced at the October Hearing, as no exhibits were presented to the court at the March Hearing.

[4] Mr. Clark testified that they changed their operational corporate entity to TCT Property Group in March 2025, right around the time of the bankruptcy filing. Oct. Hrg. at 29:28 – 31:14.

Mrs. Clark is also a realtor, she is currently working as Mr. Clark's unsalaried assistant (his former assistant having been let go in an effort to reduce business costs). During the years prior to the chapter 7 filing, the Clarks remained current on their mortgages and car payments, and enrolled their younger two daughters in CCS when they came of age to attend kindergarten.

The court addressed pre-bankruptcy spending in its December Order, noting that the Clarks took a number of trips that Mr. Clark characterized as less extravagant than in earlier years, and that the Clarks' recurring expenses reflected on their bank records included water delivery; a Wild Alaskan, Inc. seafood subscription service; alcohol purchases at Total Wine and Wake County ABC stores; ICP Team Attraction Gymnastics events involving the Clarks' children; concert tickets; purchases at Best Buy; maintenance services for a hot tub, and the $330 monthly membership fee for the Freedom Boat Club identified in their business bank records. Exs. 4, 5, 6.

At the October Hearing, Mr. Clark testified that in terms of expense reduction, the Clarks cancelled the water delivery, as well as some digital subscription services. He testified further that CCS worked with the Clarks to reduce their tuition costs, and the evidence showed that he began selling his cryptocurrency in July 2024 to make up for cash flow shortfalls, with the proceeds used for household expenses such as paying the mortgage and feeding the family.

The Clarks began to consider bankruptcy relief roughly four to six months prior to their March 18, 2025 filing date, at a time when they were "faced with paying our mortgage, or paying debt service at 30% interest rates." Oct. Hrg. at 19:00 – 19:44. Mr. Clark testified at the October Hearing that the "major thing was the debt service on the credit cards that we had; that we had to try to keep our business afloat and retain our long tenured employees." Oct. Hrg. at 19:30 -20:13. At the March Hearing, Mr. Clark testified that they took out their home equity loan to pay

employees, believing that the downturn would be temporary.[5] Mar. Hrg. at 38:40-39:35. The initial chapter 7 schedules reflect that the Clarks' nonpriority unsecured debt totaled $309,669.79, roughly half of which is identified as relating to the Clarks' business. D.E. 1 at 30. However, there was no detailed evidence linking the debts to specific business expenditures.

The Clarks' original Schedule I provided that the debtors do not earn wages, salary, or commissions, and that their combined gross monthly income from operating a business is $14,000, attributed entirely to Mr. Clark. D.E. 1 at 33-34. In contrast, the supplement filed on January 22, 2026 shows income of $16,500, D.E. 75 at 2, as does the CMI Statement filed on February 18, 2026. D.E. 78 at 2.

The Clarks' initial chapter 7 and current chapter 13 schedules list two monthly mortgage payments of $3,150 and $1,972, respectively, and two car payments of $1,199 and $888. These amounts, together with other claimed recurring monthly expenses, totaled $13,969.83 in the Clarks' initial filing, D.E. 1 at 36, and increased to $15,797.66 upon conversion to chapter 13, D.E. 75 at 4. The Clarks currently claim net monthly income of $702.34 and propose, in their chapter 13 plan, to make monthly payments of $700 to the Trustee while maintaining all their other expenses as direct pay. D.E. 75 at 4, Plan (D.E. 77) at 1, 3.

