

1 (Proceeding began at 10:00 a.m.)

2 THE COURT: Good morning. This is case
3 18-CV-3122, Leonard Pozner versus James Fetzer.

4 Mr. Fetzer is here this morning by Zoom. May I
5 have the appearance for the plaintiff.

6 MR. PFLUM: Good morning, Your Honor. Attorney
7 Randy Pflum of Quarles and Brady appears on behalf of
8 Leonard Pozner. With me at counsel table is a partner of
9 our firm, Emily Feinstein, and then our summer associate
10 who's just observing today, Kasim Rana.

11 THE COURT: And, Jacob Zimmerman.

12 MR. ZIMMERMAN: Yes, Your Honor. Jake Zimmerman
13 on behalf of Leonard Pozner.

14 THE COURT: Okay. Welcome --

15 MR. ZIMMERMAN: Good morning, Your Honor.

16 THE COURT: Good morning. Welcome, everyone.

17 We're on the court's calendar for what I call an
18 oral argument. I assume I've gone over this before but to
19 refresh recollections, I schedule oral arguments as a
20 matter of standard scheduling because it keeps things on
21 my calendar and then in a timely way move the questions
22 along. I use oral arguments to confirm my understanding
23 of certain things after reading the briefs. In this case
24 I intend to just issue a written decision.

25 Let me begin. Mr. Fetzer, is there anything

1 that you'd like to say to me in sur-reply to the
2 plaintiff's reply?

3 MR. FETZER: Most certainly, Your Honor. To
4 begin with, the Court of Appeals observed that they were
5 returning the case to the circuit court for rehearing
6 consistent with the opinions in the appellate court's
7 decision which included at the top of page 12 the Prince
8 decision that, may I quote, "creditor-garnisher entitled
9 to garnish only property belonging to the debtor or in
10 which the debtor has an interest and only in the amount
11 that the debtor could require the garnishee to pay the
12 debtor."

13 What we have in Mr. Pflum's accounting is a
14 violation of that principle. For example, he has included
15 in his calculation my wife's half of our federal and state
16 returns that already amounts to \$1,003.50, Your Honor.
17 He's also included my reimbursement to my wife for Fed-Ex,
18 that already turns out to be \$1,100 more, that's virtually
19 the entire sum he's claiming and that's not taking into
20 account my daughter's reimbursement to my wife for
21 shopping expenses in an amount of \$159 in one case and
22 \$153.88 which exceeds the amount they're claiming to
23 garnish. This is in violation of the Court of Appeals'
24 observation regarding Prince Corporation and, in my
25 opinion, is utterly irresponsible. It indicates this is a

1 form of harassment, Your Honor. It has no legal
2 foundation whatsoever.

3 THE COURT: Okay. I have a couple questions for
4 you, Dr. Fetzer, and then, Mr. Pflum, I'll ask for your
5 response.

6 First question. Mr. Fetzer, do you believe that
7 there are any genuine dispute over the facts relating to
8 the plaintiff's attempt to garnish these accounts?

9 MR. FETZER: Well of course the -- the plaintiff
10 is claiming they can garnish my wife's money, which is
11 absurd which --

12 THE COURT: No. Hang on. Hang on. I'm sorry,
13 Dr. Fetzer, to interrupt you. But we went through this
14 colloquy years ago on the context of summary judgment. In
15 order for me to make a decision, I want to make sure I
16 separate out two different inquiries. A party might say,
17 Judge, they're just simply wrong on the facts and
18 therefore you shouldn't give them what they want. Or you
19 could argue that, yeah, the -- these monies that are --
20 are characterized in accordance with they got the right
21 number of dollars and they've accurately described where
22 the money's coming from, and then you may argue as a legal
23 principle applying the law in Wisconsin, they shouldn't
24 be -- the plaintiff shouldn't be entitled to the money.

25 I didn't see any dispute over the facts, that

1 is, there wasn't any disagreement over the nature of these
2 funds, the amount of these funds, for whom the funds were
3 derived, and where they go. Do you -- do you agree.

4 MR. FETZER: Yes, I agree, Your Honor. It is my
5 wife who was very specific in her accounting in which I
6 have confirmed multiple times. Yes.

7 THE COURT: Okay. So you agree that -- that
8 we're not here today to resolve any factual disputes.

9 Mr. Pflum, indeed, may I discern from your reply
10 brief that you accepted the propositions submitted by
11 Ms. -- Ms. Fetzer in her disclosure?

