STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Leonard Pozner,
Plaintiff-Respondent

v. Appeal No. 2023AP001002

James Fetzer,
Defendant-Appellant

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

BRIEF OF APPELLANT

James H. Fetzer, Ph.D.
Pro Se
800 Violet Lane
Oregon, WI 53575
(608) 835-2707
jfetzer@d.umn.edu

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Issue 1: The Judge Erred by granting Pozner's written Plaintiff's Motion For Distribution Of Funds without a hearing.

General Area of the law: Violation of Wisconsin Statute 801.15(4).

Necessary facts: Pozner filed his Plaintiff's Motion For Distribution Of Funds, Affidavit of Randy Pflum in Support of Plaintiff's Motion For Distribution Of Fands, and a Proposed Order on April 25, 2023. Judge Remington signed the Final Order on May 1, 2023, and no notice of hearing was sent and no hearing was held on said written Motion.

Policies that should be followed: Wisconsin Statute 801.15(4) says:

> "A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte."

The judicial system in Wisconsin should follow the Wisconsin statutes and "all written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte." There was no cause shown or court order allowing an ex parte hearing of Pozner's written Plaintiff's Motion For Distribution Of Funds. Dr. Fetzer had just begun working on his Response to Pozner's Motion For Distribution of Funds when he learned the Final Order granting same had been signed only four effective days from the filing of the subject motion.

Issue 2: Pozner cannot garnish reimbursements of exempt funds:

General area of the law: Pozner has once again entered an area where the law is silent and for good reason. Creditors have not garnished the payback of petty no-interest loans originating from the exempt funds in the same account. This involves the deprivation of the right of debtors and their family members to conveniently use and protect exempt funds in a bank account.

Necessary facts: On March 17, 2023, a hearing was held to determine the contents of Fetzer's UW Credit Union bank account where Janice Fetzer, Dr.

Fetzer's wife, testified that a number of deposits shown in her check book for the subject UWCU account were paybacks of exempt funds originating from that same account. Janice then provided a list of the of nine deposits, six of which were paybacks from family members who used the credit card associated with that account. The amounts paid back were to the penny except for one which was underpaid, not overpaid.

Policies that should be followed: The lawful way to garnish funds from an account is to determine the source of that money to be non-exempt. The source of funds from family members were originally from the same exempt funds from the same account. Pozner should have determined from Janice Fetzer's testimony which funds in the account were paybacks of exempt funds in the same account and then omitted them from non-exempt funds deposited and in other accounts and then deducted the $5,000 exemption from that and garnished any positive balance.

Issue 3: Pozner cannot garnish funds that are exempt under Wisconsin statutes 815.18(3)(j).

General area of the law: Exemption of retirement and insurance benefits under Wisconsin statute 815.18(3)(j).

Necessary facts: Pozner garnished the USAA Senior Bonus deposited into the subject UWCU account on 3/3/2022 which contained $253.59 as a "senior bonus" from USAA and a $116 refund for overpayment of a dental surgery charge. Dr. Fetzer was in the process of putting this information listed in Janice Fetzer's account checkbook into his response to Pozner's Motion for Distribution of Funds

when he learned the motion was granted and the order signed. Therefore this could not be entered into evidence for this appeal because of the violation of the 801.15(4) requiring hearings on all written motions.

Policies that should be followed: Funds that a person receives due to old age are exempt, therefore, those who prosecute a garnishment proceeding must not garnish funds that are received on the reason of old age.

ORAL ARGUMENT AND PUBLICATION

Oral argument would be good for all to learn the unstated and unknown legal and philosophical argument utilized by Pozner and his legal council to garnish the exempt half of joint tax returns, and gifts to those not a party to the suit, and money that was refunded by family members for use of the account credit card and the donations from the public for the defense of Dr. Fetzer from Pozner.

This Court should publish their ruling in this case no matter what they decide as there are no cases that could be found where the repayment of no-interest loans borrowed from exempt funds were garnished by a creditor. Families in Wisconsin should know if they can or cannot conveniently use their exempt accounts to temporarily aid their family without garnishment of any payback. And all should know if the court can divert donations to serve the opposing interest for which it was lawfully donated. The people of Wisconsin should know if the court can initiate a fraud upon the public to reward a litigant.