Other scheduled recurring monthly expenses included $250 for a gym membership for Mr. and Mrs. Clark, $150 in pet expenses, and $1,715 for private school tuition at CCS for the Clarks' three minor children. D.E. 75 at 4; *see also* D.E. 1 at 35-36. Initially, all combined expenses, deducted from the $14,000 net income reported in the Clarks' initial Schedule I in the chapter 7 case, left disposable monthly income of $30.17. D.E. 1 at 36. In the chapter 7 case, those expenses

[5] The proof of claim for the second mortgage is consistent with this testimony, in that the HELOC was initiated toward the end of 2022 and additional draws were taken periodically throughout the next year or two.

presumably differed from the expenses deducted under the calculation of CMI in Official Form 122A-1, as Schedule J lists personal and household expenses while Official Form 122A-1 describes "ordinary and necessary operating expenses" for calculating net income from operating a business. *Compare* D.E. 1 at 35-36 *with* D.E. 1 at 49.

In the chapter 13 case, some of the differences in the Clarks' scheduled expenses from those in their original schedules include: monthly medical and dental expenses of $800 (previously listed as $200, plus $105 for children's dental insurance); transportation costs of $900 (previously, $400); lower entertainment costs of $100, as compared to $250; health insurance costs of $150 (previously, $0); slightly higher vehicle insurance costs of $337 (previously, $295); taxes of $1,000 (previously, $100); and no babysitting expenses (previously, $100). The Clarks continue to claim monthly pet expenses of $150. No religious or charitable donations are scheduled. With these and other minor changes, the Clarks' monthly budget increased from $13,969.83 to $15,797.66, with the $1,827.83 additional spend representing an approximate 13% increase.

As the court addressed in the December Order, the evidence presented at the October Hearing conflicted in some respects with the scheduled expense figures, and the same is true with respect to some of the figures used since the case was converted to chapter 13. For example, the amount the Clarks paid in private school tuition was unclear due to discrepancies in the schedules and the bank statements, and Mr. Clark was uncertain in his October testimony. At the March Hearing, Mr. Clark was more confident in the monthly tuition number of $1,715, noting that CCS had given them tuition assistance by discounting tuition by 33%. Mar. Hrg. at 19:27.

Similarly, the testimony and figures related to health insurance were inconsistent. With respect to medical costs and health insurance, the Clarks' original Schedule J in their chapter 7 filing reflected no costs for health insurance, D.E. 1 at 36, and Mr. Clark testified at the October

Hearing that they have not had traditional health insurance since September 2024. However, Mr. Clark also testified in October that they did have catastrophic coverage through WeShare, a faith-based medical cost-sharing program that provides a nontraditional form of reimbursement for some health care claims at a cost of approximately $400 per month – an amount not listed on Schedule J. In the schedules filed in their chapter 13 case, as noted above, the Clarks claim no costs for health insurance, but a higher amount in medical and dental costs. Mr. Clark testified in March that the family had used a form of "Christian Care" since perhaps 2022 or 2023, and certainly through all of 2024 and 2025.

More importantly for purposes of the Trustee's objection to confirmation, Mr. Clark's testimony about his children's enrollment in private school is inconsistent. He testified in October, and again in March, that the Clarks intend for their children to continue to attend CCS. Oct. Hrg. at 40:20 – 41:44; Mar. Hrg. at 18:50, 20:10. In the October Hearing, Mr. Clark testified that the Clarks enrolled their oldest daughter in CCS when she was in second grade. At that time, he testified,

> 2020 was an extremely busy year for real estate. My wife was helping out in the business, and our two younger kids were like at preschool, like daycare at Goddard, but my oldest was in actual elementary school. We were dropping her off at like the Lifetime Fitness as a first grader and like she would sit behind a laptop with a mask on for six hours a day having some 13-year-old looking over her shoulder and that broke my heart so when we saw that, we started researching affordable private school options that were like open and in person.