12 MR. PFLUM: Yes, Your Honor. We based our --
13 the amount that's subject to dispute we based solely on
14 her identification that, which is attached to my affidavit
15 at docket entry 595, Exhibit A, page 5, Ms. Fetzer
16 reviewed her -- the 12 months of the UW account and I --
17 she is the one that specifically identified deposits into
18 that account from sources other than retirement or Schwab
19 or nonexempt sources. And we --

20 THE COURT: Okay.

21 MR. PFLUM: -- base --

22 THE COURT: Okay. So Mr. Pflum, you agree
23 there's no dispute about the facts?

24 MR. PFLUM: Yes, Your Honor.

25 THE COURT: All right. Mr. Pflum, your

1 argument, as I understand it, is that having ascertained
2 the factual basis that Dr. Fetzer errs in believing that
3 it's your burden to prove the -- these monies are not
4 exempt, that in the law in Wisconsin on garnishment, the
5 burden shifts to Dr. Fetzer to find the statutory
6 exemption that would apply to each of these characterized
7 deposits or accounts. And that you argue that he's
8 misunderstood the law in Wisconsin, that there is no
9 exemptions for the amounts that you worked through in
10 your -- your brief and therefore --

11 MR. PFLUM: Yes, Your Honor.

12 THE COURT: And therefore you think that I
13 should enter the order as you drafted.

14 MR. PFLUM: Yes, Your Honor. That is accurate.

15 THE COURT: All right. So Dr. Fetzer, do you
16 understand that as I understand the plaintiff's argument,
17 you can't just simply say, Hey, that's a payment from my
18 daughter to my wife reimbursing her for a Costco charge,
19 that surely is exempt. You need for each -- for each
20 account or amount you need to identify a specific
21 statutory exemption, and that the plaintiff, Mr. Pflum is
22 arguing that, for example, the monies flowing back into
23 the account from your daughter to reimburse what I assume
24 was your wife's payment of your daughter's bill at Costco
25 are not exempt, and you've cited no statute that would

1 allow me to conclude that that amount is exempt. That's
2 their argument. How do you respond?

3 MR. FETZER: The Court of Appeals responded to
4 that, Your Honor, by sending it back. If there had been
5 no reversible error here, other than not conducting the
6 hearing we're conducting today, they wouldn't have even
7 bothered. They made it specific in citing Prince
8 Corporation at the top of page 12, the portion I have
9 cited, that you may only garnish the funds of the debtor,
10 that's James Fetzer, not Janice.

11 Frankly, I think the Court of Appeals might hold
12 Attorney Pflum or even this court in contempt if you were
13 to go forward now in violation of their specific opinion,
14 Your Honor. Notice at the bottom it states they requested
15 the hearing, they directed the hearing and a result
16 consistent with their opinion where right now the argument
17 that Attorney Pflum is making is inconsistent with their
18 opinion because those are funds related to my wife, not --
19 who is not the debtor, Janice Fetzer, not James.

20 THE COURT: All right. Mr. Pflum, your response
21 in twofold. First of all, do you -- do you -- do you
22 agree with Dr. Fetzer that he -- that the Court of Appeals
23 is somehow or another in that portion of the opinion
24 actually told me that the plaintiff is not able to garnish
25 his wife's funds? Number one, that the opinion says that

1 with such clarity as Dr. Fetzer suggests, and second,
2 relatedly, is it true that a garnish -- that you cannot
3 garnish what Dr. Fetzer just labels as his wife's money
4 rather than his own under the law in Wisconsin?

5 MR. PFLUM: Responding to the first part, Your
6 Honor, about the Court of Appeals. The Court of Appeals
7 directed -- directed the Court -- this court to hold a
8 hearing on the motion to disperse funds and provide
9 Mr. Fetzer -- or Dr. Fetzer with an opportunity to
10 respond, and that's the nature of this hearing today where
11 Dr. Fetzer can raise, as he's done, arguments in support
12 of why the \$2,004.46 are not subject to garnishment.

13 Turning to whether or not we can garnish
14 Ms. Fetzer's funds, Dr. Fetz -- the real -- Dr. Fetzer
15 identified that that \$1,486 in Wisconsin tax return and
16 the \$521 in the Federal tax returns are sources from --
17 are subject to a marital -- some sort of marital property
18 exemption because half of the -- half of that, those funds
19 are his wife's. Our response is by depositing these funds
20 into a slush fund-type of account that includes thousands
21 of dollars from nonexempt funds and then specifically,
22 which includes \$1,600 in deposits from Dr. Fetzer's Legal
23 Defense Fund, subsequent to depositing the tax returns
24 into the UW account, these funds are commingled. Any --
25 as we laid out in our brief, any deposit from Legal

1 Defense Fund constitutes a gift directly to Dr. Fetzer, as
2 such these gifts, what turn learned from Dr. Erlanger in
3 my UW coursework at the UW Law School is that gifts are
4 not marital property. Thus, after applying the \$5,000
5 account exemption that Dr. Fetzer identified, we firmly
6 believe that there's \$2,004.46 that remains still subject
7 to garnishment and Dr. Fetzer has not identified any other
8 exemption to pull those funds out of being subject to
9 garnishment.

