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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Leonard Pozner,
Plaintiff-Respondent

v.

Appeal No. 2022AP001751

James Fetzer,
Defendant-Appellant

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

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Dr. Fetzer called an incomplete uncertified death certificate with the name of Pozner's son on it a fraudulent, fabricated fake. Pozner sued Fetzer applying those comments to an "official" complete and certified death certificate that Fetzer had never seen nor commented upon. Fetzer's alleged tort was never connected to the object of the tort therefore the case should have been dismissed immediately. But it was allowed to grow into the "voluminous" judicial perversion it is today. Then Pozner won a summary judgment finding Fetzer liable for defamation as a matter of law finding that there were no material fact issues in dispute when Pozner said his son was killed by multiple gun shots at Sandy Hook and Fetzer said Sandy Hook mass shooting did not happen because the school was closed four years earlier. Then a jury was called to determine damages and awarded Pozner \$457,395.13. Then Pozner obtained a Property Taking/Turnover Order transferring the copyright interest of Fetzer in four editions of *Nobody Died at Sandy Hook: It was a FEMA Drill to Promote Gun Control* (Nobody Died). The said Order directly transferred the Nobody Died books to Pozner without a conditional assignment of same or the appointment of a receiver to protect and

maximize the profitability of the book sales until the judgment debt was paid in full at which time the property interest would be returned to Fetzer. It was stated on record in open court without objection that the purpose of this Lawsuit and Taking/Turnover Order was to shut down the books and direct traffic away from them. Such action effectively destroys the books and prevents Fetzer and his 12 coauthors from ever publishing anything in those books. But the books were ruled to be "not relevant" to the lawsuit preventing Fetzer from using the evidence in them for his defense. The result of this "litigation" is that Pozner has sued Fetzer for lying about a death certificate Fetzer never saw or commented upon and got a permanent injunction preventing Fetzer from ever repeating those four short statements and then effectively extended that permanent injunction to cover the whole book by an abuse of process allowing the Taking of those books to effectively destroy them forever. This lawsuit is a monument to legal incompetence in Wisconsin and this Appellate Court should set aside all rulings in it and dismiss it with prejudice.

REPLY TO RESPONSE TO STATEMENT OF ISSUES

Issue 1: Pozner cannot take Fetzer's intangible intellectual property directly without assignment of rights and appointment of receiver to manage or sell the properties.

Response to Issue 1: The circuit court did not abuse its discretion in not reconsidering its finding that Dr. Fetzer's intellectual property could be turned over to partially satisfy a judgment without the appointment of a receiver.

Reply to Response to Issue 1: Abuse of discretion is to be reviewed under the Clear Error Standard. But a clear error standard is only applicable when the issue involves both a question of fact and a question of law. Where the only issue is a matter of law, the de novo standard of review can be applied. Facts agreed by all and expressed by the court leaves only the law which requires the court to order a conditional assignment of right to publish and the appointment of a receiver to protect and maximize the profit from the sale of copies of the books to the public with said rights to be returned to Fetzer upon full satisfaction of the judgment debt. The circuit court was required to do those things by law knowing the intention of Pozner to otherwise effectively destroy the books and prevent anyone from publishing anything in them.

Issue 2: Pozner is judicially estopped from reducing the money judgment debt with the taking order's intangible property.

Response to Issue 2: The circuit court did not abuse its discretion in not reconsidering the turnover order when Dr. Fetzer had no factual basis for his judicial estoppel argument and first raised that argument in the motion to reconsider.

Reply to Response to Issue 2: Again an abuse of discretion is a mixed question of fact and law but when the facts are agreed by all parties and expressed by the

court, the only question that remains is a question of the law on judicial estoppel, reviewed de novo, that prevents Pozner from claiming he can reduce the judgment debt by any amount, much less \$100,000 when the court knows Pozner's consistent position from the beginning is to effectively destroy or shut down the books. Therefore, Pozner cannot take the books, for any amount of money with or without receivers as he is judicially estopped from claiming he can lawfully earn money from taking them to reduce the money judgment. Judicial estoppel also prevents Pozner from claiming he will publish books that are defamatory to him as he won a summary judgment in this case finding three statements in them to be defamatory. To publish the books would mean the three statements are not defamatory to start with. As a matter of law, judicial estoppel prevents Pozner from changing his position of shut down the books to claiming he can now take the books to reduce the money judgment. The credit of \$100,000 reducing the judgment debt for taking Fetzer's interest in the Nobody Died books does not prove that Pozner has any intention of publishing and selling the books to reduce his judgment debt of one penny. The consistent position of Pozner is to effectively destroy the books forever preventing all others, including coauthors, from ever publishing anything in them. There is no fact issue to resolve correctly regarding any matter before this Court. There is only the matter of law, to be reviewed de novo. As a matter of law, Pozner is judicially estopped from claiming the books have lawful financial value to Pozner to apply toward the money judgment and

hence, he cannot take them by any means or by any amount of money credited to the money judgment.

Issue 3: Taking order & lawsuit are abuse of process.

