

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SALVATORE ZICCARELLI,)	
)	
Plaintiff,)	
)	Case No. 17 C 3179
v.)	
)	Hon. John J. Tharp
THOMAS J. DART, Sheriff of Cook County,)	
Illinois and COOK COUNTY, ILLINOIS, a)	
Municipal Corporation and Body Politic,)	
)	
Defendants.)	

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

Defendants, Thomas J. Dart in his official capacity as Sheriff of Cook County (“the Sheriff’s Office”) and Cook County as indemnitor, by their attorney, Eileen O’Neill Burke, Cook County State’s Attorney, through her assistants, Kathleen Ori and Nazia Hasan, submit their memorandum in support of summary judgment:

INTRODUCTION

Plaintiff Salvatore Zicarelli filed this lawsuit after he resigned from his position as a correctional officer in 2016. Based on one telephone call Plaintiff had with Wylola Shinnawi, the FMLA manager for the Sheriff’s Office, Plaintiff claims that the Sheriff’s Office interfered with his rights under the Family Medical Leave Act of 1993, (“FMLA”). This Court has already correctly ruled that there was no link between the conduct of Ms. Shinnawi and Plaintiff’s decision to retire instead of taking his remaining FMLA leave in 2016. During the underlying trial, Plaintiff “presented insufficient evidence of prejudice for a reasonable jury to find for him on this issue.” *Zicarelli v. Dart*, 2024 U.S. Dist. LEXIS 143237, *17-18 (N.D. August 7, 2024). This Court found that “[N]otwithstanding the threats attributed to Ms. Shinnawi, Mr. Zicarelli took FMLA leave after his phone call with Ms. Shinnawi, and he was not disciplined for taking that leave (or any prior leave). This fact negates any reasonable inference that

Ms. Shinnawi's statements in her phone call with Mr. Zicarelli caused him not to take FMLA leave." *Id.* at 18. The Seventh Circuit has already found that this Court did not abuse its discretion in making this finding. *Zicarelli v. Dart*, 2025 U.S. App. LEXIS 16070, *27 (7th Cir. 2025) ("*Zicarelli II*"). On Appeal, the Seventh Circuit agreed that it was proper for this Court to hold that Plaintiff could not claim prejudice resulting solely from his decision to retire. *Id.* at * 26. The Seventh Circuit noted that, in holding that Plaintiff failed to prove prejudice, this Court "properly pointed to the one post-conversation day of FMLA leave as evidence that Zicarelli did not shy away from taking leave while he remained employed by the Sheriff's Office." *Id.*¹

This is the second time this case has been remanded. Initially, the Seventh Circuit remanded Plaintiff's FMLA interference claim for trial, concluding that there *could* be a link between the conduct of Ms. Shinnawi and Plaintiff's decision not to take his remaining FMLA leave in 2016. *Zicarelli v. Dart*, 35 F.4th at 1090 (7th Cir. 2022) ("*Zicarelli I*"). This was before Plaintiff *admitted* that he took "a little bit" of FMLA *after* his conversation with Ms. Shinnawi. Based upon the expanded factual record (namely, Plaintiff's own trial testimony), the undisputed evidence establishes that there is no evidence in the record that Plaintiff suffered prejudice as a result of his conversation with Ms. Shinnawi. Since the material facts of this FMLA interference claim are not in dispute, the Court should grant summary judgment in favor of Defendants.

¹ The Seventh Circuit remanded the matter to this Court for further proceedings consistent with its opinion, specifically declining to reassign the case to a different judge, noting "Judge Tharp has a thorough understanding of the record and the various issues that make this case challenging. His knowledge and understanding will help guide the just resolution of this case." *Zicarelli II*, 2025 U.S. App. LEXIS 16070 at *30. The Seventh Circuit concluded: "The case is REMANDED to the district court for further proceedings consistent with this opinion." *Id.* at *31.

FACTUAL BACKGROUND

I. Procedural History

This Court is familiar with the procedural history of this case. Plaintiff filed his Complaint in April 2017, alleging disability and age employment discrimination under Title VII, 42 U.S.C. Section 2000e, et seq. and the Americans with Disabilities Act of 1990, a class-of-one equal protection violation, and retaliation and interference under the FMLA. Initially, this matter was resolved on all counts on summary judgment in favor of Defendants. Plaintiff appealed the decision regarding his claims of retaliation and interference under the FMLA.

