



Opinion 460

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Opinion Title: 10/05/2004 UNPUBLISHED Francisco Villegas and Elsa P. Villegas, 03-40485, Judge Thurman.

Body: The Court was presented with the issue of whether private school tuition was a reasonably necessary expense for chapter 13 Debtors where they were not paying their creditors 100% in their plan. The Court analyzed section 1325(b) of the Bankruptcy Code which requires that all income, less expenses that are reasonably necessary for the maintenance or support of the Debtors or their dependents be contributed to the plan. The Court determined that private school expenses are presumptively not reasonably necessary, but that such presumption can be rebutted by a showing of compelling circumstances. Such circumstances in this case included evidence that the children of the Debtors had always attended private schools, that the Debtors perceived that such education was superior to the local public schools, that the Debtors had voluntarily reduced expenses in other areas, that the vehicles of the Debtors were at least ten years old and that the Debtors were living with relatives to reduce living expenses. Finally, the Debtors had proposed a 55 month plan rather than a minimum 36 month plan, returning 32% to their creditors. Under these specific circumstances, the Court determined that the Debtors had shown compelling circumstances and the Court confirmed the Debtors'

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Judge: [Judge William T. Thurman](#) [2]

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