Oct. Hrg. at 1:27:25 – 1:28:37. Asked by the BA if the Clarks had subsequently considered taking their children out of private school to pay creditors, Mr. Clark responded, "Absolutely not. They put litter boxes in the public schools in Apex."[6] Oct. Hrg. at 1:15:01 – 1:15:16. That statement

[6] Mr. Clark did not expand on this statement, but it appears to reference a widely circulated (and debunked) rumor from 2021 suggesting that public schools across the country installed litter boxes in bathrooms for students who "identified as cats."

aside, the overall gist of Mr. Clark's testimony in October, when the BA was actively questioning the Clarks' choice to place their children in private school, was that the Clarks were both displeased with and inconvenienced by Wake County Public Schools (WCPS) offering only virtual remote learning during the pandemic, so they sought out and found an elementary school that was "open and in person." As their younger children reached school age, they enrolled them at the same school. Several years later, with their children having become established at CCS with community, sports, and activities, the Clarks wished for them to remain there. Other than the fact of CCS being a private school that was open during a time when public schools were closed, and his criticism of public schools generally, Mr. Clark provided no further explanation of why his daughters attend CCS specifically.

In the March Hearing, in response to being asked the same question of why the Clarks originally chose to enroll their children at CCS, as well as why they continue to attend CCS now, Mr. Clark testified that that his children had *always* attended CCS because "it was important to our faith." Mar. Hrg. at 18:40, 20:00. He testified that the Clarks are practicing Christians who attend church weekly and have been members of the Summit Church in Apex for approximately six months, having previously been longtime members at Hope Community Church. Asked how attendance at CCS promotes the Clark children's faith, Mr. Clark testified that CCS does so through "biblical teachings, they teach the kids [the] Bible, they sing worship songs, all things that are important to us." These activities, he testified, are unavailable in Wake County public schools. Mar. Hrg. 18:30 – 21:30, 34:20-34:53. Mr. Clark testified that all three of his daughters have attended CCS since they started school in kindergarten, have strong relationships there, and engage in sports and extracurriculars. Asked where they would go if they were to attend the Wake County school that serves their neighborhood, Mr. Clark professed uncertainty, and said he thought it

might be Olive Chapel Elementary, which he believed to be a "capped" school such that they would instead "need to drive to a different school." *Id.* at 19:50. Following up, the Trustee inquired of Mr. Clark what research he and Mrs. Clark had done into Wake County Public Schools, to which Mr. Clark replied, "Very little. Yeah, we found a home, our children have been at CCS since they were in kindergarten, and it's very important that they remain in those relationships and stay in that environment because that's important to our faith." Mar. Hrg. 33:15 – 33:49. Conceding his lack of inquiry into whether Wake County public schools could provide an adequate education, Mr. Clark testified that because his mother was a WCPS teacher for 35 years, he is "familiar with the curriculum and crystal clear on the fact that there is no opportunity to worship or read the Bible in those settings." Mar. Hrg. 34:23 – 35:00. Asked whether the importance of schooling his children in a Christian setting had come up in the October Hearing, Mr. Clark testified that he could not recall addressing it at the time, but he "would guess it was assumed that that was important to us if we enrolled our kids in a Christian school." Mar. Hrg. 34:00 – 34:23.

Here, the discrepancies in Mr. Clark's testimony at the two hearings demonstrate that Mr. Clark's more recent testimony on several important points is not credible. As an initial matter, because both Mr. and Mrs. Clark are residential realtors, it is implausible that the Clarks elected to remain wholly uninformed about either the availability or the quality of the public school options in their area, which is relevant not only to their family but also is of importance to their client base: *i.e*, individuals seeking to purchase homes in that same area. Further, while Mr. Clark testified in March that all three children had been at CCS since kindergarten, he testified in October that their oldest daughter started in second grade, and explained that she was enrolled at CCS because they wanted her to attend an elementary school that was "open" and operating conventionally during the pandemic; this, he testified, was based on their dissatisfaction with her having to engage in

virtual learning in a day-care-like setting at that time. The Clarks' desire to change that situation is entirely reasonable, but Mr. Clark's testimony in March came across as an effort to recast their decision-making process as being motivated purely by long-held religious faith, without reference to the family's effort to respond, during the high-earning years, to the well-known challenges of pandemic-era schooling. The court rests its decisions on the evidence before it, and there was no basis to infer from the testimony in October that they chose to send their children to a Christian school solely or even primarily because religious instruction was of paramount importance to the Clarks.

