

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

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

**MEMORANDUM OF FACTS AND LAW IN SUPPORT OF
DEFENDANT'S RENEWED MOTION OR JUDGMENT AS A MATTER OF
LAW OR FOR NEW TRIAL**

Defendant Shelby County hereby presents its Memorandum of Facts and Law in Support of the accompanying Defendant's Renewed Motion for Judgment as a Matter of Law or for New Trial pursuant to Fed. R. Civ. P. 50 (b) and 59.

A. Background

The initial trial in this matter commenced on April 11, 2022, with testimony concluding on April 13, 2022. (See Exhibit and Witness List, ECF No. 160). On April 14, 2022, the jury returned a verdict in favor of Plaintiff.

Prior to trial, the parties filed competing motions for summary judgment. (ECF Nos. 60 and 64). The Court granted in part and denied in part these motions. (ECF No. 87). In relevant part, the Court granted Plaintiff's motion for summary judgment

relating to whether Plaintiff waived his rights under USERRA through the execution of a release. (*Id.*)

Following the initial trial, Defendant filed a Brief in Support of a Motion for Judgment as a Matter of Law as well as a Motion for Remittitur or New Trial. (ECF Nos. 170-171). The Court denied these motions. (ECF No. 187).

Defendant filed a Notice of Appeal to the Sixth Circuit on October 11, 2023. (ECF No. 208). Following oral argument, the Sixth Circuit issued an Order and Judgment on April 11, 2024 and a Mandate on May 24, 2024. (ECF Nos. 210 and 211).

The Sixth Circuit found that the trial court erred in granting summary judgment to Plaintiff on the issue of whether there was a valid release in the underlying case. (ECF No. 210, PageID 3356-58). The Court stated that a jury must decide if Plaintiff felt the settlement agreement provided him greater benefits than his rights under USERRA. (*Id.* at PageID 3358).

The Sixth Circuit stated, “The district court’s judgment is vacated, and the case is remanded for proceedings consistent with this opinion.” (*Id.*)

Plaintiff argued that this was a limited remand and argued that there should be a limited trial only on the single issue related to the release. (See Motion for a Separate Trial and Memorandum, ECF No. 213). Defendant disagreed, arguing that the Sixth Circuit’s remand was a general one. (ECF No. 215).

The Court agreed with Plaintiff’s position and granted his request for a single-issue trial. (ECF No. 219). Defendant has raised the issue at multiple stages of this

case since then, but the Court declined Defendant's requests. (See, e.g., proposed Pretrial Order, ECF No. 221 at PageID 3414).

For the second trial, the parties disputed which of them had the burden of proof on the single issue that the Court determined would be tried on remand. In Defendant's Motions in Limine, Defendant moved "the Court for an Order designating Plaintiff as the party with the burden of persuasion as to whether Plaintiff believed the Release was more beneficial to him at the time he signed the [release]." (ECF No. 232 at PageID 3475; see, also, proposed Joint Pretrial Order, ECF No. 221 at PageID 3414).

Plaintiff disagreed, and argued the burden was on Defendant. (See ECF No. 235 at PageID 3508-3512).

The Court agreed with Plaintiff's position. (See Order Clarifying Evidentiary Burden, ECF No. 246). Defendant raised the issue throughout the proceedings. (See, e.g., ECF Nos. 252 and 252-1).

The Court, after reviewing submissions from the parties, submitted draft jury instructions to the parties and provided them with the opportunity to object. On January 23, 2025, Defendant filed objections to some of those instructions. (ECF Nos. 252 and 252-1). Defendant objected to Instruction IV (F) "USERRA Employment Right" and requested that the instruction be struck. At that time Defendant noted that there is no requirement that a USERRA release objectively provide greater benefits than are provided under the law, rather the question is "whether at the time

of the execution of the Agreement did [Plaintiff] believe the benefits under the Agreement were greater than those under USERRA.

During trial, Defendant raised this argument again and noted that USERRA reemployment rights relate to members of the military returning from service, and not after a later termination as part of a settlement agreement. (ECF No. 252, 252-1 at PageID 3583; and ECF No. 271 at PageID 3820, l. 20 – PageID 3824, l. 8). The Court disagreed with Defendant and issued the disputed instruction. (ECF No. 260 at PageID 3836).

The case went to trial for the limited issue on February 4, 2025. At the close of proof, Defendant raised a Motion for Judgment as a Matter of Law pursuant to Rule 50 of the Federal Rules of Civil Procedure. The Court denied the motion.

The jury entered a verdict for Plaintiff on the single issue that the Court determined was before them. (ECF No. 263).

