STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Leonard Pozner,
Plaintiff-Respondent

v.

Appeal No. 2024AP002487

James Fetzer,
Defendant-Appellant

Appeal From the Circuit Court of Dane County
Case No. 2018CV003122
Judge Frank D. Remington, Presiding

Appellant's Brief

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

Issue 1: May a Circuit Court Judge deny a Motion to Reconsider his Denial of a Motion to Recuse without addressing the multiple ground on which the Motion to Recuse was based, including seven (7) which—individually and collectively—invalidate the case against the Defendant?

Respondent's Response to Issue 1: Judge Remington (falsely) alleges that Dr. Fetzer "published fake stories about Leonard Pozner in 2019" and that, "to prevail, a reconsideration movant must demonstrate a manifest error in a prior ruling. Fetzer does not meet that burden and, accordingly, I deny his motion for reconsideration".

Appellant's Reply to Response to Issue 1: Dr. Fetzer more than met the burden by identifying seven (7) prior rulings that are readily qualify as "manifest errors". It was Judge Remington's failure to address them that prompted Dr. Fetzer to make sure he (Judge Remington) was responding with deliberation by identifying them in red color. The Circuit Court and Plaintiff's attorneys committed multiple serious violations of law, including denial of Dr. Fetzer's right to a trial by jury, the suppression of copious specific and detailed evidence on his behalf (even including the exclusion of reports from two document experts supporting Dr. Fetzer), and even the subornation of perjury by introducing a witness whose identity Dr. Fetzer had challenged but was prevented from pursing) in depriving Dr. Fetzer of his Constitutional Rights under Color of Law.

Issue 2: May a Circuit Court Judge deny a Motion for Reconsideration of Denial of a Motion to Recuse when his actions decisively establish that he has violated his obligation to act in an impartial manner, which is required by Wis. Stats. Ch. 757,

Section 757.19, specifically, Sec. 757.19(2)?

Respondent's Response to Issue 2: Judge Remington insists that he can be impartial in this case, asserting that, "When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner" recusal is required. He "denied Fetzer's motion because I concluded that 'I can act in an impartial manner and, moreover, that it appears I can act in an impartial manner'".

Appellant's Reply to Response to Issue 2. A mere assertion of objectivity is clearly not sufficient. A credible argument with proof is required. Ironically, because Judge Remington had manufactured an absence of disputed facts by excluding every fact Dr. Fetzer had submitted to justify the application of Summary Judgment (by acting as both jury (regarding the facts) and judge (applying the law), Judge Remington here and now (once again) simply ignores Dr. Fetzer's facts (including seven (7) egregious violations of his rights in prior rulings to exonerate himself as free from blemish. By doing so, he thereby exemplifies his own extraordinary bias.

Issue 3: May a Circuit Court Judge deny a Motion for Reconsideration of a Denial of a Motion to Recuse when his actions have also violated Defendant's Right to a Trial by Jury contrary to 18 USC § 241 and § 242 *Violation of Constitutional Rights Under Color of Law?*

Respondent's Response to Issue 3: Judge Remington asserts that he has taken Dr. Fetzer's objections, which he characterizes as "a vague conspiracy to commit fraud".

Appellant's Reply to Response to Issue 3: Contrary to Judge Remington's insinuation, all seven (7) of the prior rulings Dr. Fetzer presents are detailed

and specific. It is Judge Remington who is arguing with vagaries. He needs to suppress or ignore the prior rulings Dr. Fetzer cites, because they—individually and collectively—vitiate the case against him. It would be wholly appropriate, under these extreme circumstances, for the Court of Appeals to reverse the case with prejudice. There was no basis for this lawsuit and the Circuit Court was only able to render a judgment by imposing conditions precluding him from presenting a valid defense.

STATEMENT OF THE CASE

Dr. Fetzer submitted a Motion to Recuse, which was treated in perfunctory fashion by Judge Remington, who no doubt does not want to be exposed for his gross violations of the procedural and Constitutional rights of Dr. Fetzer. Because he had not responded to seven (7) specific prior rulings that precluded Dr. Fetzer from presenting a valid and detailed defense, he submitted a Motion for Reconsideration, highlighting those issues. Judge Remington, once again, ignored them, Judge Remington provided no response or defense, which is his duty to provide. Other documents submitted in this case, *Pozner v. Fetzer et al. 18CV3122* (2018), are hereby incorporated and reaffirmed.