DISCUSSION

The Trustee's written objection rested primarily on two bases,[7] only one of which was pursued at the hearing: the plan is not proposed in good faith. Specifically, the Trustee contends that "the continued payment every month of $1,715 of private school tuition while attempting to discharge without payment approximately 90% of over $300,000 of non-priority unsecured debt does not demonstrate the Debtors' best efforts at repaying their creditors and is the equivalent of having their unsecured creditors finance the private school tuition." D.E. 81 at 2. In short, the matter for this court to determine is whether the Clarks' continued payment of private school tuition, under the totality of the circumstances presented in this case, demonstrates a lack of good faith.

Applied Standards for Good Faith

A chapter 13 plan must be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). The court has broad discretion in making the good faith

[7] The Trustee also objected on grounds that the Clarks would be unable to make all payments required under the plan, given that as of the March 4 date of the objection, they were delinquent by two $700 payments, for a total delinquency of $1,400. The Clarks tendered payment of the $1,400 on March 12, 2026, rendering this point moot.

determination, assessing whether, under the circumstances of the case, there has been an abuse of the provisions, purpose, or spirit of the chapter in the proposed plan. *Deans v. O'Donnell*, 692 F.2d 968, 972 (4th Cir. 1982) (quoting 9 *Collier on Bankruptcy* ¶ 9.20 at 319 (14th ed. 1978)). The good faith inquiry requires "the totality of circumstances [to] be examined on a case by case basis," *id.*, and focuses on non-exhaustive factors such as

> the percentage of proposed repayment to creditors, the debtor's financial situation, the period of time over which creditors will be paid, the debtor's employment history and prospects, the nature and amount of unsecured claims, the debtor's past bankruptcy filings, the debtor's honesty in representing the facts of the case, the nature of the debtor's prepetition conduct that gave rise to the debts, whether the debts would be dischargeable in a chapter 7 proceeding, and any other unusual or exceptional problems the debtor faces.

In re Hunsucker, 652 B.R. 658, 670 (Bankr. E.D.N.C. 2023) (citing *Neufeld v. Freeman*, 794 F.2d 149, 152 (4th Cir. 1986)). A lack of good faith does not necessarily require "malfeasance, malice, ill will, or fraudulent intent toward creditors." *In re McGovern*, 297 B.R. 650, 660 (S.D. Fla. 2003).

The Clarks' chapter 13 plan is presented in the context of the recent conversion of their case from chapter 7 to chapter 13, with this court having found in the chapter 7 case that the totality of the circumstances demonstrated abuse under § 707(b)(3), applying a different, but not irrelevant, totality of the circumstances analysis. In the Fourth Circuit, the analysis under § 707(b) is informed by the *Green* factors:

> (1) whether the bankruptcy petition was filed because of sudden illness, calamity, disability, or unemployment; (2) whether the debtor incurred cash advances and made consumer purchases far in excess of his ability to repay; (3) whether the debtor's proposed family budget is excessive or unreasonable; (4) whether the debtor's schedules and statement of current income and expenses reasonably and accurately reflect the true financial condition; and (5) whether the petition was filed in good faith.

In re Green, 934 F.2d 568, 572 (4th Cir. 1991). The December Order focused on the third and fourth *Green* factors, with emphasis on the third, concluding its § 707(b)(3) discussion with this observation:

> There are several enumerated expenses that, taken collectively and in the context of an effort to discharge over $300,000 in general unsecured debt, are unreasonable. There is no meaningful effort on the debtors' part to adjust a very comfortable lifestyle to try to pay creditors. The schedules do not reflect a full and accurate picture of the Clarks' financial circumstances, and, to the extent that the court does have the necessary information and insight, the resulting picture tips the scales toward bad faith.

