Plaintiff's Motion for Summary Judgment

Pozner v. Fetzer, et al, Case No. 18CV3122

June 17 , 2019

EXHIBIT # 1
Case # 18CV3122
Date: 6/17/19
Circuit Court Branch 8

Topics

- Why We Are Here
- Statements From the Book Are False
- Statement From the Blog is False
- Remaining Elements of Defamation

Topics

- Why We Are Here
- Statements From the Book Are False
- All Statements Are Lies
- Remarkably Little Is Not Defamatory

Defamation

Elements of Defamation

The elements of defamation under Wisconsin law are:

(1) a false statement;

(2) communicated by speech, conduct or in writing to a person other than the one defamed;

(3) the communication tends to harm one's reputation, lowering him or her in the estimation of the community or deterring third persons from associating or dealing with him or her; and

(4) the communication is unprivileged.

Plaintiff's Motion For Summary Judgment

Overview

- Plaintiff moved for summary judgment against all three defendants on the four defamatory statements listed in Plaintiff's Complaint
  - Three statements are from the 2016 second edition of Defendants' book, Nobody Died at Sandy Hook.
  - One statement is from an August 2018 blog post by Defendant Fetzer
- Defendant Wrongs Without Wremedies, LLC settled before responses were due and has been dismissed from the case
- Defendant Palecek did not file a timely response
- Therefore Plaintiff's argument will focus on Defendant Fetzer

Topics

- Statements From the Book Are False
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- Remaining Elements of Defamation

Plaintiff's Complaint

FILED
11-27-2018
CIRCUIT COURT
DANE COUNTY, WI

STATE OF CIRCUIT COURT DANE COUNTY

YOU IT IS DEATH." When Richards was later sentenced, Senior U.S. District Judge James Cohn stated: "I'm sure [
false, and he could embrace [N.P.], he
love you, Dad'... Your words were cruel
no fiction. There are no alternative fac
will not be permitted to access a list of
including websites maintained by Jan

16. Defendants published a se
in 2016. That edition does not purport
but is instead described as "Expanded
book states that it was published in M

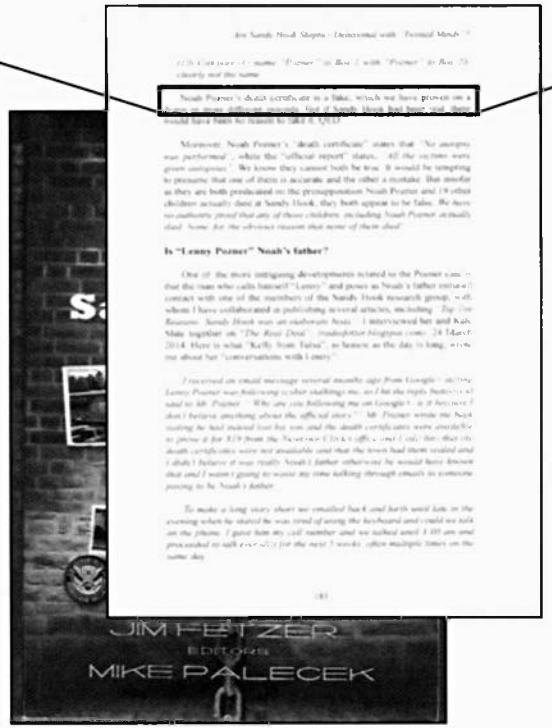
17. The second edition of "Nob
issuing and/or possessing a forged cop
page 183 of Nobody Died At Sandy Hu
a fake, which we have proven on a doz
states, [Mr. Pozner] sent her a death c
fabrication." At page 242, the book sta
aware, the very document Pozner circulated in 2014, with its inconsistent tones, fonts, and clear digital manipulation, was clearly a forgery."

18. Mr. Fetzer's publication of this false accusation against Plaintiff was not limited to the book. He repeated that false statement on one or more blog posts,

17. The second edition of "Nobody Died At Sandy Hook" accuses Plaintiff of issuing and/or possessing a forged copy of N.P.'s death certificate. In particular, page 183 of Nobody Died At Sandy Hook states: "Noah Pozner's death certificate is a fake, which we have proven on a dozen or more grounds." At page 232 the book states, [Mr. Pozner] sent her a death certificate, which turned out to be a fabrication." At page 242, the book states, "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."