STATEMENT OF THE CASE

The Pozner v. Fetzer case was filed November 27, 2018 claiming that three sentences written in a book and one sentence written in a blog by Fetzer were defamatory. Fetzer had claimed that a scan of an incomplete death certificate purporting to be that of Pozner's son published on the web by Pozner was a fake fabricated forgery. Fetzer also published the same scan of the incomplete death certificate in the same 400+ page book he edited entitled *Nobody Died At Sandy Hook: It Was A FEMA Drill To Promote Gun Control* (Nobody Died). Mr. Pozner deceptively attached an "official" version of the alleged death certificate to his Original Complaint claiming that the incomplete one seen, published and commented upon by Fetzer, was materially the same: "The official death certificate attached hereto does not differ in any material respect from the one released publicly by Plaintiff." (R1:6).

The incomplete, uncertified death certificate was originally published on Pozner's own website. Fetzer at the hearing on summary judgments stated that it was against Connecticut law for parents to possess uncertified death certificates (R.231:30:10-14):

> MR. FETZER: The issue of defamation. There can have been no defamation because by Connecticut law not even parents are allowed to possess uncertified death certificates. That was an uncertified death certificate. By Connecticut law, he was not entitled to possess it.

Pozner filed a motion for summary judgment (R102) asserting that there were no factual disputes between Pozner and Fetzer and that he had furnished evidence

of all elements of defamation against Fetzer. Pozner claimed his son was killed at Sandy Hook Elementary on December 14, 2012 by "Multiple Gunshot Wounds" as stated on the alleged "death certificates" while Fetzer claimed that the same school had been closed prior to 2008 and submitted a FEMA manual for a mass casualty drill involving children scheduled for the same day. Fetzer also submitted the Federal Bureau of Investigation National Uniform Crime Report (FBI UCR) for Newtown, Connecticut, showing zero murders and non-negligent manslaughters for all of 2012. That FBI report remains the same today.[1] Judge Remington granted the summary judgment finding Fetzer liable for defamation. Fetzer appealed to This Court and it affirmed the summary judgment on March 18, 2021, ruling that:

> "¶3 There is no reasonable dispute regarding the following facts.
>
> "¶4 On December 14, 2012, a mass shooting occurred at Sandy Hook Elementary School in Newtown, Connecticut. Tragically, twenty-six people were killed, including six staff members and twenty children who were aged six and seven. See, e.g., Jones v. Heslin, No. 03-19-00811-CV, 2020 WL 1452025, at *1, *4 (Tex. Ct. App. Mar. 25, 2020) (stating "Neil Heslin's son ... was killed in the Sandy Hook Elementary School Shooting in December 2012" and rejecting the substantial truth doctrine as a basis to dismiss Heslin's defamation claim related to statements disputing Heslin's assertion that he held his deceased son in his arms); Soto v. Bushmaster Firearms Int'l, LLC, 202 A.3d 262, 272 (Conn. 2019) ("On December 14, 2012, twenty year old Adam Lanza forced his way into Sandy Hook Elementary School in Newtown and, during the course of 264 seconds, fatally shot twenty first grade children and six staff members, and wounded two other staff members."). Pozner's six-year-old son, N.,

[1] https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/8tabledatadecpdf/table-8-state-cuts/table_8_offenses_known_to_law_enforcement_by_connecticut_by_city_2012.xls

was one of the children killed during the Sandy Hook shooting." *Pozner v. Fetzer*, 397 Wis.2d 243, 959 N.W.2d 89(Table), 2021 WI App 27(Table) (Wis. App. 2021)

This court quoted the above two cases to support its affirmation of the "reasonable" facts in the Pozner v. Fetzer case. Those facts were determined by *stipulation* of the defendant, Jones, in the first, relying solely on protection of the Texas Citizen Participation Act, and in the second by *assumption* of the court as required in Bushmaster's motion to dismiss. This Court then stated Fetzer's "position" immediately thereafter in the next paragraph concluding that there were no material fact disputes between the parties:

