

FILED
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CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

aSTATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

BRANCH 8

LEONARD POZNER,

CASE NO. 2018-CV-003122

Plaintiff,

vs.

JAMES FETZER,
MIKE PALECEK,
and WRONGS WITHOUT WREMEDIES, LLC,
Defendants.

FETZER’S REPLY ON HIS MOTION FOR SUMMARY JUDGMENT

Defendant James Fetzer, pro se and in the first person henceforth, hereby replies to “Plaintiff’s Opposition to Defendant Fetzer’s Motion for Summary Judgment” filed 6 June 2019.

**I. EXPERT FORENSIC DOCUMENT ANALYSES ESTABLISH
THE TRUTH OF MY STATEMENTS**

The Court is directed, at the outset, to the expert report of Larry Wickstrom, confirmed by the expert report of forensic documents examiner, A.P. Robertson, submitted in connection with my response to Plaintiff’s Motion for Summary Judgment (MSJ) and incorporated by reference herein. These reports establish that all of the versions of the “Noah Pozner” death certificate—and there are *four*, which do not simply differ between town and state, or dates of, or issuance, or amended vs. unamended—are fabrications, which even have hand-drawn lines and borders where content was removed, file numbers not compliant with the State of Connecticut’s numbering system, state file numbers which are variously hand-written or printed in different fonts, *and are not the same number*, a putative state file number on a town-certified copy (where no state file number should appear), different-sized certification stamps and placement, some

with the outline of a seal and others without. Of particular interest is Mr. Wickstrom's analysis of the one I called a fabrication in my book, attached as Exhibit B to my MSJ. That is Version 1 in his report. In addition to a hand-drawn black border, he notes the addition of an improperly placed seal at the bottom, as I did in my MSJ.

These reports lay to rest all of the points that are made in Plaintiff's response brief. My statements about Exhibit B are substantially true, as a consequence. They have not even been put in issue by the Plaintiff.

II. ARGUMENT

A. Plaintiff has confessed the argument about illegal possession of an uncertified death certificate.

I established in my MSJ that the death certificate about which I made statements is an uncertified copy, where Connecticut law makes it illegal to possess an uncertified copy unless one is a genealogical researcher or approved by a state or federal agency.

Plaintiff has not responded to this argument, so it is confessed.

B. Plaintiff may not expand on his complaint.

In "Background," Plaintiff refers to several allegedly defamatory statements he says I made, which are not a part of this case. He says I published an article in August 2014 in which I claimed that "Noah Pozner"'s death certificate was fake because "it was photoshopped." He cites par. 17-18 of the complaint for this allegedly defamatory statement. But paragraphs 17-18 of the complaint do not contain any such allegation.

He goes on to complain of "new, additional defamatory statements in the 2nd edition of the book" without specifying them, and says that, in August of 2018, I "published another defamatory blog post." None of these new defamatory statements are specified; but they are out

of bounds for another reason, as well, which is that Plaintiff is limited to the statements he specified as defamatory in his Complaint. Wis. Stat. 803.02(6) states in pertinent part:

LIBEL OR SLANDER. In an action for libel or slander, the *particular words* complained of *shall be set forth in the complaint...*

This is a due process concern. I was entitled to know precisely which specific statements I must defend against. There were only three; and, as shown in my MSJ and all the more with these expert reports, these were not defamatory because they are substantially true. The court must ignore this attempt to expand the case.

A. *My affidavit is sufficient, because my MSJ establishes forgery of the DC as a matter of law.*

While Wis. Stat. 802.08(3) requires an affidavit in support of a motion for summary judgment to be based on personal knowledge; it does not require that the affidavit expressly contain a statement to that effect. None of Plaintiff's affidavits do. In my case, my affirmation says, "the factual statements made [in the motion] are true to the best of my knowledge, information, and belief." Thus, I was not attesting to the truth of opinion or legal argument. I also did not intend to attest to the truth of the affidavit of Kelley Watt, which was filed separately, under her own oath.

Plaintiff asserts that my factual statements in the motion are not even relevant to any claims or defenses in the case. That is certainly untrue: I established that I had made statements about Exhibit B, *only*, the uncertified copy of the death certificate which Leonard Pozner provided Kelley Watt, and that I had never seen Plaintiff's version, Exhibit A, before I was sued. Thus, Plaintiff is suing me over apples, when I only talked about oranges. I set forth differing features of both documents, which are self-evident from the documents themselves. However, Plaintiff is right in that my *MSJ* is primarily grounded in the *illegality* of both death certificates,

which make my statements that Exhibit B is a fake and a forgery *true* without more. And the legal principles establish that Exhibit A is also a forgery, yet Plaintiff presented this document to the Court as though it were an authentic document.

