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

Theresa Kennedy, individually and for others similarly situated, *Plaintiffs,* *v.* City of Chicago, *Defendant.*	Case No. 20-cv-1440 Hon. Gary S. Feinerman

CITY OF CHICAGO'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER OR, IN THE ALTERNATIVE, FOR ENTRY OF RULE 54(b) JUDGMENT

Defendant, the City of Chicago ("City"), by its undersigned counsel, responds to Plaintiffs, Anthony Murdock, Andrew Cruz, Johonest Fischer, and Brian Neals' (collectively, "Dismissed Plaintiffs") Motion to Reconsider or, in the Alternative, for Entry of Rule 54(b) Judgment ("Motion").[1] (Dkt. 137.) In support thereof, the City states:

INTRODUCTION

Although Dismissed Plaintiffs claim they "do not intend to rehash arguments" that the Court recently rejected when partially granting the City's Rule 12(c) motion, (Dkt. 137, Mot. ¶ 1 n.1), that is precisely what they do. Dismissed Plaintiffs' sole argument for reconsideration is that the Court "overlooked" that Cook County Circuit Court General Administrative Order 2015-06 ("GAO" or "GAO 2015-06") was promulgated years after the City implemented the challenged provisions in Chicago Police Department Special Order S06-12-02 ("Special Order"), and thus the GAO could not have "commanded" the City to do anything for purposes of the Seventh Circuit's

[1] After the Court granted the City's Rule 12(c) motion for judgment on the pleadings, in part, Theresa Kennedy ("Kennedy") is the only remaining Plaintiff in this case. (Dkt. 135, Minute Order; Dkt. 136, Mem. Op. at 11.)

decision in *Bethesda Lutheran Homes*. (*Id.* ¶¶ 3-5.) But Dismissed Plaintiffs either fundamentally misapprehend or conveniently ignore the Court's rationale for dismissing their claims.

The Court found that the GAO constituted a valid state-law command that required the City to present out-of-county warrant arrestees—including Dismissed Plaintiffs—to a judge in bond court. (Dkt. 136, Mem. Op. at 8.) Accordingly, it was the "policy contained in that state . . . law, rather than anything devised or adopted by" the City that was responsible for Dismissed Plaintiffs' injury. (*Id.* at 3 (quoting *Bethesda Lutheran Homes & Servs., Inc. v. Leean*, 154 F.3d 716, 718 (7th Cir. 1998)).) In so holding, the Court also explicitly rejected the same argument Dismissed Plaintiffs advance in the Motion, namely, that the GAO "predates, and has a broader scope than, the [Special] Order." (*Id.* at 7.) The Court addressed Dismissed Plaintiffs' argument as to timing head on, and correctly disregarded it. Reconsideration is thus neither proper nor warranted.

Dismissed Plaintiffs alternatively ask the Court to enter judgment on their claims under Federal Rule of Civil Procedure 54(b). (*Id.* ¶ 7.) That argument fares no better. While Dismissed Plaintiffs may wish to immediately ripen their claims for appellate review, the Court should decline to do so here. The Seventh Circuit has often repeated that the general rule is one case, one appeal. To that end, Rule 54(b) should not burden the appellate court with the piecemeal presentation of substantially similar issues through successive appeals in the same case. That is exactly what would occur here, and Dismissed Plaintiffs cannot demonstrate that their situation warrants the rare use of Rule 54(b). The Motion should be denied in its entirety.

ARGUMENT

I. The Court Should Not Reverse its Prior Order Terminating Dismissed Plaintiffs' Claims.

The Motion should be denied because the Court previously considered—and rejected—

Dismissed Plaintiffs' argument, and correctly dismissed their claims. Motions to reconsider, while permitted, are generally disfavored and the movant "bears a heavy burden." *Patrick v. City of Chicago*, 103 F. Supp. 3d 907, 911-12 (N.D. Ill. 2015). This Court has recognized that "[m]otions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Padilla v. DISH Network LLC*, No. 12-cv-7350, 2014 WL 539746, at *2 (N.D. Ill. Feb. 11, 2014) (Feinerman, J.) (quotation omitted). A "manifest error" is not demonstrated merely "by the disappointment of the losing party." *Oto v. Metro. Life Ins.*, 224 F.3d 601, 606 (7th Cir. 2000). Rather, it is the "wholesale disregard, misapplication, or failure to recognize controlling precedent." *Id.* Such error occurs "when a district court 'has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.'" *Patrick*, 103 F. Supp. 3d at 912 (quoting *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990)). Issues appropriate for reconsideration "rarely arise and the motion to reconsider should be equally rare." *Bank of Waunakee*, 906 F.2d at 1191.