"¶5 Fetzer, a Wisconsin resident, takes the position that the Sandy Hook shooting was an "elaborate hoax" which, according to Fetzer, was staged by government authorities with the "agenda to deprive U.S. citizens of their rights pursuant to the Second Amendment of the U.S. Constitution." Fetzer takes the position that no one was killed during the Sandy Hook shooting and that part of the "elaborate hoax" included the fabrication of a "fiction[al]" person "called [N.]" Before and during this litigation, Fetzer has asserted that Pozner is a "fraud," "liar," "hypocrite," and "con-artist," and he has accused Pozner of concealing his true identity. Fetzer has also accused Pozner of "engaging in a massive cover-up" with regard to the Sandy Hook shooting. Fetzer is an editor of the book NOBODY DIED AT SANDY HOOK: IT WAS A FEMA DRILL TO PROMOTE GUN CONTROL (2d ed. 2016), and is the co-author of chapter 11 of that book, which is titled "Are Sandy Hook skeptics delusional with 'twisted minds'?" Id.

Fetzer appealed this Court's opinion to the Supreme Court of Wisconsin and his Petition for Review was denied on February 16, 2022. Fetzer filed his Petition for Writ of Certiorari in the U.S. Supreme Court on May 16, 2022 asking the question:

> "May rules of summary judgment vary throughout the states allowing the Wisconsin Judiciary to conduct and affirm a non-jury trial under the pretense of a summary judgment proceeding, the process of which violates all the rules of summary judgment in Texas, depriving Wisconsin citizens of their equal rights to a trial by jury and due process under the 7th and 14th Amendments and further allowing a Wisconsin judge to determine the validity of major national events through unsound summary judgment methodology?"

Pozner filed his "Motion For Turnover Of Property To Apply Property to Satisfy Judgment" on April 26, 2022 (R490) and Judge Remington granted the Amended Taking Order turning over intangible intellectual property on July 8, 2022 (R510) consisting of four versions of the book Nobody Died and four website domain names directly to Pozner for his own personal use. Judge Remington set a fixed value of all those intangible properties at $100,000 and deducted it from Fetzer's $457,395.13 judgment debt.

Fetzer filed his Motion For Reconsideration inter alia on July 13, 2022 (R514) and his Motion to Stay on July 19, 2022 (R515) in the Circuit court. Both were denied on August 29, 2022 (R528). Fetzer's Appeal of the Taking/Turnover Order are still pending in this Court (Appeal No. 2022AP001751).

At about this same time, or the last two weeks of December 2022, Pozner began gathering information for his garnishment procedure. A hearing was held to find out what could be garnished from Dr. Fetzer's accounts and a Motion For Distribution of Funds was written and filed and on the fourth effective day later the order was signed by the circuit court.

STATEMENT OF FACTS

In mid December 2022, Pozner began gathering information for his garnishment procedure. Three banks, Summit Credit Union, State Bank of Cross Plains, and UW Credit Union, filed Garnishee Answers in the circuit court (App., p. 17-19). On January 3, 2023, Dr. Fetzer filed his Debtor's Garnishment Answer form in the circuit court (App., p. 20). Then on March 17, 2023, a hearing was held to obtain information about funds contained in Dr. and Mrs. Fetzer's joint account at UW Credit Union (App., p. 25-48).

It was found that the UW Credit Union account contained the deposits of Dr. Fetzer's Retirement plan, and he and his wife's Social Security and their joint federal and state tax return money. Janice Fetzer, Dr. Fetzer's wife, testified at the hearing that some of the deposits in the UW account were actually reimbursements to the penny, or slightly under paid, for the use of the UW account credit card on behalf of Dr. Fetzer and their daughters.

Pozner filed his Motion For Distribution Of Funds (App., p.5) on April 25, 2023 along with the Affidavit Of Randy J. Pflum In Support Of Plaintiff's Motion For Distribution Of Funds (App., p. 8) and a Proposed Non-Earnings Garnishment Order (App., p. 10). On April 26, 2023, Pozner filed his Declaration of Mailing the said three documents (App., p. 11) to the three banks and Dr. Fetzer. On May 1, 2023, Judge Remington, signed the Final Order granting Pozner's Motion For Distribution Of Funds in the amount of $2,004 (App., p. 13). On May 16, 2023, A

Notice of Entry of Order was filed along with a Declaration of Mailing of same (App., p. 14-16).