On February 5, 2025, the Court entered a Judgment on Remanded Issue. (ECF No. 266). This judgment stated that “Defendant did not prove by a preponderance of the evidence that, at the time Sedric Ward signed the Agreement and General Release, he believed the benefits from the Agreement and General Release outweighed his USERRA rights.” (*Id.*)

This Judgment did not reinstate the judgment from the prior trial that had been vacated by the Sixth Circuit. Plaintiff has filed a Motion to Reinstate Jury Verdict Dated April 14, 2022, or in the Alternative, to Amend the Judgment. (ECF No. 268). Defendant file a response in opposition. (ECF No. 272).

B. Legal Standard

A court may only grant judgment as a matter of law pursuant to Rule 50 “...if, when viewing the evidence in a light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences, there is no genuine issue of material fact for the jury, and reasonable minds could come to but on conclusion in favor of the moving party.” *Barnes v. City of Cincinnati*, 401 F.3d 729, 736 (6th Cir. 2005).

If a court does not grant a motion for judgment as a matter of law made before giving the case to the jury, “the court is considered to have submitted the action to the jury subject to the court’s later deciding the legal questions raised by the motion.” Fed. R. Civ. P. 50(b). The movant may renew the motion within 28 days of the entry of judgment and may also include a request for a new trial under Federal Rule of Civil Procedure 59.

Under Rule 59:

The court may, on motion, grant a new trial on all or some of the issues – and to any party – as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court...

Fed. R. Civ. P. 59(a)(1)(A).

Rule 59 (d) states that:

No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

Fed. R. Civ. P. 59 (d).

In addition, a party may file a motion to alter or amend a judgment within 28 days of its entry. Fed. R. Civ. P. 59(e). In order for a Court to grant a motion under Fed. R. Civ. P. 59(e), “there must be (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” *ECIMOS, LLC .v Carrier Corp.*, 2019 WL 13014635 at *2 (W.D. Tenn. April 18, 2019)(quoting *Betts v. Costco Wholesale Corp.*, 558 F.3d 461, 474 (6th Cir, 2009)). A ruling on a Rule 59(e) “motion is within the informed discretion of the district court, reversible only for abuse.” *Huff v. Metropolitan Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982)(other citations omitted).

Under Rule 59(a), “a new trial is warranted when a jury has reached a ‘seriously erroneous’ result as evidenced by: (1) the verdict being against the weight of the evidence; (2) the damages being excessive; or (3) the trial being unfair to the moving party in some fashion, i.e., the proceedings being influenced by prejudice or bias.” *ECIMOS*, 2019 WL 13014635 at *2 (quoting *E.E.O.C. v. New Breed Logistics*, 783 F.3d 1057, 1066 (6th Cir. 2015)(other citations omitted).

As discussed below, judgment as a matter of law or a new trial is warranted due to errors in the scope of the remand, the burden of proof being improperly placed on Defendant, and on a jury instruction that misstated the law and that was prejudicial to Defendant. All these issues created an unfair trial for Defendant that warrant a new trial.¹

C. The Court Should Grant Defendant Judgment as a Matter of Law

For all the reasons stated below regarding the scope of remand, the burden of proof and the jury instruction on reinstatement, Defendant argues that the jury's verdict could not reasonably have favored Plaintiff.

Furthermore, it is reasonable to believe that the jury based its verdict in large part on Plaintiff's claim of a "take it or leave it" agreement. At trial, Plaintiff did claim the deal was "take it or leave it," but his testimony showed that he admitted he never made a counter-offer to the County's settlement offer, nor did he request that his attorney do so:

Q. Yesterday, you testified repeatedly that you felt the offer was take it or leave it; is that correct?

A. That's correct.

Q. The offer was presented to you by your attorney, correct?

A. Yes.

Q. And you didn't ask him to make a counter offer, did you?

A. Why should I have to?

¹ Defendant has filed a separate response to Plaintiff's motion to reinstate the jury verdict and opposes such a request. (ECF Nos. 268 and 272).

Q. I'm asking you, sir: Did you ask him to make a counter offer that was given to you by Shelby County.

A. No. I did not because they shouldn't have given it to me. That wasn't even discussed with the sheriff's office.

...

Q. So, to clarify, the attorney, your attorney, gave you the offer, correct?

A. Yes.

Q. You did not tell him to go back to Shelby County with a different number or a different offer, did you? Yes or no, sir?

A. No, sir, I didn't.

(ECF No. 271, PageID 3792, l. 22- PageID 3794, l. 16).

It is not reasonable to find that the agreement was "take it or leave it" based on the evidence. As this was one of the factors the Sixth Circuit noted could weigh in Plaintiff's favor (ECF No. 210, PageID 3558), Judgment as a Matter of Law should have been granted, particularly in light of the proof of the existence of the agreement and Plaintiff's representation by counsel.

D. A New Trial is Warranted Due to the Court's Treatment of the Remand from the Sixth Circuit as a Limited Remand.

If the Court does not grant judgment as a matter of law, Defendant requests the Court grant a new trial.

