

STATE OF WISCONSIN
SUPREME COURT

FILED

MAY 19 2021

CLERK OF SUPREME COURT
OF WISCONSIN

Leonard Pozner,

Plaintiff-Respondent,

v.

James Fetzer,

Defendant-Appellant-Petitioner.

Appeal No.: 2020AP121
2020AP1570

Cir. Ct. No. 2018CV3122

MOTION TO REINSTATE PETITION FOR REVIEW

The Defendant-Appellant-Petitioner, James Fetzer, moves the Supreme Court to vacate its Order of May 18, 2021, attached hereto, dismissing Petitioner's Petition for Review, and to further reinstate the Petition. The Court's Order is based on a miscalculation as to the date of the Court of Appeals' Decision from which Petitioner seeks review.

The Supreme Court calculated the time for petitioning from an erroneous date. The Court considered the date of the Court of Appeals' Decision to be April 6, 2021. In fact, the Court of Appeals denied Petitioner's Motion for Reconsideration on April 7, 2021. A true and correct copy of the Court of Appeals Decision, showing a filing date of April 7, 2021, is attached to this Motion for the Court's convenience.

Wis. Stat. § 808.10(1) requires that a petition for review be filed in the Supreme Court within 30 days of the date of decision by the Court of Appeals. Section 808.10(2), however, tolls the 30-day time period to file the petition for review in the event that a motion for reconsideration is filed, as in this case. In such case, the 30-day time period

starts on the date that the Court of Appeals determines the motion for reconsideration by filing an order denying the motion for reconsideration or an amended decision.

The Petitioner timely filed his Petition for Review within 30 days after the Court of Appeals denied his Motion for Reconsideration. The Petition for Review was filed on May 7, 2021 within 30 days after the Court of Appeals denied the Motion for Reconsideration. (See attached.)

The Petitioner, accordingly, moves the Supreme Court to vacate its Order dismissing the Petition for Review. The Petitioner further requests the Court to reinstate his Petition by recognizing timely filing on May 7, 2021, within 30 days of Court of Appeals' decision of April 7, 2021. The Court based its Order of dismissal on a miscalculation of the date of the Court of Appeals decision triggering the 30-day period for filing the Petition for Review.

Dated this 19th day of May, 2021.

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May 18, 2021

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You are hereby notified that the Court, by its Clerk and Commissioners, has entered the following order:

Nos. 2020AP121
2020AP1570

Pozner v. Fetzer L.C. #2018CV3122

A petition for review was filed by defendant-appellant-petitioner, James Fetzer, on May 7, 2021, from the court of appeals' decision of April 6, 2021. On May 13, 2021, Mr. Fetzer filed a motion to file a corrected petition for review. The petition for review filed on May 7, 2021, is

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May 18, 2021

Nos. 2020AP121

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Pozner v. Fetzer L.C. #2018CV3122

untimely pursuant to §§ 808.10 and 809.62(1m), Stats., and First Wisconsin National Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979);

IT IS ORDERED that the petition for review is dismissed, without costs.

IT IS FURTHER ORDERED that the motion to file a corrected petition for review is dismissed as moot.

Sheila T. Reiff
Clerk of Supreme Court

FILED
05-07-2021
CLERK OF WISCONSIN
SUPREME COURT

**STATE OF WISCONSIN
SUPREME COURT**

Leonard Pozner,

Plaintiff-Respondent,

**Appeal No.: 2020AP121
2020AP1570**

v.

James Fetzer,

Cir. Ct. No. 2018CV3122

Defendant-Appellant-Petitioner.

PETITION FOR REVIEW AND APPENDIX

**Appeal from the Circuit Court of Dane County
Case No. 2018CV3122
Honorable Frank D. Remington, Presiding**

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FILED
04-07-2021
CLERK OF WISCONSIN
COURT OF APPEALS

DISTRICT IV

April 7, 2021

To:

Hon. Frank D. Remington
Circuit Court Judge

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Carlo Esqueda
Clerk of Circuit Court

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Genevieve M. Zimmerman

Nathan Oesch

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You are hereby notified that the Court has entered the following order:

2020AP121
2020AP1570

Leonard Pozner v. James Fetzer (L.C. # 2018CV3122)
In re the finding of Contempt in Pozner v. Fetzer: Leonard Pozner
v. James Fetzer (L.C. # 2018CV3122)

Before Fitzpatrick, P.J., Blanchard, and Kloppenburg, JJ.

James Fetzer, by counsel, moves for reconsideration of the opinion issued by this court on March 18, 2021. Nothing in the materials presented alters our view of the case. Therefore,

IT IS ORDERED that the motion for reconsideration is denied.

Sheila T. Reiff
Clerk of Court of Appeals