

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER,

Defendant.

PLAINTIFF'S REPLY IN SUPPORT OF
MOTION FOR ATTORNEY FEES

Plaintiff Leonard Pozner asks this Court to award him attorney fees because this case is an exceptional case and there are dominating reasons of justice. Throughout the course of this case, Dr. Fetzer repeatedly stepped his toe over the line of impropriety, but only once jumped over so obviously as to necessitate a contempt sanction. Every other time, Dr. Fetzer generated warnings, without facing a consequence for his repeated behavior. Dr. Fetzer ignored facts and consistently contradicted his own "research," used his "research" to flout the rules and orders of this Court, and used this matter to further his financial interests. These false statements, rule violations, self-promotion, and bad faith demand a meaningful consequence: the equitable remedy of attorney fees.

ARGUMENT

Mr. Pozner is entitled to his attorney fees for three reasons. First, Mr. Pozner is entitled to receive this equitable remedy, even in an action at law. Second, Dr. Fetzer has acted in bad faith throughout the course of this case, regardless of how seriously he believes his own tales. Third, while Dr. Fetzer's individual actions did not necessarily rise to the level of sanctions, this Court can and should award attorney fees based on the sum total of his conduct.

1. This Court may apply an equitable remedy even in this action at law.

Mr. Pozner acknowledges that an award of attorney fees is an “exceptional” remedy, but Dr. Fetzer ignores the central holding of *Nationstar Mortgage, LLC v. Stafsholt*, 2018 WI 21, 380 Wis. 2d 284, 908 N.W.2d 784: “We hold that attorney fees may be awarded as an equitable remedy ‘in exceptional cases and for dominating reasons of justice.’” *Id.*, ¶ 24 (quoting *Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 167 (1939)). The *Nationstar* court did not limit that holding to cases in equity; the court simply applied that holding to a case in equity.

This Court may fashion an equitable remedy—such as an award of attorney fees—as a means “effect an adequate remedy” and to stop a party from using the courts for an improper purpose. *Id.*, ¶¶ 28, 32. Before awarding attorney fees to Mr. Pozner, this Court will review the record and determine whether Dr. Fetzer acted in bad faith. *Id.* Here, the record shows that Dr. Fetzer, from the beginning of this matter through trial, used the Court for improper purposes and acted in bad faith.

2. Dr. Fetzter has acted in bad faith throughout this case.

Dr. Fetzter's conduct during the entire lawsuit entitles Mr. Pozner to an award of attorney fees. Dr. Fetzter's behavior demands a meaningful consequence and only this equitable remedy can provide that. To support this request, Mr. Pozner identifies several examples of Dr. Fetzter's behavior that warrant an award of attorney fees: his deliberate indifference to facts and contradictions of his own statements (dkt. no. 327 at 2-3 and *infra*); his use of conspiracy theories to ignore the rules of this Court (*id.* at 3 and *infra*); and the use of this lawsuit to sell his book and make money (*id.* at 3-4 and *infra*). Dr. Fetzter's response ignores these facts.

For example, Dr. Fetzter ignores the repeated and contradictory positions he took in this case to further his conspiracy theories. From suggesting that neither Mr. Pozner nor his son are real (Dkt. No. 5, ¶¶ 1, 28; Dkt. No. 27 at 4) to changing the "premise" of his theory that the death certificate was "fake" (Dkt. No. 5, ¶¶ 8-14; Dkt. No. 231 at 38-39), no facts or law supported Dr. Fetzter's intentional discrepancies. According to Dr. Fetzter, he did not take these positions "frivolously" and he has provided "a reasonable basis" for his "position[s]." Dkt. No. 341 at 6.

Moreover, this Court need not consider whether Dr. Fetzter believed his unbelievable and—more importantly—unsupported claims. Dr. Fetzter can believe the moon is made of green cheese. But, Dr. Fetzter never provided admissible evidence to support any of his "positions," and his objection to Mr. Pozner's request for attorney's fees points to no examples. Dr. Fetzter, over and over again, disrespected

both the rule of law and the integrity of the legal process all in the name of his conspiracy theories, entitling Mr. Pozner to an award of attorney fees in this case.

As another example, Dr. Fetzer also consistently violated laws protecting the confidentiality of individual's private information. More than once, Dr. Fetzer shared images of Noah Pozner's passport and its identifying passport number. *See, e.g.*, Dkt. No. 92. He also violated the Court's protective order by sharing Mr. Pozner's confidential deposition video with non-parties and known conspiracy theorists. Dkt. Nos. 283, 285. At the contempt hearing, Dr. Fetzer submitted a statement to the Court. *See* Dkt. No. 281. Now, Dr. Fetzer calls this statement, "evidence in good faith questioning Plaintiff's identity." Dkt. No. 341 at 6. Clearly Dr. Fetzer persists in his belief that he may use conspiracy theories as admissible evidence sufficient to question Mr. Pozner's existence and to ignore the rules of this Court. Only the equitable remedy of attorney's fees can remedy this doggedness.

At the same time, Dr. Fetzer used this case as a means to further his personal agenda: to develop his "research" and other theories related to the Sandy Hook Tragedy. *See, e.g.*, Dkt. No. 88; Dkt. No. 267. In addition to furthering his "research," Dr. Fetzer used this litigation to promote his book and raise money (and continues to do so post-trial). *See* Trial Transcript, Day 1, at 48:3-8 and Trial Transcript, Day 2, at 68:1-7, 69:19-25, and 74:3-8). *See also* Dkt. Nos. 321, 324-26. These actions demonstrate Dr. Fetzer's use of this legal process for an improper and intentionally disruptive purpose. This business must stop, and only an award of attorney's fees provides a meaningful consequence.

Finally, Mr. Pozner never alleged that Dr. Fetzer used this process to extort him. Dr. Fetzer cannot use this new distraction to try to avoid an appropriate and viable remedy. The record shows that Dr. Fetzer acted in bad faith throughout this litigation. Therefore, this Court should award Mr. Pozner his reasonable attorney fees.

3. Based on Dr. Fetzer's cumulative misbehavior, this Court may order him to pay Mr. Pozner's reasonable attorney fees.

Dr. Fetzer's cumulative behavior warrants the equitable remedy of attorney fees. The law contemplates the use of this remedy when the at-fault party, here Dr. Fetzer, causes the dispute and doubles down on his position throughout litigation. *Nationstar*, 2018 WI 21, ¶¶ 1, 3, 35. That is precisely what occurred here.

Dr. Fetzer caused this dispute by publishing four statements that this Court determined to be defamatory. Dkt. No. 230. He then endeavored, time after time, to use this legal process to prove things he previously claimed as proven "facts," including requests for DNA testing and demanding video depositions. Even after this Court's warnings, Dr. Fetzer persisted: he attempted to convince the jury that his book, containing the court-ruled defamatory statements, was "serious" and "academic." And Dr. Fetzer continues to use this litigation as a means to promote himself and his "research." Despite the Court's efforts to address Dr. Fetzer's misguided maneuvers as they arose, the cumulative impact of Dr. Fetzer's conduct justifies an award of attorney fees in this case.

CONCLUSION

Based on Dr. Fetzter's overall behavior—from the start of this case to the present moment—Mr. Pozner asks this Court for an order requiring Dr. Fetzter to pay all of Mr. Pozner's reasonable attorney fees.

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