

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

JAMES SAMUEL FELKNOR

CIVIL ACTION NO. 10-0463

VERSUS

JUDGE S. MAURICE HICKS, JR.

ROBERT H. FELKNOR, ET AL.

MAGISTRATE JUDGE HORNSBY

ORDER

Before the Court is a “Motion for Relief from a Judgment or Order” (Record Document 33) filed by *pro se* plaintiff James S. Felknor (“Felknor”). Felknor filed the motion pursuant to Federal Rule of Civil Procedure 60(b)(3), seeking relief from a judgment based on fraud, misrepresentation, or misconduct by an opposing party.

Felknor’s case was dismissed *sua sponte* on May 18, 2010 for failure to state a claim on which relief may be granted. See Record Documents 17 & 25. At that time, Felknor was warned as to the possible sanctions for filing meritless cases, which take time away from the Court’s handling of other cases that do have merit. See Record Document 17 at 6. Despite such warning, Felknor has continued to file numerous post-judgment motions seeking to continue to prosecute this meritless case.

Federal Rule of Civil Procedure 60(b) provides in pertinent part:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.

F.R.C.P. 60(b). Rule 60(b)(3) allows a party to obtain relief from a judgment that was obtained by fraud, misrepresentation, or other misconduct ***by an opposing party***. See In re Roberts, No. 09-30754, 2010 WL 1725391, *1 & *3 (5th Cir. April 26, 2010). “A party

making a Rule 60(b)(3) motion must establish (1) ***that the adverse party engaged in fraud or other misconduct*** [in obtaining the judgment], and (2) that this misconduct prevented the moving party from fully and fairly presenting his case.” Id. (emphasis added), citing Hesling v. CSX Transp., Inc., 396 F.3d 632, 641 (5th Cir.2005). Here, Felknor cannot establish that an adverse party engaged in fraud or other misconduct to obtain the judgment because no defendant appeared and the Court dismissed the case *sua sponte*. See Record Document 17 at 5.

Accordingly,

IT IS ORDERED that the “Motion for Relief from a Judgment or Order” (Record Document 33) be and is hereby **DENIED**.

THUS DONE AND SIGNED, at Shreveport, Louisiana, this the 14th day of June, 2010.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE