

FILED
07-19-2024
CLERK OF WISCONSIN
COURT OF APPEALS

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APPENDIX 1:
Signed Final Order Granting
Plaintiff's Garnishment
(June 20, 2024)

DATE SIGNED: June 20, 2024

Electronically signed by Frank D Remington
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

LEONARD POZNER

Plaintiff,

v.

Case No.: 18CV3122

JAMES FETZER, Ph.D

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION
TO DISBURSE FUNDS**

Plaintiff, Leonard Pozner's ("Plaintiff"), Motion for Distribution of Funds ("Motion") [Doc. No. 557] came before the Court for a hearing on June 11, 2024 ("Hearing"). The Court having considered the Motion, Defendant, James Fetzer's ("Fetzer"), Response [Doc. Nos. 588-590], the Plaintiff's Reply [Doc. No. 594], the parties' oral arguments at the Hearing, and this Court being fully advised on premises,

THE COURT HEREBY FINDS that,

1. The amount subject to the Plaintiff's garnishment is **\$2,004.46**.

IT IS HEREBY ORDERED as follows:

1. The Plaintiff's Motion for Distribution of Funds is hereby **Granted**.
2. For the reasons set forth in this Court's Decision and Order [Doc. No. 598] Fetzer's objections to the Motion are hereby **Denied**.
3. **This is a final order for the purpose of appeal.**

Appendix 2:
Court of Appeals Decision
Filed and Dated
(February 8, 2024)

**COURT OF APPEALS
DECISION
DATED AND FILED
February 8, 2024**

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2023AP1002
STATE OF WISCONSIN

Cir. Ct. No. 2018CV3122

IN COURT OF APPEALS
DISTRICT IV

LEONARD POZNER,

PLAINTIFF-RESPONDENT,

v.

JAMES FETZER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
FRANK D. REMINGTON, Judge. *Reversed and cause remanded for further proceedings.*

Before Kloppenburg, P.J., Blanchard, and Nashold, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Leonard Pozner obtained a civil judgment against James Fetzer in December 2019. Seeking partial satisfaction, Pozner initiated this non-earnings garnishment action against Fetzer in December 2022, naming as garnishees three financial institutions that held accounts for Fetzer. In March 2023, the circuit court held an incomplete hearing at which some evidence was taken but little was resolved. At the close of this hearing the court indicated that the hearing was to be reconvened if Pozner wanted to continue to pursue this action. In April 2023, Pozner filed a motion seeking an order requiring the garnishees to distribute to him \$2,004.46, based in part on identified deposits at one of the garnishees. The circuit court issued a garnishment order requiring the garnishees to pay Pozner the amount that he requested, without first reconvening the hearing or otherwise calling for or receiving a response from Fetzer. Further, the court issued this order at a time that the parties agree was fewer than five days after Pozner filed the motion. In this appeal, Fetzer, pro se, challenges the garnishment order.

¶2 We conclude that one of Fetzer's arguments is dispositive and requires reversal. He argues that the circuit court erroneously exercised its discretion and violated WIS. STAT. § 801.15(4) (2021-22)¹ by issuing the

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

WISCONSIN STAT. § 801.15(4), located in a statute addressing the calculation time periods, states in pertinent part:

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion.... All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte.

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challenged garnishment order fewer than five days after Pozner filed the motion for distribution of funds and without giving Fetzer an opportunity to object to the specific deposits that Pozner claims are subject to, and not exempted from, garnishment. Based on the events as they unfolded, we conclude that Fetzer reasonably relied on the court's indication that Fetzer would have an opportunity to make arguments, which could possibly have merit depending on pertinent facts and legal rules, before the court issued the challenged order, and that the court's actions improperly denied him that opportunity. Accordingly, we reverse the garnishment order and remand for further proceedings consistent with this opinion.

BACKGROUND

¶3 Fetzer includes background in his briefing referring to events underlying the December 2019 judgment in a defamation case, but none of that is relevant to this appeal.² The relevant background begins with the non-earnings garnishment summons and complaint at issue here, which Pozner filed three years after the judgment was issued.

¶4 The following is pertinent legal context:

Garnishment is a remedy available to a creditor, the garnishor, seeking satisfaction of its debtor's debts by garnishing property of the debtor, the defendant, that is in

² See *Pozner v. Fetzer*, Nos. 2020AP121, 2020AP1570, unpublished slip op. (WI App March 18, 2021) (affirming circuit court's grant of partial summary judgment and affirming post-judgment order awarding remedial sanctions for contempt), *rev. denied*, 2022 WI 87, 989 N.W.2d 117 (Feb. 16, 2022) (unpublished table decision), *cert. denied*, 143 S. Ct. 137 (2022) (mem.), *and reh'g denied*, 143 S. Ct. 517 (2022) (mem.); *Pozner v. Fetzer*, No. 2022AP1751, unpublished slip op. (WI App Sept. 14, 2023) (per curiam) (affirming circuit's denial of reconsideration of its turnover order), *rev. denied*, unpublished order (WI Jan. 23, 2024).

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the hands of a third-party, the garnishee. Garnishment is a wholly statutory remedy, requiring strict compliance....

Chapter 812, Subchapter I of the Wisconsin Statutes governs non-earnings garnishment actions. WISCONSIN STAT. § 812.01(1) provides that any “creditor may commence a non[-]earnings garnishment [action] ‘against any person who is indebted to or has any property in his or her possession or under his or her control belonging to such creditor’s debtor.’” WISCONSIN STAT. § 812.04(3) states that “[a] garnishment action shall be commenced by the filing of a garnishee summons and annexed complaint.”

Prince Corp. v. Vandenberg, 2016 WI 49, ¶¶19-20, 369 Wis. 2d 387, 882 N.W.2d 371 (cases cited in *Prince Corp.* omitted).

¶5 Here, Pozner’s garnishment complaint identified himself as the judgment creditor and Fetzer as the judgment debtor, claimed that Pozner was due \$445,528 based on the December 2019 judgment, and named as garnishees State Bank of Cross Plains, Summit Credit Union, and UW Credit Union.

¶6 The answer of State Bank of Cross Plains asserted that the gross value of Fetzer’s assets held at the bank was \$2,437.60. Summit Credit Union’s answer asserted a gross value of \$46.06 for Fetzer’s assets there. UW Credit Union’s answer asserted that Fetzer had a savings account and a checking account, with a total value of \$11,305.72, but that Fetzer’s exemptions were greater than that, at \$11,798.00—although UW Credit Union did not identify any specific exemptions.

¶7 Fetzer’s answer, filed pro se, did not challenge the judgment itself; for example, he did not claim that the judgment was void or had been satisfied. Instead, as to the two financial institutions other than UW Credit Union, Fetzer

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asserted the living-expenses exemption,³ and as to the accounts with UW Credit Union, he represented that the deposits represent “Social Security and Retirement Account payouts and are therefore exempt,” although he did not cite any statutory provision or case law.

¶8 Pozner, through counsel, filed an objection to both the UW Credit Union’s answer and to Fetzer’s answer. Pozner also demanded a hearing. Pozner challenged Fetzer’s claim that funds in the UW Credit Union accounts are exempt as social security and retirement payouts on the ground that, “[o]n information and belief,” deposits into the accounts had “commingled” exempt and non-exempt assets.

¶9 On March 17, 2023, the circuit court held the hearing requested by Pozner, with Pozner represented by counsel and Fetzer self-represented. As we now describe, this was an incomplete hearing that the court said would be continued if Pozner wanted to pursue the action further.

¶10 Toward the start of the hearing, the court observed that Pozner was not objecting to the answer of State Bank of Cross Plains or the answer of Summit Credit Union. The discussion thereafter involved only deposits at UW Credit Union.

³ The parties have consistently agreed that Fetzer is entitled to the \$5,000 living-expenses exemption, see WIS. STAT. § 815.18(3)(k) (providing for this exemption within each garnishment action), for a garnishment of the personal depository accounts in this action.

¶11 Pozner's counsel accurately acknowledged that Pozner could not garnish benefits from deposits that constituted Social Security payments.⁴ Counsel raised two arguments as to why that exemption did not preclude garnishment of at least some of the funds in the UW Credit Union accounts. First, Pozner argued that certain other retirement funds deposited into the UW Credit Union accounts "may be subject to garnishment." Second, Pozner argued that Fetzer had "commingled" "other retirement funds" with Social Security payments.

¶12 Without objection by either side, the circuit court swore in Fetzer's wife, Janice Fetzer, as a witness after the court explained its understanding that James Fetzer's position was that Ms. Fetzer was more knowledgeable than he was about deposits made into the UW Credit Union accounts.⁵ Under limited questioning by Pozner's counsel, Ms. Fetzer testified to various aspects of deposits made into the two credit union accounts. The nature of the examination, as well as the nature of some responses, left much unclear. For example, despite the fact that UW Credit Union had identified in its answer that Fetzer had two credit union accounts, not one, counsel repeatedly examined Ms. Fetzer about "the account" at UW Credit Union, without resolving clearly which account he meant. Further, Pozner's counsel admitted to "jumping around" in his questions, multiple relevant terms were not defined by anyone, and no exhibits were used.

⁴ Pertinent authority includes 42 U.S.C. § 407(a) (protecting Social Security benefits) and 42 U.S.C. § 1383(d)(1) (protecting Supplemental Security Income Benefits), putting aside exceptions not relevant here that allow garnishment in order to collect certain domestic support and governmental obligations, *see, e.g.*, 42 U.S.C. § 659(a) (allowing garnishment of funds that would otherwise be exempted under 42 U.S.C. § 407 for the purposes of child support and maintenance).

⁵ We use "Fetzer" to refer to James, the judgment debtor, and "Ms. Fetzer" to refer to the witness called at the hearing.

¶13 The circuit court indicated that it needed to commence a hearing in an unrelated proceeding and asked Pozner's counsel what he was "asking [the court] to do this morning." Pozner's counsel renewed a request for copies of then-recent account statements for Fetzer's UW Credit Union accounts. The circuit court directed Ms. Fetzer to provide to Pozner copies of the last 12 monthly statements by the end of March 2023. The court then said:

I'm [going to] then continue this hearing. [Pozner's counsel], then after you receive these statements, I'm [going to] ask you within the next 30 days thereafter to apprise the Court what, if anything, you want me to do, either reconvene and then continue the examination to determine whether the funds are fairly traceable out of the specific account or not, or whether [Pozner] wants to sort of start over, regroup and come back with a new garnishment with a little bit better information.

....

I won't schedule anything today. We'll wait and see after Mr. and Mrs. Fetzer, after ... [Pozner's counsel] gets these records what [Pozner] wants to do next.

¶14 In these remarks, the circuit court defined for the parties two specific, potential routes forward in this garnishment action, beginning after Pozner had a chance to consider the contents of the UW Credit Union statements: (1) Pozner could ask the court to "continue" the hearing, "reconven[ing]" it to "continue the examination to determine whether the funds are fairly traceable"; or (2) Pozner could voluntarily dismiss this action and "start over" with a "new garnishment" action.