FACTS OF THE CASE

(1) Dr. James Fetzer files MOTION TO RECUSE JUDGE FRANK REMINGTON PURSUANT TO WIS. STATS. 757.19(2)(g) dated July 9, 2024 (Appendix B).

(2) PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO RECUSE dated and filed July 24, 2024 (Appendix C).

(3) Dr. Fetzer files DEFENDANT'S REPLY dated July 31, 2024 (Appendix D).

(4) Decision and Order Denying James Fetzer's Motion to Recuse dated August 22, 2024 (Appendix E).

(5) Motion for Reconsideration of Denial of Motion to Recuse dated September 3, 2024 (Appendix F).

(6) Decision and Order Denying James Fetzer's Motion to Reconsider Denial of Motion to Recuse dated November 25, 2024 (Appendix A).

ARGUMENT

Dr. Fetzer filed his Motion for Reconsideration of Decision and Order to Deny James Fetzer's Motion to Recuse (Appendix F) to provide Circuit Judge Remington the chance to Address the seven (7) allegations of bias and lack of impartiality. For emphasis, Dr. Fetzer highlighted them in the color red. Judge Remington's failure to acknowledge them, much less explain why they occurred. constitutes an implicit acknowledgment that he is unable to excuse or to "explain them away". Judge Remington instead discusses a garnishment opinion and decision currently before the Court of Appeals IV in *Case No. 24AP1329* (Exhibit E), not included here.

Dr. Fetzer filed that appeal because Judge Remington not only allowed the Plaintiff to garnish money that does not belong to the debtor but has resubmitted a decision and opinion inconsistent with that of the Court of Appeals in response to Defendant's previous appeal that Plaintiff was taking money from Dr. Fetzer's wife, Janice Fetzer—including her half of their joint state and federal tax returns and other funds of hers—after the Court of Appeals had specifically directed that could not be done and demanded a new opinion and decision consistent with the opinion and decision of the Court of Appeals.

Ironically, his own example (where he replies to the garnish issue but not to the seven more serious violations of Dr. Fetzer's procedural and Constitutional rights, especially the right to a trial by jury) *substantiates* Judge Remington's disposition to treat Dr. Fetzer in an

unfair and partial manner and to violate his due process and civil rights under color of law. While Judge Remington implies that Dr. Fetzer's allegations of judicial misconduct against Judge Remington are meant to settle the score (or "get even") for garnishing Dr. Fetzer's Fetzer's property, the situation is precisely the opposite.

Even with his own example, Judge Remington's opinions and decisions are not based upon the merits or statutes and entail gross violation of SCR Chapter 60, Code of Judicial Conduct 60.04, *Under this rule, a judge must recuse himself or herself whenever the facts and circumstances the judge knows or reasonably should know raise reasonable question of the judge's ability to act impartially, regardless of whether any of the specific rules in SCR 60.04(4) applies.*

Wis. Stats. Chapter 757. General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks, under Section 757.19 Disqualification of judge, specifically 757.19 (2) asserts, *Any judge shall disqualify himself or herself from any civil or criminal action when one of the following situations occurs: (g) when a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner* (emphasis added). In relation to the 26 exhibits A-Z supporting Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud Upon the Court filed on June 20, 2024 (cited below as "MOJ"), Dr. Fetzer has submitted the following proofs of bias and partiality by Judge Remington, who was acting in collusion with the Pozner attorneys.

Judge Remington's failure to respond to or explain away the seven (7) violations of Dr. Fetzer's procedural and Constitutional rights constitutes an admission that he either cannot or will not even consider them because they expose his failure to conduct himself in an objective and impartial manner, which justifies—actually, demands—his recusal.

