

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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SEDRIC WARD,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	2:20-cv-02407-JPM-cgc
	)	
SHELBY COUNTY,	)	
	)	
Defendant.	)	

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**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION  
TO REINSTATE JURY VERDICT DATED APRIL 14, 2022, OR IN THE  
ALTERNATIVE TO AMEND THE JUDGMENT**

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Defendant Shelby County hereby submits this Response in Opposition to the *Motion to Reinstate Jury Verdict Dated April 14, 2022, or in the Alternative, to Amend the Judgment* (ECF No. 268 (“the Motion”)). In opposition to the Motion, the County would say as follows:

PROCEDURAL HISTORY

A jury handed down a verdict in favor of Plaintiff in the first trial in this matter on April 14, 2022. (See *Jury Verdict*, ECF No. 157 (“Original Verdict”)). The County timely filed a *Motion for Remittitur and New Trial* (ECF No. 171) on May 12, 2022. The Court denied the County’s request for remittitur and/or a new trial in an Order (ECF No. 187) dated October 6, 2022. The County thereafter filed a Notice of

Appeal (ECF No. 199) to the Sixth Circuit Court of Appeals challenging the jury verdict and various pre- and post-trial rulings by the Court.

The County stated five (5) issues on appeal to the Sixth Circuit. (See Civil Appeal Statement, submitted herewith as “Exhibit A”). Most relevant here is the County’s fourth issue on appeal: “Whether the Trial Court erred in not finding that [Plaintiff] failed to mitigate his damages, and whether the Trial Court erred in denying [the County’s] Motion for Remittitur or New Trial.” (*Id.*) The parties fully briefed this issue and argued it before the Sixth Circuit.

The Sixth Circuit, however, did not reach or rule on the County’s arguments as to the remittitur/new trial issues in its opinion. (*See Order of USCA*, ECF. No. 210). Instead, the Sixth Circuit limited its Opinion to a discussion of Plaintiff’s waiver of his USERRA rights. (*Id.*, PageID 3355-58). The Sixth Circuit ultimately concluded that “[t]he district court’s judgment is vacated, and the case is remanded for proceedings consistent with this opinion” without ever reaching the merits of the County’s remittitur/new trial arguments. (*Id.* at PageID 3358).

Upon remand to this Court, Plaintiff filed a *Motion for Separate Trial and Supporting Memorandum* (ECF No. 213) (“Motion to Sever”). The crux of Plaintiff’s Motion to Sever was that the Sixth Circuit had only ruled on one (1) issue (the County’s affirmative defense of waiver) and, therefore, the Sixth Circuit’s remand only contemplated a new trial on the waiver defense. (*See e.g. Motion to Sever*). In support of a new trial limited to the waiver issue, Plaintiff stated:

Here, the Sixth Circuit addressed only one issue on the *Ward* appeal and directed only one action --- a jury trial on that one issue[the waiver defense]. *Ward*, 98 F.4th at 693. And, as discussed in the dissent, ***the other matters on appeal remain pending until this single issue is resolved.*** *Ward*, 98 F.4th at 699. It follows that because the Sixth Circuit remanded the case to this Court with the limited remand for a jury to determine the limited "issue [of] whether Ward believed benefits from the settlement agreement outweighed his USERRA claim." *Ward*, at 693, any action other than a trial on that discrete issue would be inconsistent with this Court's authority. Consequently, a single-issue trial should proceed. Whereafter, the Court may issue an indicative ruling pursuant to Fed. R. Civ P. 62.1, ***which will give the Sixth Circuit notice that the matter it remanded this case for has been resolved.*** Which also weighs heavily in favor of judicial economy, and would not risk reversible error.

(*Id.* at PageID 3375-76) (emphasis added).

The County opposed Plaintiff's Motion to Sever. (See ECF No. 215). Nevertheless, the Court concluded that "[t]he Sixth Circuit's analysis demonstrates that it intended to limit remand to only the affirmative defense of waiver, particularly whether such waiver was based on careful consideration of its merits." (Order on Motion to Sever, ECF No. 219, PageID 3405). Plaintiff now argues the exact opposite of his earlier position and brings the instant Motion to reinstate the jury's verdict from the original trial.