Pozner's Motion for Distribution of Funds treated seven of the deposits in the UW Credit Union account as non-exempt that were known by Pozner and his attorney to be reimbursements to the penny or in one case slightly under paid for the use of the account credit card by Dr. Fetzer and his daughters. The said deposits were not additional deposits from non-exempt sources but rather the repayment of no-interest loans from exempt funds that were already in the UW Credit Union account. These facts were known to Pozner and his attorney.

On June 5, 2023, Dr. Fetzer filed his Notice of Appeal (R565) of the Distribution Of Funds Order. On July 3, 2023, the Notice of Filing of The Record at the Fourth Court of Appeals (R577) was filed setting the due date for the Appellant's Brief on August 14, 2023.

ARGUMENT

Introduction:

This non-earnings garnishment procedure was mismanaged by Pozner, his attorneys, and the circuit court. The reasonable procedure would have been to determine how much money Fetzer received in 2022 from non-exempt sources and then deduct the $5000 aggregate exemption (under 815.18(3)(k)) and garnish the positive balance if any. This is how simple it could have been by asking the correct questions:

Honest Correct Manner of Determining Non-Exempt Annual Income		
	Income	**non-exempt**
1	UWCU-WI Income Tax Return (1/2 of Joint Return)	$743.00
2	UWCU-Federal Income Tax Return (1/2 of Joint Return)	$260.50
3	Summit Credit Union	$46.06
4	State Bank of Cross Plains (public donations Fetzer Legal Defense)	$0.00
5	UWCU-Birthday Gift to Janice from daughter	$0.00
6	Old Age Retirement ($1,700/mo) exempt	$0.00
7	Social Security ($2,476.00/mo) exempt	$0.00
	Sub Total	**$1,049.56**
	Deduction	$5,000.00
	Grand Total - Distribute Nothing.	**-$3,950.44**

Had the circuit court not violated Wisconsin Statute 801.15(4) and instead held a hearing on Pozner's written "Plaintiff's Motion For Distribution Of Funds" the garnishment amounts could have been determined correctly and with ease. Dr. Fetzer was in the process of clarifying the errors in Pozner's motion but the judge signed the final order only four effective days after the filing of the motion preventing Dr. Fetzer from completing his response and filing it in the circuit

court. The circuit court not only failed to continue the hearing and reconvene the examination, as they said they would, but violated the state statute by signing the order without a hearing on the written motion.

Issue 1: The Judge Erred by granting Pozner's written Plaintiff's Motion For Distribution Of Funds without a hearing in violation of 801.15(4).

Even though a hearing was held about a month prior to the filing of the Pozner's written Motion to Distribute Funds to discover the source of funds in the UW Credit Union account, none was held after the filing of the written Motion. This violated Wisconsin Statute 801.15(4) and deprived Dr. Fetzer of his right and opportunity under same to show that Pozner was garnishing exempt funds from the subject UW Credit Union account. Wisconsin Statute 801.15(4) says:

> "A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte."

This appeal could have been easily avoided had the state statute been adhered to by Pozner and the circuit court. Judge Remington admitted he was not intimately familiar with garnishment law (App., p 28, L 16-19):

> "Mr. Pflum, I did research. This is not an area in which I'm intimately familiar, but I have concluded the following legal principles. And you can correct me if I'm wrong."