10 THE COURT: Okay. Dr. Fetzer, I'll go ahead and
11 reread the Court of Appeals decision. Let's assume that I
12 disagree with your characterization and believe that the
13 purpose of this hearing is to effectuate the appellate
14 court's mandate that you be given this process to
15 articulate your defenses or exemptions from the
16 garnishment of these funds. That's why I scheduled this
17 hearing. That's why, indeed, we had a scheduling
18 conference that I had a briefing schedule, that is indeed
19 why I gave the parties an opportunity to make their
20 arguments in writing in addition to oral presentation here
21 on June 11th.

22 Assuming that I have the discretion or that
23 discretion is not circumscribed by the Court of Appeals'
24 decision and that is my decision to determine whether I
25 should grant the plaintiff's motion to garnish these funds

1 or, alternatively, deny it, acknowledging an appropriate
2 exemption.

3 It seems to me your argument is that -- that you
4 think that your implicit characterization that some
5 portion of a joint account is being your wife's property,
6 you believe is grounds to deny the plaintiff's access. Is
7 there anything more -- is that accurate and is there
8 anything more you want to tell me? This is your day in
9 court and your opportunity to make all your arguments.

10 MR. FETZER: Surely every party present
11 understands joint tax returns are equally divisible
12 between a husband and spouse. It is common knowledge,
13 Your Honor. I don't think it requires specific judicial
14 notice to recognize that Attorney Pflum's argument is
15 ridiculous on its face. And given that the Court of
16 Appeals had directed that the -- the rehearing must be
17 conducted and a new opinion found in accordance with its
18 opinion, where they have specifically cited Prince
19 Corporation to state that only debtor property may be
20 subject to garnish, frankly, I think that this court will
21 be found in contempt by the Court of Appeals.

22 Not only that, but you, yourself, Your Honor,
23 have declared that commingling doesn't affect an account.
24 My wife has been very specific in which matters came from
25 which sources. Attorney Pflum continues to persist in

1 bringing in funds that only belong to Janice as though
2 they belong to James, which includes my reimbursement for
3 Fed-Ex in -- in an excess of \$1,100 or the tax exemption
4 and that simple reimbursement by themselves are
5 approximately the amount that is being claimed, not to
6 mention my daughter's reimbursement to my wife. I mean,
7 unless the intent here is to make ridiculous the laws of
8 Wisconsin regarding garnishing, which is a matter so --

9 THE COURT: Hang on.

10 MR. FETZER: -- mundane --

11 THE COURT: Hang on. Mr. Fetzer, please. If we
12 can limit the hyperbole, you will allow me to focus on the
13 merits of what I think is your legitimate argument. And
14 you can answer my questions. And I have the following, is
15 let's talk about the your daughter's, quote,
16 reimbursement. If I understand what went on, you -- your
17 wife and your daughter went to Costco to buy some
18 something, right?

19 MR. FETZER: Yeah.

20 THE COURT: And assuming your wife is the member
21 of Costco and your daughter is not, we all know that the
22 member has to give a card at checkout, your wife gave her
23 card and your wife paid for the purchase destined for your
24 daughter, let's say, food in the amounts --

25 MR. FETZER: Yes.

1 THE COURT: -- stated. And I -- what most
2 people -- how did -- how did your wife pay the Costco
3 bill? Did she hand the Costco a credit card?

4 MR. FETZER: I think it was the UW credit card,
5 Your Honor.

6 THE COURT: Okay.

7 MR. FETZER: Or the Costco. It was one or the
8 other but it was a simple transaction between them, mother
9 and daughter.

