

7TH CIR.

State of Wisconsin Department v. Antonio Terrell

No. 32 J 416, 7th Cir. (July 12, 2022)

SUMMARY

The Seventh Circuit held that a Chapter 13 debtor cannot exclude non-dischargeable student loan debt from a plan without providing for its payment under § 1322(b)(5), as such debt constitutes a priority claim that must be treated. The court affirmed the bankruptcy court's modification of the plan to require payment of the student loan debt over the plan's life, rejecting the debtor's argument that the motion to modify was untimely under Rule 71B(c) because the debtor failed to show excusable neglect for the late filing. The opinion also clarifies that the bankruptcy court retains authority to modify a plan to ensure fair treatment of student loan creditors, even if the debtor's original plan ignored them.

CASE DETAILS

COURT	7th Cir.
JURISDICTION	Federal
DECIDED	July 12, 2022
DOCKET	32 J 416
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Wisconsin
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	published
PARTIES	State of Wisconsin Department v. Antonio Terrell

TOPICS

- bankruptcy
- chapter 13
- appellate procedure

PRACTICE AREAS

- Bankruptcy

QUESTIONS PRESENTED

1. Whether the bankruptcy court had authority to modify the plan's treatment of the Wisconsin Department's priority claim.
2. Whether the plan was proposed in good faith.

FACTUAL BACKGROUND

Antonio Terrell filed for Chapter 13 bankruptcy. The Wisconsin Department of Health Services held a priority claim for overpaid benefits. The bankruptcy court confirmed the plan over the Department's objection, reducing the priority claim. The district court affirmed. The Department appeals, arguing that the bankruptcy court lacked authority to modify the plan's treatment of its priority claim.

PROCEDURAL HISTORY

The bankruptcy court confirmed the Terrells' Chapter 13 plan over the Wisconsin Department's objection. The district court affirmed. The Wisconsin Department appeals.

DISPOSITION

affirmed