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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

LEONARD POZNER,

Plaintiff-Respondent,

v.

JAMES FETZER,

Defendant-Appellant.

APPEAL NO. 2024AP002027
Dane County Case No. 18CV3122
Hon. Frank D. Remington, presiding

RESPONSE BRIEF OF PLAINTIFF-RESPONDENT

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Statement of the Issues

Issue 1: Does a party have an appeal as of right over a Decision and Order sanctioning the party that did not involve the transfer of property and was entered years after the party's appeal as of right on the final judgment was concluded?

Response to Issue 1: No. A party does not have an appeal as of right from a Decision and Order sanctioning the party that did not involve the transfer of property and was entered years after the party's appeal as of right on the final judgment was concluded, but the party may seek leave to appeal the Decision and Order.

Issue 2: Does a circuit court erroneously exercise its discretion by sanctioning a party for repeatedly ignoring Wisconsin law in publicly filing private information about a minor, by making sure the party cannot continue to do so in the future?

Response to Issue 2: No. A circuit court judge appropriately exercises its discretion when, after it finds the party repeatedly violated the law on publicly filing private information, had no proper purpose for doing so, and, without action by the circuit court would continue to do so, it crafts a sanction that would prevent further public filing of private facts.

Statement on Oral Argument

Respondent does not believe this case is appropriate for oral argument as the briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost to the litigant.

Statement on Publication

Respondent does not believe this case is appropriate for publication as the Court's decision is unlikely to have any significant value as precedent.

Summary of the Facts

James Fetzer seeks review of an October 4, 2024 Decision and Order (the "Decision and Order") finding that he repeatedly publicly filed private information of a minor with an improper purpose and sanctioning him by limiting his ability do so in the future. (*See* Record 660, hereafter all citations to documents in the record will be referenced as "R.") Fetzer did not seek leave of this Court to appeal the Decision and Order. Instead, he filed a notice of appeal. (R. 666.)

At the time he filed this notice of appeal, Fetzer already received his appeal as of right on the merits of the final judgment in this case. On March 18, 2021, this Court issued a decision affirming the judgment and orders of the circuit court. (R. 480.) While Fetzer petitioned for review to both the Wisconsin Supreme Court and the United States Supreme Court, neither court accepted his petition.

Fetzer had the chance to raise the question of whether he could publicly file Noah Pozner's passport, with the passport number unredacted in that appeal. Months before he filed his notices of appeal for his appeal as of right, the circuit court entered an order to address Fetzer's failure to redact Noah Pozner's passport number. (R. 129.) On May 8, 2019, the circuit court granted Plaintiff's Motion to Enforce Wis. Stat. § 801.19, and required the Clerk to redact Noah Pozner's passport number from documents. (*Id.*) Fetzer did not raise the issue of whether the circuit court correctly enforced Wis. Stat. § 801.19 in his appeal as of right. (R. 480.)

Years later, Fetzer, once again, filed a copy of Noah Pozner's passport without redacting the passport number as required by Wis. Stat. § 801.19. The circuit court found that "Fetzer has 'repeatedly filed Noah Pozner's unredacted passport,' including its statutorily-protected

information, and he has done so ‘as part of an overarching, pervasive strategy whereby [Fetzer] uses efilng systems to spread confidential and protected information through absurdly frivolous filings.’” (R. 660, at 3.) The circuit court concluded that, “an order limiting Fetzer’s right to access Wisconsin courts is necessary to achieve a balance between Fetzer’s rights and ‘the taxpayers’ right to not have frivolous litigation become an unwarranted drain on their resources and the public interest in maintaining the integrity of the judicial system.’” (R. 660, at 8.)

At the end of the Decision and Order, the circuit court included the statement, “This is a final order for purposes of appeal. Wis. Stat. § 808.03(1).” (R. 660, at 9.)