False Statement from Page 183

Noah Pozner's death certificate is a fake, which we have proven on a dozen or more different grounds. But if Sandy Hook had been real, there



PPUF99(a). Unrebutted. *See* Doc. 195 at 99.

Context of False Statement

Defendant Urges Court To Take Words In Isolation

- Cannot parse words; truth must be evaluated in light of the overall context in which it was made. *See Anderson v. Hebert*, 332 Wis. 2d 432, 444 (Wis. App. 2011).
- Individual words and elements in an article "may not be viewed in isolation, but must be considered in context in relation to the whole." *Id.* quoting *Westby v. Madison Newspapers, Inc.*, 81 Wis.2d 1, 6 (1977).

Context of False Statement

Image of Noah Pozner's Death Certificate

Noah Pozner's "death certificate"

VS-4ME 4/04
STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

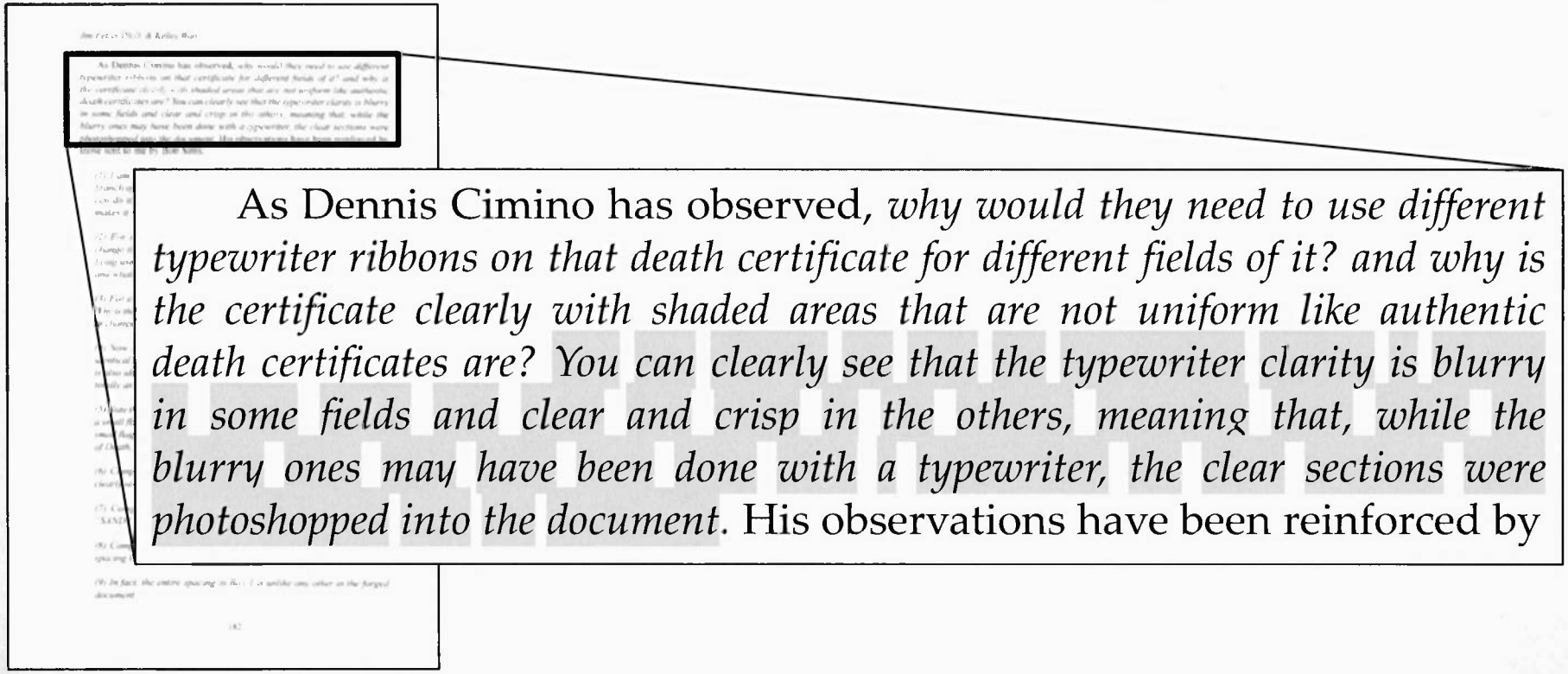
CERTIFICATE OF DEATH
OFFICE OF THE CHIEF MEDICAL EXAMINER

1. DECEDENT'S LEGAL NAME: Noah Samuel Pozner
2. SEX: MALE
3. DATE OF DEATH: December 14, 2012
4. TIME OF DEATH: 11:00 AM
5. Age at last birthday: 6
7. Date of Birth: November 20, 2006
8. BIRTHPLACE: Danbury, Connecticut
9. RESIDENCE STATE: Connecticut
10. RESIDENCE COUNTY: Fairfield
11. RESIDENCE: Sandy Hook
12. RESIDENCE: 37 Alpine Circle
14. ZIP CODE: 06482
16. MARITAL STATUS AT TIME OF DEATH
17. SURVIVING SPOUSE'S NAME
18. FATHER'S NAME: Lenny Pozner
19. MOTHER'S NAME PRIOR TO FIRST MARRIAGE: Veronique Patricia Haller
20. INFORMANT'S NAME: Veronique Pozner
21. INFORMANT'S RELATIONSHIP TO DECEDENT: Mother
22. MAILING ADDRESS: 37 Alpine Circle, Sandy Hook, Connecticut 06482
23. IF DEATH OCCURRED IN A HOSPITAL
24. IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: Public School
25. FACILITY NAME: 12 Dickinson Drive
26. CITY OR TOWN OF DEATH & ZIP CODE: SANDY HOOK 06482
27. COUNTY OF DEATH: FAIRFIELD
28. METHOD OF DISPOSITION: Burial
29. [redacted]
30. [redacted]
31. DATE: 12/17/2012
32. WAS BODY EMBALMED?
33. NAME OF FUNERAL DIRECTOR OR EMBALMER: Abraham L. Green and Son Funeral Home, 88 Beach Rd. Fairfield, Connecticut 06824
34. LICENSE NUMBER: 2130
35. M.E. CASE NUMBER: 12-17604
36. DATE REPORTED DEAD: 12/14/2012
