

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
ALABAMA

John Andrew Kister v. Jefferson S. Dunn, et al.

No. 2:20-cv-414-ECM (M.D. Ala. Jan. 16, 2026) · No. 2:20-cv-414-ECM · Decided January 16, 2026

SUMMARY

The United States District Court for the Middle District of Alabama denied John Andrew Kister’s pro se motion to reopen a closed case under Federal Rule of Civil Procedure 60(b)(6). The court held that reliance on subsequent Eleventh Circuit decisions concerning special-report procedures did not establish extraordinary circumstances, particularly because Kister did not appeal the judgment and waited nearly two years to seek relief. The case remained closed.

CASE DETAILS

COURT	United States District Court for the Middle District of Alabama
WRITING FOR THE COURT	Emily C. Marks
JURISDICTION	United States District Court for the Middle District of Alabama
DECIDED	January 16, 2026
DOCKET	2:20-cv-414-ECM
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 60(b)(6) to reopen the case and set aside the final judgment entered after the court granted defendants' summary-judgment motion. The court denied the motion and left the case closed.
STANDARD OF REVIEW	A Rule 60(b)(6) motion requires sufficiently extraordinary circumstances and a showing that denying relief would result in extreme and unexpected hardship; the court evaluated plaintiff's entitlement to relief under that standard.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- motion for reconsideration
- summary judgment
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff was entitled to relief from the final judgment under Federal Rule of Civil Procedure 60(b)(6) based on later Eleventh Circuit opinions concerning special-report procedures.
2. Whether plaintiff's failure to appeal and delay in seeking postjudgment relief precluded a finding of extraordinary circumstances.

HOLDINGS

1. Plaintiff was not entitled to relief under Rule 60(b)(6) because he failed to demonstrate extraordinary circumstances warranting relief from the final judgment.

KEY QUOTATIONS

“ “[R]elief under Rule 60(b)(6) is available only in ‘extraordinary circumstances.’ ” ”

“ Therefore, on this record the Plaintiff fails to show extraordinary circumstances justifying relief from the judgment. ”

“ Accordingly, for the reasons stated, it is ORDERED that the Plaintiff’s motion (doc. 82) is DENIED. This case remains CLOSED. ”

FACTUAL BACKGROUND

Defendants' answer and special report were construed as motions for summary judgment, and summary judgment was entered in defendants' favor. Plaintiff did not object to the Magistrate Judge's Recommendation, did not appeal the judgment, and waited nearly two years after judgment to seek relief. He relied on a later Eleventh Circuit decision vacating summary judgment in another case involving special-report procedures and on a concurrence criticizing such procedures.

PROCEDURAL HISTORY

The court adopted the Magistrate Judge's Recommendation, granted defendants' motion for summary judgment, dismissed the case with prejudice, and entered final judgment on August 23, 2023. Plaintiff did not object to the Recommendation or appeal the judgment. He later moved to reopen the case based on Eleventh Circuit developments concerning special-report procedures, including *Kister v. Borowicz* and a concurrence in *Chapman v. Dunn*.

DISPOSITION

dismissed

CASES CITED

- *Kister v. Borowicz*, 2025 WL 1013729 (11th Cir. Apr. 4, 2025) (per curiam)

- Chapman v. Dunn, 129 F.4th 1307, 1319-29 (11th Cir. 2025) (Jordan, J., concurring)
- Buck v. Davis, 580 U.S. 100, 123 (2017)
- Gonzalez v. Crosby, 545 U.S. 524, 535-38 (2005)
- Doe v. Drummond Co., 782 F.3d 576, 612 (11th Cir. 2015)
- Ackermann v. United States, 340 U.S. 193, 198 (1950)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION JOHN ANDREW KISTER,)) Plaintiff,)) v.) CASE NO. 2:20-cv-414-
ECM) [WO] JEFFERSON S. DUNN, et al.,)) Defendants.) O R D E R On August 23, 2023, this
Court entered a Memorandum Opinion and Order adopting the Magistrate Judge's
Recommendation, granting the Defendants' motion for summary judgment, and dismissing this
case with prejudice, along with a final judgment.