December Order (D.E. 60) at 32.[8]

As the Trustee argued at the March Hearing, the court's analysis under § 707(b)(3) examined the totality of the circumstances of this case in ways that also apply to the good faith analysis under § 1325(a)(3). While the statutory calculation of projected disposable income under § 1325(b)(1)(B) is not challenged here, the requirements of what amounts must be paid into a chapter 13 plan cannot be ignored in a totality of the circumstances analysis under a set of factors that are, by their terms, "non-exhaustive." Section 1325(b)(1)(B) requires chapter 13 debtors to ensure that all projected disposable income to be received in the applicable commitment period be applied to payments to unsecured creditors under the plan, with that disposable income – and appropriate expenditures from it – being "determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)" where, as here, the debtors are above-median.

[8] This opinion fully informed the Clarks, prior to the proposal of their current chapter 13 plan, of the court's concerns about thee Clarks' demonstrated lack of meaningful effort to adjust their lifestyle in ways indicative of a true effort on their part to try to pay creditors. The Clarks likewise were fully informed of the various means through which courts endeavor to assess whether a debtor proceeds in good faith or is instead engaged in an abuse of the bankruptcy process, because that exact topic was discussed in great detail in the December Order. *Id.* at 22-33.

That section, in turn, specifically addresses private school tuition. The language of § 707(b)(2)(A)(ii)(IV) informs some of the court's discussion below:

> The debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $2,275(*) per year per child, to attend a private or public elementary or secondary school *if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary*, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

11 U.S.C. § 707(b)(2)(A)(ii)(IV) (emphasis added). While not the exclusive basis upon which courts review private school tuition, the "reasonable and necessary" standard is evaluated by courts in both chapter 7 and 13 cases.

Private School Cases

Bankruptcy courts, including this one, have considered challenges to payment of private school tuition by individuals seeking to discharge other obligations under differing statutory provisions. In the December Order, this court cited numerous opinions in which courts concluded, in the context of § 707(b)(3), that parental preference does not make a tuition expense reasonable and necessary for an analysis of abuse. *See* December Order at 25-27; *see also In re Peterlin*, 457 B.R. 630, 634-35 (Bankr. N.D. Ohio 2011) (noting debtor has offered nothing to show that public school is insufficient or that children have special needs); *In re Golematis*, No. 11-52238, 2012 WL 3583154, at *3 (Bankr. E.D. Mich. Aug. 17, 2012) (noting debtors demonstrated a mere preference for private school).

Parental preference alone is likewise insufficient to support a private school expense in a chapter 13 case. In *Watson v. Boyajian (In re Watson)*, 403 F.3d 1, 8 (1st Cir. 2005), the United States Court of Appeals for the First Circuit affirmed a bankruptcy court's finding that, in the absence of the debtor providing evidence of educational necessity or special circumstances, a mere

parental preference for private schooling rooted in sincere religious belief cannot substantiate the cost of tuition as a reasonably necessary expense in chapter 13 for purposes of § 1325(b). Using creditor-focused reasoning similar to the Trustee's objection here, that court concluded:

> To allow the [debtors] to pay parochial school tuition over the life of the proposed plan would require already severely reduced creditors to fund the private education of the [debtors'] children. We can appreciate the importance attached by the [debtors] to the religious values of a parochial school education. Still, it is not impossible to inculcate those values outside of a school, and the court could reasonably conclude, in the circumstances presented here, that it would be improper to impose the added expense on the [debtors'] unpaid creditors where the children's educational needs could otherwise be met in the public schools.

Id.

