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CIRCUIT COURT  
DANE COUNTY, WI  
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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LEONARD POZNER,  
Plaintiff,

vs.

Case No. 18CV3122

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

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PLAINTIFF'S OPPOSITION TO DEFENDANT FETZER'S MOTION TO STRIKE  
MR. GREEN'S AFFIDAVIT

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## INTRODUCTION

Defendant Fetzer's motion to strike the affidavit of Samuel Green has no basis in law or fact. For the majority of Defendant Fetzer's arguments, he does not identify any rule of evidence that would preclude the statements offered by Mr. Green. In a few instances he cites general principles, *e.g.*, hearsay, but in each such instance he is wrong. Underlying Defendant Fetzer's request to strike Mr. Green's affidavit is Defendant Fetzer's accusation that Mr. Green is "lying." Doc. 186 at 4. Defendant Fetzer has no legal argument or evidentiary basis to support his motion.

### I. BACKGROUND

Defendant Fetzer has failed to show that any of the statements made by Mr. Green in his affidavit are inadmissible.

**A. Defendant Fetzter's Paragraphs 1-3**

Mr. Fetzter apparently relies on his own internet research to try to undermine Mr. Green's statements about his licensure and that of his funeral home. Given that Mr. Green is not being offered as an expert witness, his qualifications, including his professional licenses, are not material issues.

Defendant Fetzter's reliance on his internet research to establish the absence of professional licenses demonstrates only the unreliability of Defendant's internet research and his lack of understanding of Connecticut's licensing system. It does not evidence unreliability of Mr. Green's sworn statements, much less support his request to strike Mr. Green's affidavit.

In any event, Defendant Fetzter's arguments are wrong. For example, Defendant Fetzter argues that Mr. Green is not licensed as a funeral director but instead only as an embalmer. Doc. #186 at page 1. That is wrong. As a matter of Connecticut law, Mr. Green's embalmer's license entitles him to be funeral director. *See Conn. Gen. Stat. § 20-223.*

Defendant Fetzter also alleges that the Abraham L. Green and Sons Funeral Home is not a licensed funeral home. *See Fetzter's Motion at ¶ 2.* Again, that is wrong. The online system Mr. Fetzter says he used shows that the "A. L. Green & Son Funeral Home" in Fairfield, Connecticut holds license FH.000223. *See Zimmerman Aff. at Ex. E.* Defendant Fetzter's failure to find a result does not mean Mr. Green was lying, it means only that Defendant Fetzter did not conduct an adequate search.

**B. Defendant Fetzner's Paragraph 4**

Defendant Fetzner's attempt to re-cast Mr. Green's statement into something else is neither logical nor based on any rule of evidence. That Defendant Fetzner's motion for summary judgment discusses "partial completion" in a different context has nothing whatsoever to do with Mr. Green's sworn statement. This is not grounds to exclude Mr. Green's statement or his affidavit.

Mr. Green's affidavit states that he personally completed the funeral home's portions of Noah Pozner's death certificate before he filed the death certificate. Doc. #104 at ¶¶4-5. He testified that the document did not leave his funeral home's possession until it was filed at the clerk's office. *Id.* Mr. Green therefore is competent to testify that Mr. Pozner did not possess the incomplete death certificate. Mr. Pozner's testimony is consistent—he says he never had an incomplete copy of Noah's death certificate. Doc. #103 at ¶ 14.

Mr. Green's testimony is relevant because Mr. Pozner could not photoshop or digitally manipulate or otherwise forge a document that Mr. Pozner never possessed. It is also relevant because it establishes that the contents of the death certificate portrayed in Defendants' book were the same as what Mr. Green typed into the document. Therefore the accusation that Noah Pozner's death certificate was photoshopped or digitally manipulated or was the combination of a real death certificate and a fake one cannot possibly be true. Defendant Fetzner's motion to strike on this ground is meritless.

**C. Defendant Fetzer's Paragraph 5**

Defendant Fetzer has no basis to challenge Mr. Green's testimony with regard to Mr. Green's review of the death certificate attached as Exhibit A to Mr. Green's affidavit. Defendant Fetzer has not established that the provenance of that copy is material to Mr. Green's testimony. Mr. Green did not attest to the authenticity of Attachment A, only that he was asked to review it and that he did so.

