

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MAY 3 2004

PATRICK FISHER
Clerk

In re: DAVID HAROLD ABBOTT,

Debtor,

DAVID HAROLD ABBOTT,

Appellant,

v.

MARK R. STEWART, Trustee,

Appellee.

No. 03-8075
(BAP No. WY-02-058)
(BAP)

ORDER AND JUDGMENT *

Before **EBEL**, **ANDERSON**, and **BRISCOE**, Circuit Judge.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Debtor-appellant appeals the decision of the Bankruptcy Appellate Panel (BAP) affirming the bankruptcy court's denial of his motion to order the Trustee to return debtor's tax refund for 2001, to declare that debtor had successfully completed his plan under Chapter 13, and to enter an order of discharge.

Upon review of the plan and the parties' submissions, we REVERSE and REMAND the decision of the BAP for substantially the reasons stated in the panel's dissent. See Abbott v. Stewart (In re Abbott), BAP No. WY-02-058 (B.A.P. 10th Cir. Aug. 25, 2003).

Entered for the Court

David M. Ebel
Circuit Judge