That is not to say that private school tuition is always impermissible in a chapter 13 case, because it is not. Instead, in chapter 13 cases, courts typically review the issue in the context of calculating projected disposable income under § 1325(b)(1)(B) and are more likely to allow for the payment of costly private school tuition when the debtors "sacrifice . . . other basic expenses" to fund the tuition expense. *See In re Cleary*, 357 B.R. 369, 373-74 (Bankr. D.S.C. 2006) (highlighting that "[t]he Debtor's wife would not work outside the home (and did not do so for many years) except to provide additional income to pay for private school tuition. In fact, [the wife's] pay check is reduced by the amount of tuition for the couple's children who attend the elementary school where she works."); *see also In re Grawey*, No. 00-83643, 2001 WL 34076376, at *3 (Bankr. C.D. Ill. Oct. 11, 2001).

All that said, financial sacrifice is not strictly necessary for a court to find that private school tuition is a reasonably necessary expense under § 1325(b)(1)(B), but it can carry compelling weight where there is no evidence of any particular need for the debtors' children to attend private school *other* than parental preference. "[M]ost cases turn on the specific facts after an examination of reasonableness and necessity in the context of sustaining the basic needs of the debtor and the

debtor's dependents. In other words, a balancing test still applies." *In re Crim*, 445 B.R. 868, 871 (Bankr. M.D. Tenn. 2011).

In *Crim*, the balancing test favored private school education due to special circumstances, including the debtor's child having a chronic illness, being teased, and suffering a nervous breakdown after only two weeks in public school. *Id.* at 870. Furthermore, the debtors asked the local school board to transfer their child to another public school, but their request was denied. *Id*. *Crim* hinged on "compelling testimony [from the debtor] that no other public school option is currently available." *Id*. at 872. This compelling testimony tipped "the balance in favor of the debtors' tuition expense." *Id*.; *see also In re Brown*, 500 B.R. 255, 268-70 (Bankr. S.D. Ga. 2013) (finding debtor demonstrated special circumstances of a special needs program for his child's diagnosed ADHD and auditory/speech disorders available only at a private school).

In short, courts consider whether the tuition expense is reasonable and necessary as contemplated by § 707(b)(2)(A)(ii)(IV), and in making this determination weigh whether there is a reason beyond parental preference to send the children to private school and, if not, whether there has been some financial sacrifice to fund that wholly discretionary expense. As noted, this court is considering the monthly CCS expense in the context of good faith applying a totality of the circumstances test, as opposed to the statutory "reasonable and necessary" determination; still, the court cannot ignore that this is an expense that the statute strictly controls, and for that reason, the court finds it appropriate to apply the balancing test as part of the totality of the circumstances. At the end of the day, the issue is whether the Clarks are making a good faith effort to repay creditors, and the tuition expense directly impacts the enumerated factors of both percentage of proposed repayment to creditors and the debtor's financial situation, as well as the non-enumerated factor of whether their expenses fall within the statutory disposable income calculation.

Application of Standards to This Case

As noted by the Trustee in support of his argument that the Clarks' proposed plan lacks good faith, the Clarks are attempting to discharge, without payment, approximately 90% of over $300,000 in non-priority unsecured debt, while continuing to pay $1,715 in private school tuition every month, and without adjusting other discretionary expenses. D.E. 81 at 2. In argument at the March Hearing, the Clarks contended that because § 707(b)(2)(A)(ii)(IV) specifically provides for educational expenses of up to $2,275 per year, per child, that sum is essentially an "allowance" of sorts, with no further justification required, such that they "don't have to explain anything." From the Clarks' perspective, $2,275 per year (or $189.58 monthly), multiplied for three children, would be $6,825 annually or $568.75 monthly, which the Clarks seemingly consider to be comparable to the $20,580 ($1,715 monthly) that they include in their budget.

The court finds the Clark's rationale unpersuasive. The Clarks spend more than three times the amount their counsel deems an "allowance." Further, contrary to the representations that no explanation is needed, the statute itself requires debtors to "provide[] documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary" even for a $2,275 annual expenditure. 11 U.S.C. § 707(b)(2)(A)(ii)(IV). The Clarks made no effort to do so in the October Hearing, and their explanation at the March Hearing is simply not sufficient to establish that the tuition is reasonable and necessary.

