

FILED
08-08-2022
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER

Plaintiff

vs.

Case No. 2018-CV-003122

JAMES FETZER

Defendant

FETZER'S REPLY TO POZNER'S BRIEF IN OPPOSITION TO FETZER'S MOTION FOR RECONSIDERATION, MOTION TO VACATE & OBJECTION TO POZNER'S VALUATION OF PROPERTY, & DAMAGES FOR ABUSE OF PROCESS ("Motion For Reconsideration, et al")

Now comes James H. Fetzer, Ph.D., pro se Defendant, and Judgment Debtor, with his reply to Plaintiff's Brief in Opposition to Defendant's Motion for Reconsideration, Motion to Vacate, and Objection to Pozner's Valuation of Property, and Damages for Abuse of Process and would show the court the following reasons the Brief in Opposition fails to show why Fetzer's Motions should not be granted:

INTRODUCTION

Dr. Fetzer based his Motion For Reconsideration, et al, of ORDER GRANTING PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO SATISFY JUDGMENT ("Taking Order") on the fact that the property being taken has no value to Mr. Pozner and that he is judicially estopped from claiming that it does and that he cannot take property of the Defendant by court order that will not lawfully reduce the money judgment debt.

POZNER'S TWO ARGUMENTS

The Plaintiff has two main arguments against Fetzer's Motion For Reconsideration, et al. The First is that Dr. Fetzer has failed to meet his burden of showing that the court committed a manifest error of law or fact in violation of controlling precedent or statute. The second is that Fetzer's motion is used to introduce new argument rather than a proper showing of new evidence, not available prior the ruling, that would require the ruling to be vacated or modified.

JUDICIAL ESTOPPEL IS NOT A DEFENSE CLAIM NEEDING PRESERVATION

Beginning with Pozner's second objection first as their other objection depends upon it; Dr. Fetzer has argued from the beginning that the property listed in the Taking Order is worthless to Mr. Pozner and therefore he cannot take it because he cannot show how it will reduce the money judgment debt. Dr. Fetzer did plead for the first time in his Motion for Reconsideration, et al, that Mr. Pozner is *judicially estopped* from claiming the books and domain names have any value to Pozner.

It is Mr. Pozner's contention that this is new argument and it is a procedural error because it could have been known and raised prior to the hearing and granting of the Taking Order. However, the plea of judicial estoppel is like a plea to the jurisdiction in that it can be brought up at any time as it does not apply to the parties or prejudice the rights of the affected. The plea of judicial estoppel is for the benefit of the court not the detriment of the estopped. "It is generally considered the purpose of judicial estoppel to protect the integrity of the courts," *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001). "Because the purpose of the doctrine is to protect the courts, and not the litigants, judicial estoppel can even be raised sua sponte." *Grigson v. Creative Artists Agency, L.L.C.*, 210 F.3d 524, 530 (5th Cir. 2000). "If a litigant is allowed to prevail on contradictory positions in different courts, it inescapably follows that one court was wrong,

misled, or perhaps even defrauded." *New Hampshire*, 532 U.S. at 750. Since judicial estoppel is to preserve the integrity of the court and can be raised at any time sua sponte even for the first time on appeal, it can be plead at anytime by any party. As a result Dr. Fetzer can claim judicial estoppel against Mr. Pozner without a time limit.

The failure of a party to make a plea to the jurisdiction does not confer authority upon the court and that is why it can be asserted at any time in a legal action. Likewise, failure of a party to plea judicial estoppel does not harmonize inconsistent court rulings under the same parties and facts and leaves the court smelling bad.

POZNER ASSERTION OF NEW ARGUMENTS BROUGHT TOO LATE

Mr. Pozner asserted on page 4 of his Brief in Opposition to Dr. Fetzer's Motion for Reconsideration, et al, that Dr. Fetzer has never argued that the books have no value or obtained a decision to that effect:

Plaintiff has not argued for or obtained a decision that the books have no value. To the contrary, on June 24, 2022, Plaintiff argued that the Books' copyrights have a collective value of approximately \$100,000, which is based on Defendant Fetzer's own testimony on royalties he received in 2019. At bedrock, Defendant Fetzer fails to cite to any evidence to support his judicial estoppel argument and he cannot because none exists.

This is incorrect as Dr. Fetzer argued in his RESPONSE BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO APPLY PROPERTY TO SATISFY JUDGMENT that the property was worthless to Mr. Pozner. And Dr. Fetzer also argued at the hearing on same that the property was worthless to Mr. Pozner. And the court agreed with Dr. Fetzer that the property could be worthless to Mr. Pozner:

If I agree with your argument or the analysis which you apply, then I must come to the conclusion as a finding of facts that these assets have no monetary value. (Line 1 page 16 Taking Motion Transcript)

Well, I think we were having a general discussion about whether the argument you were tendering as to the ability to seize property with no value created a conundrum that if I agreed that it could be seized, whether I should give no value to your client. (Line 12

page 17 Taking Motion Transcript)

So what possible reason would I entertain further proceedings to establish a value when the possessor of the property is testifying or presenting an argument that it has no value? Usually, it's the opposite. (Line 17 page 18 Taking Motion Transcript)

If Ms. Schank wants to challenge the valuation offered by the creditor, I think she has that right. And if the appraisal comes out as Dr. Fetzer seems to suggest, it's worth nothing, then Mr. Pozner will still have the asset, but the setoff will be zero, or a dollar, a nominal value. (Line 25 page 33 Taking Motion Transcript)

Obviously, the court perceives of no problem with ordering the seizure of the property in the Taking Order and crediting the debtor with nothing. That is theft by court order!

