

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER,

Defendant.

PLAINTIFF'S REPLY IN SUPPORT OF HIS
MOTION FOR PERMANENT INJUNCTION

Dr. Fetzer's only criticism about the proposed injunction is that it would restrain statements that do not mention Mr. Pozner. That objection has no legal support. Mr. Pozner's connection to the statement need not arise from the false allegation that he himself faked the document. It is enough (and an undisputed fact) that Dr. Fetzer stated that Mr. Pozner circulated his son's death certificate. Circulating a fake death certificate is a crime. So any allegation that Noah Pozner's death certificate is fake is necessarily an accusation that Mr. Pozner committed a crime.

Dr. Fetzer relies on *Sindi v. El-Moslimany*, 896 F.3d 1, 31 (1st Cir. 2018) to suggest that any injunction against defamatory speech violates the First Amendment. First, this court is not bound by a First Circuit decision. Second, the approach in *Sindi* is inconsistent with Wisconsin's policy determination to allow prior

restraints on speech. As described in Plaintiff's motion, Wisconsin has allowed prior restraints on defamatory speech.

Finally, *Sindi* is factually distinguishable. Because the parties in *Sindi* used a general verdict form, there was no specific statement found to be defamatory. After trial, the court identified six statements as false, defamatory, and uttered with actual malice (the plaintiff was a limited purpose public figure). *Sindi* enjoined those six statements.

The court of appeals reversed, noting that future utterances of those six statements may not be defamatory if they occurred in different contexts. One hypothetical difference might occur if the statement was uttered without actual malice. That contextual difference is inapplicable to this case because Mr. Pozner is not a limited purpose public figure and therefore does not need to show actual malice.

Sindi also considered the possibility that future utterances might not disparage the plaintiff. Again, that alleged change of context is not relevant to this case. None of the statements in *Sindi* were alleged to be crimes. In contrast, each and every time he declares Noah Pozner's death certificate to be fake, Dr. Fetzer accuses Mr. Pozner of committing a crime. No context can change that accusation of a criminal act or make it less disparaging to Mr. Pozner.

Dr. Fetzer has offered no reason why this Court should allow him to continue to defame Mr. Pozner. His ongoing defamation has no adequate remedy at law because he lacks resources to satisfy the verdict, much less compensate Mr. Pozner

for additional harm caused by future utterances. The only way to deter Defendant Fetzner from continuing to defame Mr. Pozner is to issue and enforce a permanent injunction.

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