The Seventh Circuit remanded Plaintiff's FMLA interference claim for a jury trial. *Zicarelli I*, 35 F.4th at 1089. In remanding the FMLA interference claim for trial, the Seventh Circuit held that to prevail on the FMLA interference claim, Plaintiff "must also show he was prejudiced by the unlawful actions of the Sheriff's Office." *Id.* at 1090. To prove prejudice, Plaintiff would have to prove "harm resulting from the violation" of his FMLA rights. *Id.* at 1084. During pre-trial discussions, Plaintiff's counsel noted "it was crazy for him to quit. ... It was not objectively reasonable for him to quit based on what Ms. Shinnawi said." *Zicarelli II*, 2025 U.S. App. LEXIS 16070, *21-22.

This matter proceeded to a two-day jury trial on Plaintiff's FMLA interference claim in March 2024. After jury deliberations, the jury found that the Sheriff's Office interfered with Plaintiff's FMLA rights and awarded \$240,000 plus attorney's fees. Following the jury verdict, the parties filed post-trial motions. On August 7, 2024, this Court granted the Sheriff's Office's motion for judgment as a matter of law, finding that Plaintiff failed to prove he suffered prejudice from the Sheriff's Office's conduct. *Zicarelli v. Dart*, 2024 U.S. Dist. LEXIS 143237, 17 (N.D. Ill. August 7, 2024). In the event that its grant of judgment as a matter of law was reversed, this Court conditionally granted a new trial, again finding insufficient evidence of prejudice. *Id.* at 20.

On June 30, 2025, the Seventh Circuit affirmed this Court's provisional granting of a new trial and reversed the Court's granting of judgment as a matter of law. *Zicarelli II*, 2025 U.S. App. LEXIS 16070. The Seventh Circuit remanded the matter to this Court for further proceedings consistent with its opinion, specifically declining to reassign the case to a different judge. *Id.* at *30.

II. Plaintiff's employment at the Sheriff's Office

Plaintiff worked at the Sheriff's Office as a correctional officer for twenty-seven years. SOF ¶ 1. Plaintiff remained employed as a correctional officer until he resigned on September 20, 2016. SOF ¶ 27.

In December 2015, Plaintiff submitted a request for FMLA leave. SOF ¶ 7. The Sheriff's Office approved his application in January 2016. SOF ¶ 8. Plaintiff knew that, pursuant to policy, he could take up to 12 weeks of leave, which is 480 hours. SOF ¶ 9. In July 2016, Plaintiff's psychiatrist recommended that he take eight weeks of leave so he could undergo a partial hospitalization program. SOF ¶ 10. After receiving this recommendation, he reached out to Ms. Shinnawi via telephone. SOF ¶ 11.

III. Plaintiff's telephone call with Ms. Shinnawi, the FMLA manager

While he cannot recall the date, Plaintiff telephoned Ms. Shinnawi while he was on-duty. SOF ¶ 12. At the time he called Ms. Shinnawi, he had already used FMLA time in 2016. SOF ¶ 13. At the time of his call with Ms. Shinnawi, Plaintiff knew he still had FMLA time remaining. SOF ¶ 14. The FMLA hours are tracked in a database that Ms. Shinnawi can access. SOF ¶ 15. When he called Ms. Shinnawi, Plaintiff knew that he did not have eight weeks of FMLA leave remaining. SOF ¶ 16.

Plaintiff had a two- or three-minute conversation with Ms. Shinnawi. SOF ¶ 17. On that call, he told Ms. Shinnawi that he needed to take FMLA leave, and she told him that he could not take any more leave or he would be disciplined. SOF ¶ 18. He thought when Ms. Shinnawi used the term "discipline," she meant fired. SOF ¶ 19. Plaintiff had never been disciplined for taking FMLA leave, and Ms. Shinnawi had never disciplined him, nor was discipline her purview. SOF ¶ 20.

After Plaintiff's telephone call with Ms. Shinnawi, he took additional FMLA leave. SOF ¶ 22. Plaintiff's timesheet that tracks his work hours corroborates that Plaintiff took additional FMLA time after the telephone call. SOF ¶ 23. Plaintiff was not disciplined for taking additional FMLA leave following his call with Ms. Shinnawi. SOF ¶ 24. The Sheriff's Office never disciplined Plaintiff for taking FMLA leave. SOF ¶ 25. Plaintiff resigned from the Sheriff's Office on September 20, 2016. SOF ¶ 26.

STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *McGreal v. Vill. of Orland Park*, 850 F.3d 308, 312 (7th Cir. 2017); see F.R.C.P. 56(a). A "material fact" is one identified by the substantive law as affecting the outcome of the suit. *Hanover Ins. Co. v. Northern Bldg. Co.*, 751 F.3d 788, 791 (7th Cir. 2014), quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Although the court construes all facts in the light most favorable to the non-moving party, it does not extend this favor to inferences "that are supported by only speculation or conjecture" and to survive summary judgment, the non-moving party must establish some genuine issue for trial "such that a reasonable jury could return a verdict" in his favor. *Fitzgerald v. Santoro*, 707 F.3d 725, 730 (7th Cir. 2013) (internal quotation marks and citation omitted). Here, because no reasonable jury could return a verdict in favor of Plaintiff, summary judgment in favor of Defendants is proper.