Defendant Fetzer's assumption that the death certificate attached as Green Aff. Ex. A is the copy his funeral home made before filing it with the clerk is wrong. The funeral home file copy is attached as Ex. C to Doc. #171. Not only is it permissible for the funeral home to maintain a copy of Noah Pozner's death certificate, it is required by law. *See* Conn. Gen. Stat. § 20-222(g)(2) (specifying that funeral homes must maintain "copies of all death certificates, burial permits . . . copies of the final bill . . . for a period of not less than six years after such final disposition[.]") Defendant Fetzer's entire argument is based on the false premise that the death certificate released by Mr. Pozner is not a scan of a certified copy, despite the unmistakable raised seal evident on the document.<sup>1</sup>

Defendant Fetzer's argument that Mr. Green's testimony is irrelevant is simply wrong. Mr. Green's testimony establishes that the information in Noah

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<sup>1</sup> Defendant Fetzer's claim that the seal is in the wrong place is unsupported by evidence. He has not established that he has the requisite training or skill to opine on the correct placement of the Newtown seal. None of his "experts" testified that the seal is in the wrong place. He has not cited any Connecticut statute, regulation, or even practice that would evidence improper placement of the raised seal on that copy of Noah Pozner's death certificate.

Pozner's death certificate could not possibly have been photoshopped or digitally manipulated and the death certificate could not possibly be the combination of a the bottom half of a real death certificate and the top half of a fake one as Defendant's book and blog allege.

**D. Defendant Fetzer's Paragraph 6**

Mr. Green discussed burial permits in his paragraph 15. Mr. Green did not describe the contents of Noah Pozner's burial certificate such that Wis. Stat. § 910.02 would be relevant. He instead described the process of obtaining the document. None of that testimony violates the best evidence rule and none of it is hearsay.

**E. Defendant Fetzer's Paragraph 7-8**

Defendant Fetzer's complaints are not grounds to strike Mr. Green's affidavit. Plaintiff served a copy of Mr. Green's subpoena on April 25. *See Zimmerman Aff.* at ¶ 8; Ex. F. The subpoena set the deposition for May 20. *Id.* at Ex. G. Mr. Green was deposed on May 20. *See, e.g.,* Doc. #171 at Ex. 4 (excerpts from Green Transcript dated May 20, 2019). Dr. Fetzer (and the other defendants) had every opportunity to cross examine Mr. Green on the contents of his affidavit, which had been filed weeks earlier (Doc. #104, filed April 30, 2019). They elected not to do so.

Defendant Fetzer's complaints about document requests (not requests for admission) served by Wrongs Without Wremedies are not pertinent to his motion to strike.

**F. Defendant Fetzer's Paragraph 9**

Defendant Fetzer is wrong about the process for completing death certificates in Connecticut. Dr. Fetzer is improperly applying the process for deaths in which the

medical examiner conducts an inquiry under Conn. Gen. Stat. § 19a-409. Under that process, the Chief Medical Examiner is to file a death certificate or a supplemental death certificate. *Id.* In Noah Pozner's case, the Chief Medical Examiner did not need to use the more extended process described in § 19a-409 because the post mortem examination was completed, and the cause of death determined, on December 15, 2014. Doc. 120, Ex. I.

Mr. Green has been licensed by Connecticut as a funeral home director since 1979 and involved in his family's Connecticut funeral home business for 41 years. *See*, Doc. #104 at ¶¶2-3. Dr. Carver was the Chief Medical Examiner for the State of Connecticut from 1989 until 2013 and estimated in deposition that he has personally completed about 13,000 Connecticut death certificates. Carver Depo. at 25:5-20 In contrast, Defendant Fetzer has never once claimed to have completed a Connecticut death certificate. As such, Defendant Fetzer is hardly in a position to argue that Mr. Green or Mr. Carver have spent the last few decades doing it wrong.

**G. Defendant Fetzer's Paragraphs 10-11**

There is no basis to strike Mr. Green's affidavit or the statements set forth in these paragraphs. Defendant Fetzer's argument shows nothing other than Defendant Fetzer's lack of familiarity with Connecticut's burial permit process. Defendant Fetzer claims that no registrar other than Newtown's should have been involved in the process. *See* Doc. #186 at ¶ 11. But Conn. Gen. Stat. § 7-65(a) says:

The embalmer or funeral director ... shall obtain a removal, transit and burial permit from the registrar of the town in which the death occurred or the town in which the embalmer or funeral director maintains a place of business not later than five calendar days after death, and prior to final disposition or removal of the body from the state.

The process Mr. Green described using to obtain Noah Pozner's burial permit comports with Connecticut law. He obtained Noah's burial permit from Fairfield, the town in which his funeral home maintains its place of business. Doc. #104 at ¶ 15.

## II. CONCLUSION

Defendant Fetzer has offered no valid grounds to strike the Affidavit of Samuel Green. For the reasons stated above, Plaintiff asks the Court to deny Defendant Fetzer's Motion to Strike.

Dated: June 12, 2019

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