37. TIME PRONOUNCED: 11:00 AM
38. WAS AN AUTOPSY PERFORMED?
39. APPROXIMATE INTERVAL ONSET TO DEATH
CAUSE OF DEATH
40. PART I. IMMEDIATE CAUSE (final disease or condition resulting in death): a. Multiple Gunshot Wounds
Due to (or as a consequence of):
Due to (or as a consequence of):
Due to (or as a consequence of):
PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in PART I.
41. IF FEMALE
42. DID TOBACCO USE CONTRIBUTE TO DEATH?
43. MANNER OF DEATH: Homicide
44. DATE OF INJURY: December 14, 2012
45. TIME OF INJURY: AM
46. PLACE OF INJURY: School, Primary or Secondary
47. INJURY AT WORK
48. LOCATION OF INJURY: 12 Dickinson Dr., Sandy Hook, CT
49. DESCRIBE HOW INJURY OCCURRED: Shooting
50. IF TRANSPORTATION INJURY, SPECIFY
51. CERTIFIER: H. Wayne Carver, II, M.D.
Chief Medical Examiner
Dec 15, 2012
52. MAILING ADDRESS: Office of the Chief Medical Examiner, 11 Shuttle Road, Farmington, CT 06032-2939
THIS CERTIFICATE WAS RECEIVED FOR RECORD ON: December 26, 2012
BY: Debbie Aurelia
53. DECEDENT'S EDUCATION
54. DECEDENT OF HISPANIC ORIGIN
55. DECEDENT'S RACE: White
56. DECEDENT'S USUAL OCCUPATION: Student
57. KIND OF BUSINESS/INDUSTRY: Elementary School
[redacted]

Doc. 121 at Ex. M; Doc. 205 at Ex. I.

Context of False Statement

"Fake" because clear typewritten sections were "photoshopped"



As Dennis Cimino has observed, *why would they need to use different typewriter ribbons on that death certificate for different fields of it? and why is the certificate clearly with shaded areas that are not uniform like authentic death certificates are? You can clearly see that the typewriter clarity is blurry in some fields and clear and crisp in the others, meaning that, while the blurry ones may have been done with a typewriter, the clear sections were photoshopped into the document*. His observations have been reinforced by

Doc. 121 at Ex. M

Could Not Have Been Photoshopped

Carver and Green Establish Text Was Not Photoshopped

- Carver said no information he entered has been altered. Doc. 170 ¶ 17.
- Green said no changes were made to information he entered. Doc 104 ¶ 13.
- Anyone comparing the three documents can see the typewritten text is unchanged.