It is also obvious that Judge Remington was not satisfied with what was found during the hearing before the Motion was filed and said he would continue the hearing to then reconvene so Pozner could find out more or completely start over with another garnishment founded on better information which he obviously thought was lacking up to that point. (App., p 46, L 14-p 47, L 22):

> THE COURT: Could you then please make a copy of the last, let's say, 12 months starting with the most recent account, so not all of 2022, but just give me -- if they come monthly, give me the last 12 that you have, not give me, but send those to Mr. Pflum.
>
> MS. FETZER: I will. But now, on my bank statement, when the bank sends 'em, it just gives a deposit of so much money. It doesn't say where it's from.
>
> THE COURT: Don't worry about it. That's Mr. Pflum's problem to interpret that. Then Mr. Pflum -- Ms. Fetzer, please provide those to Mr. Pflum in the next two weeks. Today is the 17th. I'm gonna ask that you send those to him no later than the end of the month, March 31st.
>
> MS. FETZER: Okay.
>
> THE COURT: I'm gonna then continue this hearing. Mr. Pflum, then after you receive these statements, I'm gonna ask you within the next 30 days thereafter to apprise the Court what, if anything, you want me to do, either reconvene and then continue the examination to determine whether the funds are fairly traceable out of the specific account or not, or whether the plaintiff wants to sort of start over, regroup and come back with a new garnishment with a little bit better information.
>
> MR. PFLUM: Thank you, your Honor.
>
> THE COURT: I won't schedule anything today. We'll wait and see after Mr. and Mrs. Fetzer, after the -- after Mr. Pflum gets these records what the plaintiff wants to do next.
>
> Thank you very much for coming this morning.
>
> MR. PFLUM: Thank you, your Honor.
>
> THE COURT: We're adjourned.

Judge Remington left all parties with the understanding that something would be scheduled for another hearing after Mr. Pflum received records from Mrs. Janice Fetzer. The court only gave Pozner these two options: "either reconvene and then continue the examination to determine whether the funds are fairly traceable out of the specific account or not, or whether the plaintiff wants to sort of start over." Neither option included: "file a motion and I'll grant it immediately without a hearing." Dr. Fetzer heard nothing until he received Pozner's Motion For Distribution of Funds. And on the fourth effective day later the Final Order was signed granting Pozner's Motion.

There was no continuance and reconvening of "this hearing," to "continue the examination" and had they done so they would have discovered that the source of the deposits Pozner garnished ultimately came out of exempt funds of the same account. Pozner should have been able to determine, even from the hearing held prior to his motion that the deposits he garnished were repayments from sources not "fairly traceable." And Pozner should have gleaned as the circuit court did that a better course of action would have been to "start over, regroup and come back with a new garnishment with a little bit better information."

The Notice of Hearing (App., p. 23) (R552) filed on January 23, 2023 setting the date of a hearing for March 17, 2023, stated that "This matter will not be adjourned by the court except upon formal motion for good cause or with the specific approval of the court upon stipulation by all parties" There was no motion filed to adjourn the examination process and Dr. Fetzer never stipulated that he

was in agreement to adjourn the examination process nor did he receive any such stipulation from Pozner. This means that Pozner's Motion For Distribution Of Funds was filed and granted while the examination process was still in progress surprising Dr. Fetzer and depriving him of an opportunity to respond with more information to correct the garnishment.

Judge Remington was required to hold a hearing on the written motion under ss 801.15(4) and Dr. Fetzer was not required to perform anything to invoke the statute for a hearing and time to respond to the motion and submit affidavits; “All written motions *shall be heard* on notice unless a statute or rule permits them to be heard ex parte.” (Emphasis added.) The State's summary judgment motion was a written motion that would, following notice, be heard by the court. See id. Because the State's motion would be heard, Hanson was not required to request a hearing in order to invoke the time for a response established in § 802.08(2). We conclude § 802.08(2) is applicable in this case. *State v. Hanson*, 347 Wis.2d 549, 830 N.W.2d 722, 2013 WI App 55 (Wis. App. 2013).

The violation of Wisconsin Statute 801.15(4) is enough to have Pozner's motion vacated and to start over on the non-earnings garnishment. Further, the balance of issues serve to show that this is not harmless error and should be reversed. Also, Dr. Fetzer cannot be expected to provide citations to places in the record where he has asserted his exemptions when he was deprived of a response to the motion and a hearing to address each of Pozner's erroneous items for garnishment. Therefore any rule requiring the one seeking an exemption to show their assertion of it at the

circuit court does not apply under a showing of the violation of Wisconsin Statute 801.15(4).

