

23-7750

No. _____

ORIGINAL
TRANSMISSION

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JUN 10 2024

OFFICE OF THE CLERK

James Moore — PETITIONER

(Your Name)

vs.

Jason Koenigsfeld — RESPONDENT(S)
Collins Community Credit Union

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Eighth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Moore

(Your Name)

1852 A. Ave. NE Apt. #3

(Address)

Cedar Rapids Iowa 52402

(City, State, Zip Code)

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Question's Presented

- (1)** Did the Eighth Circuit abuse it's discretion in failing to recall the mandate of the panel decision affirming the district court without a final decision on appellant document 42 motion pursuant to Federal Rule of Civil Procedure 60 (b) to vacate judgement for which document 41 motion for recusal pursuant to Title 28 U.S.C 455 depended on in violation of Title 28 U.S.C 1291 district court final decision jurisdictional requirement to consider the jurisdictional question.
- (2)** Did the Eighth Circuit abuse it's discretion in failing to recall the mandate based on the irrefutable evidence of the district court judicial bias misconduct which deprived appellant of a meaningful opportunity to be heard in the district court by an impartial decision maker and a meaningful opportunity to appellate review of my Federal Rule of civil procedure rule 60 (b) motion to vacate judgment which set forth new facts and Supreme Court case law that refuted the district court bases for denial.
- (3)** Did the Eighth circuit abuse it's discretion in failing to recall the mandate where the eighth Circuit Clerk docket showed the district court continued the judicial bias misconduct attempting to have my appeal dismissed as untimely by submitting false dated text order judgements in violation of Federal Rules of Appellate procedure 10. (a)(1) and (a)(3) Record on Appeal provision to try and cover up the judicial bias misconduct by preventing appellate review.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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Federal Rules of Civil procedure 15 (c)(1)(B) relation back-----

Federal rule of appellate procedure 10 (a)(1)and (a)(3) record on appeal—

Federal rule of civil procedure 54 (b)

Federal rule of civil procecre 60 (b)(2),(4) and (6)

Constitution

Fifth Amendment Due process

Right to be heard equal protection

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 19, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Procedural History

This case started from a civil lawsuit filed on March 13, 2021 against defendants Jason Koenigsfeld and Collins community credit Union alleging a violation of title 12 U.S.C. 4002 Expedited Funds Availability Act and violations of Title 42 U.S.C. 1981 intentional discrimination and retaliation. The district court dismissed the complaint *sua sponte* pursuant to 28 U.S.C. 1915 (e)(2)(B)(ii) for failure to state a claim without any response from defendants. Appellant appealed to the Eighth Circuit which denied the appeal without opinion and appellate filed a petition for certiorari review. The Supreme Court required defendants to respond to the petition for certiorari which defendants in their first response to the complaint claims admitted facts constituting a violation of the complaint title 12 U.S.C. 4002 (a)(1)(B) wire deposit mandatory requirement as alleged in the complaint and facts that violate the title 42 U.S.C. 1981 Retaliation claim alleged in complaint and false facts concerning their reason denying the 1981 discrimination claim. The defendants also admitted the district court erred in dismissing appellant motion to amend complaint documents 2-3 as moot because they correctly identified the deposit as an ACH deposit from Customer's Bank and that nowhere in the complaint did appellate allege he received a check deposit from the Treasury as the court incorrectly interpreted in favor of the defendants. Based on these later new facts appellant filed two motions to the district court document 41 Motion for recusal pursuant to 28 U.S.C. 455 (a) and (b) asking the court to recuse himself before addressing the document 42 Federal Rule of Civil procedure 60 (b)(2) and (b)(6) motion to vacate judgement to allow the attached Post judgement Federal Rule of Civil Procedure 15(c)(1)(B) Relation Back complaint to be filed if the judgement was vacated. The district court document 43 text order denied appellant document 41 motion for recusal stating case closed appellant lost his appeal. The district court document 44 text order denied the unfiled attached federal Rule of Civil procedure 15(c)(1)(B) Relation Back attached complaint stating case closed appellant lost his appeal without addressing the actual document 42 motion pursuant to Federal rule of civil procedure 60 (b) to vacate judgement which set forth defendants later newly discovered evidentiary statements not considered by any previous court in their previous decisions authorizing reopening the case without recall of the courts mandates citing

Supreme Court president in Standard Oil Co. of California v. United States 429 U.S. 17,18 (1976) which contradict the district court document 43 and 44 bases for denial based on prior appellate review. The district court document 43 and 44 also refused to accept any further filings from appellate preventing appellate from filing any motion to have the district court correct document 44 mischaracterization of appellant document 42 as a motion to amend complaint rather than a motion pursuant to rule 60(b) to vacate judgment and to address the merits to allow appellant to preserve the issues for appellate review. Appellant then appealed to the eighth circuit which affirmed the district court without opinion. Appellant then filed a motion to recall the mandate based on the panel lack of jurisdiction to affirm the district court pursuant to title 28 U.S.C. 1291 final district court decision jurisdictional requirement because the district court had not addressed the merits of appellant actual filed rule 60(b) motion to vacate judgement which both the motion to recuse and the post judgement relation back complaint depended on in order for consideration. Appellant also asked the eighth circuit to recall the mandate based on the district court judicial bias misconduct including the continued misconduct on appeal submitting false dated judgements attempting to have my appeal dismissed as untimely. The eighth circuit denied to recall the mandate without opinion on the jurisdictional issue or the judicial misconduct issue. Appellant now files this petition for certiorari to the United States Supreme Court for review.