Consider that these seven (7) violations—individually and collectively—vitiate the case against Dr. Fetzer brought by the (fictional) Plaintiff, Leonard Pozner (Reuben Vabner):

(1) Judge Remington Suppressed the Affidavit of Kelley Watt

Judge Remington's approach was to manufacture a predetermined outcome by finding that Dr. Fetzer had libeled Leonard Pozner by declaring a death certificate that Pozner himself had provided to Dr. Fetzer's research colleague, Kelley Watt, to be fake, a matter of fact for a jury to decide, not a judge. A different (complete) death certificate was substituted in the Complaint for the (incomplete) published death certificate. The published death certificate, unlike the substitution, had no file number nor state or town certification. Under CT law, not even parents are allowed to possess incomplete death certificates. Kelley Watt's Affidavit exposes the fraud and vitiates the case against Dr. Fetzer but was suppressed by Judge Remington in collusion with the Pozner attorneys (MOJ, Exhibits J, K, and V).

(2) Judge Remington Dismissed Proof that Nobody Died at Sandy Hook

Judge Remington excluded Dr. Fetzer's proof that nobody died at Sandy Hook on both legally and logically absurd grounds, when he declared that, "whether or not Sandy Hook ever happened or not is not relevant to this – the – the truthfulness or the accuracy of the death certificate". But the death certificate states the decedent died at Sandy Hook on December 14, 2012, of "multiple gunshot wounds" (MOJ, Exhibit M). Once again, the proof amassed in Dr. Fetzer's co-edited book, *Nobody Died at Sandy Hook: It was a FEMA Drill to Promote Gun Control* (2015; 2nd ed., 2016), was inconsistent with Pozner's position, thereby producing *disputed facts* that, had they been admitted, required a jury.

(3) Judge Remington Set Aside Reports of Two Forensic Document Experts

Having restricted the issue to the authenticity or truthfulness of the death certificate

and having disallowed extensive and detailed proof Dr. Fetzer had submitted in defense, Dr. Fetzer provided reports of two (2) forensic document experts—Larry Wickstrom and A.P. Robertson—who found not only that the incomplete death certificate published by Dr. Fetzer was fake but that the complete death certificate attached to the Complaint was also fake (along with two others obtain from the Town of Newtown and from the State), Judge Remington simply dismissed them as "someone else's opinion" and said, "I just don't think they were helpful" (MOJ, Exhibit R, pages 163 and 165). Their uncontested reports (again) vitiated the case against Dr. Fetzer by proving his statements were true. Notably, the Plaintiffs produced no forensic experts, other than Judge Remington himself, who is disallowed from such opinion by due process. In short, Defendant's evidence and experts were never refuted by the Plaintiff. Their expert reports ought to have resolved the case definitively; instead Judge Remington improperly set them aside.

(4) Judge Remington denied Dr. Fetzer Discovery on his Counterclaims

To ensure that Dr. Fetzer not discover more proof of the non-occurrence of mass murder or that the decedent had not died at Sandy Hook, Judge Remington took the further step of bifurcating the case to deny Dr. Fetzer discovery on his counterclaims of Abuse of Process, Fraud and Theft by Deception, and Fraud upon the Court, a deft maneuver to cut off Dr. Fetzer's access to new evidence that might strengthen his case (MOJ, Exhibit N). This denial of Dr. Fetzer's right to discovery has now been used to claim that Dr. Fetzer had not made allegations of Fraud upon the Court in a timely manner, brought about by Judge Remington's denial of Dr. Fetzer's discovery rights. Legal experts have advised Dr. Fetzer that case bifurcation is an all-too-common way for courts to block introduction of evidence that is unhelpful to a litigant who has backroom influence in that court.

(5) Judge Remington Refused to Admit Proof that Noah Pozner is a Fiction

Dr. Fetzer repeatedly advanced proof that the alleged decedent, Noah Pozner, was not a real person but a legal fiction created out of photographs of his purported older half-brother, Michael Vabner. Dr. Fetzer raised the issue by moving to expand DNA testing to include, not just Noah Pozner and Leonard Pozner, but Michael Vabner and Reuben Vabner, whom Dr. Fetzer had concluded to be the basis for "Noah" and for "Leonard" (MOJ, Exhibit O). This fact has now been substantiated by the Affidavit of Brian Davidson, P.I., who has also established that the party who testified as "Leonard Pozner" in Madison is not the same person as the "Leonard Pozner" of Sandy Hook, whose image has appeared millions of times around the world (MOJ, Exhibits W, X, and Y). This has enormous importance, not least of all because it implicates Pozner's attorneys in the subornation of perjury.