Defendant has previously briefed its reasons as to why the Court should have treated the Sixth Circuit's remand as a general one, and not as one limited to a single issue in its Response to Motion for Separate Trial. (ECF No. 215). Defendant incorporates those arguments herein.

In short, the Sixth Circuit's remand stated that the **judgment** from the original trial was vacated. The general rule is that "When a judgment is vacated, it is legally void and unenforceable." *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 250 F.3d 482, 491 (6th Cir. 2001).

Under Sixth Circuit jurisprudence, "[i]n the absence of an explicit limitation, the remand order is presumptively a general one." *U.S. v. Moore*, 131 F.3d 595, 598 (6th Cir. 1997). In this case, there is no explicit limitation of the remand, and thus the remand should have been treated as a general, as opposed to a limited one, particularly in light of the vacation of the entire judgment in the case.

Treating the remand as a limited one was an error of law that resulted in a trial that was fundamentally unfair to Defendant, and, therefore, the Court should grant Defendant a new trial on all the issues based on a general remand.

E. A New Trial is Warranted Due to the Court's Assignment of the Burden of Proof on Defendant.

Defendant previously briefed its reasons as to why the burden of proof should have rested with Plaintiff. (See ECF No. 231 at PageID 3470). Defendant incorporates that argument herein.

Defendant based this argument on the concurrence in the leading case on USERRA waivers, *Wysocki v. Int. Business Machine Corp.*, 607 F.3d 1102 (6th Cir. 2010). The concurrence states that a Defendant in a USERRA case must present a facially valid and signed waiver to meet its initial burden of production. However, the concurrence stated that "[t]he burden then shift[s] to [Plaintiff] to come forward

with evidence calling into question the Release’s satisfaction” of USERRA’s requirements. *Id.* at 1110.

Requiring a Defendant to carry the burden of proving Plaintiff’s state of mind in what is essentially an argument to avoid a contract is not appropriate and runs counter to the *Wysocki* concurrence. It is not appropriate to require Defendant to carry the burden of persuasion on what is – at heart – Plaintiff’s avoidance defense to an existing contract.

Requiring Defendant to shoulder the burden of persuasion was a clear error of law that resulted in a trial that was fundamentally unfair to Defendant.

For these reasons, the Court should order a new trial with the burden of persuasion on the waiver issue lying with Plaintiff.

F. A New Trial is Warranted Due to the Court’s Jury Instruction Regarding Reinstatement.

Jury Instruction IV (F) “USERRA Employment Right” should not have been given to the jury, and it created an unfair trial for Defendant.

The instruction stated:

In determining whether Mr. Ward believed the benefits from the settlement agreement outweighed his USERRA claim, you may consider, among other things, how the reinstatement position offered to Mr. Ward in the agreement compared to his prior employment with Shelby County. The right to reinstatement under USERRA requires that the employment offered be equivalent in terms of proper seniority, position, status, pay and lost benefits. Under USERRA, Mr. Ward was not obligated to accept an inferior position.

ECF No. 260 at PageID 3636.

Defendant objected to this instruction both before and during trial

Defendant objected to this instruction before and during trial as it prejudiced Defendant by setting out an objective standard by which the jury could value the agreement and determine personally whether the Agreement provided rights more beneficial than those under USERRA. (See ECF No. 252, 252-1 at PageID 3583; and ECF No. 271 at PageID 3820, l. 20 – PageID 3824, l. 8).

This is not the proper standard as enunciated by the Sixth Circuit. It is the Plaintiff's beliefs at the time of signing the agreement– not the jury's valuation at the time of trial – that should be considered.

This instruction is inappropriate for this case. Under USERRA, “any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to reemployment rights...” 38 U.S.C. §4312(a).

Furthermore “...a person entitled to reemployment under section 4312, **upon competition of a period of service**, shall be promptly reemployed in a position of employment in accordance with the following order of priority...” 38 U.S.C. § 4313 (Emphasis added).

Thus, the reemployment rights set forth in USERRA relate to the position that an individual shall be reinstated to following an absence due to service, and not as part of a settlement related to a termination. There was no allegation in this case that Plaintiff was not returned to a position immediately following military service.

Therefore, this instruction was inappropriate and prejudicial as the reemployment rights under USERRA had no relevance or bearing on this case.

For this reason, a new trial should be granted and this instruction should not be provided.

G. Conclusion

For all of the above reasons, Defendant requests:

The Court grant it Judgment as a Matter of Law or alter or amend the judgment to be in Defendant's favor.

In the alternative, Defendant requests that the Court grant a new trial in this matter, treating the Sixth Circuit remand as a general one and not as a limited one; that it place the burden of persuasion on Plaintiff as to the issues related to the release; and that it not give the jury instruction relating to reinstatement rights under USERRA.

Defendant further requests all other relief to which the Court finds it is entitled.

Respectfully submitted,

s/ R. Joseph Leibovich

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Certificate of Service

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

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