¶15 On April 25, 2023, instead of either asking the court to reconvene the hearing or voluntarily dismissing the action, Pozner electronically filed a motion for distribution of funds, accompanied by an affidavit by Pozner's counsel and a proposed garnishment order. Counsel placed copies in the mail to Fetzer on

April 26. In the affidavit counsel averred that, before application of the living-expenses exemption, the following sums are subject to garnishment:

- 10 identified deposits into a "UW Account" in 2022, totaling \$4,520.80;
- All of the \$2,437 held by State Bank of Cross Plains;
- All of the \$46.06 held by Summit Credit Union.

The result, according to Pozner, is that, after the \$5,000 exemption is applied, Pozner is entitled to \$2,004.46.

¶16 On May 1, 2023, without taking any further evidence or hearing from Fetzer, the court issued the order as proposed by Pozner. Fetzer appeals.

DISCUSSION

¶17 Fetzer argues that the circuit court violated WIS. STAT. § 801.15(4) because it issued the garnishment order fewer than five days after Pozner filed the motion for distribution of funds. Pozner does not dispute that the circuit court issued the order, without holding a hearing on the motion, fewer than five days after it was filed and without providing Fetzer with a chance to provide input. But Pozner asserts that it was sufficient that Fetzer "had a fair opportunity to prepare and to be heard on his exemptions at" the truncated March 17, 2023 hearing. Further, without developing a legal argument, Pozner suggests that the circuit properly exercised its "inherent power to control its calendar and scheduling." See *Schopper v. Gehring*, 210 Wis. 2d 208, 215, 565 N.W.2d 187 (Ct. App. 1997) (circuit courts may, in their discretion, shorten statutory notice requirements for motions under their inherent authority to control their dockets to achieve economy of time and effort, and the manner in which a court exercises this authority is

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committed to its discretion). We conclude that the court erroneously exercised its discretion and prejudiced Fetzer through its actions.

¶18 We uphold the circuit court's exercise of discretion in this context "unless there was no reasonable basis" for the decision. *Id.* at 216; *see also Alexander v. Riegert*, 141 Wis. 2d 294, 298, 414 N.W.2d 636 (1987) ("The conduct of a trial is subject to the exercise of sound judicial discretion by the trial court and its determinations will not be disturbed unless rights of the parties have been prejudiced." (quoted source omitted)). "[S]tatutory provisions for notice time required for motions do not limit the trial court's ability to schedule a motion so long as each party has a fair opportunity to prepare and be heard." *Schopper*, 210 Wis. 2d at 215.

¶19 As summarized above, much was left unresolved at the hearing and little was affirmatively resolved, except that Ms. Fetzer would be turning over copies of statements from UW Credit Union and the circuit court established two paths forward. Pozner attempts to suggest that the court made a relevant finding of fact at the hearing regarding the "commingling" of funds at UW Credit Union, but this distorts the record. When properly interpreted in context, the court made clear that it had not yet been shown what the result would be of what the court said was necessary: "a forensic look-back ... to determine ... what money is going into" the account that is "fairly traceable" to an exempt source, as Fetzer claimed.

¶20 Any party in Fetzer's shoes (and certainly a pro se party, as he was) would be entitled to rely on the circuit court's articulation at the close of the hearing that there were two specific, potential routes forward—unless and until the court provided or endorsed a new path that would allow both sides an opportunity to be heard regarding the specific amounts that Pozner sought to garnish. The fact

that Pozner, in effect, unilaterally proposed a different path by filing his motion after the hearing did not necessarily derail this garnishment action. Indeed, so far as we can discern, the filing could have been a suitable starting point for the hearing that the court had told the parties it would reconvene if Pozner continued to pursue this action. But when Pozner submitted this filing, given the history of the case to that point, the court erroneously exercised its discretion in issuing an order without giving Fetzer an opportunity to address the substance of the motion.

¶21 Pozner argues that any error was harmless, because Fetzer is not entitled to exemptions that he did not claim in the circuit court and in any case he is not entitled to exemptions he now claims on appeal. We now address these various arguments.

¶22 Under the specific circumstances of this case, we reject Pozner's argument that Fetzer forfeited in the circuit court any claim that he did not state in advance of, or during, the incomplete hearing, and Pozner fails to cite authority establishing that forfeiture occurred here. The general rule, as Pozner now correctly points out, is that Fetzer, as a judgment debtor, is required to "affirmatively claim an exemption." See WIS. STAT. § 815.18(6)(a). But the discussion at the hearing by the court and the parties could be characterized as free flowing, permitting Fetzer to reasonably understand at the time of the hearing—and continue to reasonably understand up to the time the court issued the challenged order—that the court would give him an opportunity to make affirmative claims regarding specific deposits that were identified by Pozner only after the hearing. Put differently, the record does not reflect that Fetzer was sufficiently placed on notice that his affirmative claims of exemption in this action had to be stated once and for all before or during an inconclusive hearing, at which

he was informed the hearing would be reconvened unless Pozner voluntarily dismissed this action.

¶23 In a garnishment action, the plaintiff, here Pozner, bears the burden to establish by a preponderance of the evidence the essential facts entitling the plaintiff to recovery. See *Maxcy v. Peavey Publ'g Co.*, 178 Wis. 401, 405, 190 N.W. 84 (1922). Once Pozner made a prima facie case that a disputed amount was non-exempt, the burden of production would shift to Fetzer, but the burden of proof always was Pozner's. See *Reinke v. Personnel Bd.*, 53 Wis. 2d 123, 133, 191 N.W.2d 833 (1971). Assuming without deciding that Pozner could be said to have made out a prima facie case, the circuit court did not give Fetzer the chance to carry his burden of production.

¶24 "The standard for harmless error is the same for civil and criminal cases. The test is whether there is a reasonable possibility that the error contributed to the outcome of the action or proceeding at issue." *Schwigel v. Kohlmann*, 2005 WI App 44, ¶11, 280 Wis. 2d 193, 694 N.W.2d 467 (citations omitted). "A reasonable possibility of a different outcome is a possibility sufficient to 'undermine confidence in the outcome.'" *Id.* (citation omitted).

¶25 The harmless error issue may present a close question, because at least some of Fetzer's arguments on appeal in favor of exemptions appear unsupported by legal authority. In particular, at least as presented to this court, Fetzer's oblique argument involving funds that he claims to have received for his legal defense in the defamation action appears to have no merit. However, Fetzer makes other assertions that we cannot say, without the benefit of a complete hearing, do not represent a reasonable possibility that the circuit court's order reflected error. Specifically, Fetzer asserts that: one of the deposits came from an

insurance “senior bonus”; two other deposits were tax returns for joint filings, half of each of which is exempt because the deposits belong to Ms. Fetzer; and some non-tax related deposits were to benefit Ms. Fetzer, not attributable to Fetzer. See *Prince Corp.*, 369 Wis. 2d 387, ¶¶34-35 (creditor-garnishor entitled to garnish only property belonging to the debtor or in which the debtor has an interest and only in the amount that the debtor could require the garnishee to pay the debtor).

¶26 Pozner makes a passing reference to the “tracing” provision in the section of the chapter of the statutes addressing executions, WIS. STAT. § 815.18(4), but he fails to base a developed legal argument on this reference. If Pozner could show a valid tie-in between § 815.18(4) and the specifics here that could help his position, he would need to develop that concept following remand.

¶27 We express no conclusions regarding the merits of Fetzer’s arguments or potential counterarguments by Pozner, because the current record is insufficiently developed. We decide only that Pozner fails to show, given the current state of the record, that Fetzer could not demonstrate legitimate reasons to reduce the amount of garnishment ordered if given the opportunity.

CONCLUSION

¶28 For these reasons, we reverse the garnishment order and remand for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded for further proceedings.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

Appendix 3:
Hearing in Response to
Court of Appeals Decision
(April 25, 2024)

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P R O C E E D I N G S

THE COURT: All right. This is case 18 CV 3122,
Leonard Pozner versus James Fetzer. May have I have
the appearance for the plaintiff first, please.

MR. PFLUM: Good morning, your Honor.

MR. FETZER: Yes.

THE COURT: Hang on, Mr. Fetzer.

MR. PFLUM: Good morning, your Honor. Attorney
Randy Pflum of Quarles & Brady appears on behalf of
Leonard Pozner. And also with me appearing by Zoom is
Attorney Emily Feinstein.

THE COURT: And for the defendant?

MR. FETZER: Yes, your Honor. James Fetzer
representing himself.

THE COURT: All right. And we have Ms. Brooks.
Ms. Brooks, are you sort of like --

MS. BROOKS: Yes, your Honor. I represent
garnishee State Bank of Cross Plains, which is now
doing business as Lake Ridge Bank. I'm just here to
-- I don't know what's going on in this case. I want
to make sure I'm up to speed as well on many of the
bank's obligations as garnishee here.

THE COURT: Thank you, Ms. Brooks. Welcome.
And James Fetzer appears.

A couple of preliminary matters, Mr. Pflum, Ms.

1 Feinstein. The Court received a fax purportedly from
2 Dr. Fetzer that contained child pornography. I turned
3 that over to my bailiff, who turned it over to
4 investigators with the Dane County Sheriff's
5 Department, who I understand or I was told came out to
6 see you, Dr. Fetzer. And I was told that, Doctor, you
7 denied sending the fax, that you felt it was abhorrent
8 behavior and, in other words, claimed that you had
9 nothing to do with the transmission of child
10 pornography through the facsimile mail system.

11 MR. FETZER: That's correct, your Honor. It had
12 a fake ID. I mean, this kind of stuff is child's play
13 for anyone who's familiar with the internet. I had
14 nothing to do with it, your Honor. I condemn it, and
15 it was an obvious effort to smear me in the eyes of
16 the Court.

17 THE COURT: Well, it didn't really work,
18 Dr. Fetzer. Here's what I thought when I first got
19 it. It appeared to me rather childish. Mr. Pflum,
20 Ms. Feinstein, you didn't see it, but truth be told,
21 the fax was a fax of a photocopy of a photocopy and,
22 quite honestly, one would have to strain their eyes to
23 discern the pornographic nature of it.

24 I think a lot of things, Dr. Fetzer, of you and
25 the positions you hold. I didn't actually -- I

1 quickly came to the conclusion that I felt that you
2 had nothing to do with it by nature of its simplicity
3 and it's sort of patent unbelievable. I mean,
4 Dr. Fetzer, if you were gonna send child pornography
5 by facsimile, I don't think you'd put your name on it,
6 truth be told.

7 So we followed up. I want to assure you,
8 Dr. Fetzer, I didn't think it came from you. And that
9 I received it from someone bears no relevance and
10 plays no part in how I decide the issues in this case.
11 I do think it came from someone else. It's disturbing
12 in that somebody else thinks that a fax containing
13 child pornography with your name on it somehow or
14 another affects me, the system. It does not. But I
15 just wanted to raise that, Mr. Pflum and Ms.
16 Feinstein, because there was communications, albeit
17 indirect, between the court system, the Sheriff's
18 Department, and I just wanted to alert you to that
19 with the final conclusion and say no more that it has
20 no bearing and plays no part and doesn't affect my
21 decision moving forward in this case.

22 Second, we're on the Court's calendar because
23 I'm remanded. I think the appropriate order on remand
24 is for the Court to vacate its order garnishing the
25 monies held by then State Bank of Cross Plains for the

1 reasons stated in the appellate decision. Do you
2 agree, Mr. Pflum?

