

REVISED OCTOBER 21, 2010

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

September 10, 2008

Charles R. Fulbruge III
Clerk

No. 08-40321
Summary Calendar

In The Matter Of: WILLIAM HAYES WYTTENBACH,

Debtor.

WILLIAM HAYES WYTTENBACH,

Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(07-CV-180)

Before KING, JOLLY, and OWEN, Circuit Judges.

PER CURIAM:*

William Hayes Wytttenbach appeals an order affirming the bankruptcy court's "Order Striking Pleadings and Retroactively Annuling Automatic Stay."

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The bankruptcy court held that Wyttenbach was ineligible to be a debtor because he did not comply with the credit counseling requirements in 11 U.S.C. § 109(h).

Wyttenbach appealed to the Southern District of Texas but neither disputed that he failed to fulfill the credit counseling requirements nor contended that the bankruptcy court's reliance on 11 U.S.C. § 109(h) was in error. Instead, Wyttenbach challenged the bankruptcy court's order only on the grounds that he filed his chapter 7 petition as a "man," not a "trust"—grounds upon which the bankruptcy court did not rely. In his current brief, Wyttenbach does not assert that the lower court's reliance on 11 U.S.C. § 109(h) was improper; he again argues only that the lower courts misidentified him as a "trust" rather than a "man." We conclude that the district court did not err in affirming the bankruptcy court's order.

AFFIRMED.