



IT IS ORDERED as set forth below:

Date: November 13, 2007

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 07-66692

Andre James Wilson and Shandra Marie Wilson,

CHAPTER 13

Debtors.

JUDGE MASSEY

ORDER DISAPPROVING IN PART AND
APPROVING IN PART MODIFICATION OF CONFIRMED PLAN

Debtors propose to modify their confirmed plan by deleting paragraphs in the plan naming Rio Auto Sales as a secured creditor. The Court scheduled a hearing on the proposed modification on November 7, 2007. No one filed an objection to the proposed modification.

Section 1329 of the Bankruptcy Code limits modifications to increasing or reducing payments to a particular class of creditors, increasing or reducing the time for payments, altering the amount of a distribution to a particular creditor whose claim is paid other than through the plan and reducing amounts to be paid under the plan by actual amounts expended for health

insurance. Thus, the question is whether a modification can propose to delete the paragraphs in the plan referring to Rio. It might be argued that the effect of deleting the provisions concerning Rio would be the same as reducing the proposed distribution to Rio to zero. But if Rio had filed a proof of claim, modification of the paragraphs referring to Rio would be barred by res judicata or as an inappropriate procedure to object to its claim. *In re Bateman*, 331 F.3d 821 (11th Cir. 2003). Rio has not filed a proof of claim, however.

The Court need not decide whether the plan can be modified under the circumstances here because the confirmed plan does not permit any distribution to Rio for the simple reason that it does not have an allowed claim. If Rio filed a claim at this late date, an objection by a party in interest, including Debtors, on the ground that the claim was untimely would have to be sustained. Therefore, whatever issue Debtors are attempting to raise with this provision is presently moot.

For this reason, Debtor's proposed modification is DENIED as moot as to the deletion of the paragraphs referring to Rio Auto Sales and is otherwise APPROVED.

END OF ORDER