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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Leonard Pozner,
Plaintiff-Respondent

v.

Appeal No. 2024AP001329

James Fetzer,
Defendant-Appellant

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

APPELLANT'S REPLY

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SCR 20.3.3 *Candor toward the tribunal.* 10, 13

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)?

Respondent's Response to Issue 1: Pozner did not seek, nor did the circuit court allow, the garnishment of retirement benefits under Wis. Stat. § 815.18(3)(j) and the only other exemption Fetzler claimed was the \$5,000 individual exemption, which Fetzler received.

Appellant's Reply to Respondent's Response to Issue 1: A misrepresentation to the Court because Appellant had specifically noted that both his retirement and Social Security accounts were exempt. Appellant was in addition entitled to the \$5,000 exemption, which (as Appellant has previously affirmed) entailed Pozner wrongly garnishing from an account that was exempt.

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. Fetzler's funds cannot be garnished; Pozner's subsequent attempt to garnish Mrs. Fetzler'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 of the Defendant's time and expenses.

Respondent's Response to Issue 2: On remand, the circuit court gave Fetzler the opportunity to submit evidence both in a response brief and at a hearing, to support his

arguments that the funds at issue should not be garnished. Fetzer failed to submit any additional evidence, agreed there were no disputes of fact, and, instead, argued that this Court had already decided the issue in his favor.

Appellant's Reply to Respondent's Response to Issue 2: Both Dr. Fetzer and his wife, Janice, testified in detail and with specificity as to the source of funds involved here, which were reimbursements for expenditures from the UW Credit Union (non-garnishable) retirement account or personal gifts and reimbursements to Mrs. Fetzer from her daughters, including even a \$100 check for her birthday and her half of their joint state and federal tax returns, where each of those deposits was substantiated with scans provided to Pozner's then-attorney, Randy Pflum (Appendix 5, Exhibit A). None were properly subject to garnishment, contrary to assertions by the Zimmerman/Zimmerman/Feinstein team of Pozner lawyers.

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. Dr. Fetzer originally claimed exemption for both accounts on Defendant's Answer Non-Earning Garnishment Form when the issue originally arose. The Pozner Response does not change the facts or the law in this case, which are provided (updated) for the Court.

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 those additional proceedings be conducted to render a new opinion that was consistent with its opinion. A hearing was conducted but only in a perfunctory and non-responsive fashion without 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 repeated Admonitions that what was taking place here 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. Pflum in Support of Plaintiff's Response (May 13, 2024) reiterates Mrs. Fetzer's accounting of each deposit:

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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.

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

Once Mrs. Fetzer's accounting was 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 has nevertheless garnished.

As though those inclusions were not obnoxious enough, Mr. Pflum still included 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. Notably, Mr. Pflum does not cite Wisconsin case law that would entitle Pozner to garnish Mrs. Fetzer's portion of their income tax refund as payment for her husband's indebtedness 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): *creditor-garnishers may not garnishing property from parties other than the debtor*. Not only does Mr. Pflum (now Zimmerman/Zimmerman/Feinstein) lack a basis in Wisconsin case law to support garnishing property of Mrs. Fetzer, but what the Court of Appeals (District IV) in its earlier decision itself cited was violated by Mr. Plum *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 that Pozner adopts is neither she nor Dr. Fetzer can engage in transactions using those accounts without running the risk of garnishment—even when merely reimbursing the account for money that was drawn 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:

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)	\$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
	Sub Total	\$1,049.56
	Deduction	\$5,000.00
	Grand Total - Distribute Nothing.	-\$3,950.44

(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:

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)	\$1,000
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
	Amount Subject to Garnishment	\$2,004.46

Pflum Aff., dkt. 558:2.² 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.

The Pozner Response attempts to obfuscate the apparent fact that Dr. Fetzer has provided a detailed accounting of the funds in question here as summarized above. See App. 5: Affidavit of Randy J. Pflum in Support (May 13, 2024) 51 App. 6: Plaintiff's Reply in Support of His Motion (May 15, 2024) 57 App. 7: Garnishment Oral Argument Transcript (June 11, 2024)

Pozner attorneys replacing Attorney Pflum have the duty to this Court not to mislead the court or to lie. Under the Rules of Professional Conduct, including SCR 20.3.3 *Candor toward the tribunal*, they are obligated to not misrepresent the facts or the law before the Court, which they have done here (as the above review confirms). Pozner counsel also has a professional duty not to file frivolous motions. SCR 20:3.1 *Meritorious claims and contentions*.

Pozner's Standard of Review discussion is intended to obfuscate both the facts and the law by contending the court has the discretion to ignore both and rule in Pozner's favor. What they intend is for this Court to exercise its discretion to sanction their lie about the funds. Surely, no proper court should be fooled by Pozner's sleight of hand. Acknowledge that an appropriately detailed account of the funds—their disbursement and their reimbursement--was provided, and that Pozner should be sanctioned and charged damages for this meritless and frivolous response.

Similarly for their deliberate failure to acknowledge that Dr. Fetzer addressed the issue of garnishing funds from legal defense funds. 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. Again, the arguments are reviewed below for the convenience of the court.

THE NON-FINAL ORDER

The appeal to a “Non-Final Order for the Purpose of Appeal”, under the circumstances of the history of this case—which has been dedicated from the beginning to shut him down in every possible way from informing the public about (what was in reality) a FEMA drill presented as mass murder to promote gun control—pales by comparison. Pozner has even succeeded in taking intellectual property to satisfy a monetary judgment (*without appointing a receiver*), which ought to have been corrected but was allowed to stand. In the present context, this “non-final” issue appears to be an example of legalistic hair-splitting by Pozner attorneys in their ongoing efforts to utilize a compliant Circuit Court to abuse the law and to harass and punish Dr. Fetzer for speaking inconvenient truths.

This issue is surely not dispositive since manifest justice should address Dr. Fetzer’s appeal on the facts and arguments which are identical. If something looks like a duck, walks like a duck, and quacks like a duck, it’s a duck, no matter whether one calls it “Interlocutory” or “Petition for Writ of Mandamus”. Dr. Fetzer’s next step of appeal, by any other name, would have landed in this court either way, and the Respondent is not prejudiced by the mere naming of the motion. Should this Court be inclined to agree with Respondents’ argument on this point, therefore, Dr. Fetzer formally requests to have this appeal renamed as an Interlocutory Appeal or as a Petition for a Writ of Mandamus on identical grounds and argument.

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 17th and 14th

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 funding appeal, none of these funds are 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). 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.

STATEMENT ON PUBLICATION

Respondent does not believe this case is appropriate for publication as publication as the Court's decision is unlikely to have any significant value as precedent. Appellate observes that garnishing from retirement accounts that were not previously subject to garnishment (and taking non-debtors' property, including their portion of state and federal tax returns), are of extraordinary importance to Wisconsin citizens, where such a ruling would legalize what heretofore would be regarded as theft by deception. Publication would not be optional but, under the circumstances, mandatory. Changes of this kind are so egregious that they deserve to be made known to the citizens of this state on an immediate and timely basis.

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 29th day of September 2024.