10 THE COURT: Okay.

11 MR. FETZER: It had nothing to do with me as a
12 debtor whatsoever.

13 THE COURT: Okay. Hang on. So your wife used a
14 credit card.

15 MR. FETZER: Yeah.

16 THE COURT: And is that -- is that a credit card
17 jointly held by you and your wife?

18 MR. FETZER: No. I have no Costco credit card.
19 Never have, Your Honor. That's solely my wife, my
20 daughter.

21 THE COURT: Well do you have any credit cards?

22 MR. FETZER: Well, sure.

23 THE COURT: What credit -- how do you know
24 that -- I earlier asked you from what form the payment. I
25 don't -- is there any factual basis for me to say that she

1 didn't commingle the funds with a joint credit card, the
2 ones you do share with her as opposed to a Costco
3 membership card? I'm not -- I suspect Costco does have a
4 credit card, but I didn't read anything in your submission
5 that would indicate that this is an isolated funds
6 maintained --

7 MR. FETZER: Your Honor --

8 THE COURT: -- in the --

9 MR. FETZER: Your Honor, I have never had
10 anything -- I have never had anything to do with any
11 Costco transaction whatsoever. This is just a fabricated
12 claim made by Attorney Pflum and -- and I, frankly, can't
13 believe you're taking it seriously. This is just
14 ridiculous. It's like the joint tax return, Your Honor.
15 Everyone knows that's half hers and half mine and yet
16 Pflum throws it in. And when I reimburse her for Fed-Ex
17 expenses, he throws that in too. This is a manufactured
18 case. It's reprehensible. It's brought in violation of
19 Supreme Court Rules, Your Honor.

20 I would cite, for example, Supreme Court Rule
21 20:4.1, Truthfulness in statements of others, and Supreme
22 Court Rule 20:3.1, Meritorious claims. These claims are
23 not meritorious and they're not being made on the basis of
24 truthful declarations.

25 THE COURT: All right. Is there anything else

1 you'd like to tell me, Mr. Fetzer?

2 MR. FETZER: This is so clear cut that if the
3 circuit court can't properly handle a case like this then
4 it has to go back to the Court of Appeals, because it most
5 certainly shall if this is allowed to stand. I believe
6 the Court of Appeals is going to find this as offensive as
7 do I, Your Honor.

8 THE COURT: All right. Thank you, Dr. Fetzer.
9 Mr. Pflum, you're the movant. You get the last
10 word.

11 MR. PFLUM: Thank you, Your Honor.

12 In his response plaintiff's -- to the
13 plaintiff's motion, Dr. Fetzer outlined the reasonable
14 procedure to determine whether or not certain deposit
15 account funds are subject to garnishment. And I quote,
16 The reasonable procedure would have been to determine how
17 much money he received in 2022 from nonexempt sources and
18 then deduct the \$5,000 aggregate exemption under Wis.
19 Stat. section 815(3)(k) [sic], and then garnish the
20 positive balance that remained.

21 Plaintiffs followed these exempt procedures
22 based on the bank statements and on the nonexempt deposits
23 identified by Ms. Fetzer and the answers on file. When
24 we -- when we do our behalf by looking at what Ms. Fetzer
25 provided as identifying -- as identifying non -- deposits

1 from nonexempt sources, reviewing the -- the answer by
2 State Bank of Cross Plains and the answer by Summit Credit
3 Union -- Summit Credit Union, there remained a positive
4 balance of \$2,004.46 after deducting the \$5,000 deposit
5 account exemption identified by Dr. Fetzer. Plaintiffs
6 submit that that is the amount that should be subject to
7 garnishment and asks the Court to enter an order to that
8 effect. Thank you.

9 THE COURT: All right. I didn't look back.
10 Have you draft -- if I agree with you, have you drafted an
11 order for my signature?

12 MR. PFLUM: Not yet, Your Honor, but I'm happy
13 to do so.

14 THE COURT: Please do so.

15 Thank you very much for coming this morning.
16 The Court will take it under advisement and issue a timely
17 written decision.

18 MR. PFLUM: Thank you.

19 THE COURT: Have a good rest of the day.

20 MR. PFLUM: Thank you, Your Honor.

21 THE COURT: We're adjourned.

22 (Proceeding concluded at 10:21 a.m.)
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1 STATE OF WISCONSIN)
 ss.)
 2 COUNTY OF DANE)

3 I, COLLEEN C. CLARK, Registered Professional
 4 Reporter, Official Court Reporter, Branch 8, Dane County
 5 Circuit Court, hereby certify that I reported in Stenographic
 6 shorthand the proceedings had before the Court via Zoom video
 7 conference on this 11th day of June, 2024, and that the
 8 foregoing transcript is a true and correct copy of the said
 9 Stenographic notes thereof.

10 On this day the original and one copy of the
 11 transcript were prepared by pursuant to Statute.

12 Dated this 11th day of June, 2024.

13

14 Electronically signed by:

15

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Colleen C. Clark
 COLLEEN C. CLARK, RPR
 OFFICIAL COURT REPORTER

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