Reasons For Granting The Petition

The Eighth Circuit abused its discretion in
Failing to recall the mandate based on the
Appellate court lack of jurisdiction to hear
Appeal pursuant to 28 U.S.C. 1291 district
Court final decision requirement.

(1) Appellant filed a motion to the eighth circuit to recall the mandate based on the appellant panel lack of jurisdiction to hear the appeal and affirm the district court pursuant to 28 U.S.C.1291 district court final decision jurisdictional requirement because there was no final decision entered by the district court on appellant document 42 motion pursuant to Federal rule of Civil Procedure 60 (b) motion to vacate judgement which both the attached federal Rule of Civil procedure 15 (c)(1)(B) Relation Back amended complaint and Document 41 motion for recusal pursuant to 28 U.S.C. 455 was based on. Document 42 was not a motion to amend the complaint as mischaracterized by the district court document 44 denial. See appendix (B) district court document 44 denial. Document 42 page 1 heading is clearly titled

“ Motion pursuant to federal rule of civil procedure 60 (b)(2)and (b)(6) asking the district court to vacate The original judgement to allow filing the federal rule Civil procedure 15 (c)(1)(B) relation back attached Amended filed complaint.” See appendix (C) document 42 rule 60 (b) motion page 1.

The rule 60 (b) motion to vacate judgment set forth later newly discovered evidence from defendants later Supreme court response admitting facts that violated the complaint title 12 U.S.C. 4002(a)(1)(B) wire deposit next business day mandatory requirement and facts that violate the complaint title 42 U.S.C. 1981 retaliation claim and untrue facts concerning their bases for denying the 1981 discrimination claim which were attached to the document 42 60 (b) motion. See appendix (C) rule 60 (b) motion page 1-3. The rule 60 (b) motion also cited Supreme Court precedent Standard Oil Co. of California v. United States 429 U.S 17, 18 (1976) which authorizes an appellant to file a rule 60 (b) motion to vacate judgement based on a later event not considered by the courts in their previous decisions without recall of their mandates. See appendix (C) rule 60 (b) motion page 3. See also LSL J Partnership v. Frito –Lay Co. 920 F.2d 476, 477-478 (7th cir. 1990) and Deweert v. Baldinger 38 F.3d 1266, 1270 (2nd cir. 1994). Therefore the factual bases and cited case law of the rule 60 (b) motion refutes both the district court bases for denial in the district court document 43 denying to recuse because appellant lost his appeal and document 44 because appellant lost his appeal, and because the district court document 44 failed to address the merits of appellant actual filed document 42 rule 60 (b) motion to vacate judgement which refutes the district court bases for denial in document 43 and 44 there was no final decision ending the litigation on the merits for appellate jurisdiction pursuant to 28 U.S.C.1291 because the courts have held that a final decision for purposes of 1291 is one that ends the litigation on the merits and resolves all the issues. See Quackenbush v. Allstate Ins. Co. 517 U.S. 706, 712 (1996), Cunningham v. Hamilton 527 U.S. 198,203-204 (1999), National Dist. Agency v.Nationwide Mut. Ins. Co. 117 F.3d 432, 433 (9th cir. 1997) and Henrietta D. v. Guilliani 246 F. 3d 176, 181 (2nd cir. 2001). See also federal Rules of Civil procedure 54 (b). Therefore clearly there cannot be a final decision in this case where the district court avoided addressing the merits of the motion which refuted the courts bases for denial. The district court also prevented appellant from obtaining a final decision by refusing to accept any further filings from appellant preventing appellate from filing a motion to obtain

Finality by filing a motion to have the district court address the rule 60 (b) motion merits and preserve the issues for appeal. See motion to recall mandate. Because absent the district court addressing the rule 60 (b) motion merits the issues would not be preserved for appeal. See Gen. ins. Co. v. Contenental Cement Co. 761 F.3d 830, 837 (8th cir. 2004). The Supreme Court has stated that courts have a special obligation to insure their jurisdiction to hear the appeal to decide the case. See Bender v. Williams Area Sch. Dist. 475 U.S. 534, 541 -542 (1986), Franklin v. Peterson 878 F.3d 631, 635 (8th cir.2017), Kamerling v. Massanari 295 F.3d 206 ,212-213 (2nd cir. 2002) and Jackson v. Fort Hosp. Training Sch. 964 F.2d 980, 987 (10th cir. 1992). Also the fact appellant document 41 motion for recusal specifically asked the district court to recuse himself from the case before considering the rule 60 (b) motion to vacate the judgement. See document 41 page 1. Therefore it should have been clear to the panel that no final decision was entered in the case given the district court document 44 text order denied only the unfiled attached amended motion without addressing or mentioning the actual filed document 42 rule 60 (b) motion merits.