In reaching those conclusions, the court plows no new ground; all of this was known to the Clarks before they filed their chapter 13 plan. In the December Order, the court observed that "the Clarks intend for their children to continue to attend CCS; *however, there was no testimony as to why private school was necessary for their children other than Mr. Clark's stated negative opinion*

of the public schools in his area." December Order at 25 (emphasis added). After reviewing case law involving private school tuition, the court also observed:

> Mr. Clark testified that they enrolled their oldest daughter at CCS during the pandemic because it remained open – as opposed to other schools that operated only remotely – and they enrolled their younger children there as they became school-aged. There was no additional testimony that any of the children had special requirements best met by private schools; at most, Mr. Clark made evident his negative impression of the local public school.

Id. at 26. Applying a totality of the circumstances analysis under § 707(b), and based on the lack of evidence that the Clarks' children had a particular educational need that could not be met by the public schools, the court concluded the private school expense was not reasonably necessary. *Id*. at 27. The same apprehension remains in the current context of the Clarks' proposed chapter 13 plan.

Presented with a second opportunity to proceed in bankruptcy after having first had the fundamental premises of it set out for them in the context of their own spending, the Clarks appear to have gained little insight. The court understands the circumstances in which the Clarks acquired their home and cars, and enrolled their oldest child in CCS, as these events took place during a time that was financially rewarding and brought unprecedented pandemic-era challenges that clearly affected the quality and availability of public education. Those decisions, at that time, were reasonable ones that the Clarks were well positioned to make. Now, however, those times — including the unique societal challenge of the COVID-19 pandemic — are in the past, yet as the Trustee points out, the Clarks seek to retain the most expensive elements of a lifestyle that they cannot at this time afford, while removing the burden of over $300,000 in unsecured debt.

The Clarks have offered no testimony to suggest that their current desire to keep their children enrolled at CCS is rooted in educational necessity or other special circumstances. Mr. Clark testified that his parental preference for CCS is rooted in his family's sincere and strongly

held religious beliefs — which, as the First Circuit noted in *Watson*, can be instilled and reinforced outside of school. On balance, then, the court considers whether other financial sacrifices have been made to fund that tuition, and concludes that the evidence before it shows little to none.

By its very nature, filing for bankruptcy relief should cause debtors to change their pre-petition lifestyles and habits via belt-tightening measures that seek to reduce expenses and facilitate the repayment of creditors. *See In re Daniel*, 260 B.R. 763, 769 (Bankr. E.D. Va. 2001) ("Debtors do not have an entitlement, at the expense of their creditors, to maintain their prepetition lifestyles and status in society."). At both the October Hearing and the March Hearing, the Clarks demonstrated that they have made few meaningful financial sacrifices to offset the costly private school tuition for their three children during the pendency of their bankruptcy case. *See* December Order at 25 ("[T]he only personal [expenses] the Clarks have chosen to forego since deciding to pursue bankruptcy relief is the water delivery, suspension of a couple of streaming services, and substitution of traditional health insurance for a private health cooperative plan."). Notwithstanding the continued expenditure for private school again being the primary concern expressed in response to the Clarks' plan, no evidence of new cost-cutting was offered in March.

With next to no testimony to suggest educational necessity, special circumstances, or any meaningful belt-tightening measures to offset the tuition expense at either hearing, the Clarks are not entitled to fund their parental preference for private school education at the expense of their unsecured creditors. On the evidence that is before it, the court cannot find that this chapter 13 plan is proposed in good faith. To be clear, the court is not requiring the Clarks to take their children out of private school to obtain chapter 13 relief, but discretionary spending of this nature simply cannot be paired with the discharge of over 90% of their unsecured debt.

CONCLUSION

For the foregoing reasons, the Trustee's objection to confirmation is SUSTAINED and confirmation is DENIED. The debtors may file an amended chapter 13 plan within 30 days.

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