Here, Dismissed Plaintiffs argue reconsideration is warranted because the Court supposedly "overlooked" that GAO 2015-06 was promulgated in 2015, three years after the challenged provision in the Special Order went into effect. (Mot. ¶ 3.) In their view, the later-enacted GAO, which is newer and has a different scope than the Special Order, could not have commanded the City to bring out-of-county warrant arrestees to bond court, such that the City "made a separate policy choice when it adopted the challenged policy in 2012." (*Id.* ¶ 5.)

However, as the Court correctly recognized, the GAO's scope and date of enactment are irrelevant. "The focus, rather, is on whether, at the time the City took the challenged actions [in 2018 and 2019], it had any 'discretion that [it] could exercise in the plaintiffs' favor.'" (Dkt. 136, Mem. Op. at 7 (quoting *Bethesda Lutheran Homes*, 154 F.3d at 718-19).) The Court correctly

concluded that the GAO commanded the City to bring Dismissed Plaintiffs to bond court because they were arrested on out-of-county warrants after the chief circuit judge enacted GAO 2015-06. (*Id.* at 5.) Accordingly, the GAO did not allow the City to permit Dismissed Plaintiffs to post bond at police stations, but instead required their appearances in bond court. Thus, it was the "policy contained in that state . . . law, rather than anything devised or adopted by" the City that was responsible for Dismissed Plaintiffs' injury. (*Id.* at 3 (quoting *Bethesda Lutheran Homes*, 154 F.3d at 718).) The Court did not fail to consider Dismissed Plaintiffs' argument. Rather, that argument was simply rejected because it lacked merit.

The Court did not commit a manifest error of law when granting the City's Rule 12(c) motion and terminating Dismissed Plaintiffs' claims. The Motion should be denied.

II. The Court Should Not Enter Rule 54(b) Judgment on Dismissed Plaintiffs' Claims.

Judgment should not be entered on Dismissed Plaintiffs' claims under Rule 54(b). In cases involving multiple claims or parties, a court "may direct entry of a final judgment as to one or more, but fewer than all, claims or parties," after expressly finding "that there is no just reason for delay." Fed. R. Civ. P. 54(b). But "the mere existence of multiple parties and the dismissal of some do not afford sufficient warrant for entry of final judgment under" Rule 54(b). *U.S. Gen., Inc. v. Albert*, 792 F.2d 678, 683 n.5 (7th Cir. 1986). A proper Rule 54(b) order requires the 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." *Gen. Ins. v. Clark Mall Corp.*, 644 F.3d 375, 379 (7th Cir. 2011).

A judgment is considered "final" if "it is an ultimate decision of an individual claim entered in the course of a multiple claims action." *Ind. Harbor Belt R. Co. v. Am. Cyanamid Co.*, 860 F.2d 1441, 1444 (7th Cir. 1988). For a judgment to be "truly final," the Court must also assess "whether there is too much factual overlap with claims remaining in the district court." *Peerless Network,*

Inc. v. MCI Commc'ns Servs., Inc., 917 F.3d 538, 543 (7th Cir. 2019). In deciding whether there is "no just reason for delay," the Court "must take into account judicial administrative interests as well as the equities involved." *Curtiss–Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). Both of these inquiries require the Court to assess "the factual relation between the issues that have been resolved and those that remain." *Marseilles Hydro Power, LLC v. Marseilles Land & Water Co.*, 518 F.3d 459, 463-64 (7th Cir. 2008).

The Court should refrain from entering judgment under Rule 54(b) for several reasons. First, the Court's order is not "truly final" because there is a significant amount of factual overlap between Dismissed Plaintiffs' claims and those of the remaining Plaintiff, Kennedy. As the Seventh Circuit has explained, "if there is a great deal of factual overlap between the decided and the retained claims they are not separate, and appeal must be deferred till the latter are resolved." *Jack Walters & Sons Corp. v. Morton Bldg., Inc.*, 737 F.2d 698, 702 (7th Cir. 1984); *Ind. Harbor*, 860 F.2d at 1444. Such is the case here.

