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

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Leonard Pozner,  
Plaintiff-Respondent

v.

**Appeal No. 2024AP001329**

James Fetzer,  
Defendant-Appellant

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

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**BRIEF OF APPELLANT**

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## TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES.	3
STATEMENT OF ISSUES PRESENTED FOR REVIEW	
Issue 1: May Pozner garnish reimbursements of exempt funds, such as those that are exempt under Wisconsin Statutes 815.18(3)(j)?	4
Issue 2: May Pozner garnish funds, or may the Circuit Court Order them to be garnished, inconsistent with the Court of Appeals' Decision filed and dated February 8, 2024?	5
STATEMENT OF THE CASE.	6
STATEMENT OF FACTS	6
ARGUMENT	7
FIRST IMPRESSIONS.	10
CONCLUSION.	12

## TABLE OF AUTHORITIES

### Statutes

**26 U.S. Code § 6013 - Joint returns of income tax by husband and wife.** 9

### Cases

***Prince Corp. v. Vandenberg***, 2016 WI 49, ¶¶19-20, 369 Wis. 2d 387, 882 N.W.2d 371 (cases cited in ***Prince Corp.*** omitted). 7, 9

### Rules

**Wisconsin Code of Judicial Conduct, Ch. 20**

at <https://www.wicourts.gov/sc/rules/chap20b.pdf>

SCR 20:3.1, *Meritorious claims and contentions* 12

SCR 20.3.3 *Candor toward the tribunal.* 12

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

### **Issue 1: May Pozner garnish reimbursements of exempt funds, such as those that are exempt under Wisconsin Statutes 815.18(3)(j)?**

*General area of the law:* Pozner has once again entered an area where the law is silent and for good reason. Creditors have not garnished the payback of petty no-interest loans originating from the exempt funds in the same account. This involves the deprivation of the right of debtors and their family members to conveniently use and protect exempt funds in a bank account. Exemption of retirement and insurance benefits under Wisconsin statute 815.18(3)(j).

*Necessary facts:* On March 17, 2023, a hearing was held to determine the contents of Dr. Fetzer's UW Credit Union bank account where Janice Fetzer, Dr. Fetzer's wife, testified that several deposits shown in her check book for the subject UWCU account were paybacks of exempt funds originating from that same account. Janice then provided a list of the of nine deposits, six of which were paybacks from family members who used the credit card associated with that account. The amounts paid back were to the penny except for one which was underpaid, not overpaid. A second hearing was held on April 25, 2024, in response to the Court of Appeals' Decision Filed and Dated February 8, 2024. But Pozner did not change his accounting of funds proposed for garnishment.

*Policies that should be followed:* The lawful way to garnish funds from an account is to determine the source of that money to be non-exempt. The source of funds from family members were originally from the same exempt funds from the

same account. Pozner should have determined from Janice Fetzer's testimony which funds in the account were paybacks of exempt funds in the same account and then omitted them from non-exempt funds deposited and in other accounts and then deducted the \$5,000 exemption from that and garnished any positive balance. Funds from Social Security or derived from retirement accounts are exempt. Those who prosecute garnishments must not garnish funds from such sources, where Mrs. Fetzer was reviewing funds from Dr. Fetzer's retirement account.

**Issue 2: May Pozner garnish funds, or may the Circuit Court Order them to be garnished, inconsistent with the Court of Appeals' Decision filed and dated February 8, 2024?**

**This Court already ruled in its Decision filed and dated February 8, 2024 (hereafter "Court of Appeals' Decision"), that Mrs. Fetzer's funds cannot be garnished; Pozner's subsequent attempt to garnish Mrs. Fetzer's funds thus ignores this Court's prior opinion. It must not be permitted to stand and ought to be appropriately sanctioned for the abuse of judicial resources and if the Defendant's time and expenses.**

*General area of the law:* Lower courts are required to follow the orders and decisions of higher courts, in this case, the Circuit Court must follow the orders and decisions of the Court of Appeals, District IV.

*Necessary Facts:* In response to Defendant Fetzer's previous appeal for failure to hold a hearing at which objections could be raised to the Proposed Garnishment Order and on the ground that Pozner was garnishing funds that were exempt (including retirement and

insurance benefits under Wisconsin statute 815.18(3)(j), A second hearing was held on April 25, 2024, in response to Court of Appeals' Decision. But Pozner did not change his accounting of funds proposed for garnishment. Even though the Court of Appeals specifically noted that creditor-garnishers are only entitled to garnish property belonging to the debtor or in which the debtor has an interest, the Court still ordered that funds belonging to Janice Fetzer—including her half of federal and state income tax refunds—be garnished.

*Policies that should be followed:* The Court of Appeals reversed the garnishment order and directed that further proceedings be conducted consistent with its opinion. A hearing was conducted on April 25, 2024, but property belonging to Dr. Fetzer's wife—including her half of state and federal income tax returns—were garnished nevertheless, which was inconsistent with the Court of Appeals Decision.