Issue 2: Pozner cannot garnish reimbursements of exempt funds.

It is obvious that Pozner garnished funds from the subject UW Credit Union bank account without regard to the facts he learned at the hearing held prior to his motion that some of those deposits he listed in his Motion For Distribution Of Funds were exempt. Each item will be addressed following this chart derived from Pozner's Motion For Distribution Of Funds:

POZNER'S GARNISHMENT ORDER			
ITEM	**DATE**	**DESCRIPTION**	**AMOUNT**
1	03/03/22	UW Account (Deposit)	$549.59
2	03/21/22	UW Account (Deposit from Daughter)	65.32
3	03/30/22	UW Account (WI Tax Return)	1,486.00
4	04/06/22	UW Account (Fed. Tax Return)	521.00
5	05/06/22	UW Account (the Debtor's reimbursement for lawsuit)	391.05
6	06/15/22	UW Account (Deposit from Daughter)	159.00
7	08/08/22	UW Account (Deposit from Daughter)	153.88
8	09/02/22	UW Account (Deposit from the Debtor for Fed Ex)	94.96
9	09/23/22	UW Account (Deposit)	100.00
10	12/01/22	UW Account (Deposit from the Debtor for Fed Ex)	1,000.00
11	12/21/22	Summit Credit Union Answer	46.06
12	12/27/22	SBCP Answer	2,437.60
		Claimed Exemption Wis. Stat. §815.18(3)(k)	-5,000.00
		Amount Subject to Garnishment	**$2,004.46**

1. The March 3, 2022 deposit contained three sources all of which were exempt; one in the amount of $253.59 from Jim's USAA Senior Bonus; second, in the amount of $116.00 as a refund of an over payment of a dental surgery charge; and the last was a $180.00 reimbursement for Dr. Fetzer's lawsuit expenses in this case derived from donors for his defense against Pozner. That means Item 1 should be in the amount of $0.00. Mrs. Janice Fetzer has this written in her

check book which could have been submitted as evidence had a hearing been held.

2. The deposit made on 3/21/22 was a reimbursement to the subject account for money that the Fetzer's daughter spent using Janice Fetzer's Costco Credit card while they shopped together at Costco. Had the daughter known her reimbursement would be confiscated by Pozner, she would not have repaid it. Reimbursements to the penny of exempt funds remain exempt. The amount at item two should be $0.00. Neither Janice or Dr. Fetzer benefited from the purchase nor did their income increase by this action.
3. The deposit made on 3/30/22 was a joint Wisconsin tax return in the amount of $1,486.00 half of which is exempt as it belongs to Mrs. Janice Fetzer therefore the correct amount should be $743.00.
4. The deposit made on 4/6/22 in the amount of $521.00 was a joint IRS tax return half of which is exempt as it belongs to Mrs. Janice Fetzer. The correct amount on this line should be $260.50.
5. The deposit made on 5/6/22 in the amount of $391.05 was a reimbursement for lawsuit expenses derived from Dr. Fetzer's legal defense donation account at State Bank of Cross Plains. It could also be argued that an account that holds a fixed amount of exempt funds, say $5,000, could be the "bottle that never runs dry" simply by spending the exempt funds and replacing them to the penny from non-exempt sources. One could conceivably spend $5,000 daily and replace it daily to the penny while claiming that none of it is non-exempt. This

would allow the moving of $150,000 per month of non-exempt funds while claiming that all of it was and is exempt. But all this means is that the source of the funds have not been discovered and garnished if non-exempt. Even though nothing of the sort is happening with this account there is a bigger issue that demands that this item be exempt. Item 5 is derived from the public who have donated funds thinking their money would be used in the legal defense of Dr. Fetzer against Mr. Pozner rather than paying Pozner. If Pozner is allowed to garnish the donations of the public for Fetzer's defense against Pozner, the court would be instigating a fraud on the public. A more judicious solution for the public would be to order the return of their funds rather than defraud their intent. But that too would deprive the public of using their funds to support one who they believe is being cheated and plundered by Pozner and the court system. Regardless, Pozner should never be allowed to garnish the donations for Fetzer's defense. The court could also protect Dr. Fetzer legal defense funds that have been donated by the public and return some when a maximum amount sufficient for his defense, set by the court, is reached. The worst solution is to simply garnish the whole of Dr. Fetzer's legal defense funds from donors. The amount for item five should be $0.00.