(Docs. 80, 81). In the Recommendation, the Magistrate Judge had construed the Defendants' answer and special report, which had been filed over two years earlier, as motions for summary judgment. (Doc. 79 at 2, 21). The Plaintiff did not file objections to the Recommendation. Now pending before the Court is the Plaintiff's pro se motion to reopen case (doc. 82), which the Court construes as a motion for relief under Federal Rule of Civil Procedure 60(b)(6).¹ The Plaintiff argues that the Court should set aside the final judgment and reopen the case because summary judgment was granted in favor of the Defendants based upon their special reports, and after final judgment was entered, the Plaintiff obtained from the Eleventh Circuit the vacatur of a grant of summary judgment in another case based on 1 The Plaintiff cites Rule 60(b)(6) in his motion.

(Doc. 82 at 1). problems with the special report procedures which were used in that case. See Kister v. Borowicz, 2025 WL 1013729 (11th Cir. Apr. 4, 2025) (per curiam). The Plaintiff also cites a concurrence in Chapman v. Dunn, 129 F.4th 1307 (11th Cir. 2025), in which an Eleventh Circuit judge voiced concerns about the special report procedure employed in this Court.

See id. at 1319–29 (Jordan, J., concurring). The Plaintiff contends that the Court should reopen this case and allow him to file objections to the Recommendation based on the Eleventh Circuit's reasoning and conclusion in Kister and the Chapman concurrence. Rule 60(b)(6) authorizes the court to relieve a party from a final judgment for “any other reason that justifies relief.” “[R]elief under Rule 60(b)(6) is available only in ‘extraordinary circumstances.’” Buck v. Davis, 580 U.S. 100, 123 (2017) (quoting Gonzalez v. Crosby, 545 U.S. 524, 535 (2005)).

To warrant relief under Rule 60(b)(6), the moving party must not only show “‘sufficiently extraordinary’ circumstances,” but also that “absent such relief, an ‘extreme’ and ‘unexpected’ hardship will result.” Doe v. Drummond Co., 782 F.3d 576, 612 (11th Cir. 2015) (citation omitted).

Although an intervening change in the law could be sufficiently extraordinary to justify Rule 60(b)(6) relief, a plaintiff's "lack of diligence in pursuing review of the [relevant] issue" precludes a finding of extraordinary circumstances. See *Gonzalez*, 545 U.S. at 537–38.

In *Gonzalez*, the Supreme Court concluded that the petitioner failed to show extraordinary circumstances where the district court had dismissed his federal habeas petition on statute of limitations grounds based on then-existing Eleventh Circuit precedent, and the Supreme Court subsequently reached a different conclusion on the limitations issue. *Id.* at 536–37.

The Court reasoned that the petitioner was not diligent in pursuing review of the statute of limitations issue after the district court ruled against him because he did not raise the issue in his application for a certificate of appealability ("COA"), "nor filed a petition for rehearing of the Eleventh Circuit's denial of a COA, nor sought certiorari review of that denial." *Id.* at 537.

The Court concluded that his lack of diligence "confirm[ed]" that the intervening change in the law was "not an extraordinary circumstance justifying relief from the judgment." *Id.* After careful review, the Court concludes that the Plaintiff has not shown entitlement to Rule 60(b)(6) relief. Beginning with his reliance on the Chapman concurrence, the concurrence did not work a change in law and thus is insufficient to establish extraordinary circumstances for this reason alone.

Additionally, the Court has little trouble concluding that the Plaintiff was not diligent in pursuing review of the special report procedures in this case based on *Kister* or the Chapman concurrence, assuming without deciding that either or both of those opinions amount to a change in the law.² First, the Plaintiff did not appeal this Court's grant of summary judgment.

Although the favorable ruling in *Kister*, the Chapman concurrence, or both may have made his decision not to appeal "mistaken in hindsight," the record supports the conclusion that his decision "had been free and voluntary." See *id.* at 538 (citing *Ackermann v. United States*, 340 U.S. 193, 198 (1950)).

Moreover, he waited nearly two years after judgment was entered—and approximately six months after the Eleventh Circuit's decision in *Kister*—to seek 2 To the extent the Plaintiff also relies on the majority opinion in Chapman, it does not alter the Court's conclusion. postjudgment relief in this Court.³ Therefore, on this record the Plaintiff fails to show extraordinary circumstances justifying relief from the judgment.

Accordingly, for the reasons stated, it is ORDERED that the Plaintiff's motion (doc. 82) is DENIED. This case remains CLOSED. DONE this 16th day of January, 2026. /s/ Emily C. Marks
EMILY C. MARKS CHIEF UNITED STATES DISTRICT JUDGE 3 The Court also observes that to date, the Plaintiff still has not filed objections or proposed objections to the Magistrate Judge's Recommendation.