#### **STATEMENT OF THE CASE**

The Statement of the Case presented by Dr. Fetzer in his Brief of Appellant filed on July 24, 2023 (Case #23AP1002) requires supplementation only by the proceedings addressed above, which along with other documents submitted in this case in the past are hereby incorporated and reaffirmed lest this court be subject to redundant reporting.

#### **STATEMENT OF FACTS**

The Statement of Facts by Dr. Fetzer in his Brief of Appellant filed on July 24, 2023, pages 11-12 (Case #23AP1002), requires supplementation only by those proceedings addressed above, which with other documents submitted in this case in the past are hereby incorporated and reaffirmed lest the court be subject to redundant reporting. The Court of Appeals, District IV, Decision was filed and dated February 8, 2024 (Appendix 2). A scheduling hearing was

held on April 25, 2024 (Appendix 3). In response to the Circuit Court's request, Dr. Fetzer submitted portions of his prior submission in his earlier appeal to the Court of Appeals (Appendix 4). Affidavits by Pozner and Plaintiff's Reply were submitted on May 13, 2024, and May 15, 2024 (Appendices 5 and 6). An oral hearing was held on June 11, 2024 (Appendix 7). Dr. Fetzer submitted an Answer to a query from the court on June 11, 2024 (Appendix 8). The Non-Final Order Granting Motion was filed on June 15, 2024 (Appendix 9). And the Signed Final Order Granting Motion was filed June 20, 2024 (Appendix 1).

### ARGUMENT

The argument likewise remains the same, but bears repeating. The Court of Appeals in its Decision reversed and directed that additional proceedings be conducted to render a new opinion that was consistent with its opinion. That was only done in the most perfunctory and non-responsive fashion by holding a hearing but not addressing the key point the Court of Appeals had made by citing *Prince Corp* (Appendix 2, page 12):

*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).

No response was forthcoming from Pozner or the Court to Dr. Fetzer's admonitions during the hearing that what was taking place was inconsistent with the Court of Appeals opinion, that it was garnishing non-debtor properties in violation of *Prince Corp*, and that the Circuit Court could be held in contempt by the Court of Appeals (Appendix 7). Dr. Fetzer was dumbfounded less by the non-response of Pozner to the Court of Appeals opinion than by the failure of the Circuit Court to acknowledge its own actions were inconsistent with the opinion of the Court of Appeals.

Plaintiff's arguments that the funds were comingled and could not be separated are contradicted by the content its own briefs and exhibits, where Exhibit A (page 2) attached to Appendix 5, Affidavit of Randy J. Pflume in Support of Plaintiff's Response (May 13, 2024) reiterates Mrs. Fetzer's accounting of each deposit:

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

**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 <sup>th</sup> 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.**

The arguments presented in Defendant's previous brief thus remain applicable in whole.

Once Mrs. Fetzer's accounting had entered into evidence, the specious claim of being unable to disentangle comingled funds came apart at the seams. These are all transactions in relation to a (Schwab) retirement account, which is protected from garnishment. One after



another of these transactions was merely reimbursing funds from a protected account after they had been used for transactions only involving Mrs. Fetzer (3/21/22; 5/06/22 regarding daughter's reimbursement); 6/15/22; 8/08/22; and 9/23/22). How could Pozner's attorneys reasonably suggest any of these transactions were subject to garnishment? They know that Mrs. Fetzer is not a debtor, yet they included five transactions merely reimbursing her or, in the case of the fifth (9/23/22), a \$100 birthday gift, which Pozner proposes to garnish.

As though those inclusions were not obnoxious enough, Mr. Pflume would include Mrs. Fetzer's share of their joint income tax return. Dr. Fetzer has taken it as common knowledge that refunds on joint income tax returns are equally divisible by each spouse. Based upon an unsuccessful search of IRS statutes such as 26 U.S. Code § 6013 and Wisconsin case law, Dr. Fetzer has been unable to find case law specifying how they are lawfully distributed. Notably, Mr. Pflume does not cite Wisconsin case law that would entitle Pozner to take Mrs. Fetzer's portion of their income tax refund as payment for her husband's indebtedness, which appears to be in violation of Wisconsin case law cited by the Court of Appeals (District IV), when it rendered its prior Decision (filed and dated February 8, 2024) of *Prince Corp.* 369 Wis. 387 (2016), which precludes creditor-garnishers from garnishing property from parties other than the debtor. Not only does Mr. Pflume appear to lack a basis in Wisconsin case law to support his proposal to garnish property of Mrs. Fetzer, but what the Court of Appeals (District IV) in its earlier decision itself cited appears to be violated by Mr. Plume *even after being noticed*.

