

**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' MOTION FOR LEAVE OF COURT
TO FILE MOTION FOR SUMMARY JUDGMENT *INSTANTER***

Defendants, Thomas J. Dart in his official capacity as Sheriff of Cook County (“the Sheriff’s Office”) and Cook County as indemnitor seek leave of Court to file a successive motion for summary judgment pursuant to Rule 56, which is attached to this motion. In support of this motion, Defendants state as follows:

Introduction

Plaintiff Salvatore Ziccarelli filed this lawsuit after he resigned from his position as a correctional officer at the Sheriff’s Office in 2016. 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. *Ziccarelli 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 Court of Appeals for 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 v. Dart*, 2025 U.S. App. LEXIS 16070 (7th Cir. June 30, 2025). 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." *Id.* at 30. The Seventh Circuit concluded: "The case is REMANDED to the district court for further proceedings consistent with this opinion." *Id.* at 31.

Defendants now seek leave of Court to file a second motion for summary judgment because, based on the expanded trial record, the undisputed evidence demonstrates Plaintiff cannot prevail on his FMLA interference claim. Summary judgment would obviate the need for another trial of this matter.

Argument

I. The Court has the authority to grant the motion for leave to file a successive motion for summary judgment.

This Court has the discretion to grant the Sheriff's Office's motion seeking leave of Court to file a successive motion for summary judgment for two reasons.

First, the granting of this motion complies with the mandate. The mandate rule requires a lower court to adhere to the commands of a higher court on remand. *Carmody v. Bd. of Trs. of the Univ. of Ill.*, 893 F.3d 397, 407 (7th Cir. 2018). Here, the Seventh Circuit remanded this case "to the district court for further proceedings consistent with this opinion." *Zicarelli*, 2024 U.S. Dist. LEXIS 143237 at 20. This mandate does not require that a new trial occur since the granting of a new trial (in civil cases) is a non-final, non-appealable order. *Galvan v. Norberg*, 678 F.3d 581, 586-587 (7th Cir. 2012) (finding that the newly assigned district judge had the discretion to reconsider an order granting a new trial). Rule 54(b) provides that non-final orders "may be revised at any time before the entry of a

judgment adjudicating all the claims and all the parties' rights and liabilities." *Id.* Here, since the mandate remanded the case "for further proceedings consistent with this opinion," there is no final order and this Court may consider a successive summary judgment motion without being in conflict with the mandate. *Compare Callaban v. Cnty. of Suffolk*, 96 F.4th 362, 368 (2d Cir. 2024) (holding "the district court should have held a new trial because our mandate clearly instructed the district court to do so" where the mandate stated: "We therefore **VACATE** the judgment of the district court and **REMAND** for a new trial." *Callaban v. Wilson*, 863 F.3d 144, 154 (2d Cir. 2017) (emphasis in original)). Here, the mandate requires "further proceedings."

Second, the filing of a successive summary judgment motion is a matter within the discretion of the district court and if good reasons exist, the district court has discretion to allow a party to file a successive summary judgment motion. *520 S. Mich. Assocs., Ltd. v. Unite Here Loc. 1*, 2016 U.S. Dist. LEXIS 206672, *2 (N.D. Ill. Mar. 25, 2016) (after the Seventh Circuit reversed and remanded the case, the court allowed the defendant to file a successive motion for summary judgment). *See also Hollingshead v. Wexford Health Sources, Inc.*, 2025 U.S. Dist. LEXIS 139382, *3 (C.D. Ill. July 22, 2025) *citing Narducci v. Moore*, 572 F.2d 313, 314 (7th Cir. 2009) ("The federal rules neither permit nor prohibit successive motions for summary judgment, and the decision to consider such a motion falls within the discretion of the district court."). A successive summary judgment motion is appropriate especially if one of the following grounds exists: "(1) an intervening change in controlling law; (2) the availability of new evidence or an expanded factual record; and (3) need to correct a clear error or prevent manifest injustice." *Whitford v. Boglino*, 63 F.3d 527, 530 (7th Cir. 1995) (citations omitted). Summary judgment is appropriate under Rule 56 where there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Here, based upon the availability of an expanded factual record gleaned from trial testimony, an additional summary judgment motion is proper.

II. A successive summary judgment motion is appropriate based on the trial record.

Here, the Court should grant leave to file a successive summary judgment motion because the expanded factual record (the trial testimony) demonstrates that Plaintiff cannot prevail on his FMLA interference claim and Defendants are entitled to judgment as a matter of law. For Plaintiff to prevail on his FMLA interference claim, he must prove by a preponderance of the evidence that the actions of the Sheriff's Office would have discouraged a reasonable employee from taking FMLA leave *and caused him to be prejudiced*. See *Preddie v. Bartholomew Consol. Sch. Corp.*, 799 F.3d 806, 818 n.35 (7th Cir. 2015) (emphasis added). Plaintiff admits that *after* he inquired about taking additional FMLA leave to the FMLA manager, *he took more FMLA leave and was not disciplined*. Dkt. 865, 3/12/24 Tr. 256:2-10; 258:1-6. Plaintiff's timesheet corroborates that he took more FMLA time. Plaintiff further testified that the FMLA manager never disciplined him nor would discipline be under her purview. Dkt. 865, 3/12/24 Tr. 256:7-10. Because Plaintiff concedes he took more FMLA leave after his telephone call with the FMLA manager, his testimony demonstrates that he was not prejudiced by the Sheriff's Office's conduct and therefore, cannot prevail on this claim. Accordingly, Defendants seek leave to file a second motion for summary judgment.

Conclusion

Defendants seek leave of the Court to file a successive motion for summary judgment *instantly*, and grant any additional relief the Court deems appropriate. Counsel for Plaintiff opposes this motion and requests 21 days to file a response to this motion.

Dated: August 12, 2025

Respectfully submitted,

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