

FILED
08-22-2024
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

BY THE COURT:

DATE SIGNED: August 22, 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
DENYING JAMES FETZER’S MOTION TO RECUSE

INTRODUCTION

James Fetzer asks me to recuse under Wis. Stat. § 757.19(2)(g). That section requires a judge recuse if “he or she cannot, or it appears he or she cannot, act in an impartial manner.” I deny Fetzer’s motion because I conclude that I can act, and that it appears I can act, in an impartial manner.

DECISION

Fetzer’s present motion to recuse comes in the wake of, most recently,¹ two orders related to execution on a judgment against Fetzer. The first order granted Leonard Pozner’s motion to

¹ For a more thorough history of this litigation, see *Pozner v. Fetzer*, No. 2023AP1001, unpublished slip op. (WI App Feb. 8, 2024) (per curiam) (*Pozner III*).

disburse funds. That order applied Wisconsin's rules for execution to explain why some of Fetzer's property was not exempt and, therefore, must be disbursed to Fetzer's judgment creditor. Decision and Order (Jun. 14, 2024), dkt. 598; *see also* Order Granting Leonard Pozner's Motion to Disburse Funds (Jun. 20, 2024), dkt. 614 (a followup order more specifically addressing Pozner's motion). Three days after that first order, Fetzer accused the Court of participating in a vague conspiracy to commit fraud. The second order liberally construed Fetzer's rambling accusations as a motion for relief from judgment, then denied that motion. Decision and Order (Jun. 20, 2024), dkt. 615. Based principally on these two orders—the first disbursing Fetzer's funds and the second denying relief based on a vague conspiracy theory—Fetzer says that I have “repeatedly demonstrated that [I] cannot act in an impartial manner” Fetzer Recusal Mot., dkt. 630:1. As a result, Fetzer claims a “breach of due process and ... Civil Procedure.” *Id.* at 1-2.

Fetzer now asks me to recuse under Wis. Stat. § 757.19(2)(g). That section requires a judge must recuse: “When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.” As our supreme court has held, this determination “concerns not what exists in the external world subject to objective determination, but what exists in the judge's mind.” *State v. American TV and Appliance of Madison, Inc.*, 151 Wis. 2d, 175, 181-82, 443 N.W.2d 662 (1989). Plainly put, “the determination ... is subjective.” *Id.* at 182.

I deny Fetzer's motion because I conclude I can act in an impartial manner and, moreover, that it appears I can act in an impartial manner. Although Wisconsin law requires that I go no further than make this subjective determination of “what exists in the judge's mind,” I note that objective facts also strongly weigh against any finding of bias. This case was remanded for me to decide one very simple issue: whether Fetzer could produce evidence that showed his property was exempt from execution on Pozner's judgment. Fetzer left no room for bias to infect any

decisions on that issue because, given the simplicity of the issue presented—to repeat, the issue was: whether Fetzer could produce evidence—Fetzer produced no evidence. The reason why Fetzer produced no evidence was probably because, as he later conceded at oral argument, he did not actually dispute any facts asserted by Pozner’s motion. Tr. of Jun. 11 Hr’g, dkt. 597:3-4. No reasonable person would look at Fetzer’s failure to produce evidence and then conclude that failure was the result of judicial bias and/or some vague conspiracy.

Accordingly, I conclude Fetzer fails to show any reason, subjective or otherwise, why Wis. Stat. § 757.19(2)(g) requires my recusal.

ORDER

For the reasons stated,

IT IS ORDERED that James Fetzer’s motion to recuse is denied.

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