Mrs. Fetzer has understood the importance of having Social Security and (Schwab) funds separated from other sources of income, but the stance of Pozner appears to be that she or Dr. Fetzer cannot even engage in transactions using those accounts without running the risk of garnishment—even when merely reimbursing the account for money that was used from it:

As Dr. Fetzer has previously explained, a proper account should have been straightforward:

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:

<b>Honest Correct Manner of Determining Non-Exempt Annual Income</b>		
	<b>Income</b>	<b>non-exempt</b>
1	UWCU-WI Income Tax Return (1/2 of Joint Return)	\$743.00
2	UWCU-Federal Income Tax Return (1/2 of Joint Return)	\$260.50
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
	<b>Sub Total</b>	<b>\$1,049.56</b>
	Deduction	\$5,000.00
	<b>Grand Total - Distribute Nothing.</b>	<b>-\$3,950.44</b>

(Appendix 4, page 13). Yet the Circuit Court's Proposed Garnishment Order ignores all that and accepts Pozner's assertion that all these properties are non-exempt from garnishment:

<b>Deposit Date</b>	<b>Deposit Account</b>	<b>Amount</b>
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)	\$1,000
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
	<b>Amount Subject to Garnishment</b>	<b>\$2,004.46</b>

Pflum Aff., dkt. 558:2.<sup>2</sup> According to Pozner, Fetzer's wife "specifically identified" these deposits (Appendix 9, page 5), which include her half of federal and state income tax returns (\$743 and \$260.50), reimbursements from our daughter for shopping at COSTCO (\$159 and \$153.88) as well as additional reimbursements from Dr. Fetzer for FEDEX legal expenses

(\$1,000), which are properly exempt. Thus, the amount claimed (\$2,004.46) ought to be reduced by that combined sum (\$2,315.38) leaving a negative balance that is not subject to garnishment (\$310.92). It's that plain and simple.

### FIRST IMPRESSIONS

The State Bank of Cross Plains (12/27/2022) deserves special attention from this Court. These were funds donated to Dr. Fetzer's Legal Defense Fund through a [GiveSendGo.com](https://www.givesendgo.com) Account ([GiveSendGo.com/fundingfetzer](https://www.givesendgo.com/fundingfetzer)), which Dr. Fetzer established to assist in paying legal fees accumulated in the defense of his Constitutional Rights under the 17<sup>th</sup> and 14<sup>th</sup> Amendments, which are egregious in this case, especially by denying Dr. Fetzer the right to a trial by jury in the face of massively disputed facts. As Dr. Fetzer has explained in the past and in the latest (updated) version of his appeal, none of these funds are going to be used to pay liabilities Dr. Fetzer has incurred but only for his legal expenses in fighting for his rights:

As a former Marine Corps officer, I was obligated to carry this case to the US Supreme Court (to no avail). The Circuit Court of Dane County denied the right to present a defense and to have the disputed facts decided by a jury. **I have been saddled with \$1.1m in liens** as a result of a **SLAPP (Strategic Lawsuit against Public Participation)** to punish those who speak out and expose fraud and corruption by the government. I am doing what I can to protect your rights.

If this case stands, then we can be deprived of life, liberty or property without due process of law. I am doing this for all of use but I need your help! I have the law and the evidence on my side. What I don't have is the money. I am doing this for the sake of the nation. None of these funds will be used to pay the liability I am fighting but only for legal expenses incurred. Lend a hand if you can. Thanks!

Dr. Fetzer has been unable to find specific case law to cite in support of this exception to garnishment procedures, suggesting this may qualify as a "First Impression" case, which raises an issue not previously addressed by the Court or within the Court's jurisdiction, where there appears to be no binding authority ([https://www.law.cornell.edu/wex/first\\_impression](https://www.law.cornell.edu/wex/first_impression)). Soliciting funds to support a legal defense, as Dr. Fetzer has done, with assurance to donors

that they will not be used to pay off the liability being opposed in court, but then having those funds subject to garnishment, represents a form of theft by deception or fraud. No donors should be defrauded by supporting a fight against unjust judgments and having their donations appropriated to satisfy those judgments instead.

Dr. Fetzer believes this case should be used to establish a suitable precedent under the law. Such an exception, which appears to be legally appropriate, would further reduce the amount of funds properly available for garnishment by an additional amount of \$2,437.60. Dr. Fetzer has been at a loss over how the Circuit Court could proceed in committing such obvious errors and rendering an opinion inconsistent with the Court of Appeals. The Court and Pozner appear to be engaging in conduct precluded by SCR 20.3.1, *Meritorious claims and contentions*, and SCR 20.3.3, *Candor toward the tribunal*, and deserving of reprimands of such form and variety as the Court finds to be appropriate in this case.

### CONCLUSION

Based upon the foregoing arguments and evidence, the Circuit Court Order 615 granting Pozner's Motion for Distribution of Funds should be reversed. The Circuit Court and Pozner should be sanctioned for transgressing these Supreme Court Rules and for failing to produce a new opinion as this Court directed. In addition, this case should also be used to establish a precedent for Wisconsin by exempting donations to legal defense funds from garnishment.

Respectfully submitted.

Electronically signed by:

/s/ James H. Fetzer, Ph.D.

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Signed this 18th day of July 2024.