6. The deposit made on 6/15/22 in the amount of $159 came from Dr. Fetzer's daughter to reimburse her mother, Janice Fetzer, for things the daughter bought at Costco while shopping with her mother, both using Janice's Costco credit card. This expenditure is not attributable to Dr. Fetzer but to his wife, as with

item two, and the daughter paid the wife back so the wife could pay the credit card bill. Dr. and Mrs. Fetzer did not benefit from the purchases of their daughter nor did their income increase with the reimbursement from their daughter. The estate of Dr. and Mrs. Fetzer did not increase as a result of the purchase by the daughter or the payback from the daughter. The amount that should be entered for item six is $0.00.

7. The deposit made on 8/8/22 in the amount of $153.88 is like the deposit number two and six and the same logic would apply leaving $0.00 on line seven.
8. The deposit made on 9/2/22 in the amount of $94.96 is either exempt or a court initiated fraud on the public as explained under item five. Therefore the amount for item eight should be $0.00.
9. The deposit made on 9/23/22 in the amount of $100 was a birthday gift to Mrs. Janice Fetzer from her daughter and is totally exempt. The amount for item nine should be $0.00.
10. The deposit made on 12/1/22 in the amount of $1,000 was a reimbursement for the use of the UWCU credit card to pay for lawsuit expenses at Fed Ex which was an underpayment by $19.66. The source of the reimbursement funds were from his GiveSendGo legal defense donations deposited in his State Bank of Cross Plains account, like all the rest of the Fetzer legal defense funds. This should be treated the same as line five and eight and therefore be $0.00.

11. The item on line eleven in the amount of $46.06 was reported by Summit Credit Union as non-exempt on 12/21/22. The amount that should appear for item eleven is $46.06.

12. The item on line twelve in the amount of $2,437.60 reported on 12/27/22, was the total amount of money in Dr. Fetzer's legal defense fund held at State Bank of Cross Plains completely derived from public voluntary donations at GiveSendGo.com for his legal defense from Pozner. And once again, this item should be treated exactly as items five, eight and ten. Therefore the amount for item twelve should be $0.00.

The totals of the errors are summarized in the chart below:

GARNISHMENT ERRORS SUMMARY				
Item	**Date**	**Description**	**Exempt**	**Amount**
1	03/03/22	UW Account (Deposit)	$549.59	$0.00
2	03/21/22	UW Account (Deposit from daughter)	$65.32	$0.00
3	03/30/22	UW Account (WI Tax Return)	$743.00	$743.00
4	04/06/22	UW Account (Fed. Tax Return)	$260.50	$260.50
5	05/06/22	UW Account (the Debtor's reimbursement for lawsuit)	$391.05	$0.00
6	06/15/22	UW Account (Deposit from daughter)	$159.00	$0.00
7	08/08/22	UW Account (Deposit from daughter)	$153.88	$0.00
8	09/02/22	UW Account (Deposit from the Debtor for Fed Ex)	$94.96	$0.00
9	09/23/22	UW Account (Deposit BD gift to Janice)	$100.00	$0.00
10	12/01/22	UW Account (Deposit from the Debtor for Fed Ex)	$1,000.00	$0.00
11	12/21/22	Summit Credit Union Answer		$46.06
12	12/27/22	SBCP Answer	$2,437.60	$0.00
		Sub Total	**$5,954.90**	$1,049.56
		Claimed Exemption Wis. Stat. § 815.18(3)(k)		-$5,000.00
		Amount subject to garnishment		**-$3,950.44**

Obviously, the just thing to do is to prevent Mr. Pozner from harming those innocent people in the public who see the unjust treatment of Dr. Fetzer by taking

their money for Fetzer's legal defense and paying Pozner with it. That would be fraud instituted by the courts.

