IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Theresa Kennedy, individually and for others similarly situated,	)	
Plaintiffs,	)	
	)	20-cv-1440
-vs-	)	
	)	*(Judge Feinerman)*
City of Chicago,	)	
Defendant.	)	

PLAINTIFFS' MOTION TO RECONSIDER OR, IN THE ALTERNATIVE, FOR ENTRY OF RULE 54(b) JUDGMENT

Plaintiffs Murdock, Cruz, Fischer, and Neals request that the Court reconsider its order of December 1, 2022 to address an issue overlooked by the Court.[1] In the alternative, plaintiffs Murdock, Cruz, Fischer, and Neals request that the Court enter judgment, pursuant to Rule 54(b), in accordance with the order of December 1, 2022.

Grounds for these requests are as follows:

1. The Court recognized that because Cook County General Administrative Order 2015-06 was issued in 2015, the City could not have relied on the Order when, in 2012, it adopted the policy plaintiffs challenge in this

[1] Plaintiffs do not intend to rehash arguments rejected by the Court, but rely on a traditional ground for rehearing, that the Court overlooked an argument. *See* FEDERAL RULE OF APPELLATE PROCEDURE 40(a)(2).

case. (ECF No. 136 at 7.) The Court also recognized differences between the scope of the Administrative Order and the City's policy. (*Id.*)

2. The Court nevertheless rejected the challenge to the policy by plaintiffs Murdock, Cruz, Fischer, and Neals based on the City's argument that application of its policy in 2019 and succeeding years was commanded by the Administrative Order. (ECF No. 136 at 5-8.)

3. The Court overlooked the question of whether, to invoke the defense that its policy had been compelled by "a 'command' of state law" (ECF No. 136 at 5), the City need only show that it "could have" relied on the Administrative Order in continuing to apply its 2012 policy. This question was not presented in any of the cases relied on by the Court:

a. *Bethesda Lutheran Homes and Services, Inc. v. Leean*, 154 F.3d 716, (7th Cir. 1998) involved the application of federal Medicaid regulations. The Seventh Circuit concluded, "it is the policy contained in that state or federal law, rather than anything devised or adopted by the municipality, that is responsible for the injury." *Id.* at 718.

b. *Snyder v. King*, 745 F.3d 242 (7th Cir. 2014) arose from "disenfranchisement of incarcerated persons … [as] laid out in the [Indiana] code. *Id.* at 248.

c. The Sheriff in *Henry v. Farmer City State Bank*, 808 F.2d 1228 (7th Cir. 1986) "was at all times acting pursuant to an official court order to enforce a validly entered judgment." *Id.* at 1238.

4. In each of these cases, the regulations, statute, or court order had been promulgated *before* it was applied by defendant, and the regulations, statute, or court order was the cause of the defendant's acts. Each case involved "efforts to implement a state mandate when the plaintiff cannot point to a separate policy choice made by the municipality." *N.N. ex rel. S.S. v. Madison Metro. School District*, 670 F. Supp. 2d 927, 941 (W.D. Wis. 2009).

5. In this case, the City made a separate policy choice when it adopted the challenged policy in 2012. The Chief Judge subsequently issued the General Administrative Order in 2015. The policy the City adopted in 2012 implemented only a subset of the policies set out in the General Administrative Order.

6. The City has never presented any evidence that it adopted or continued to apply the challenged policy because of the Administrative Order. Nothing in the documents produced by the City after the Court rejected its claim of "deliberative-process privilege," *Murdock v. Chicago*, 565 F.

Supp. 3d 1037 (N.D. Ill. 2021), shows any reliance on the Administrative Order. It is certainly plausible that a creative Corporation Counsel invented the claim of reliance on the General Administrative Order in defending *Alcorn v. City of Chicago*, No. 17 C 5859, 2018 WL 3614010, at *8 (N.D. Ill. July 27, 2018) (opinion on motion to dismiss).

7. In the alternative, if the Court declines to reconsider, plaintiffs Murdock, Cruz, Fischer, and Neals respectfully request that the Court enter judgment, pursuant to Rule 54(b), against them and in favor of the City of Chicago.

8. As this Court summarized in *Cook County v. Wolf*, 498 F. Supp. 3d 999, 1007–08 (N.D. Ill. 2020), "A proper Rule 54(b) order requires the district court to make two determinations: (1) that the order in question was truly a 'final judgment,' and (2) that there is no just reason to delay the appeal of the claim that was 'finally' decided." *Id.* at 1007-08 (cleaned up).

9. The order of December 1, 2022 satisfies each requirement. First, the order is a "final judgment" because it is the "ultimate disposition" of the claims of plaintiffs Murdock, Cruz, Fischer, and Neals against the City of Chicago and there is no factual overlap with the claims remaining in the district court. Second, prosecution of an appeal will not interfere with adjudication of the remaining issues in this case.

It is therefore respectfully requested that the Court reconsider its order of December 1, 2022 and vacate the judgments entered against plaintiffs Murdock, Cruz, Fischer, and Neals. In the alternative, these plaintiffs request that the Court enter judgment, pursuant to Rule 54(b), in favor of the City of Chicago in accordance with the order of December 1, 2022.

Respectfully submitted,

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