COVER-UP IS MOTIVE FOR ABUSE OF PROCESS

Why is the Plaintiff, Mr. Pozner, now arguing that Dr. Fetzer's judicial estoppel lacks merit? Would not he want Dr. Fetzer's property with as little deduction from the money judgment debt as possible, even to take it for nothing as this court seems will to do? Is it because he knows that if he is judicially estopped from claiming the property has any value to him but is worth a minimum of \$125,000 annually to Dr. Fetzer, as evidence shows, the property cannot be seized by court order? Taking property by court order that the creditor has been estopped from placing any value upon while also blocking the ability of the debtor to pay off the debt with that same property is not allowed by any statute or precedent and reveals an evil motive beyond the purpose of the judicial judgment execution process. This proves the bad motive required by Dr. Fetzer's Motion for Damages For Abuse of Process.

PROPERTY VALUABLE TO DEFENDANT - WORTHLESS TO PLAINTIFF

It is also obvious that the summary judgment, the basis of this Taking Order, only finds three sentences out of over 400 pages in the Nobody Died books that are defamatory to Mr. Pozner. The following three sentences, found to be defamatory to Mr. Pozner, can be removed from the Nobody Died Books and published once again by Dr. Fetzer to make at least \$125,000 per year,

based on past performance, before Mr. Pozner had them banned by Amazon.com:

1. “Noah Pozner’s death certificate is a fake, which we have proven on a dozen or more grounds.”
2. “[Mr. Pozner] sent her a death certificate, which turned out to be a fabrication.”
3. “As many Sandy Hook researchers are aware, the very document Pozner circulated in 2014, with its inconsistent tones, fonts, and clear digital manipulation, was clearly a forgery.”

However, Mr. Pozner is judicially estopped from claiming he can make one cent lawfully from the copyrights on the same books because those copyrights contain material found to be defamatory to him by this court. Mr. Pozner has not obtained a judgment finding the entire book defamatory to him or anyone else. But he has acted to have all these books banned and removed from private websites by DMCA (Digital Millennium Copyright Act) Takedown Orders. Mr. Pozner does not negotiate with those operating private websites to remove the defamatory portion but requires the whole book removed or the entire website will remain shut down.

It is inescapable to conclude that the purpose of the listing of the copyrights of these books in the Taking Order has nothing to do with collection of a money judgment debt but rather the permanent cover-up of the contents of these books that contain over 400 pages of information supporting the notion that the mass media cartel narrative about Sandy Hook is incorrect. If Mr. Pozner can seize the copyrights of these books over three sentences that are defamatory to him he can prevent anyone from publishing any part of those books as he will own those facts found by those people and any reprint will be a copyright infringement.

COURT & DEFENDANT WANT CONSISTENCY

All this leads to court rulings that smell bad. The court has stated that it will strike Dr. Fetzer's latter affidavit under the Wisconsin Sham Affidavit Rule:

So to the extent that Dr. Fetzer's affidavit is directly inconsistent with his prior sworn testimony, I will strike those provisions under the Wisconsin sham affidavit rule.

Likewise, Dr. Fetzer, a Wisconsin and 14th Amendment United States citizen, expects equal protection under the law in this court to find that Leonard Pozner is judicially estopped from claiming the property in the Taking Order has any value to him, and to say otherwise, conflicts with his earlier judicial testimony and summary judgment granted earlier by this court and eight years of removing those books from internet access, free or otherwise. This is clearly no more than censorship carried out by private interests dangerous to our nation.

FETZER HAS ESTABLISHED ALL ELEMENTS OF JUDICIAL ESTOPPEL

Contrary to the Plaintiff's Brief in Opposition to Fetzer's Motion for Reconsideration, et al, Dr. Fetzer has established all elements showing that Pozner is judicially estopped from claiming that the property listed in the Taking Order (Nobody Died books and domain names) have any value that he can convert to money to reduce the money judgment debt against Dr. Fetzer. All evidence supports the following three required elements of judicial estoppel:

(1) the later position must be clearly inconsistent with the earlier position: It is an irrefutable fact that Pozner's initial position is that Dr. Fetzer's Nobody Died books, for which Defendant held the copyright prior to Taking Order, contain three sentences that are defamatory to Mr. Pozner and Pozner has removed those books from the internet and the domain names are on Pozner's list to be removed from the internet. Now his latter position is that Pozner can earn \$100,000 from the publication of these copyrighted books containing three sentences defamatory to him and he can leave the domain names in place and redirect them to his websites and earn money from them. These two positions are opposite one another.