Issue 3: Pozner cannot garnish funds that are exempt under Wisconsin statutes 815.18(3)(j).

Said statute says:

> (j) *Retirement benefits.*
>
> 1. Assets held or amounts payable under any retirement, pension, disability, death benefit, stock bonus, profit sharing plan, annuity, individual retirement account, individual retirement annuity, Keogh, 401-K or similar plan or contract providing benefits by reason of age, illness, disability, death or length of service and payments made to the debtor therefrom.
>
> 2. The plan or contract must meet one of the following requirements:
>
> a. The plan or contract complies with the provisions of the internal revenue code.
>
> b. The employer created the plan or contract for the exclusive benefit of the employer, if self-employed, or of some or all of the employees, or their dependents or beneficiaries and that plan or contract requires the employer or employees or both to make contributions for the purpose of distributing to the employer, if self-employed, the employees, or their dependents or beneficiaries, the earnings or the principal or both of a trust, annuity, insurance or other benefit created under the plan or contract and makes it impossible, at any time prior to the satisfaction of all liabilities with respect to beneficiaries under a trust created by the plan or contract, for any part of the principal or income of the trust to be used for or diverted to purposes other than for the exclusive benefit of those beneficiaries.
>
> 3. The plan or contract may permit the income created from personal property held in a trust created under the plan or contract to accumulate in accordance with the terms of the trust. The trust may continue until it accomplishes its purposes. The trust is not invalid as violating the rule against perpetuities or any law against perpetuities or the suspension of the power of alienation of title to property.

4. The benefits of this exemption with respect to the assets held or amounts payable under or traceable to an owner-dominated plan for or on behalf of a debtor who is an owner-employee shall be limited to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

5. This exemption does not apply to an order of a court concerning child support, family support or maintenance payments, or to any judgment of annulment, divorce or legal separation.

6. In this paragraph:

a. “Employer" includes a group of employers creating a combined plan or contract for the benefit of their employees or the beneficiaries of those employees.

b. “Owner-dominated plan" means any plan or contract that meets the requirements of subd. 2. and under which 90 percent or more of the present value of the accrued benefits or 90 percent or more of the aggregate of the account is for the benefit of one or more individuals who are owner-employees. For purposes of this definition, the accrued benefits or account of an owner-employee under a plan or contract shall include the accrued benefits or account of the spouse, any ancestor or lineal descendant, whether by blood or by adoption, or the spouse of such a lineal descendant, of the owner-employee under the same plan or contract.

c. “Owner-employee" means any individual who owns, directly or indirectly, the entire interest in an unincorporated trade or business, or 50 percent or more of the combined voting of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, or 50 percent or more of the capital interest or profits interest of a partnership or limited liability company.

Even though Dr. Fetzer did not check box "s" on his Debtor's Answer Non-Earning Garnishment form (App., p. 20) he did mention it under box "y" of the same form which asked for; "Any other exemptions permitted under the law. [Explain briefly]". There he wrote in:

"The UWCU accounts are for Social Security and Retirement Account payouts and are therefore exempt."

It is obvious that Dr. Fetzer knew his retirement benefit receipts were exempt and he asked for them to be excluded from any garnishment. The only part of his retirement that was garnished was under item one. And even though Pozner may not have been fully aware of it, had a hearing been set and held on his Motion For Distribution of Funds, the error could have been clarified and avoided. However, the careless way this garnishment procedure was conducted conforms to the continual disdain Posner and the court has shown Dr. Fetzer from day one.

The essence of this appeal is that a hearing was not set or held for Pozner's written "Plaintiff's Motion For Distribution Of Funds" in violation of 801.15(4) wherein a more direct and simple means of determining the correct amount to garnish could have been established and this appeal avoided.

CONCLUSION

Based upon conclusions of the foregoing issues and arguments, Judge Remington's Order (563) Granting Pozner's Motion for Distribution of Funds (R557) should be reversed and remanded for further proceedings.

July 22, 2023

James H Fetzer Ph.D.

James H. Fetzer, Ph.D.

Pro Se
800 Violet Lane
Oregon, WI 53575
(608) 835-2707
jfetzer@d.umn.ed