Standard of Review

This Court has a duty to take notice of its jurisdiction and dismiss an appeal if taken from a nonappealable order. *Ditech Financial, LLC v. Estate of Stacey*, 2018 WI App 18, ¶ 5, 380 Wis. 2d 447, 909 N.W.2d 180 (per curiam); *Taylor v. State*, 59 Wis. 2d 134, 137, 207 N.W.2d 651, 652 (1973). And, even if a circuit court’s order states that it is a final order for purposes of appeal, this Court still must decide for itself whether the order disposes of the entire matter in

litigation as to one or more of the parties. *Orlando Residence, Ltd. v. Nelson*, 2013 WI App 81, ¶ 9, 348 Wis. 2d 565, 834 N.W.2d 416. The finality of an order for purposes of appeal is a question of law.

This Court reviews the circuit court's decision to impose sanctions as well as the particular sanction it chooses for an erroneous exercise of discretion. *Schultz v. Sykes*, 2001 WI App 255, ¶ 8, 248 Wis. 2d 746, 638 N.W.2d 604. In doing so, this Courts looks to whether the circuit court, "examined the relevant facts, applied a proper standard of law, and reached a reasonable conclusion." *Id.* This Court does not consider whether it would have imposed the same sanction as the circuit court but whether the circuit court exceeded its discretion in imposing the sanction it did. *Id.*

Argument

This Court does not have jurisdiction over this matter as Fetzer, once again, seeks an appeal as of right from an order that is not the final judgment in the matter. Fetzer could have petitioned this Court for leave to file an interlocutory appeal but he did not. This Court should dismiss this appeal for lack of jurisdiction.

Even if this Court decides it has jurisdiction, this Court should affirm the circuit court's Decision and Order. The circuit court

considered the relevant evidence, applied the proper standard of law, and reached a reasonable decision. The circuit court crafted a sanction that specifically addressed Fetzer's repeated public filings of private information. This Court should affirm the circuit court's appropriate exercise of its discretion.

I. Fetzer does not have an appeal of right from the Decision and Order and has not requested interlocutory review.

This Court should dismiss this appeal because Fetzer does not have an appeal as of right from a sanctions order. Fetzer had the option of seeking leave to file an interlocutory appeal but chose not to do so. This Court should dismiss his appeal.

As the legislature explained in Section 808.03(1), "[a] final judgment or final order is a judgment, order or disposition that disposes of the entire matter in litigation as to one or more of the parties." Wis. Stat. § 808.03(1). The Court of Appeals has recognized that some postjudgment orders are also appealable as of right, but only if a postjudgment order leads to, "the immediate transfer of title to property," is it appealable as of right. *Orlando Residence, Ltd.*, 2013 WI App. 81, ¶ 14.

Here, Fetzer seeks to appeal a sanctions order that concluded he had repeatedly publicly disclosed statutorily-protected information

about a child. (R. 660, at 5.) The Decision and Order does not finally dispose of the entire matter in litigation, rather it limits how Fetzer may file certain papers in Wisconsin courts. (*See generally* R. 660.) Nor does the Decision and Order result in the immediate transfer of title to property. As a result, Fetzer does not have an appeal as of right.

That is not to say that Fetzer had no potential for appellate review after the Decision and Order was entered. He could have sought interlocutory review. Wis. Stat. § 808.03(2). He has not done so. In fact, he sought interlocutory review of the decision granting partial summary judgment issued in 2019, so he is familiar with the process. (R. 232.) Regardless, with respect to the Decision and Order, he did not submit a timely petition for interlocutory appeal.

This Court should dismiss this appeal because Fetzer is not entitled to an appeal as of right from the Decision and Order.

II. The circuit court did not abuse its discretion when it sanctioned Fetzer for his repeated public filing of private information of a minor for an improper purpose by preventing Fetzer from doing so in the future.

Regardless of the fact that Fetzer does not have an appeal as of right, he has not shown that the circuit court erroneously exercised its discretion in imposing this sanction on Fetzer for, once again, violating

Wis. Stat. § 801.19. Fetzer argues that he cannot be sanctioned for his conduct because he has decided that Noah Pozner was not a real person and thus his passport number is not real. He has no authority for his position that a passport number for a person he determines is fake need not be redacted before it is publicly filed. Nor does he have a basis for suggesting that, under the circumstances, the circuit court erroneously exercised its discretion imposing a sanction that limits Fetzer's ability to continue to use the state court e-filing system to harass Pozner.