3 MR. PFLUM: Yes, your Honor. I believe that's
4 correct.

5 THE COURT: All right. Third, then what to do
6 going forward?

7 Ms. Brooks, does -- has -- all the time this
8 case has been working through the appellate court, has
9 the State Bank been holding Dr. Fetzer's money? Does
10 it still hold Dr. Fetzer's money?

11 MS. BROOKS: Your Honor, no. I was looking back
12 through emails, and we were advised by plaintiff's
13 attorneys that UW Credit Union had disbursed the
14 funds, and we were authorized to release the hold that
15 Lake Ridge Bank had on them. So there's not been a
16 hold.

17 THE COURT: All right. So what do we do today,
18 Mr. Pflum?

19 MR. PFLUM: Well, your Honor, I think it's
20 appropriate -- we think it's appropriate to set an
21 evidentiary hearing on plaintiff's motion to disburse
22 funds which was filed a year ago today in document 557
23 and Dr. Fetzer's objection thereto to have the Court
24 make a ruling on what funds are -- whether or not we
25 are entitled to the \$2,004.46, which I believe is now

1 held currently by Dr. Fetzer -- or excuse me --
2 Mr. Pozner.

3 THE COURT: Okay. Just so I can understand
4 context, I want to go back to March 17th. That was
5 the first garnishment hearing. At that time, I think
6 I determined then and I guess now State Bank of Cross
7 Plains was not involved, and at least at that time
8 Attorney Davenport logged off the hearing.

9 The Court addressed the issue of the funds in UW
10 Credit Union account. Attorney Pflum indicates Social
11 Security Administration benefits are not subject to
12 garnishment, but other funds are commingled, and they
13 are unable to tell what is subject to exemption.
14 Janice Fetzer, Dr. Fetzer's wife, was sworn and
15 testified.

16 The plaintiff in March asked the account history
17 for the UW Credit Union for all of 2022. I think I
18 ordered that be produced, 30 days to review. We had a
19 further discussion of two UW Credit Union accounts. I
20 directed Janice Fetzer to make copies of the UW Credit
21 Union bank statements for both accounts for the last
22 12 months and provide them to Attorney Pflum on or
23 before March 31st. I continued the hearing at that
24 time.

25 Now, here's the mistake I made. And I don't

1 have any problem saying I made a mistake. I did. And
2 for that, I apologize for the delay in taking this to
3 the Court of Appeals and back.

4 When we got back together on -- well, we didn't
5 get back together. I'm looking at the -- Mr. Pflum,
6 you submitted on April 25th an affidavit and you moved
7 to distribute the funds.

8 MR. PFLUM: Yes, your Honor. And I also
9 apologize to the Court. This motion should have
10 requested a hearing and then requested distribution of
11 funds. That's what our motion should have included.
12 Following the March 17th hearing, um, your Honor
13 ordered that I either -- so your Honor ordered three
14 things. First, Ms. Fetzer provide us with the bank
15 statements, which she did. I reviewed those, prepared
16 the motion to disburse funds, which I filed on April
17 25, 2023. And in that motion, I needed to ask the
18 Court whether -- to set a hearing to discuss the -- to
19 discuss whether or not we are in fact entitled to the
20 \$2,004.46. And that's what I was hoping to accomplish
21 today is to get that -- to get that hearing on the
22 Court's calendar.

23 THE COURT: So, um, the money that's in play, is
24 that -- is that held, the \$2,437.60, held by State
25 Bank of Cross Plains?

1 MR. PFLUM: No, your Honor. The \$2,004.46 is
2 currently held by the plaintiff, Mr. Pozner.

3 THE COURT: And how did Mr. Pozner get the
4 money?

5 MR. PFLUM: Based off of your order, UW Credit
6 Union cut him a check --

7 THE COURT: Okay. So it came out --

8 MR. PFLUM: -- which then --

9 THE COURT: All right. So I'm looking at
10 document number 557, which is your motion. And that's
11 on paragraph 10, that's how you come up with
12 \$2,004.46.

13 MR. PFLUM: Yes, your Honor. And I will note
14 for the Court that these numbers are based on a
15 further reconciliation by Ms. Fetzer of money flowing
16 in and out of her UW account and then also looking in
17 the aggregate of at the time State Bank of Cross
18 Plains' answer showed that there were \$2,437 in that
19 account, and then Summit Credit Union's answer of
20 \$4,606.

21 THE COURT: All right. Well, of course, it goes
22 without saying -- I think you're implying this as
23 well, Mr. Pflum -- Mr. Pozner should hang on to
24 Dr. Fetzer's money until further order of the Court.

25 MR. PFLUM: Yes, your Honor.

1 THE COURT: It may be that he returns it or
2 keeps it, subject to further determinations after
3 briefing and opportunity occur.

4 Dr. Fetzer, so I think what is proposed and what
5 I understand needs to be done is turn back the hands
6 of time. The plaintiff filed a motion for
7 distribution of funds on April 25th of last year,
8 document number 557. That's the one which I acted on
9 without you having an opportunity to respond. I
10 propose we just issue -- set a briefing schedule on
11 the pending motion with a new date to return.

12 When can you respond to plaintiff's motion?

13 MR. FETZER: Well, I have in fact already
14 responded, your Honor, when I appealed to the Court of
15 Appeals for the Fourth District pointing out that,
16 with all respect to Attorneys Pflum and Feinstein,
17 this was sloppy, slovenly work. They were including a
18 reimbursement to the account from my daughter because
19 she had -- my wife, who's being reimbursed for
20 shopping, it included instructions for her, my wife's,
21 tax returns, your Honor. There was no merit
22 whatsoever, which I would have explained at the
23 hearing, had it been held.

24 If your Honor would simply review my submissions
25 to the Court, it's obvious there is nothing to this

1 but a form of harassment, which I'm becoming
2 increasingly aggravated about. This money should
3 never have been taken from the account. It deserves
4 to be returned. And it's a waste of the Court's time
5 and an abuse of the judicial process that this was
6 even brought, your Honor.

7 THE COURT: Dr. Fetzer, I don't have in my file
8 the documents that you filed in the Court of Appeals.
9 There are essentially two records. There is the
10 appellate record and the circuit court records. Now,
11 I might be able to find them, but I would feel a lot
12 better if you would just then resubmit to me in the
13 circuit court all the evidence and arguments you have
14 opposing the motion. It may be just you cutting and
15 pasting and submitting it. But then I'll know that I
16 won't make another mistake and be confused as to why
17 it is you believe I should deny the motion.

18 MR. FETZER: Yes. I'll be glad to do that, your
19 Honor. And incidentally, ten months ago I forwarded
20 Leonard Pozner a check for \$20,000, having sold our
21 vacation trailer, which Mr. Pflum had sought to put up
22 for auction by a judge, but had no bids for \$30,000,
23 which would have returned him \$15,000. We actually
24 decided we wanted to part with the trailer. I
25 notified him I was going to do that. When we sold the

1 trailer, I sent him a check for \$20,000. To the best
2 of my knowledge, that has never been formally
3 acknowledged by Mr. Pflum, and I would appreciate him
4 doing so here and now.

5 THE COURT: Okay. Let's come back to that in a
6 moment. Let me finish.

7 Dr. Fetzer, today is April 24th (sic). When can
8 you provide a response to plaintiff's motion?

9 MR. FETZER: Since the documents are already
10 written, your Honor, it could be done -- I can do it
11 this weekend.

12 THE COURT: Well, how about a week from today?

13 MR. FETZER: Yes.

14 THE COURT: May 1st. Oh, that's a week -- May
15 2nd.

16 Mr. Pflum, how many days thereafter for a reply?

17 MR. PFLUM: Ten days, your Honor.

18 THE COURT: May 13th.

19 Heather, let's have the parties come back for an
20 oral argument hearing and what I would assume, hope to
21 be an oral decision granting or denying it a couple
22 weeks thereafter.

23 MR. FETZER: This day of the week, your Honor,
24 works for me. I'm doing many shows on the internet,
25 but this Thursdays 10:00 p.m. (sic) is workable for

1 me, your Honor. So if we could stay on that Zoom
2 schedule, that will work.

3 THE COURT: All right. A Thursday, Heather.

4 THE CLERK: I don't have a Thursday in May. I
5 can go to June, if you'd like.

6 THE COURT: Okay. Let's accommodate Mr.
7 -- Dr. Fetzer's request for a Thursday.

8 THE CLERK: Okay. June 13th at 8:30?

9 MR. FETZER: No, no, no. It's gotta be at
10 10:00. I have a show at 9:00. I could not do it at
11 8:30. I just finished a show today, and I was glad
12 that it worked for the Court's schedule. So it needs
13 to be at 10:00.

14 THE COURT: Can it be 10:00 on any day, or just
15 Thursday?

16 MR. FETZER: No. Just Thursday, your Honor. I
17 have so many shows I'm doing on the internet. If it
18 were guaranteed to end in less than an hour, my first
19 show, Monday, Wednesday, Friday is at 11:00, so it
20 could be a Tuesday or a Thursday, your Honor.

21 THE COURT: I don't anticipate spending more
22 than an hour on a Zoom given that the parties will
23 have briefed the issue. So tell me what days and what
24 time do you prefer, Dr. Fetzer.

25 MR. FETZER: Well, as long as we're done by

1 11:00, I could do it any day of the week, your Honor.

2 THE COURT: Okay.

3 MR. FETZER: My preference is a Tuesday or a
4 Thursday, however, because there's a lot of
5 preparation involved in doing these programs.

6 THE CLERK: The 13th at 10:00 a.m.?

7 Mr. PFLUM: I'm sure the 13th does not work for
8 me. I have a conflict that day. I am free -- I'm
9 free June 6th, and then I'm also free June 20th. But
10 unfortunately, the 13th I'm not.

11 THE CLERK: We can't do either of those dates.
12 June 11th at 10:00 a.m.?

13 MR. FETZER: That works for me, your Honor, June
14 11th.

15 THE CLERK: One second, please.

16 MR. PFLUM: I'm sorry, folks. This is Randy
17 Pflum. I can do it at 11:00 -- I'm sorry -- at 10:00.

18 THE CLERK: 10:00.

19 MR. PFLUM: I can make that work.

20 THE CLERK: June 11th at 10:00.

21 MR. PFLUM: Thank you. Thank you very much.

22 THE COURT: Now, I hesitate to sort of step into
23 this issue of -- Mr. Pflum, I think what Dr. Fetzer is
24 asking for is a document, a partial satisfaction, if
25 in fact the creditor received \$15,000 or \$20,000, that

1 would memorialize in the court record a partial
2 satisfaction of judgment.

3 MR. PFLUM: Understood, your Honor. Yes, we did
4 receive \$20,000 from Mr. Fetzer's sale of his mobile
5 home, but I'm happy to put that partial satisfaction
6 on the record, or on the court's record.

7 THE COURT: Do that within ten days.

8 MR. PFLUM: Understood.

9 THE COURT: Dr. Fetzer, what that is is it's a
10 single piece of paper. It's a common business form
11 and can be created. That is a written record that the
12 judgment is partially satisfied, acknowledging receipt
13 of those funds. The plaintiff will do that within the
14 next ten days.