ARGUMENT

**1. The Sixth Circuit retains jurisdiction over issue of the finality and propriety of the Original Verdict, and Plaintiff should be judicially estopped from arguing otherwise.**

The Court should deny Plaintiff's Motion to reinstate the Original Verdict as said verdict has either been vacated and should have been subject to what Defendant argued is a general remand or, in the alternative, it is still being contested before the Sixth Circuit.<sup>1</sup> If the Court was correct that the Sixth Circuit issued a limited remand, Plaintiff has outright stated that the issues of remittitur of the Original Verdict remain active before the Sixth Circuit given (what they claim is) the limited nature of the appellate court's remand. Plaintiff should not be allowed to now claim that the Original Verdict—previously (to Plaintiff's way of thinking) within the exclusive jurisdiction of the Sixth Circuit—has somehow become fair game for reinstatement by the Court. In any event, the Court should decline to reinstate the Original Verdict.

Plaintiff argued—and the Court agreed—that the remand in this case was a limited one. “[A] limited remand constrains the district court’s authority to the issue or issues specifically articulated in the appellate court's order.” *Monroe v. FTS USA, LLC*, 17 F.4th 664, 669 (6th Cir 2021) (quotation marks omitted). “Put differently, the mandate rule instructs that the district court is without authority to expand its inquiry beyond the matters forming the basis of the appellate court's remand.” *Id.*

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<sup>1</sup> Defendant will file a separate motion for a new trial regarding, in part, the question of whether the Sixth Circuit issued a general remand.

(internal citations and quotation marks omitted). Here, Plaintiff successfully argued to the Court that the Sixth Circuit only addressed and, therefore, could only have remanded, the issue of the waiver of his USERRA claim. It stands to reason, then, that if this was a limited remand the rest of the County's arguments on appeal (including potential remittitur of the Original Verdict) remain within the exclusive jurisdiction of the Sixth Circuit. Thus, the Court would have no jurisdiction to reinstate or otherwise address the original Verdict *at all*.

Indeed, Plaintiff's assertion that the Court can and should reinstate the Original Verdict is in direct contradiction to their earlier position, in the Motion to Sever, that the Court only had jurisdiction to consider the affirmative defense of waiver. As such, the Court should apply the doctrine of judicial estoppel to deny the instant Motion. "Under the doctrine of judicial estoppel, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not later assume a contrary position simply because his interests have changed." *Payne v. Central Defense Services, LLC*, 2013 WL 3974575 at \*5 (W.D. Tenn., August 2, 2013) (citing *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)). Courts analyze three (3) factors when determining if judicial estoppel is appropriate:

(1) whether the party's later position is clearly inconsistent with its earlier position; (2) whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or second court has been misled; and (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage if not estopped.

*Id.*

Here, Plaintiff's Motion meets all three (3) factors, and the Court should apply judicial estoppel to deny his Motion. First, Plaintiff's Motion is totally inconsistent with his position in the Motion to Sever. Plaintiff explicitly stated that "the other matters on appeal [i.e. remittitur] remain pending until this single issue is resolved." (Motion to Sever, PageID 3375). Plaintiff even pointed out that Judge Clay of the Sixth Circuit had made the same observation regarding the status of the County's remittitur argument in his dissent from the appellate court's opinion in the first appeal. (*Id.*) (*See also Order of USCA*, ECF. No. 210, PageID 3367 (stating that issues such as the County's remittitur argument "remain pending after the resolution of the waiver issue"))).

Plaintiff now argues the opposite—that "there are ***no outstanding errors or issues to be decided*** with regard to Shelby County's liability, nor Mr. Ward's ***damages.***" (Motion, ECF No. 268, PageID 3653) (emphasis added). Plaintiff gives no indication how the issue of remittitur—and, therefore, the disposition of the Original Verdict—could "***remain pending***" before the Sixth Circuit at the time of his Motion to Sever, while maintaining in the instant Motion that there are "no outstanding errors or issues" relating to damages left to address. The two positions are irreconcilable.

Second, Plaintiff was successful in his original argument that the Sixth Circuit did not remand any issue to the Court other than waiver. (*See Order on Motion to*

*Sever*, ECF No. 219).<sup>2</sup> The Court would have to tacitly accept that the Plaintiff's earlier argument in support of the Motion to Sever was an outright falsehood in order to rule in Plaintiff's favor on the instant Motion. Simply put, Plaintiff cannot have it both ways: Either the Sixth Circuit refused to rule on the remittitur issue and therefore retains jurisdiction over the fate of the Original Verdict, or the Sixth Circuit returned complete jurisdiction over the Original Verdict to the Court in its mandate (in which case Plaintiff's earlier position that the mandate could only allow for a trial on the limited issue of waiver was incorrect and a completely new trial on all issues would have been appropriate).