(2) the facts at issue should be the same in both cases: It is an irrefutable fact that these two opposition positions of the Plaintiff are asserted in different proceedings of the same cause of action involving the same parties and identical facts.

(3) the party to be estopped must have convinced the first court to adopt its position. It is an irrefutable fact that the Plaintiff has convinced this same court to adopt its prior position by granting a summary judgment for him finding that three sentences in the Nobody Died books are defamatory to Mr. Pozner. Therefore, Mr. Pozner cannot publish these Nobody died books without defaming himself anew which would mean that they were not defamatory to start with. Mr. Pozner cannot have this both ways. This court must find that Mr. Pozner is judicially estopped from claiming this property has any value to him and he cannot take it to reduce the money judgment debt. Seizure without reduction of the debt is theft. The money judgment debt did not convert all of Dr. Fetzer's property into contraband that can be seized without compensation as the court pretends in the case.

TAKING WORTHLESS PROPERTY IS ABUSE OF PROCESS

The two elements of abuse of process as asserted in Defendant's Motion for Reconsideration, et al, are "first, an ulterior purpose, and second, a willful act in the use of the process not proper in the regular conduct of the proceeding." *Thompson v. Beecham*, 241 N.W.2d 163, 72 Wis.2d 356 (Wis. 1976).

First, the ulterior purpose or motive of the Plaintiff is now obvious. Mr. Pozner wants to cover-up the contents of the Nobody Died books so the public has no access to this evidence revealing that the mass media cartel narrative about Sandy Hook is incorrect. This Taking Order has nothing to do with collection on a money judgment and is outside the function of statutory judgment execution procedures.

Second, The listing of property in the Taking Order that is worthless to the Plaintiff is improper, unauthorized and incompatible with the conduct and purpose of execution laws. The Plaintiff cannot cite authority for them to take property worthless to them or to take property they

are judicially estopped from claiming has value to them. They also can't take property that has no value to them by law but has considerable value to the money judgment debtor, and in so doing, block the debtor from being able to use that property to pay off the debt. That is two evil results of this one improper money judgment execution process. Therefore, the Defendant has established all evidence for an Abuse of Process against the Plaintiff.

FETZER'S MOTION FOR RECONSIDERATION

The Defendant, Dr. Fetzer needed to show just one of the following three reasons for the court to reconsider their grant of the Plaintiff's Taking Order: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. The Plaintiff's assertion that the Defendant must show new evidence to support a motion for reconsideration is false. A motion for reconsideration can be supported by proving a manifest injustice or error needing correction. Dr. Fetzer has proven that the Taking Order was an abuse of process and therefore a manifest injustice justifying reversal of same. The Defendant moves this court to Reverse the Taking Order based upon the third (and perhaps most important) reason to reconsider a court order.

The Defendant has proven that the Plaintiff is judicially estopped from claiming the property he has taken has any value to Plaintiff. And the Defendant has shown that a money judgment debt does not convert all property of the debtor into contraband subject unto seizure without reduction of the judgment debt as this court has strongly suggested they can and will do. The Defendant has shown the whole Taking Order procedure is an abuse of process for which he suffered damages (\$6,277.50).

CONCLUSION

Dr. Fetzer has met his burden to show grounds for the reversal of this court's ORDER GRANTING PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO SATISFY JUDGMENT showing that it is an abuse of process and therefore a manifest injustice and error of law. The Defendant has also shown the ulterior motive to initiate this abuse of process was to cover-up evidence that the Plaintiff and his friends do not want the public to have access to while they prosecute Alex Jones and smear Dr. Fetzer at the same time. Since these trials are live streamed to YouTube, people may search the web for information and Mr. Pozner will misdirect them over to his website and prevent them from finding out any information about the "Sandy Hook" event.

Therefore, based upon the foregoing insurmountable arguments showing judicial estoppel and abuse of process and irrefutable law and evidence, the Defendant, Dr. Fetzer Moves this Court to Reverse and Return all the Property listed in the ORDER GRANTING PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO SATISFY JUDGMENT and to find that the said property is worthless to the Plaintiff and henceforth not able to be taken by court order for any price.

Respectfully Submitted,



James H. Fetzer, Ph.D.
Pro Se

NOTICE OF SERVICE

On this 8th day of August 2022, I hereby certify that a copy of **FETZER'S REPLY TO POZNER'S BRIEF IN OPPOSITION TO FETZER'S MOTION FOR RECONSIDERATION, MOTION TO VACATE & OBJECTION TO POZNER'S VALUATION OF PROPERTY, & DAMAGES FOR ABUSE OF PROCESS** has been emailed and forwarded by first-class mail (postage paid) to Plaintiff's Counsel, Emily M. Feinstein, Attorney, Quarles & Brady LLP, 33 East Main Street, Suite 900, Madison, WI 53703; and emily.feinstein@quarles.com



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