15 MR. FETZER: I appreciate that, your Honor.

16 THE COURT: Okay. Anything further, Mr. Pflum,
17 for us this morning?

18 MR. PFLUM: No, your Honor.

19 THE COURT: Dr. Fetzer, anything further?

20 MR. FETZER: We're good, your Honor.

21 THE COURT: All right. Ms. Brooks, do you have
22 anything you need from the Court?

23 MS. BROOKS: I guess I'm a little bit -- I'm
24 curious as to whether anybody has any belief that
25 State Bank of Cross Plains, Lake Ridge Bank should be

1 holding any funds 'cause they have been released as of
2 last May.

3 THE COURT: I think the answer is no; right,
4 Mr. Pflum?

5 MR. PFLUM: Correct because the funds subject to
6 this are currently being held by Mr. Pozner.

7 MS. BROOKS: Okay. I just want to make sure I
8 understand the bank's obligations here. So if that
9 changes, let me know and I would have to obviously
10 investigate the current status of the account. I
11 don't know -- I don't know what that is. So just keep
12 me posted, Attorney Pflum. I won't plan to attend any
13 more hearings, and I'll just wait to hear from you or
14 from the Court.

15 THE COURT: I assume that this is a
16 retrospective analysis of a garnishment that occurred
17 at a point in time in the past. State Bank of Cross
18 Plains has discharged its obligations under the law.
19 To the extent that State Bank of Cross Plains is
20 implicated further, it would be only after the filing
21 a new and separate garnishment proceeding, and at that
22 time, Ms. Brooks, the State Bank, the bank, would, as
23 any other bank would, undertake an inquiry as to what
24 funds are being held and respond then and there
25 appropriately directly to the garnishee -- garnishee?

Appendix 4:
Defendant's Response to
Court's Request for Partial Submission
to Court of Appeals
(April 25, 2024)

STATE OF WISCONSIN, CIRCUIT COURT, DANE COUNTY

FILED
04-25-2024
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

✓
✓ Leonard Pozner

Plaintiff

Case No. 2018-CV-003122

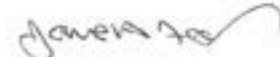
vs.

James Fetzer

Defendant

REQUEST TO TAKE JUDICIAL NOTICE OF BRIEF OF APPELLANT
TO WISCONSIN COURT OF APPEALS, DISTRICT IV (07-24-2023)

In response to the Court's request at the Hearing held 04-25-2024 for the Defendant's Response to the Garnishment Order remanded by the Court of Appeals (District IV), Dr. Fetzer hereby requests that the Court take Judicial Notice of his submission to The Court of Appeals (District IV), which is attached as Exhibit A. This document demonstrates Dr. Fetzer's explanation why the Garnishment Order should be vacated or rescinded,



James H. Fetzer
Pro Se

25 April 2024

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Case 2018CV003122 Document 590 Filed 04-25-2024 Page 1 of 15

FILED
04-25-2024
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

EXHIBIT A

Brief of Appellant, Appeal No. 2023AP001002
(Dated 07-24-2023)
Extracts: Pages 1 and 13-25

FILED
07-24-2023
CLERK OF WISCONSIN
COURT OF APPEALS

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

Leonard Pozner,
Plaintiff-Respondent

v.

Appeal No. 2023AP001002

James Fetzer,
Defendant-Appellant

Appeal From the Circuit Court of Dane County
Case No. 2018CV003122
Judge Frank D. Remington, Presiding

BRIEF OF APPELLANT

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ARGUMENT

Introduction:

This non-earnings garnishment procedure was mismanaged by Pozner, his attorneys, and the circuit court. The reasonable procedure would have been to determine how much money Fetzer received in 2022 from non-exempt sources and then deduct the \$5000 aggregate exemption (under 815.18(3)(k)) and garnish the positive balance if any. This is how simple it could have been by asking the correct questions:

Honest Correct Manner of Determining Non-Exempt Annual Income		
	Income	non-exempt
1	UWCU-WI Income Tax Return (1/2 of Joint Return)	\$743.00
2	UWCU-Federal Income Tax Return (1/2 of Joint Return)	\$200.50
3	Summit Credit Union	\$46.06
4	State Bank of Cross Plains (public donations Fetzer Legal Defense)	\$0.00
5	UWCU-Birthday Gift to Janice from daughter	\$0.00
6	Old Age Retirement (\$1,700/mo) exempt	\$0.00
7	Social Security (\$2,476.00/mo) exempt	\$0.00
	Sub Total	\$1,049.56
	Deduction	\$5,000.00
	Grand Total - Distribute Nothing.	-\$3,950.44

Had the circuit court not violated Wisconsin Statute 801.15(4) and instead held a hearing on Pozner's written "Plaintiff's Motion For Distribution Of Funds" the garnishment amounts could have been determined correctly and with ease. Dr. Fetzer was in the process of clarifying the errors in Pozner's motion but the judge signed the final order only four effective days after the filing of the motion preventing Dr. Fetzer from completing his response and filing it in the circuit

court. The circuit court not only failed to continue the hearing and reconvene the examination, as they said they would, but violated the state statute by signing the order without a hearing on the written motion.

Issue 1: The Judge Erred by granting Pozner's written Plaintiff's Motion For Distribution Of Funds without a hearing in violation of 801.15(4).

Even though a hearing was held about a month prior to the filing of the Pozner's written Motion to Distribute Funds to discover the source of funds in the UW Credit Union account, none was held after the filing of the written Motion. This violated Wisconsin Statute 801.15(4) and deprived Dr. Fetzer of his right and opportunity under same to show that Pozner was garnishing exempt funds from the subject UW Credit Union account. Wisconsin Statute 801.15(4) says:

"A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte."

This appeal could have been easily avoided had the state statute been adhered to by Pozner and the circuit court. Judge Remington admitted he was not intimately familiar with garnishment law (App., p 28, L 16-19):

"Mr. Pflum, I did research. This is not an area in which I'm intimately familiar, but I have concluded the following legal principles. And you can correct me if I'm wrong."

It is also obvious that Judge Remington was not satisfied with what was found during the hearing before the Motion was filed and said he would continue the hearing to then reconvene so Pozner could find out more or completely start over with another garnishment founded on better information which he obviously thought was lacking up to that point. (App., p 46, L 14-p 47, L 22):

THE COURT: Could you then please make a copy of the last, let's say, 12 months starting with the most recent account, so not all of 2022, but just give me -- if they come monthly, give me the last 12 that you have, not give me, but send those to Mr. Pflum.

MS. FETZER: I will. But now, on my bank statement, when the bank sends 'em, it just gives a deposit of so much money. It doesn't say where it's from.

THE COURT: Don't worry about it. That's Mr. Pflum's problem to interpret that. Then Mr. Pflum -- Ms. Fetzer, please provide those to Mr. Pflum in the next two weeks. Today is the 17th. I'm gonna ask that you send those to him no later than the end of the month, March 31st.

MS. FETZER: Okay.

THE COURT: I'm gonna then continue this hearing. Mr. Pflum, then after you receive these statements, I'm gonna ask you within the next 30 days thereafter to apprise the Court what, if anything, you want me to do, either reconvene and then continue the examination to determine whether the funds are fairly traceable out of the specific account or not, or whether the plaintiff wants to sort of start over, regroup and come back with a new garnishment with a little bit better information.

MR. PFLUM: Thank you, your Honor.

THE COURT: I won't schedule anything today. We'll wait and see after Mr. and Mrs. Fetzer, after the -- after Mr. Pflum gets these records what the plaintiff wants to do next. Thank you very much for coming this morning.

MR. PFLUM: Thank you, your Honor.

THE COURT: We're adjourned.

Judge Remington left all parties with the understanding that something would be scheduled for another hearing after Mr. Pflum received records from Mrs. Janice Fetzer. The court only gave Pozner these two options: "either reconvene and then continue the examination to determine whether the funds are fairly traceable out of the specific account or not, or whether the plaintiff wants to sort of start over." Neither option included: "file a motion and I'll grant it immediately without a hearing." Dr. Fetzer heard nothing until he received Pozner's Motion For Distribution of Funds. And on the fourth effective day later the Final Order was signed granting Pozner's Motion.

There was no continuance and reconvening of "this hearing," to "continue the examination" and had they done so they would have discovered that the source of the deposits Pozner garnished ultimately came out of exempt funds of the same account. Pozner should have been able to determine, even from the hearing held prior to his motion that the deposits he garnished were repayments from sources not "fairly traceable." And Pozner should have gleaned as the circuit court did that a better course of action would have been to "start over, regroup and come back with a new garnishment with a little bit better information."

The Notice of Hearing (App., p. 23) (R552) filed on January 23, 2023 setting the date of a hearing for March 17, 2023, stated that "This matter will not be adjourned by the court except upon formal motion for good cause or with the specific approval of the court upon stipulation by all parties" There was no motion filed to adjourn the examination process and Dr. Fetzer never stipulated that he

was in agreement to adjourn the examination process nor did he receive any such stipulation from Pozner. This means that Pozner's Motion For Distribution Of Funds was filed and granted while the examination process was still in progress surprising Dr. Fetzer and depriving him of an opportunity to respond with more information to correct the garnishment.

Judge Remington was required to hold a hearing on the written motion under ss 801.15(4) and Dr. Fetzer was not required to perform anything to invoke the statute for a hearing and time to respond to the motion and submit affidavits; "All written motions *shall be heard* on notice unless a statute or rule permits them to be heard *ex parte*." (Emphasis added.) The State's summary judgment motion was a written motion that would, following notice, be heard by the court. See *id*. Because the State's motion would be heard, Hanson was not required to request a hearing in order to invoke the time for a response established in § 802.08(2). We conclude § 802.08(2) is applicable in this case. *State v. Hanson*, 347 Wis.2d 549, 830 N.W.2d 722, 2013 WI App 55 (Wis. App. 2013).

The violation of Wisconsin Statute 801.15(4) is enough to have Pozner's motion vacated and to start over on the non-earnings garnishment. Further, the balance of issues serve to show that this is not harmless error and should be reversed. Also, Dr. Fetzer cannot be expected to provide citations to places in the record where he has asserted his exemptions when he was deprived of a response to the motion and a hearing to address each of Pozner's erroneous items for garnishment. Therefore any rule requiring the one seeking an exemption to show their assertion of it at the

circuit court does not apply under a showing of the violation of Wisconsin Statute 801.15(4).

Issue 2: Pozner cannot garnish reimbursements of exempt funds.