Also the fact that pursuant to eighth circuit precedent and every other appellate court a district court may not even consider a post judgement motion to amend the complaint once a judgement has been entered in the case unless the plaintiff first file a proper motion pursuant to federal rule of civil procedure 59 (e), or 60 (b) to have the judgement vacated to allow the filing of a amended complaint which must accompany the motion to vacate which is the procedure appellant followed. See Wilburn v. Pepsi Cola Bottling Co. of ST. Louis 492 F.2d 1288, 1290 (8th cir. 1974), Cooper v. Shumway 780 F.2d 27, 28-29 (10th cir. 1985) Scott v. Schmidt 773 F.2d 160, 163 (7th cir. 1985) and Laber v. Harvey 438 F.3d 404, 427 (4th cir enbanc 2006). The First circuit in Alsamhouri v. Gonzalez 471 F.3d 209, 210 (1st cir. 2006) recalled their mandate to determine the jurisdictional question to prevent the Supreme Court from considering the issue for the first time in petition for certiorari.

Appellant states the Supreme Court has held that when the courts lack subject matter jurisdiction which determines the court power to hear a case requires reversal regardless because such errors can never be waived or forfeited. See United States v. Cotton 535 U.S. 625, 630 (2002). Also such judgements are considered void. See Valley v. Northern Fire & Marine Ins. 254 U.S. 348, 353-354 (1920). And because the district court has instructed the clerk to not accept any further filings in this case from appellant, appellant would not be able to file a rule 60 9b) (4). The eighth circuit denial to recall the mandate without opinion to explain their jurisdiction to hear the appeal pursuant to 1291 proves the record show the court lacked jurisdiction and their failure to recall the mandate constitute abuse of discretion.

The eighth Circuit abused its discretion in failing
To recall the mandate based on the extraordinary
Judicial bias misconduct violating my due process
Right to meaningful opportunity to be heard and
Meaningful appellate review of my Federal rule 60
(b) motion to vacate judgement document 42.

Appellant filed a motion to recall the mandate based on the district court judicial bias misconduct which violated my due process right to a meaningful opportunity to be heard in the district court and meaningful opportunity to appellate review of my Federal Rule of civil procedure 60 (b) motion to vacate judgement by failing to address the merits of the rule 60 (b) motion in the district court document 44 text order denial denying appellant document 42 which refutes the district court documents 43 and 44 text order denials based on prior appellate review. See appendix (C) page 1-3. and then refusing to accept any further filings from appellant to have the district court address the rule 60 (b) motion merits preventing appellate from preserving the issues for appellate review. See motion to recall the mandate pages 4-7 which prevented appellate from preserving

the issues for appellate review. See Gen. Ins. Co. v. Contenental Cement Co. 761 F.3d 830, 837 (8th cir. 2004). The motion to recall the mandate also showed the district court continued its judicial bias misconduct on appeal as alleged in document 41 motion for recusal by submitting false dated text order judgements attempting to have the appeal dismissed as untimely to cover up the judicial bias misconduct. See motion for recusal page 4-7. Appellant filed both documents 41 and 42 on 8-29-2023 and the district court denied both motions on 8-30-2023. See appendix (B) district court original text order judgements document 43 and 44 denying documents 41 and 42. but the district court submitted false dated text order judgements initially to the eighth circuit clerk dated 8-23-2023 violating Federal Rules of Appellate procedure 10. (a)(1)and (a)(3) record of appeal attempting to have my appeal dismissed as untimely to cover up the judicial bias misconduct. See appendix (D) eighth circuit letter stating my notice of appeal which was filed on September 26, 2023 appears untimely because the district court initially submitted false dated judgements. See appendix (E) eighth circuit docket dated September 28, 2028 referring to two text orders dated 8-23-2023 which I contested submitting the original two text order denials dated 8-30-2023 documents and the eighth circuit clerk corrected the docket date on 10-11, 2023. See appendix (F) eighth circuit docket correction, which confirms the district court continued judicial bias misconduct throughout this case including on the present appeal which required the appellate court to recall the mandate vacate the judgments and remand to a different judge. Therefore clearly the eighth circuit abused their discretion in failing to recall the mandate based on the extraordinary judicial bias misconduct in this case to prevent a complete miscarriage of justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

To prevent a complete injustice

Respectfully submitted,

James Moore

Date: 6-11-2024