(6) Judge Remington Refused to Acknowledge Dr. Fetzer as a Media Person

To lower the bar for finding Dr. Fetzer liable, Judge Remington declined to rule that Dr. Fetzer had media standing as an investigative journalist, even though Dr. Fetzer had submitted a brief laying out his experience as an investigative journalist/reporter for decades, including paid assignments (MOJ, Exhibit U). Even more blatantly, Dr. Fetzer was being sued over three sentences in a book he had co-edited and another in a separate publication to which he had contributed. How could Judge Remington, who insisted that he read every document submitted to the court, have missed this? Further, Plaintiffs did not prove that Dr. Fetzer was not a public figure, or that his opinion was not protected by the First Amendment.

(7) When Dr. Fetzer tried to Expose the Impostor, he was Sanctioned

Among the most important tells that Judge Remington was acting in concert with the Pozner attorneys is that, when Dr. Fetzer attempted to expose the party who had

testified under the name of "Leonard Pozner" as an impostor (because he was too young and too small to be the Sandy Hook Pozner), Dr. Fetzer sent the video deposition to Wolfgang Halbig for confirmation. Judge Remington took offense and held Dr. Fetzer in Contempt of Court, adding attorney fees in the amount of $650,000 to the $450,000 that would be awarded by the jury for his purported defamation of Leonard Pozner, thereby protecting himself and the Pozner attorneys, when Dr. Fetzer had told the truth (MOJ, pages 11-15).

Judge Remington has been so eager to avoid his exposure that he has now violated Dr. Fetzer's due process rights by abandoning the Wisconsin Rules of Civil Procedure, Chapter 802, not once or twice, but three times: (1) by rejecting Dr. Fetzer's Motion to Open Judgment Pursuant to Extrinsic Fraud and Fraud upon the Court filed on June 20, 2024; (2) by rejecting Dr. Fetzer's Request for Relief from Judgment or Order filed on June 20, 2024, and (3) by granting Plantiff's Motion to Seal or Redact a Court Record filed on June 24, 2024.

The Pozner Response thus fails. It was not making decisions *per se* that deprived Dr. Fetzer of his legal rights but the decisions that Judge Remington made. The pattern of ruling to deny Dr. Fetzer's motions and facts to produce no disputed facts when the case was factually contradictory from the beginning reveals that Judge Remington was acting with partiality and bias—of a rather extreme variety given he manufactured the absence of disputed facts to apply Summary Judgment—in a case that had to be sent to a jury for fact resolution. This goes far beyond the appearance of partiality and bias.

PRAYER FOR RELIEF

Judge Remington has egregiously violated Wis. Stats. Chapter 757. General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks, under Section 757.19(2)(g)

Disqualification of Judge. By suppressing the Affidavit of Kelley Watt, dismissing proof that nobody died at Sandy Hook and that Noah Pozner was a legal fiction, setting aside the reports of two forensic document experts, denying Dr. Fetzer discovery on his counterclaims, failing to acknowledge Dr. Fetzer as a media person and holding him in contempt when he sought to expose the impostor witness—together with his more recent procedural violations to suppress the proof of his egregious misconduct as quickly as possible—Judge Remington must be recused.

Judge Remington has also violated **18 USC § 241 and § 242** *Violation of Constitutional Rights Under Color of Law* by denying him the right to Trial by Jury. As Judge Remington himself has observed, ""to prevail, a reconsideration movant must demonstrate a manifest error in a prior ruling", of which Dr. Fetzer has provided seven (7). Evincing his complicity—and thereby admitting his misconduct—Judge Remington has made no effort to respond or defend himself, no doubt because he has no defense. Under these circumstances (and in the interest of justice), not only must Judge Remington be removed but the case against Dr. Fetzer should be reversed with prejudice. Justice demands no less.

Respectfully submitted,

Electronically signed by: */s/ James H. Fetzer, Ph.D.*

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Submitted the 3rd day of February 2025.