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CLERK OF WISCONSIN
COURT OF APPEALS

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV**

Leonard Pozner,

Plaintiff-Respondent,

v.

James Fetzer,

Defendant-Appellant.

Appeal No.: 2020AP121
2020AP1570

Cir. Ct. No. 2018CV3122

MOTION FOR RECONSIDERATION

NOW COMES Dr. James Fetzer,¹ by the undersigned counsel, pursuant to Rule 809.24, to move reconsideration of the Opinion entered on March 18, 2021, and, in support thereof, states as follows:

1. In furtherance of a gun grab in the United States, the Federal Emergency Management Agency (“FEMA”) initiated Sandy Hook (“SH”), a mock casualty drill that Fetzer claims FEMA falsely called a mass murder.

2. This Court ruled that Fetzer’s pleadings and two attempts by Fetzer to explain what happened at SH were ample opportunity for Fetzer to present his defense to the lower court, a ruling that should be reconsidered in the face of the summary judgment.

¹ Dr. Fetzer earned his Ph.D. in the history and philosophy of science. A former Marine Corps officer, Fetzer has taught and published extensively on the theoretical foundations of scientific knowledge, computer science, artificial intelligence, cognitive science, and evolution and mentality (24+ books). He retired as McKnight Professor at the University of Minnesota, Duluth, and has devoted himself to collaborative research on the most complex and controversial events of our time, including JFK, 9/11, the moon landing and more (12+ books). This case concerns his co-authorship and editing of a book about the FEMA mass casualty drill commonly known as “Sandy Hook” (13 contributors).

3. The version of N.'s death certificate attached to Pozner's complaint is not the same as the one published in Fetzer's book. Fetzer submitted two (2) expert reports to review the different versions of N. death certificate: the version published in his book; a second attached to the complaint; a third a co-defendant obtained from the Town Registrar; and a fourth Fetzer obtained from the Connecticut Department of Health. All four were found by the experts to be of dubious provenance. The lower court considered the expert reports as merely "someone else's opinion," but did not strike them, although questioning their admissibility. (R 231, P 163, L 22-24.)

4. The expert opinions, still being of record, created material questions of fact as to the falsity of statements in the Fetzer book and blog, i.e., was Fetzer negligent in his statements. In addition, the Fetzer pleadings and affidavits created a material fact dispute as to whether anybody died at SH, the answer to which refutes Pozner's defamation claim.

5. The entry of Summary Judgment in the face of these fact disputes: fails to satisfy ". . . fundamental requirement(s) of due process which is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." *Anderson National Bank v Luccett*, 321 U. S. 233, 246 cited with approval in *Neylan v Vorwald*, 121 Wis.2d 481, 360 N. W. 537 (Ct. App. 1984); *Toledo Scale Co. v Computing Scale Co.*, 261 U. S. 399 (1923); §806.07(2) Wis Stat; *Walker v Tobin*, 209 Wis. 2D 73, 568 N. W. 303 (1997).

6. This Court also isolated from context the lower court's statement that it would not ". . . go down the rabbit hole," dismissing the ruling as merely preliminary to limit discovery. This limitation of discovery, however, effectively denied Fetzer the right to present his defense. The court's full quote expresses its intent:

“Whether or not Sandy Hook ever happened or not is not relevant to this – the -- the truthfulness or the accuracy of the death certificate. Now, I understand the -- the Defendants' overall theory in believing that it never happened, and I'm not going to take the bait and let this case go down that -- that path and into that rabbit hole.” (R 303, P 49, L 17-23).

Additional evidence that the Court prevented Fetzer from presenting his defense includes this statement:

“I do not intend to read your book because it would not be appropriate for me to start educating myself about the larger controversy.” (R 231, P 90, L 5-7)

7. Although *res judicata* is not specifically mentioned by the Court, the Opinion cites two cases implying that whether nobody died at SH has been finally determined in other legal actions. *Alex Jones, et al v Neil Haslin*, No. 03-20-00008CV (2020), and *Soto v Bushmaster case*, 331 Conn. 53, 202 A. 3d 262 (2019), are cited, but no attempts to prove nobody died at SH were made in either case. The quotes that people died at SH cited from those cases, moreover, constitute non-binding *dicta* as to the present case.

8. The Court also reasons that Fetzer, appearing pro se, waived the right to appellate review of the *Denny v. Mertz issue*, although the issue was subsequently raised before the trial court. The Court's reliance on decisions where an appeal issue was never raised in the trial court at all should be reconsidered, especially as the Court does not otherwise express disagreement regarding the requirements of *Denny*.

9. The trial court also should have considered ability to pay as a predicate requirement before imposing an alternative contempt sanction. Fetzer does not claim that the court erred by failing to hold a hearing on ability to pay. The court erred by refusing to even consider ability to pay before imposing the sanction, as required by *Frisch v. Henrichs*. (R. 428 at 51.) The court stated: “If what you're saying is that, well, when am I going to get my time and date to show he's unable to pay? My response is not before the judgment is entered, but

subsequently, depending on the creditor's next step in its attempt to collect said judgment." (Id.)
The record, moreover, does not otherwise support Fetzer's ability to pay.

10. Fetzer filed a brief about his background and credentials as an investigative reporter on June 16, 2019, (R 215, P 1-7). The court deferred ruling on the question of was Fetzer a journalist, eliminating Pozner's obligation to prove negligence before Fetzer could be found to have committed defamation.

11. This case concerns First Amendment freedom of speech, the obligation of the Government to be truthful to the people, the scope of proof necessary to prove a defamation claim, the degree of protection from defamation claims provided to journalists, the elements to prove who is a journalist, and the freedom of the press to address the most controversial events of our time.

12. Finally, Attorney Bolton makes and extends sincere apology for offensive statements as addressed by the Court in its Opinion.

Accordingly, Fetzer requests that the Court reconsider its Opinion; hear oral argument; reverse the Judgment of the trial court; remand the case for trial; and remove dicta from nonbinding cases.

Dated this 6th day of April, 2021.

Respectfully submitted,

Electronically signed by William Sumner Scott

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CERTIFICATE OF SERVICE

William Sumner Scott certifies that on April 6, 2021, I electronically filed using the Court's E-filing system a MOTION FOR RECONSIDERATION which will provide electronic service to:

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Dated this 6th day of April, 2021.

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