It is obvious that Pozner garnished funds from the subject UW Credit Union bank account without regard to the facts he learned at the hearing held prior to his motion that some of those deposits he listed in his Motion For Distribution Of Funds were exempt. Each item will be addressed following this chart derived from Pozner's Motion For Distribution Of Funds:

POZNER'S GARNISHMENT ORDER			
ITEM	DATE	DESCRIPTION	AMOUNT
1	03/03/22	UW Account (Deposit)	\$549.59
2	03/21/22	UW Account (Deposit from Daughter)	65.32
3	03/30/22	UW Account (WI Tax Return)	1,486.00
4	04/06/22	UW Account (Fed. Tax Return)	521.00
5	05/06/22	UW Account (the Debtor's reimbursement for lawsuit)	391.05
6	06/15/22	UW Account (Deposit from Daughter)	159.00
7	08/08/22	UW Account (Deposit from Daughter)	153.88
8	09/02/22	UW Account (Deposit from the Debtor for Fed Ex)	94.96
9	09/23/22	UW Account (Deposit)	100.00
10	12/01/22	UW Account (Deposit from the Debtor for Fed Ex)	1,000.00
11	12/21/22	Summit Credit Union Answer	46.06
12	12/27/22	SBCP Answer	2,437.60
		Claimed Exemption Wis. Stat. §815.18(3)(k)	-5,000.00
		Amount Subject to Garnishment	\$2,004.46

1. The March 3, 2022 deposit contained three sources all of which were exempt; one in the amount of \$253.59 from Jim's USAA Senior Bonus; second, in the amount of \$116.00 as a refund of an over payment of a dental surgery charge; and the last was a \$180.00 reimbursement for Dr. Fetzer's lawsuit expenses in this case derived from donors for his defense against Pozner. That means Item 1 should be in the amount of \$0.00. Mrs. Janice Fetzer has this written in her

- check book which could have been submitted as evidence had a hearing been held.
2. The deposit made on 3/21/22 was a reimbursement to the subject account for money that the Fetzer's daughter spent using Janice Fetzer's Costco Credit card while they shopped together at Costco. Had the daughter known her reimbursement would be confiscated by Pozner, she would not have repaid it. Reimbursements to the penny of exempt funds remain exempt. The amount at item two should be \$0.00. Neither Janice or Dr. Fetzer benefited from the purchase nor did their income increase by this action.
 3. The deposit made on 3/30/22 was a joint Wisconsin tax return in the amount of \$1,486.00 half of which is exempt as it belongs to Mrs. Janice Fetzer therefore the correct amount should be \$743.00.
 4. The deposit made on 4/6/22 in the amount of \$521.00 was a joint IRS tax return half of which is exempt as it belongs to Mrs. Janice Fetzer. The correct amount on this line should be \$260.50.
 5. The deposit made on 5/6/22 in the amount of \$391.05 was a reimbursement for lawsuit expenses derived from Dr. Fetzer's legal defense donation account at State Bank of Cross Plains. It could also be argued that an account that holds a fixed amount of exempt funds, say \$5,000, could be the "bottle that never runs dry" simply by spending the exempt funds and replacing them to the penny from non-exempt sources. One could conceivably spend \$5,000 daily and replace it daily to the penny while claiming that none of it is non-exempt. This

would allow the moving of \$150,000 per month of non-exempt funds while claiming that all of it was and is exempt. But all this means is that the source of the funds have not been discovered and garnished if non-exempt. Even though nothing of the sort is happening with this account there is a bigger issue that demands that this item be exempt. Item 5 is derived from the public who have donated funds thinking their money would be used in the legal defense of Dr. Fetzer against Mr. Pozner rather than paying Pozner. If Pozner is allowed to garnish the donations of the public for Fetzer's defense against Pozner, the court would be instigating a fraud on the public. A more judicious solution for the public would be to order the return of their funds rather than defraud their intent. But that too would deprive the public of using their funds to support one who they believe is being cheated and plundered by Pozner and the court system. Regardless, Pozner should never be allowed to garnish the donations for Fetzer's defense. The court could also protect Dr. Fetzer legal defense funds that have been donated by the public and return some when a maximum amount sufficient for his defense, set by the court, is reached. The worst solution is to simply garnish the whole of Dr. Fetzer's legal defense funds from donors. The amount for item five should be \$0.00.

6. The deposit made on 6/15/22 in the amount of \$159 came from Dr. Fetzer's daughter to reimburse her mother, Janice Fetzer, for things the daughter bought at Costco while shopping with her mother, both using Janice's Costco credit card. This expenditure is not attributable to Dr. Fetzer but to his wife, as with

item two, and the daughter paid the wife back so the wife could pay the credit card bill. Dr. and Mrs. Fetzer did not benefit from the purchases of their daughter nor did their income increase with the reimbursement from their daughter. The estate of Dr. and Mrs. Fetzer did not increase as a result of the purchase by the daughter or the payback from the daughter. The amount that should be entered for item six is \$0.00.

7. The deposit made on 8/8/22 in the amount of \$153.88 is like the deposit number two and six and the same logic would apply leaving \$0.00 on line seven.
8. The deposit made on 9/2/22 in the amount of \$94.96 is either exempt or a court initiated fraud on the public as explained under item five. Therefore the amount for item eight should be \$0.00.
9. The deposit made on 9/23/22 in the amount of \$100 was a birthday gift to Mrs. Janice Fetzer from her daughter and is totally exempt. The amount for item nine should be \$0.00.
10. The deposit made on 12/1/22 in the amount of \$1,000 was a reimbursement for the use of the UWCU credit card to pay for lawsuit expenses at Fed Ex which was an underpayment by \$19.66. The source of the reimbursement funds were from his GiveSendGo legal defense donations deposited in his State Bank of Cross Plains account, like all the rest of the Fetzer legal defense funds. This should be treated the same as line five and eight and therefore be \$0.00.

11. The item on line eleven in the amount of \$46.06 was reported by Summit Credit Union as non-exempt on 12/21/22. The amount that should appear for item eleven is \$46.06.

12. The item on line twelve in the amount of \$2,437.60 reported on 12/27/22, was the total amount of money in Dr. Fetzer's legal defense fund held at State Bank of Cross Plains completely derived from public voluntary donations at GiveSendGo.com for his legal defense from Pozner. And once again, this item should be treated exactly as items five, eight and ten. Therefore the amount for item twelve should be \$0.00.

The totals of the errors are summarized in the chart below:

GARNISHMENT ERRORS SUMMARY				
Item	Date	Description	Exempt	Amount
1	03/03/22	UW Account (Deposit)	\$549.59	\$0.00
2	03/21/22	UW Account (Deposit from daughter)	\$65.32	\$0.00
3	03/30/22	UW Account (W1 Tax Return)	\$743.00	\$743.00
4	04/06/22	UW Account (Fed. Tax Return)	\$260.50	\$260.50
5	05/06/22	UW Account (the Debtor's reimbursement for lawsuit)	\$391.05	\$0.00
6	06/15/22	UW Account (Deposit from daughter)	\$159.00	\$0.00
7	08/08/22	UW Account (Deposit from daughter)	\$153.88	\$0.00
8	09/02/22	UW Account (Deposit from the Debtor for Fed Ex)	\$94.96	\$0.00
9	09/23/22	UW Account (Deposit BD gift to Janice)	\$100.00	\$0.00
10	12/01/22	UW Account (Deposit from the Debtor for Fed Ex)	\$1,000.00	\$0.00
11	12/21/22	Summit Credit Union Answer		\$46.06
12	12/27/22	SBCF Answer	\$2,437.60	\$0.00
		Sub Total	\$5,954.90	\$1,049.56
		Claimed Exemption Wis. Stat. § 815.18(3)(k)		-\$5,000.00
		Amount subject to garnishment		-\$3,950.44

Obviously, the just thing to do is to prevent Mr. Pozner from harming those innocent people in the public who see the unjust treatment of Dr. Fetzer by taking

their money for Fetzer's legal defense and paying Pozner with it. That would be fraud instituted by the courts.

Issue 3: Pozner cannot garnish funds that are exempt under Wisconsin statutes 815.18(3)(j).

Said statute says:

(j) Retirement benefits.

1. Assets held or amounts payable under any retirement, pension, disability, death benefit, stock bonus, profit sharing plan, annuity, individual retirement account, individual retirement annuity, Keogh, 401-K or similar plan or contract providing benefits by reason of age, illness, disability, death or length of service and payments made to the debtor therefrom.
2. The plan or contract must meet one of the following requirements:
 - a. The plan or contract complies with the provisions of the internal revenue code.
 - b. The employer created the plan or contract for the exclusive benefit of the employer, if self-employed, or of some or all of the employees, or their dependents or beneficiaries and that plan or contract requires the employer or employees or both to make contributions for the purpose of distributing to the employer, if self-employed, the employees, or their dependents or beneficiaries, the earnings or the principal or both of a trust, annuity, insurance or other benefit created under the plan or contract and makes it impossible, at any time prior to the satisfaction of all liabilities with respect to beneficiaries under a trust created by the plan or contract, for any part of the principal or income of the trust to be used for or diverted to purposes other than for the exclusive benefit of those beneficiaries.
 3. The plan or contract may permit the income created from personal property held in a trust created under the plan or contract to accumulate in accordance with the terms of the trust. The trust may continue until it accomplishes its purposes. The trust is not invalid as violating the rule against perpetuities or any law against perpetuities or the suspension of the power of alienation of title to property.

4. The benefits of this exemption with respect to the assets held or amounts payable under or traceable to an owner-dominated plan for or on behalf of a debtor who is an owner-employee shall be limited to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

5. This exemption does not apply to an order of a court concerning child support, family support or maintenance payments, or to any judgment of annulment, divorce or legal separation.

6. In this paragraph:

a. "Employer" includes a group of employers creating a combined plan or contract for the benefit of their employees or the beneficiaries of those employees.

b. "Owner-dominated plan" means any plan or contract that meets the requirements of subd. 2, and under which 90 percent or more of the present value of the accrued benefits or 90 percent or more of the aggregate of the account is for the benefit of one or more individuals who are owner-employees. For purposes of this definition, the accrued benefits or account of an owner-employee under a plan or contract shall include the accrued benefits or account of the spouse, any ancestor or lineal descendant, whether by blood or by adoption, or the spouse of such a lineal descendant, of the owner-employee under the same plan or contract.

c. "Owner-employee" means any individual who owns, directly or indirectly, the entire interest in an unincorporated trade or business, or 50 percent or more of the combined voting of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, or 50 percent or more of the capital interest or profits interest of a partnership or limited liability company.

Even though Dr. Fetzer did not check box "s" on his Debtor's Answer Non-Earning Garnishment form (App., p. 20) he did mention it under box "y" of the same form which asked for; "Any other exemptions permitted under the law. [Explain briefly]". There he wrote in:

"The UWCU accounts are for Social Security and Retirement Account payouts and are therefore exempt."

It is obvious that Dr. Fetzer knew his retirement benefit receipts were exempt and he asked for them to be excluded from any garnishment. The only part of his retirement that was garnished was under item one. And even though Pozner may not have been fully aware of it, had a hearing been set and held on his Motion For Distribution of Funds, the error could have been clarified and avoided. However, the careless way this garnishment procedure was conducted conforms to the continual disdain Posner and the court has shown Dr. Fetzer from day one.

The essence of this appeal is that a hearing was not set or held for Pozner's written "Plaintiff's Motion For Distribution Of Funds" in violation of 801.15(4) wherein a more direct and simple means of determining the correct amount to garnish could have been established and this appeal avoided.

CONCLUSION

Based upon conclusions of the foregoing issues and arguments, Judge Remington's Order (563) Granting Pozner's Motion for Distribution of Funds (R557) should be reversed and remanded for further proceedings.

July 22, 2023



James H. Fetzer, Ph.D.

Pro Se
800 Violet Lane
Oregon, WI 53575
(608) 835-2707
jfetzer@d.umn.ed

Appendix 5:
Affidavit of Randy J. Plume in Support
of Plaintiff's Response
(May 13, 2024)

Case 2018CV003122 Document 595 Filed 05-13-2024 Page 1 of 5

FILED
05-13-2024
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER, Ph.D. et al.,

Defendant.

