

# Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
RACHEL ELLEN SOUTER ) CASE NO. 10-11012  
KYLE WAYNE SOUTER )  
)  
Debtors )

**DECISION AND ORDER DENYING  
TRUSTEE'S MOTION TO RECONSIDER**

At Fort Wayne, Indiana, on June 28, 2010.

This chapter 7 case was dismissed by a decision and order dated June 8, 2010, because the debtor, Kyle Souter, was not eligible for relief. The trustee has recently filed a motion to reconsider that dismissal. He argues that he was surprised by the dismissal of the entire case, rather than just dismissal of the ineligible debtor, and that he has assets to distribute. The motion suffers from a few deficiencies. To begin with, it has not been accompanied by a brief in support thereof as required by the local rules of this court. See, N.D. Ind. L.B.R. B-9023-1. See also, In re King, 2006 WL 1994679, 2006 Bankr. LEXIS 1416 (Bankr. N.D. Ind. 2006). More importantly, a hearing was held – on notice to all creditors and parties in interest – to consider Mr. Souter’s eligibility for relief and “if not, whether this case should be dismissed.” Notice of Hearing dated March 18, 2010 (emphasis added). Ergo, the trustee had notice that the court would consider the dismissal of the entire case and not just Mr. Souter. If there was anything the trustee wanted the court to know or consider in making its decision, he should have attended the scheduled hearing; yet, he did not. That failure constitutes a waiver of any arguments he could have raised.

The trustee’s motion to reconsider the dismissal of this case is DENIED.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court