M.E. File Copy

Funeral Home File Copy

Fetzer's Book Copy

Doc. 171 at Exs. C and F; 121 at Ex. M;

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Context of False Statement

Book cited differences in fonts as evidence certificate was fake

As Dennis Cimino has observed, *why would they need to use different typewriter ribbons so that certificate for different fields of it? and why is the certificate clearly with shaded areas that are not uniform like authentic death certificates are?* You can clearly see that the typewriter clump is blurry in some fields and clear and crisp in the others, meaning that, while the blurry ones may have been done with a typewriter, the clear sections were photoshopped into the document. His observations have been reinforced by those sent to me by Bob Sims:

> *(1) I am rather surprised, according to the copy you posted, that any branch of government was still using typewriters at all, when computers can do it so much better. However, the use of a typewriter in this case makes it much easier to spot fraud.*
>
> *(2) For starters, can you see any reason for the government typist to change the ball back and forth on the IBM machine? I must assume was being used, because I cannot think of a reason to go to the extra trouble, and what for?*
>
> *(3) For example, look at the very top in Box 3, where the date is posted. Why is that type clearly smaller than the rest of the page? You would have to change the ball for this, but for what reason?*
>
> *(4) Now look at the capital "A" in Box 12 for Residence (Alpine). It is identical to the capital "A" in Box 22 for Mailing Address (Alpine). It is also identical to the capital "A" in Box 33 for Funeral Home. This is totally as expected, is it not? Read on.*
>
> *(5) Note that the capital "A" in question above in three different boxes has a small flag at its pinnacle. Compare that to the capital "A" without the small flag in Box 4, Time of Death, Box 26, City or Town, Box 27, County of Death, and Box 39, Time Pronounced, and in Box 46, Time of Injury.*
>
> *(6) Compare Box 1, "Noah," with Box 7, "November," and you will clearly see that the spacing between the "N" and the "o" is quite different.*
>
> *(7) Compare Box 1, the "N" in "Noah," with Box 26, the "N" in "SANDY." They are clearly different.*
>
> *(8) Compare Box 1, "Samuel," with Box 11, "Sandy," and again, the spacing between the "S" and the "a" is clearly not the same.*
>
> *(9) In fact, the entire spacing in Box 1 is unlike any other in the forged document.*

> *(10) Compare the capital "Posner" in Box 1 with "Posner" in Box 20, clearly not the same.*

Noah Posner's death certificate is a fake, which we have proven on a dozen or more different grounds. But if Sandy Hook had been real, there would have been no reason to fake it. QED.

Moreover, Noah Posner's "death certificate" states that "*No autopsy was performed*", while the "official report" states, "*All the victims were given autopsies*". We know they cannot both be true. It would be tempting to presume that one of them is accurate and the other a mistake. But insofar as they are both predicated on the presupposition Noah Posner and 19 other children actually died at Sandy Hook, they both appear to be false. *We have no authentic proof that any of those children, including Noah Posner, actually died. None, for the obvious reason that none of them died!*

Is "Lenny Posner" Noah's father?

One of the more intriguing developments related to the Posner case is that the man who calls himself "Lenny" and poses as Noah's father initiated contact with one of the members of the Sandy Hook research group, with whom I have collaborated in publishing several articles, including "*Top Ten Reasons: Sandy Hook was an elaborate hoax*". I interviewed her and Kate Slate together on "*The Real Deal*" (realdealtrzer.blogspot.com) 24 March 2014. Here is what "Kelly from Tulsa", as honest as the day is long, wrote me about her "conversations with Lenny":

> *I received an email message several months ago from Google+ stating Lenny Posner was following (cyber stalking) me, so I hit the reply button and said to Mr. Posner, " Why are you following me on Google+, is it because I don't believe anything about the official story?" Mr. Posner wrote me back stating he had indeed lost his son and the death certificates were available to prove it for $19 from the Newtown Clerk's office and I told him that the death certificates were not available and that the town had them sealed and I didn't believe it was really Noah's father otherwise he would have known that and I wasn't going to waste my time talking through emails to someone posing to be Noah's father.*
>
> *To make a long story short we emailed back and forth until late in the evening when he stated he was tired of using the keyboard and could we talk on the phone. I gave him my cell number and we talked until 3:00 am and proceeded to talk everyday for the next 5 weeks, often multiple times on the same day.*