Dismissed Plaintiffs and Kennedy all purport to represent the same class of similarly situated individuals whose constitutional rights were supposedly violated by the Special Order. (Dkt. 136, Mem. Op. at 1-3.) They both allege that the Chicago Police Department arrested them on valid arrest warrants, prevented them from posting bond at police stations, held them overnight, transported them to bond court the next day, and that they eventually posted the bond set forth on their warrants. (*Id.* at 2-3.) Likewise, Dismissed Plaintiffs and Kennedy claim the City detained them for an unreasonable length of time, thereby violating the Fourth and Fourteenth Amendments. (*Id.*) True, Dismissed Plaintiffs were arrested on out-of-county warrants while Kennedy was arrested pursuant to an in-county warrant. But beyond that single distinction, their claims are nearly identical. The Court should deny the Motion for this reason alone. *See Peerless Network*, 917 F.3d at 545 (dismissing appeal for want of jurisdiction and finding the district court erred by

entering judgment under Rule 54(b) because "the very same facts and issues will [likely] arise before [the Seventh Circuit] again once the district court" resolves substantially similar claims).

Second, considerations of judicial economy and equity weigh heavily against entering judgment for Dismissed Plaintiffs. "To avoid time-consuming duplicative appeals, the norm in litigation is one appeal per case." *Lottie v. W. Am. Ins.*, 408 F.3d 935, 940 (7th Cir. 2005). Because Rule 54(b) departs from that norm, "and has the potential to multiply litigation costs for parties and the appellate court, the district court must carefully consider" whether entry of final judgment is appropriate. *United States v. Ettrick Wood Prods., Inc.*, 916 F.2d 1211, 1218 (7th Cir. 1990). Accordingly, "district courts are not to utilize Rule 54(b) unless there is a good reason for doing so." *Am. Family Mut. Ins. v. Coleman*, 09 C 523, 2009 WL 4015521, at *2 (S.D. Ill. Nov. 19, 2009) (citing *Ettrick Wood Prods.*, 916 F.2d at 1218).

Dismissed Plaintiffs do not even attempt to explain why judicial economy warrants a Rule 54(b) finding or that there "is no just reason to delay" appealing their claims. Instead, they baldly assert that "prosecution of an appeal will not interfere with adjudication of the remaining issues in this case." (Mot. ¶ 9.) But potential interference with ongoing trial court proceedings is irrelevant. Rather, Rule 54(b)'s underlying purpose is "to spare the court of appeals from having to keep relearning the facts of a case on successive appeals." *Marseilles Hydro Power, LLC*, 518 F.3d at 464 (quoting *Ind. Harbor*, 860 F.2d at 1444).

Should the Court enter partial judgment on Dismissed Plaintiffs' claims now, the Seventh Circuit would be asked to resolve the same issue on at least two occasions in the same case—if not more. In the first instance, the appellate court would have to determine whether Dismissed Plaintiffs sufficiently alleged that the City unlawfully detained them after being arrested pursuant to warrants and held overnight at the police station because of the challenged provision in the

Special Order. The exact same issue would arise after the City disposes of Kennedy's at summary judgment, or alternatively, following a trial on the merits in Kennedy's favor.

While Dismissed Plaintiffs would prefer that the Seventh Circuit hear their appeal now, that is of no moment and would contradict the judiciary's interest in preventing "'piece-meal appeals' involving the same facts." *Peerless Network*, 917 F.3d at 543 (quoting *Curtiss-Wright Corp.*, 446 U.S. at 10). Entering judgment on Dismissed Plaintiffs' claims would also prejudice the City by having to expend unnecessary time and resources either defending or prosecuting successive appeals regarding the same issues in the same case. *See Ettrick Wood Prods.*, 916 F.2d at 218. Therefore, the Court should reject Dismissed Plaintiffs' invitation to unnecessarily burden the appellate court and deny the Motion.

CONCLUSION

For these reasons, the City respectfully requests that the Court deny Dismissed Plaintiffs' Motion, affirm its prior decision to dismiss their claims with prejudice, reject Dismissed Plaintiffs' request for entry of Rule 54(b) judgment, and grant such other and further relief as this Court deems necessary and just.

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Respectfully submitted,

CITY OF CHICAGO

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