AFFIDAVIT OF RANDY J. PFLUM IN SUPPORT OF PLAINTIFF'S RESPONSE

Randy J. Pflum, being first duly sworn and under oath, states as follows:

1. I am one of the attorneys for the Plaintiff, Leonard Pozner ("Plaintiff"), in this matter. The information in this affidavit is based upon my personal knowledge, and if necessary, I could testify competently as to the facts contained herein.
2. On March 17, 2023, the Court held a hearing on whether the Defendant's UW Credit Union Account contained non-exempt funds.
3. During the March 17, 2023, hearing the Court ordered the Defendant's spouse, Janice Fetzer to provide Plaintiff with copies of the UW Account bank statements.
4. On or around March 20, 2023, Ms. Fetzer provided Plaintiff's counsel with 12 months of bank statements detailing the deposits in the UW Account together with an itemized list of non-exempt deposits. Attached hereto as **Exhibit A** is a true and correct copy of Ms. Fetzer's itemized breakdown of non-exempt deposits.

Case 2018CV003122

Document 595

Filed 05-13-2024

Page 2 of 5


 Randy J. Chum

Subscribed and sworn to before me
 this 13th day of May, 2024


 Notary Public, State of Wisconsin
 My Commission expires: 12-29-2024



Exhibit A

20 March 2023

Attorney Randy J. Pflum
Quarles & Brady
33 East Main Street, Suite 900
Madison, WI

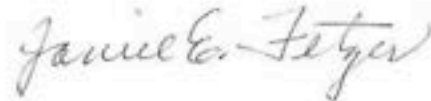
Re: Garnishment Hearing with Judge Remington (17 March 2023)

Dear Mr. Pflum,

In accordance with Judge Remington's instructions, here are the records of deposits for the Schwab UW Credit Union accounts. We created them in the beginning to keep Jim's retirement income from Schwab and Social Security separate and apart.

The only contributions he has made to the retirement account has been to reimburse me for expenses made using the UW Credit Card, because he does not have a credit or debit card for his Legal Defense Fund Account at State Bank of Cross Plains.

Let us know if you need anything more from us.



Janice E. Fetzer
800 Violet Lane
Oregon, WI 53575

Deposits to Retirement (Schwab) Account other than Schwab (for past 12 months)
plus Supporting Documents (attached)

Deposits to Retirement (Schwab) Account Other than
from Schwab (during past 12 months):

3/21/22. From daughter for COSTCO	65.32
3/30/22 WI Tax Return	1,486.00
4/06/22 Federal Tax Return.	521.00
5/06/22 From daughter for COSTCO + Jim's lawsuit reimbursement	60.00 331.05
6/15/22 From daughter for COSTCO	159.00
8/08/22 From daughter for COSTCO.	153.88
9/02/22 Jim's FEDEX reimbursement	94.96
9/23/22 From daughter for 80 th birthday	100.00
12/01/22 Jim's FEDEX reimbursement.	1,000.00

NOTE: SUPPORTING DOCUMENTS ATTACHED HERETO
including copies of Schwab Account for past 12 months.

Appendix 6:
Plaintiff's Reply in Support of
His Motion to Disburse Funds
(May 15, 2024)

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER, Ph.D. et al.,

Defendant.

PLAINTIFF'S REPLY IN SUPPORT OF HIS MOTION TO DISBURSE FUNDS

Plaintiff, Leonard Pozner ("Plaintiff"), by his attorneys, Quarles & Brady LLP, hereby files this reply in support of his motion to disburse funds, following Defendant Dr. James Fetzer's Request to Take Judicial Notice of certain portions of his opening brief that he filed with the Wisconsin Court of Appeals District IV (Case No. 2023AP1002) on July 24, 2023 as his response. In reply, Plaintiff states:

Brief Background

1. On December 15, 2022, Plaintiff filed the present Non-Earnings Summons and Complaint ("Complaint") against the Defendant James Fetzer, Ph.D. (the "Debtor"), and Garnishee Defendants, State Bank of Cross Plains, Summit Credit Union, and UW Credit Union.
2. On December 21, 2022, Summit Credit Union filed an answer stating it had control or possession of \$46.06 of the Debtor's assets. (Doc. No. 543 at 1).
3. On December 27, 2022, State Bank of Cross Plains filed an answer stating it had control or possession of \$2,437.60 of the Debtor's assets (the "SBCP Account"). (Doc. No. 546 at 1).

4. On December 30, 2022, UW Credit Union filed an answer stating it had control or possession of \$11,305.72 of the Debtor's assets (the "UW Account"), but such amounts were subject to an exemption. (Doc. No. 550 at 1).

5. On January 3, 2023, the Debtor filed an answer claiming a \$5,000 deposit account exemption under Wis. Stat. § 815.18(3)(k) and represented "the UWCU accounts are for Social Security and Retirement Account payouts and therefore exempt." (Doc. No. 549 at 1). Fetzer did not cite any statutory provision or case law for these exemptions. *Id.*

6. On January 18, 2023, the Plaintiff filed an Objection to the above answers and requested a hearing on the matter. (Doc. No. 558 at ¶ 2).

7. On March 17, 2023, the Court held a hearing on whether any funds in the UW Account were non-exempt. *Id.* at ¶ 3.

8. At the March 17, 2023, hearing the Debtor's spouse, Janice Fetzer, testified that both she and Fetzer deposited certain non-exempt funds into the Debtor's UW Account. *Id.* at ¶ 4.

9. After argument from both parties, the Court ordered the Debtor to provide the Plaintiff with copies of the UW Account bank statements for the last 12 months. *Id.* at ¶ 5.

10. Following the March 17, 2023, hearing Ms. Fetzer provided Plaintiff's counsel with 12 months of bank statements of the UW Account together with an itemized list of non-exempt deposits. (Affidavit of Randy J. Pflum ("Pflum Aff.") at ¶ 4, Ex. A).

11. After reviewing the UW Account statements, Plaintiff filed a Motion to Disburse Funds on April 25, 2023, arguing the following amounts, taken from Ms. Fetzer's itemized list, are subject to the garnishment action less the \$5,000 exemption:

Deposit Date	Deposit Account	Amount
3/3/2022	UW Account (Deposit)	\$549.59
3/21/2022	UW Account (Deposit from Daughter)	\$65.32
3/30/2022	UW Account (WI Tax Return)	\$1,486.00

4/6/2022	UW Account (Fed. Tax Return)	\$521.00
5/6/2022	UW Account (the Debtor's reimbursement for lawsuit)	\$391.05
6/15/2022	UW Account (Deposit from Daughter)	\$159.00
8/8/2022	UW Account (Deposit from Daughter)	\$153.88
9/2/2022	UW Account (Deposit from the Debtor for Fed Ex)	\$94.96
9/23/2022	UW Account (Deposit)	\$100.00
12/1/2022	UW Account (Deposit from the Debtor for Fed Ex)	\$1,000.00
12/21/2022	Summit Credit Union Answer	\$46.06
12/27/2022	SBCP Answer	\$2,437.60
	Claimed Exemption Wis. Stat. § 815.18(3)(k)	-\$5,000.00
	Amount Subject to Garnishment	\$2,004.46

Id. at ¶ 6. By relying on Ms. Fetzer's list of non-Social Security and pension depositions, Plaintiff made sure his request did not include exempt retirement benefits.

12. The above amount is hereinafter referred to as the "Disputed Amount."

13. On May 1, 2023, the Court granted Plaintiff's Motion to Disburse and Fetzer appealed.

14. On February 8, 2024, the Court of Appeals agreed with Fetzer's arguments that he was entitled to a hearing on the April 25, 2023, Motion to Disburse, and remanded the case back to the Court.

15. On April 25, 2024, Fetzer filed a request for the Court to take judicial notice of certain portions of his opening brief that he filed with the Wisconsin Court of Appeals District IV (Case No. 2023AP1002) on July 24, 2023 (the "Objection").

16. In the Objection, Fetzer reviews each of the above deposits, and, without citing any specific statutory exemption under Wis. Stat. § 815.18 (or otherwise), he concludes that these depositions are subject to a variety of unidentified exemptions. Fetzer argues that Plaintiff cannot garnish deposits from (1) a USAA bonus; (2) a refund for dental surgery; (3) various reimbursements from family; (4) legal defense fund "donations"; (5) reimbursements for "legal expenses"; and (6) payment by the Internal Revenue Service for income tax refunds.

ARGUMENT

The Court should grant the Plaintiff's Motion to Disburse Funds for two reasons (1) the Plaintiff established that the Disputed Amount is subject to garnishment; and (2) Fetzer has failed to show that the Disputed Amount is subject to one or more exemptions under section 815.18 of the Wisconsin Statutes.

I. Plaintiff has made a prima facie showing that he is entitled to the above non-exempt funds.

Non-earnings garnishments are a statutory remedy available to creditors "against any person who is indebted to or has any property in his or her possession or under his or her control belonging to such creditor's debtor." Wis. Stat. § 812.01(1). In a garnishment action, the plaintiff has the burden to establish the essential facts entitling the plaintiff to recovery. *See Mavey v. Perry Publ'g Co.*, 178 Wis. 401, 405, 190 N.W. 84 (1922). Once the plaintiff establishes that a disputed amount is non-exempt and subject to garnishment, the burden then shifts to the defendant. *See Reinke v. Personnel Bd.*, 53 Wis. 2d 123, 133, 191 N.W.2d 833 (1971); *see also Capital One Bank v. Gabriel*, 2014 WL12669784, *2 (Wis. App. Ct. July 9, 2014) (unpublished)¹.

Here, Plaintiff commenced a non-earnings garnishment proceeding against Fetzer to collect on a money judgment he obtained on December 12, 2019. Plaintiff also named SBCP, Summit, and UW Credit Union as garnishee defendants. After receiving answers from Fetzer, SBCP, Summit, and UW Credit as well as Fetzer's bank records from Janice Fetzer, Plaintiff identified the following amounts as subject to garnishment:

- The ten (10) deposits totaling \$4,520.80 in the UW Account;
- The entire \$2,437.00 held in the SBCP Account; and

¹ Plaintiff cites *Capital One Bank v. Gabriel*, 2014 WL12669784 (Wis. App. Ct. July 9, 2014) under Wis. Stat. § 809.23(3)(b) for its persuasive value only.

- The entire \$46.06 held in the Summit Credit Union Account.

(Doc. No. 590 at 8).

The above amounts are based on the answers on file as well as Janice Fetzer's own review of her and Fetzer's UW Account where she specifically identified ten (10) deposits that were not associated with Fetzer's pension or social security benefits. Thus, Plaintiff has met his burden that the Disputed Amount is subject to garnishment. The burden then shifts to Fetzer to establish certain exemptions apply to the Disputed Amount.

II. The Disputed Amount is not exempt under Wisconsin law.

In his Answer, Fetzer claimed a \$5,000 exemption in his deposit accounts together with asserted claims of exemptions in his UW Account(s) for any retirement and/or social security distributions. Under Wis. Stat. §§ 815.18(3)(k) Fetzer is entitled to an aggregate \$5,000 deposit account exemption, as well as an exemption for any retirement distributions and social security distributions. See Wis. Stat. §§ 815.18(3)(ds) and (j) and 42 U.S.C. § 407(a) (protecting Social Security Benefits).

