

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
ALABAMA

**John Andrew Kister v. John Q. Hamm, et al.**

No. 2:20-cv-852-ECM (M.D. Ala. Jan. 16, 2026) · No. No. 2:20-cv-852-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 his case, construing it as a motion for relief from judgment 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 postjudgment relief.

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                | No. 2:20-cv-852-ECM                                                                                                                                                                                                                                        |
| DISPOSITION           | other                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Plaintiff moved pro se under Federal Rule of Civil Procedure 60(b)(6) to reopen a closed prisoner civil-rights case after the court had granted defendants' motion for summary judgment and entered final judgment.                                        |
| STANDARD OF REVIEW    | Rule 60(b)(6) relief is available only in extraordinary circumstances and requires sufficiently extraordinary circumstances together with an extreme and unexpected hardship; lack of diligence in pursuing review of the relevant issue precludes relief. |
| PRECEDENTIAL VALUE    | Unpublished, nonprecedential district-court order                                                                                                                                                                                                          |
| PARTIES               | John Andrew Kister v. John Q. Hamm, et al.                                                                                                                                                                                                                 |

TOPICS

[motion for reconsideration](#)

[civil procedure](#)

[summary judgment](#)

[prisoners rights](#)

[civil rights](#)

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 authority concerning special-report procedures.
2. Whether Plaintiff's failure to object to the Recommendation, appeal the judgment, or timely pursue review precluded a finding of extraordinary circumstances.

## HOLDINGS

1. A judicial concurrence that does not effect a change in law is insufficient, by itself, to establish the extraordinary circumstances required for relief under Rule 60(b)(6).
2. Plaintiff was not entitled to Rule 60(b)(6) relief because he did not demonstrate extraordinary circumstances, including the diligence required to challenge the special-report procedure.

## KEY QUOTATIONS

*“Rule 60(b)(6) relief is available only in ‘extraordinary circumstances.’”*

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

## FACTUAL BACKGROUND

The District Court had granted defendants summary judgment based on their answer and special report after construing those filings as a summary-judgment motion. Plaintiff did not object to the Magistrate Judge's Recommendation, did not appeal the judgment, and waited nearly two years after judgment—and approximately six months after the Eleventh Circuit's decision in another case—to seek postjudgment relief. He relied on that later decision and on a concurrence expressing concerns about the special-report procedure.

## PROCEDURAL HISTORY

The Magistrate Judge construed defendants' answer and special report as a motion for summary judgment and recommended granting judgment for defendants. The District Court adopted the Recommendation, granted summary judgment, dismissed the case with prejudice, and entered final judgment on January 11, 2024. Plaintiff filed no objections to the Recommendation and did not appeal. He later moved to reopen the case based on subsequent Eleventh Circuit decisions concerning special-report procedures; the District Court denied the motion and left the case closed.

## DISPOSITION

other

## CASES CITED

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

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

## OPINION

Kister

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JOHN ANDREW KISTER, )

) Plaintiff, ) ) v. ) CASE NO. 2:20-cv-852-ECM ) [WO] JOHN Q. HAMM, et al., ) ) Defendants. )

## ORDER

On January 11, 2024, 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. 33, 34). In the Recommendation, the Magistrate Judge had construed the Defendants’ answer and special report, which had been filed over two years earlier, as a motion for summary judgment. (Doc. 32 at 2, 7). 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. 36), which the Court construes as a motion for relief under Federal Rule of Civil Procedure 60(b)(6).<sup>1</sup> 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 report, and after final judgment was entered, the Plaintiff obtained from 1 The Plaintiff cites Rule 60(b)(6) in his motion. (Doc. 36 at 1). the Eleventh Circuit the vacatur of a grant of summary judgment in another case based on 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.<sup>2</sup> 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 <sup>2</sup> To the extent the Plaintiff also relies on the majority opinion in Chapman, it does not alter the Court’s conclusion. <sup>3</sup> postjudgment relief in this Court.<sup>3</sup> 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. 36) 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

<sup>3</sup> The Court also observes that to date, the Plaintiff still has not filed objections or proposed objections to the Magistrate Judge’s Recommendation.