Third and finally, Plaintiff would derive an unfair advantage from his inconsistent position if not estopped. Plaintiff has already had the benefit of his successful argument in his Motion to Sever that the Sixth Circuit's mandate limited the Court to considering only the affirmative defense of waive. The parties conducted a trial on this narrow issue over the County's objection, and the Plaintiff prevailed. Plaintiff argued for such a narrow trial presumably because he felt he had a greater chance of success if the County was forced to limit its arguments and evidence to only what was relevant to waiver. Plaintiff was apparently correct about the advantage of a limited new trial insofar as he obtained a favorable verdict on the sole issues of waiver. It is manifestly unfair for Plaintiff to use his success in the new, limited trial

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<sup>2</sup> Shelby County does not waive its position that the Sixth Circuit's remand was not, in fact, meant to be a limited remand, and addresses its position in that regard in other filings. However, it *was* Plaintiff's position that the remand was limited.

to now argue that the Court has power to reinstate a verdict whose ultimate fate Plaintiff has argued is still undecided before the Sixth Circuit.

Plaintiff was successful in his argument in his Motion to Sever that “the Sixth Circuit addressed only one issue on the *Ward* appeal and directed only one action”—a limited trial on the single issue of whether Plaintiff waived his USERRA claim. (Motion o Sever, PageID 3375). Plaintiff ostensibly succeeded in gaining such a limited trial by asserting that “the other matters on appeal”—including remittitur—***“remain pending until this single issue is resolved.”*** (*Id.*) (emphasis added). Plaintiff even went so far as to suggest that the Court could “issue an indicative ruling pursuant to Fed. R. Civ. P. 62.1, which will give the Sixth Circuit notice that the matter it remanded this case for has been resolved.” (*Id.*) It is puzzling, then, that Plaintiff would attempt to have the Court alter or amend its judgment pursuant to Federal Rule of Civil Procedure 59. Nevertheless, the Court should apply judicial estoppel to find that Plaintiff cannot change his previous argument solely because it is now more convenient to have the District Court, rather than the Sixth Circuit, make a final determination as to damages in this case.

**2. Even if the Court decides to reinstate the Original Verdict, remittitur is still appropriate.**

In the event the Court determines that it should grant Plaintiff’s Motion to reinstate the Original Verdict, despite Plaintiff’s previous argument that disposition of the Original Verdict remains in the jurisdiction of the Sixth Circuit, the County reasserts and incorporates by reference all arguments relating to remittitur of the Original Verdict in *Defendant’s Motion for Remittitur or New Trial and Supporting*



*Memorandum*(ECF No. 171) (“Motion for Remittitur”)), as if set forth verbatim herein.

Specifically, the County asserts that Plaintiff failed to mitigate his damages by not returning to work as he had agreed. (*See* Motion for Remittitur, PageID 2855-57). The County argued that Plaintiff agreed to return to work with a start date of September 16, 2016. (*Id.* at PageID 2855). “After accepting the position, he decided he would not begin the job. He then did practically nothing to obtain replacement employment.” (*Id.* at 2856-57). “Plaintiff’s damages should be cut off effective September 16, 2016 due to Plaintiff’s failure to mitigate his damages. The jury erred in not making that determination.” (*Id.* at PageID 2857).

Further, “Plaintiff should not be awarded the potential value of his pension benefits, as he chose to cash out pension contributions. Plaintiff testified that he was fully vested in Defendant’s Pension Plan A at the time of his termination. Plaintiff chose to cash out his pension fund in two withdrawals – one in 2015 and one in 2016.” (*Id.* at PageID 2859) (internal citations omitted). “Had Plaintiff not cashed out his pension fund, he would have been able to collect lifetime pension benefits within about two years of the [original] trial.” (*Id.* at PageId 2860) (internal citations omitted).

The County understands that the Court has previously ruled on the foregoing arguments. The Sixth Circuit, however, has not. As stated above, Plaintiff apparently agrees with the position that the issue of remittitur remains viable in some form or

fashion. The County resubmits its arguments as to remittitur for the Court's consideration in the event the Court decides it has jurisdiction over the issue.

Respectfully submitted,

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Certificate of Service

I certify that the foregoing is being filed via the Court's ECF system this 27<sup>th</sup> day of February, 2025, for service on all persons registered in connection with this case, including:

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