However, by Janice Fetzer's own summary of Fetzer's bank records, the ten (10) deposits into the UW Account were not deposits associated with Fetzer's retirement distributions nor his social security distributions. The origin of these deposits was unrelated to Fetzer's retirement or social security distributions. In such instances, under Wis. Stat. 815.18(4), the ten deposits are not traceable to an exemption under Wis. Stat. § 815.18(3)(j) thereby making such deposits not exempt property in the form of a cash reimbursement. See *Gabriel*, 2014 WL12669784, *2 (Wis. App. Ct. July 9, 2014) (unpublished)². In other words, the ten deposits totaling \$4,520.80 in the UW Account represent a cash deposit that was no longer traceable to an exempt source such as Fetzer's

² Plaintiff cites *Capital One Bank v. Gabriel*, 2014 WL12669784 (Wis. App. Ct. July 9, 2014) under Wis. Stat. § 809.23(3)(b) for its persuasive value only.

retirement account or social security benefits. Accordingly, these deposits are subject to garnishment. *See id.* and Wis. Stat. § 815.18(4).

However, Fetzer argues the ten deposits in the UW Account are exempt. Citing no specific reference to the list of exemptions under Wis. Stat. 815.18(3) (or otherwise), he wrongly concludes the following deposits are exempt:

1. The March 3, 2022 deposit in the amount of \$549.59 is exempt based on a USAA senior bonus, a refund for dental surgery, and a "reimbursement for Dr. Fetzer's lawsuit expenses";
2. The March 21, 2022 deposit was a reimbursement from family and therefore exempt;
3. The March 30, 2022 and April 6, 2022 deposits are for income tax returns and therefore exempt;
4. The May 6, 2022 deposit of \$391.05 is a reimbursement for lawsuit expenses;
5. The June 15, 2022 deposit of \$159.00 was a reimbursement from family;
6. The August 8, 2022 deposit of \$153.88 was a reimbursement from family;
7. The September 2, 2022 deposit of \$94.96 was a reimbursement for Fetzer's lawsuit expenses;
8. The September 23, 2022 deposit of \$100 was a gift from family;
9. The December 1, 2022 deposit of \$1,000 was a reimbursement for "the use of the UWCU credit card to pay for lawsuit expenses[.]";
10. The \$2,437 in the SBCP Account represents Fetzer's legal defense fund, which is derived from public gifts.

(Doc. No. 590 at 8-12.)

The Wisconsin “legislature has determined that certain property, in reasonable amounts, should be exempt from seizure or sale for the benefit of creditors.” See 12 Wis. Prac., Wis. Collection Law § 15:3 (2d ed.). If the legislature did not identify a type of property as exempt, the property is not exempt. *Id.* Further, “A debtor shall affirmatively claim an exemption or select specific property in which to claim an exemption.” See Wis. Stat. 815.18(6).

Reviewing the above deposits, Fetzer does not and cannot cite a single exemption under Wis. Stat. § 815.18(3) (or any other statutory exempt) for any of them. None of the deposits originate from Fetzer’s retirement benefits or his social security benefits, or some other exempt source. As such, these deposits are not protected by an exemption under Wis. Stat. § 815.18 or otherwise. Taking these asserted exemptions one-by-one:

1. Fetzer argues that his legal defense fund and reimbursements (totaling \$4,103.61) are exempt because the people who donated the monies did so with the intent to donate to his legal defense. The Court of Appeals noted that this argument, “appears to have no merit.” (Doc. No. 538 at ¶ 25). Even though the Court of Appeals did not definitely rule on this issue, Wisconsin law does not protect donations made for a litigant’s defense. Again, the only exemption that *may* apply is the \$5,000 deposit account exemption under Wis. Stat. § 815.18(3)(k).

2. Similarly, there is no specific Wisconsin exemption for Fetzer’s \$253.59 “USAA Senior Bonus” nor his \$116.00 refund for dental surgery. Once again, Fetzer cites no law that would render either of these deposits as exempt. Further, he fails to provide any explanation of bonus and whether or not it is in any way related to his retirement or his social security distributions. Likewise, a refund for an overpayment on a medical procedure also lacks any statutory basis for an exemption. Again, the only exemption that *may* apply is the \$5,000 deposit account exemption under Wis. Stat. § 815.18(3)(k), which Plaintiff already accounted for.

3. Next, Fetzer claims monies received from his family (totaling \$478.20) are also exempt. Fetzer claims that "reimbursements of exempt funds remain exempt." (Doc. 590 at 9 ¶ 2). But, he never explains how these reimbursements were for exempt funds. Ms. Fetzer identified these reimbursements as being for Costco purchases. Pflum Aff. at ¶ 4, Ex. A; *see also* (Doc. No. 562, March 17, 2023, Hrg. Tr. at 11:6-22). And, he misunderstands how tracing works under Wis. Stat. § 815.18(4). That section provides "[p]roperty traceable to property that would be exempt under this section in the form of cash proceeds or otherwise is not exempt unless expressly provided for in this section." In other words, Fetzer cannot claim an exemption for cash proceeds made from exempt property unless another exemption under Wis. Stat. § 815.18(3) applies. *See id.* He does not identify another exemption.

As Ms. Fetzer testified, their daughter provided these deposits. (Doc. No. 562, March 17, 2023, Hrg. Tr. at 11:6-22). As such, he has no basis for claiming they are related to his retirement or social security distributions. He cannot claim these reimbursements are traceable to an exemption under Wis. Stat. § 815.18(3). Deposits for a reimbursement from exempt property are not exempt funds in the form of a cash reimbursement. *See Gabriel*, 2014 WL12669784, *2 (Wis. App. Ct. July 9, 2014) (unpublished).

4. Lastly, citing no specific statute or other law that exempts tax refund deposits, Fetzer claims one-half of the Wisconsin and IRS tax refunds are marital property and thus exempt. While Fetzer is right that the tax refunds are marital property, he misses the point. By depositing these funds into an account with thousands of dollars of deposits from non-exempt funds, including \$1,606.01 in deposits (between February 28, 2022 thru December 2022) from a "legal defense fund," he has co-mingled them in a way that makes it impossible to identify any given amount as marital property. Further, Fetzer's "legal defense fund" are merely gifts to him. In general, gifted

property to an individual is not marital property. *See Steinmann v. Steinmann*, 2008 WI 43, ¶ 38, 309 Wis. 2d 29, 55, 749 N.W.2d 145, 157. Thus, after applying the \$5,000 exemption across *all* of Fetzer's deposit accounts, including his legal defense fund account, there remained \$2,004.46 not subject to any other exemption under Wisconsin law.

Conclusion

Based on the foregoing, the Plaintiff respectfully requests that the Court overrule Fetzer's objection and grant Plaintiff's Motion to Disburse Funds in the amount of \$2,004.46.

Dated May 13, 2024

Quarles & Brady LLP

Electronically signed by Randy J. Pflum

Randy J. Pflum (1096694)

33 East Main Street, Suite 900

Madison, WI 53703

Phone: 608-283-2634

Email: randy.pflum@quarles.com

Appendix 7:
Garnishment Oral Argument Transcript
(June 11, 2024)

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.)
23
24
25

1 STATE OF WISCONSIN }
2 SS. }
3 COUNTY OF DANE }

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

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

13 Dated this 11th day of June, 2024.

14 Electronically signed by:

15 Colleen C. Clark
16 COLLEEN C. CLARK, RPR
17 OFFICIAL COURT REPORTER

18
19
20
21 The foregoing certification of this transcript
22 does not apply to any reproduction of the same by
23 any means unless under the direct control and/or
24 direction of the certifying reporter.
25

Appendix 8:
Defendant's Response to
Court's Query During Oral Hearing
(June 11, 2024)

Case 2018CV003122 Document 596 Filed 06-11-2024 Page 1 of 1

FILED
06-11-2024
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN	CIRCUIT COURT	DANE COUNTY
LEONARD POZNER,		
	Plaintiff,	
vs.		Case No. 18CV3122
JAMES FETZER,		
	Defendant.	

RESPONSE TO QUERY BY THE COURT

James Fetzer, Ph.D., pro se, in response to a query from the court during the hearing held at 10 AM on June 11, 2024, concerning the credit card that my wife, Janice Fetzer, used to charge for our daughter at COSTO, I checked and, while we have joint accounts at the UW Credit Union, we have separate credit cards, one for JANICE E FETZER, the other for JAMES H FETZER, and all her charges at COSTO have been made using her credit card and not mine.

/s / James Fetzer, Ph.D.

James Fetzer, Ph.D.
Pro Se
800 Violet Lane
Oregon, WI 53575
(608) 835-2707
jfetzer@d.umn.edu

Date: June 11, 2024

Appendix 9:
Non-Final Order Granting Leonard Pozner's
Motion for Disbursement of Funds
(June 14, 2024)

Case 2018CV003122

Document 598

Filed 06-14-2024

Page 1 of 8

FILED
06-14-2024
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

BY THE COURT:

DATE SIGNED: June 14, 2024

Electronically signed by Frank D Remington
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

LEONARD POZNER,

Plaintiff,

v.

Case No. 2018-CV-3122

JAMES FETZER,

Defendant.

**DECISION AND ORDER
GRANTING LEONARD POZNER'S MOTION FOR DISBURSEMENT OF FUNDS**

INTRODUCTION

James Fetzer published fake stories accusing Leonard Pozner of fabricating his child's death certificate. Pozner sued for defamation and, in 2019, a jury awarded him \$450,000. Fetzer still has not paid. Last year, Pozner moved for an order garnishing Fetzer's bank accounts. Five days after the motion was filed, I granted Pozner's motion. However, Pozner waited a day to mail his motion to Fetzer, so my order came one day short of the statutory minimum under Wis. Stat. § 801.15(4). Because this left Fetzer with four, rather than five, days to respond to the motion, Fetzer told the court of appeals that I "depriv[ed] him of an opportunity to respond with more information to correct the garnishment." Fetzer Resp. Br., dkt. 590:7 (Fetzer's response brief in this matter is

an excerpt from his appellate brief, *see* dkt. 588-89). The court of appeals agreed with Fetzer. *Pozner v. Fetzer*, No. 2023AP1001, unpublished slip op., ¶20 (WI App Feb. 8, 2024) (per curiam) (*Pozner III*).

On remand, the court of appeals instructs me to give Fetzer a better opportunity to “demonstrate legitimate reasons to reduce the amount of garnishment” *Id.*, ¶27. I obey the mandate by giving Fetzer opportunities to oppose Pozner’s motion in written briefing and also in oral argument. But if Fetzer’s promise of additional information sowed this litigation, then he reaps nothing—he wasted his opportunity to submit written argument by filing no brief, choosing to rely instead on an old brief addressing inapposite points, then wasted his opportunity to submit oral argument by insulting Pozner’s motion (“ridiculous on its face”) and me (“this court will be found in contempt”). In all, Fetzer did not produce a single shred of new evidence to dispute Pozner’s motion. I conclude, again, that Pozner satisfies his burden to show he is entitled to an order for garnishment.