ARGUMENT

To prevail on an FMLA interference claim, a plaintiff must prove that the actions of his employer would have discouraged a reasonable employee from taking FMLA leave and caused him to be prejudiced. *Preddie v. Bartholomew Consol. Sch. Corp.*, 799 F.3d 806, 818 n.35 (7th Cir. 2015). Prejudice is based on an objective standard, not a plaintiff's subjective feelings. *Freelain v. Vill. of Oak Park*, 888 F.3d 895, 898 (7th Cir. 2018). To prevail, the plaintiff must show prejudice from the violation. *Zicarelli*

I, 35 F.4th at 1089. Plaintiff's claim for FMLA interference is based on the one telephone call he had with Ms. Shinnawi. SOF ¶ 5.

Plaintiff cannot show prejudice from this telephone call. Plaintiff testified that Ms. Shinnawi told him he could not take any more FMLA leave and that he would be disciplined if he took more leave. SOF ¶¶ 5, 18. At the time of the telephone call, Plaintiff knew that Ms. Shinnawi did not have the authority to discipline him. SOF ¶ 20. Additionally, at the time of the telephone call, Plaintiff had never been disciplined for taking FMLA leave. SOF ¶ 25. A reasonable employee would not be discouraged from taking additional FMLA leave by Ms. Shinnawi's statement. And Plaintiff himself was not discouraged from taking additional FMLA leave: Plaintiff concedes *he took more* FMLA leave *after* his telephone call with her. SOF ¶ 22. Plaintiff's timesheet corroborates that he took more FMLA leave, and he was not disciplined for taking this additional FMLA leave. SOF ¶¶ 23-24.

These facts negate any reasonable inference that Ms. Shinnawi's statements in her telephone call with Plaintiff caused him not to take FMLA leave. Plaintiff was not prejudiced by the Sheriff's Office's conduct and therefore, cannot prevail on this claim. *Zicarelli II*, 2025 U.S. App. LEXIS at 26-27 (finding that "the district court did not abuse its discretion by concluding that Zicarelli had not presented evidence of prejudice aside from his resignation and the resulting harm. It properly pointed to the one post-conversation day of FMLA leave as evidence that Zicarelli did not shy away from taking leave while he remained employed by the Sheriff's Office.").

In discussing the need to prove prejudice in order to prevail on an FMLA interference claim, *Zicarelli II* cited both *Hickey v. Protective Life Corp.*, 988 F.3d 380, 389 (7th Cir. 2021) and *Cianci v. Pettibone Corp.*, 152 F.3d 723, 728-29 (7th Cir. 1998), noting that the plaintiffs in both of those cases were no longer employed when their scheduled FMLA leave would have occurred (both plaintiffs had been terminated before the planned FMLA leave) could not show prejudice for purposes of their FMLA claims "because they did not work at their jobs long enough to suffer prejudice. The same may well be

true in this case.” *Id.* When Plaintiff chose to resign from the Sheriff’s Office, he still had FMLA leave time remaining. SOF ¶ 28. But the Seventh Circuit held that his decision to resign from his employment with the Sheriff’s Office cannot be attributed to Ms. Shinnawi’s conduct. *See Zicarelli II*, 2025 U.S. App. LEXIS at *4-5 (finding the constructive discharge claim “untenable” and quoting *Zicarelli I*: “A reasonable person [in Zicarelli’s position] likely would have thought he had several options short of immediate retirement under these facts, especially when Zicarelli had not yet even applied for FMLA leave and any potential discipline remained remote.”). Because Plaintiff took additional FMLA leave after his telephone call with Ms. Shinnawi, there is no evidence of prejudice. Plaintiff cannot prevail on his FMLA interference claim and the Court should grant summary judgment in favor of Defendants.

CONCLUSION

Defendants respectfully request this Honorable Court grant Defendants’ Motion for Summary Judgment and for any other relief it deems appropriate.

Respectfully submitted,
EILEEN O’NEILL BURKE
State’s Attorney of Cook County

By: /s/ Kathleen C. Ori
Kathleen C. Ori
Nazia Hasan
Assistant State’s Attorneys
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-4635/3618
kathleen.ori@cookcountysao.org
nazia.hasan@cookcountysao.org