Plaintiff, in his brief, pules that, “Defendants have never served a document request seeking a scan of his son’s death certificate that Plaintiff uploaded to his social media page in 2014.” And he complains about the low resolution of my Exhibit B. This is cavil. I have proven, through Kelley Watt’s affidavit, that Plaintiff provided *that* death certificate to her; through my own affidavit—and collaboration with her in the book—that she provided that DC, my Exhibit B, to *me*; and that *that* is the DC I made statements about. Both Ms. Watt and I said these things under oath. Plaintiff has never put these facts into issue via his own sworn statement. We only see his attorney complaining about what we said *in her brief*, even insisting (at 14) that “all of the evidence shows Mr. Pozner received a certified copy of his son’s death certificate from the Newtown Registrar and uploaded an accurate digital scan of that information to his son’s memorial page.” The facts are the exact opposite, and they have not been put in issue.

B. Kelley Watt’s affidavit is also sufficient.

Neither Ms. Watt nor I is an attorney. I do acknowledge there are some inconsistencies between her affidavit and the book, and as the book’s editor, it’s my fault for not catching them. Undoubtedly they are due to some faulty recollection over a period of 4-1/2 or so years. These inconsistencies are only in ancillary matters, however, rather than in the basic facts necessary to support our Motion for Summary Judgment. *What matters is the unbroken chain from Pozner, to her, to me.* Again, Plaintiff has not denied any of the events in this chain under oath—he has not

denied under oath that Exhibit B to my motion is the death certificate that he provided Kelley Watt--so they must be taken as true.

C. Both Green and Carver are incredible.

I have moved to strike the affidavit of Samuel Green, not least because he is not a licensed funeral director and his business is not a licensed funeral home, but for many other violations of Connecticut law. That motion (filed 7 June 2019) is incorporated by reference. As for the medical examiner, Wayne Carver, while I have not moved to strike his Post-Mortem Examination report (PME), which was all Plaintiff has offered from him in connection with his MSJ, I could have, and perhaps may still. I have pointed out numerous internal inconsistencies and hearsay in my response to the MSJ, also incorporated by reference.

Plaintiff now provides a new affidavit from Carver, apparently to fill in gaps in his PME, first in the DNA analysis of "Noah Pozner," which I have moved to strike, since the men responsible (Friedman and Sinelnikov) said the DNA came from the medical examiner, when, as a matter of law, the medical examiner is not permitted to retain any DNA. That includes DNA stored on "blood cards." It is also new information that "the X-ray image provided me more than enough detail to allow me to conclusively establish the path of the bullet that went through Noah Pozner's chest and determine it to be the type of injury that would be fatal in 100% of cases." In contrast, the PME does not conclude the chest wound was the reason for death. It simply states cause of death as "multiple gunshot wounds" and manner of death to be "homicide," leaving the reason for death to the imagination of the reader. Obviously, these additional observations ought to have been included, and would have, had the report been done in the ordinary course of business. I have also discussed, in my response to Plaintiff's MSJ, that the section, "Anatomical Diagnosis," in the PME does not mention any wound to the face, while

the initial page, done by investigator Rinaldi, *only* mentions the wound to the face and does *not* mention any wound to the chest or hand. The PME is incredible as a matter of law and this affidavit only digs Carver deeper in a hole.

At the least, there are issues of disputed fact. Since Carver did not put most of these statements into the PME, where they ought to have gone, Plaintiff is effectively impeaching his own witness. During his deposition in Connecticut on 21 May 2019, moreover, I ask him if he could explain the different file numbers in the two State-certified death certificates, which he could not. In relation to the one with a partial, printed file number, he replied, “I have no idea what it is!”, as my own affidavit attests.

III. CONCLUSION

When the Court takes into account my comprehensive filing in response to Plaintiff’s MSJ, along with my own MSJ, the Court will see this case for what it is: a blatant attempt to silence, and punish, citizen journalists who are performing the most patriotic of duties, and exercising one of our most cherished freedoms: *ensuring that our government works for us and tells the people the truth*. The American public has not been told the truth about Sandy Hook. It would be grossly contrary to the public interest to find that my commentary about this matter—and the actions of the very visible person who has sued me and has retaliated severely against others who are carrying out the same civic responsibility—is tortious. The Court will play an important role in awakening America, restoring accuracy in reporting, and ending taxpayer-funded psychological operations on the public at large by granting summary judgment for me and denying same to the Plaintiff.

Dated: 12 June 2019.

/s/ James Fetzer

James Fetzer