Accordingly, I grant Pozner’s motion.

I. BACKGROUND

In this defamation action, Fetzer falsely accused Pozner of fabricating a death certificate as part of a conspiracy related to the 2012 mass shooting at Sandy Hook Elementary School. *Pozner v. Fetzer*, No. 2020AP121, unpublished slip op., ¶1 (WI App Mar. 18, 2021) (*Pozner I*). Following a trial in 2019, a jury awarded Pozner \$450,000 in damages. *Id.* The court of appeals affirmed the verdict. *Id.*

By April 2022, Fetzer had not paid what he owed, so Pozner sought the turnover of books and internet websites as a judgment creditor under Wis. Stat. § 816.08. *Pozner v. Fetzer*, No. 2022AP1751, unpublished slip op., ¶5 (WI App Sep. 14, 2023) (per curiam) (*Pozner II*). Following

multiple rounds of briefing and a hearing, I generously valued the websites and books at \$100,000 and granted Pozner's motion. *Id.*, ¶¶22-23; see Decision and Order (Aug. 29, 2022), dkt. 528 (the written order). Fetzer appealed this order, too, and the court of appeals affirmed. *Id.*, ¶42.

In December 2022, after crediting Fetzer with the \$100,000 for the books and websites, Fetzer still owed Pozner almost the entirety of the underlying defamation judgment. In partial satisfaction of the remaining deficit, Pozner moved to garnish three financial institutions that held accounts for Fetzer. *Pozner III*, ¶1. On March 17, 2023, in an evidentiary hearing held on Pozner's motion, Fetzer's wife Janice Fetzer testified about deposits she had made into Fetzer's accounts at those institutions. See Tr. of Mar. 17, 2023 Hr'g, dkt. 562. About a month later, on April 25, 2023, Pozner relied on Janice Fetzer's statements and a review of Fetzer's bank accounts and asked for an order garnishing those accounts for \$2,004.46. *Pflum Aff.*, dkt. 558 (summarizing the amounts in each account). On May 1, 2023, I granted Pozner's motion; I found that (1) Fetzer owed Pozner \$357,395.13, (2) that the financial institutions held \$2,004 in non-exempt accounts belonging to Fetzer and, as a result, I entered a garnishment order for that amount. Garnishment Order (May 1, 2023), dkt. 561.

Pozner III is Fetzer's appeal of that garnishment order. The court of appeals' decision focused on the events of the March 17 hearing. Although no authority for how courts should determine a litigant's expectation for future hearings is cited, or how to gauge the reasonableness of such an expectation, the court of appeals held that Fetzer reasonably expected "that the court would give him an opportunity to make affirmative claims" *Pozner III*, ¶22. Then, because no other hearing followed in-between the March 17 hearing and Pozner's April 25 motion, the court of appeals concluded that:

[T]he record does not reflect that Fetzer was sufficiently placed on notice that his affirmative claims of exemption in this action had to be stated once and for all before or during an inconclusive hearing, at which he was informed the hearing would be reconvened

Id. Emphasizing that it “express[ed] no conclusions regarding the merits of Fetzer’s arguments ...,” the court of appeals remanded the matter to “give Fetzer the chance to carry his burden of production.” *Id.*, ¶23.

Following remand, on April 25, 2024, I scheduled written briefing and oral arguments. Dkt. 586. On June 11, 2024, the parties again appeared for a hearing on Pozner’s motion. Later in the afternoon of the day of the hearing, Fetzer filed a document titled “response to query by the Court.” Dkt. 596. Therein, Fetzer provides an immaterial statement concerning names on credit cards. However, Fetzer’s uninvited, supplemental statement is inadmissible because it is neither sworn nor does it satisfy the requirements for an unsworn declaration. *See* 2023 Wisconsin Act 245 (amending Wis. Stat. § 887.015 to authorize the use of unsworn declarations in certain situations). To the extent Fetzer means to rely on this document as evidence to prove an unexplained category of exemption from garnishment, I disregard it.

II. LEGAL STANDARD

Pozner III summarized the law applicable to garnishment actions as follows:

In a garnishment action, the plaintiff, here Pozner, bears the burden to establish by a preponderance of the evidence the essential facts entitling the plaintiff to recovery. *See Maxcy v. Peasey Publ’g Co.*, 178 Wis. 401, 405, 190 N.W. 84 (1922). Once Pozner made a prima facie case that a disputed amount was non-exempt, the burden of production would shift to Fetzer, but the burden of proof always was Pozner’s. *See Reinke v. Personnel Bd.*, 53 Wis. 2d 123, 133, 191 N.W.2d 833 (1971).

Pozner III, ¶23.

III. DISCUSSION

Pozner asks the Court to garnish three banks in which Fetzer has accounts. I proceed by examining Pozner's submissions to determine whether he has made a prima facie case that these banks contain non-exempt property, then turn to see whether Fetzer can show any exemption to garnishment applies.

The first step in a garnishment action requires Pozner to establish a prima facie case. *Maxcy*, 178 Wis. at 405. Pozner has done so by pointing to the admissions of the banks holding Fetzer's accounts, plus testimony about the contents of the bank statements. Pozner Reply Br., dkt. 594:4-5 (citing answers filed by State Bank of Cross Plains, Summit Credit Union, and UW Credit Union and the affidavit of Randy Pflum, dkt. 543, 546, 660, 558).¹ Here, according to Pozner, is a table of Fetzer's non-exempt property:

Deposit Date	Deposit Account	Amount
3/3/2022	UW Account (Deposit)	\$549.59
3/21/22	UW Account (Deposit from daughter)	\$65.32
3/30/2022	UW Account (WI Tax Return)	\$1,486
4/6/2022	UW Account (Fed. Tax Return)	\$521.00
5/6/2022	UW Account (the Debtor's reimbursement for lawsuit)	\$391.05
6/15/2022	UW Account (Deposit from Daughter)	\$159.00
8/8/2022	UW Account (Deposit from Daughter)	\$153.88
9/2/2022	UW Account (Deposit from the Debtor for Fed Ex)	\$94.96
9/23/2022	UW Account (Deposit)	\$100.00
12/1/2022	UW Account (Deposit from the Debtor for Fed Ex)	\$1,600
12/21/2022	Summit Credit Union Answer	\$46.06
12/27/2022	State Bank Cross Plains Answer	\$2,437.60
	Claimed Exemption Wis. Stat. § 815.18(3)(k)	-\$5,000
	Amount Subject to Garnishment	\$2,094.46

Pflum Aff., dkt. 558:2.² According to Pozner, Fetzer's wife "specifically identified" these deposits

¹ Pozner repeatedly cites *Capital One Bank v. Gabriel*, No. 2013AP1755, unpublished slip op. (WI App July 9, 2014) (summary disposition). Pozner Reply Br., dkt. 594:4 & n.1, 5 & n2, 8. Pozner asserts this citation is lawful under § 809.23(3)(b), but that section expressly prohibits citation to summary disposition orders and, even if it was citeable, § 809.23(3)(c) required Pozner to file a copy of the opinion. I disregard Pozner's unlawful citation.

² Pozner's table includes the exemption for depository accounts in Wis. Stat. § 815.18(3)(k), which reads, in relevant part:

as not being associated with Fetzter's pension and/or social security benefits. Pflum Aff. Ex. A, dkt. 595:4-5.

In the second step of the garnishment procedure, the burden shifts to Fetzter to "affirmatively claim an exemption," Wis. Stat. § 815.18(6)(a), then produce evidence that might show any disputed amounts should not be garnished. In other words, after Pozner produced evidence that Fetzter owned all of the garnishable property in the table above, Fetzter's burden was to produce evidence that might show he did not own the property or, if he did, why some exemption from garnishment applied. Fetzter failed to do this—he neither claims any exemption under § 815.18(3) nor has he submitted any evidence in opposition to Pozner's motion.³

Instead of submitting any evidence to meet his burden of production, Fetzter repeatedly offered his own unsupported characterization of the property that Pozner seeks to garnish. To illustrate, I turn to the first piece of property that Pozner seeks to garnish: the \$549.59 deposited into Fetzter's account on March 3, 2022 (row one in the table accompanying the Pflum Aff., dkt. 558:2). Pozner made a prima facie case that this money was subject to garnishment based on the written admissions of the putative garnishee banks, written admissions from Fetzter's wife that the money was not exempt, and testimony that Pozner's attorney had "reviewed the Debtor's UW Account statements" Pflum Aff., ¶6, dkt. 558.

(j) The debtor's interest in or right to receive the following property is exempt ...

(k) Depository accounts in the aggregate value of \$5,000, but only to the extent that the account is for the debtor's personal use and is not used as a business account.

³ As best I can tell, Fetzter thinks that the property should not be garnished not because of any exemption but rather because it belongs to his wife. After all, a creditor can only garnish the debtor's property, e.g., *Prince Corp. v. Jindesberg*, 2016 WI 49, ¶34, 369 Wis. 2d 387, 882 N.W.2d 371, and Fetzter's wife is not a debtor. However, the only evidence of record anywhere that might suggest Fetzter does not own this property is Janice Fetzter's testimony on March 17, 2023. For example, at one point, Janice Fetzter vaguely describes how "my one daughter sent me birthday money, and I put that in my account." Tr. of Mar. 17, 2023 Hr'g, dkt. 562:11. This vague testimony does not support any reason for denying Pozner's motion because the phrase "my account" refers to Fetzter's account.

The burden then shifted to Fetzer. Here is Fetzer's written explanation for why, given the opportunity to do so, he could meet that burden:

The March 3, 2022 deposit contained three sources all of which were exempt ... Janice Fetzer has [evidence explaining why] in her check book which could have been submitted as evidence had a hearing been held.

Fetzer Resp. Br., dkt. 590:8 (Fetzer's brief in response to Pozner's motion is a collection of excerpts from his appeal brief in *Pozner III*). Fetzer did not meet his burden because Fetzer has not produced this check book or any other evidence relevant to the March 3 deposit. Indeed, as noted above, Fetzer conceded at oral argument that he did not dispute any facts asserted by Pozner's motion.

Fetzer's remaining challenges to Pozner's prima facie case for garnishment fare similarly. Fetzer says that other monies are exempt as gifts, or for tax reasons, or because of a novel and unsupported argument that garnishing a legal defense fund "would be instigating a fraud on the public." Fetzer Resp. Br., dkt. 590:10. Assuming these were lawful reasons for exempting property from garnishment under Wis. Stat. § 815.18(3), Fetzer's arguments would still fail because, crucially, arguments are not evidence.

In sum, the court of appeals has remanded this matter for one narrow reason: to "give Fetzer the chance to carry his burden of production." *Pozner III*, ¶23. I followed the mandate by giving Fetzer two opportunities—in writing and in person—to carry that burden. However, a person cannot meet their evidentiary burden of production by not producing any evidence. Fetzer produced no evidence, so he has not met his burden to show any of the § 815.18(3) exemptions apply.

Accordingly, I grant Pozner's motion for disbursement of funds.

ORDER

For the reasons stated,

IT IS ORDERED that Leonard Pozner's motion for disbursement of funds is granted. Pozner should promptly submit a proposed final order for the Court's signature.

This is NOT a final order for purpose of appeal. Wis. Stat. § 808.03(1).