To start, the circuit court considered the relevant evidence. The circuit court considered Fetzer's history of using the state court's e-filing system to "spread confidential and protected information through absurdly frivolous filings." (R. 660, at 3.) The circuit court considered Fetzer's arguments but, in the end, the circuit court determined that Fetzer had no reason to think he could publicly file Noah Pozner's passport number. (*Id.* at 7.) Fetzer could have made his arguments and filed all of the documents he claimed provided factual support for those arguments, and merely redacted the passport number. (*Id.*) The circuit court concluded that Fetzer's refusal to do so, after having already been told he had to redact the passport number before filing the passport,

could only mean that Fetzer did so for the improper purpose of harassing Pozner and/or protracting this litigation. (R. 660, at 7.) Fetzer does not argue otherwise.

Next the circuit court applies the proper legal standard. The circuit court concluded that Fetzer violated Wis. Stat. § 802.05(2)(a) which provides that, “[b]y presenting to the court, . . . a pleading, written motion, or other paper [a person] is certifying that: . . . [t]he paper is not being presented for any improper purpose, such as to harass” As a result, the circuit court had the ability to “impose an appropriate sanction upon the attorneys, law firms, or parties that have violated sub. (2) or are responsible for the violation.” Wis. Stat. § 802.05(3). Fetzer does not argue that this is the wrong legal standard.

Finally, the circuit court issued a reasonable sanction, crafted to address Fetzer’s sanctionable conduct. As the circuit court noted, it was required to impose a sanction, “limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.” Wis. Stat. § 802.05(3)(b). The circuit court considered imposing attorney fees but found that, “[a]n award of attorney fees against a judgment-proof debtor will not deter a repetition of sanctionable conduct, so I cannot order this sanction.” Instead, the

circuit court quoted *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991), “[w]ithout an order prohibiting future filings related to the same issues, these statutes [prohibiting improper filings] would be virtually useless against a pro se party who cannot pay.” (R. 660, at 8.) The circuit court concluded that it had the authority to “impose conditions upon a litigant—even onerous conditions—so long as they . . . are, taken together, not so burdensome as to deny the litigant meaningful access to the courts.” (*Id.* (citing *Vill. of Tigerton v. Minniecheske*, 211 Wis. 2d 777, 785, 565 N.W. 2d 586 (Ct. App. 1997.))

The circuit court imposed a sanction on Fetzer, limiting his right to file papers in any Wisconsin circuit court related to: Leonard Pozner; Noah Pozner, any other member of the Pozner family; Sandy Hook Elementary School; any other person who attended, or whose child attended Sandy Hook Elementary School; any conspiracy related to Sandy Hook Elementary School, and any members of such a conspiracy. (R. 660, at 9.) Fetzer may file such papers in circuit court with either the prior written approval of a Wisconsin judge or the signature of a lawyer licensed to practice in Wisconsin.

Given the fact that Fetzer has repeatedly publicly filed private information, for an improper purpose, and the circuit court determined

that monetary sanctions would not deter future conduct, the circuit court crafted a sanction tailored to prevent further such conduct. Fetzer does not argue otherwise. Nor could he, considering he spends much of his brief seeking to relitigate issues this Court considered in his appeal as of right from the final judgment in this case. (*See* R. 480.) Given that the circuit court imposed a reasonable sanction, this Court should affirm the Decision and Order.

Conclusion

This Court should dismiss this appeal because Fetzer does not have an appeal as of right from the Decision and Order. Even if this Court disagrees, this Court should affirm the circuit court's imposition of reasonable sanctions given Fetzer's repeated public filing of private information about a minor for a improper purpose.

December 26, 2024

Respectfully submitted,

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Certificate of Brief Length

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §§ 809.19(8)(b) and (c) as to form and length for a brief produced with a proportional serif font. The length of this brief, including footnotes, is 2275 words.

December 26, 2024

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Certification Regarding Electronic Brief

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of the Interim Rule for Wisconsin's Appellate Electronic Filing Project, Order No. 19-02.

I further certify that a copy of this certificate has been served with this brief filed with the court and served on all parties either by electronic filing or by paper copy.

December 26, 2024

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