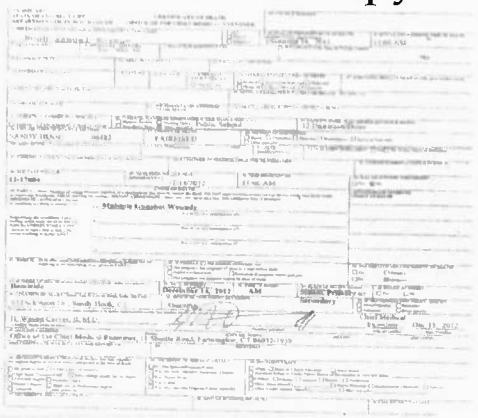
Doc. 121 at Ex. M;

Font Differences Do Not Indicate Fake

Different Fonts Because Fields Completed by Different Offices

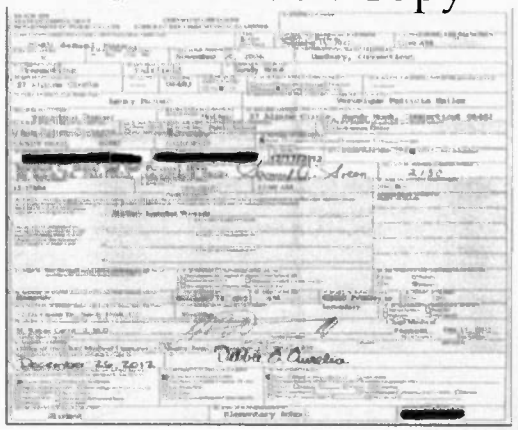
- Different equipment yielded different typefaces.
  - Carver said M.E.'s office filled out their portions on computer and printed onto archival paper form. Doc. 171, Ex. A, 31:8-22.
  - Green used a typewriter for funeral home's portions. Doc. 104, ¶¶ 8, 13
- Defendant offered no admissible evidence to rebut.
  - Not one of Defendant's experts opine that different typefaces was evidence that the death certificate was fake.

M.E. File Copy



Funeral Home File Copy

Fetzer's Book Copy



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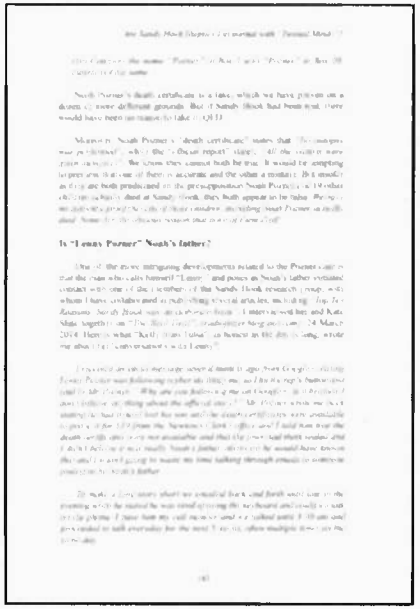
Context of False Statement

Fetzer never claimed document was "uncertified"

- At no point did Defendants' book claim that Noah Pozner's death certificate was fake because it was not certified.
- Only way to make that argument even remotely material is to analyze "fake" out of context. *But cf Anderson v. Hebert*, 332 Wis. 2d 432, 444 (Wis. App. 2011).



No Evidence Death Certificate is Fake

No Evidence Death Certificate is Not Certified

- Plaintiff introduced evidence that death certificate Pozner uploaded was a certified copy and the seal was visible.
  - *See* Doc 103 (Pozner Aff.) at ¶¶ 11, 13, Ex. B. *See also* PPUF 45.

- Defendant offered no admissible evidence that death certificate is not certified
  - Experts reviewed the wrong jpeg file. *See* Doc. 204 at ¶ 2.
  - Wickstrom admitted image of seal was visible, did not opine document was fake
  - Fetzer speculation about improper location of seal is not admissible evidence.

Where Does That Leave Us?

- Plaintiff identified defamatory statement in Complaint
- Context of statement says death certificate fake because typewritten text was photoshopped
- Plaintiff introduced evidence that shows no modifications to any text
- Defendants failed to provide admissible evidence of photoshopping or other changes to text
- No genuine issue of material fact on this element