Response to Issue 3: The circuit court did not abuse its discretion when it did not reconsider the turnover order in response to a new legal argument Dr. Fetzer raised that somehow the tort of abuse of process prohibits Mr. Pozner from partially collecting on this judgment.

Reply to Response to Issue 3: Here again, an abuse of discretion is a mixed question of fact and law, but where the parties agree to the relevant facts and are expressed by the court, the only question left on appeal is one of law which is reviewed de novo. Pozner asserts that Fetzer's claim that the Taking/Turnover Order was an abuse of process cannot be brought for the first time in a Motion to Reconsider and therefore the court did not abuse its discretion in denying Fetzer's Motion to Reconsider inter alia. In fact, Dr. Fetzer had claimed early in the lawsuit that the whole lawsuit was an abuse of process which the court bifurcated, removing said counterclaim (R.53) from this action. Regardless, as a matter of law a claim of abuse of process can be asserted at any time, at the beginning of litigation, upon completion, or during, against the whole lawsuit or any part of it that is an abuse of process. It is also a matter of law that property taken to reduce a money judgment must be protected and preserved for both the judgment creditor and debtor. Filing a motion to Turnover Property and Ordering same for the known expressed purpose of effectively destroying the Property is an abuse of

process as a matter of law. Therefore, as a matter of law, this Taking/Turnover Order is an abuse of process which should be reversed or vacated. That is the "somehow" that "prohibits Mr. Pozner from partially collecting on this judgment." Litigants are not permitted to use an abuse of process to collect on judgments.

STANDARD OF REVIEW

As mentioned in the Reply to Response to Statement of Issues, Pozner has asserted that all the issues are a matter of abuse of discretion that apply the Clear or Plain Error standard of review of mixed questions of fact and law. However, in cases where the parties have agreed to the relevant facts and have been expressed by the court the only questions left are those of the law which are reviewed de novo. Therefore, there is no need to determine the relevant facts in this case, leaving only questions of law for this Appellate Court.

STATEMENT OF AGREED KNOWN RELEVANT FACTS

Contrary to the assertion of Pozner, there is no need for the appellate court to determine the relevant facts as they have already been stated in open court on the record by Judge Remington without objection by any party. Other relevant facts were previously ruled upon by the circuit court. Both sets of facts are listed as follows:

1. The purpose of the lawsuit and the Taking/Turnover Order is to effectively destroy the Nobody Died books; Pozner's earlier position from which he is

judicially estopped from altering to now claim the books can earn Pozner money to deduct from his money judgment:

THE COURT: Please. I think you're entitled to some fair compensation. And the point that I was making is Mr. Pozner could take the position that it has no value to anyone else, it has great value to you 'cause, yes, **his plan is to shut it down**. Appears, I should say. It appears. **I don't anticipate him marketing, selling the book Nobody Died at Sandy Hook. It would be entirely inconsistent with the constant position he's taken since day one of this case.** So it has great value to him, on a personal basis has value to you. But the measure under I guess the Fourteenth Amendment or the Fifth Amendment, the taking, if you're gonna take someone's asset, you should afford, I mean, some words that's used is just compensation. (Emphasis added) (R526:22) (App.102)

2. The permanent injunction against the repeat of the four statements by Fetzer found to be defamatory:

The court can therefore order that these statements not be repeated. See McCarthy, 810 F.3d at 464 (Sykes, J., concurring) (“An emerging modern trend, however, acknowledges the general rule but allows for the possibility of narrowly tailored permanent injunctive relief as a remedy for defamation **as long as the injunction prohibits only the repetition of the specific statements found at trial to be false and defamatory.**”) (Emphasis added) (R.348:18)

3. The four statements found to be defamatory:

- Mr. Pozner’s son’s death certificate is fake, which we have proven on a dozen or more grounds. (Internal quotation marks omitted).
- [Mr. Pozner] sent . . . a death certificate, which turned out to be a fabrication. Alterations in the original).
- As many Sandy Hook researches are aware, the very document Pozner circulated in 2014, with its inconsistent tones, fonts and clear digital manipulation, was clearly a forgery.

- Mr. Pozner's son's death certificate turned out to be a fabrication, with the bottom half of a real death certificate and the top half of a fake, with no file number and the wrong estimated time of death at 11:00am, when officially the shooting took place between 9:35-9:40 that morning. (Internal quotation marks omitted) (R.348:18)
4. The balance of the Nobody Died books have been ruled "not relevant" to this lawsuit preventing Fetzer from using their content for his defense and should likewise prevent any moral or legal authority for Pozner to effectively destroy those books by an abuse of process extending the reach of his unsound summary judgment to ban four statements to now banning four whole books ruled "not relevant:"

THE COURT: I'm sorry. Death certificate. I'm sorry. Thank you for correcting me. His death certificate. **Whether or not Sandy Hook ever happened or not is not relevant to this -- the -- the truthfulness or the accuracy of the death certificate.** Now, I understand the -- the Defendants' overall theory in believing that it never happened, and I'm not going to take the bait and let this case go down that -- that path and into that rabbit hole. **Whether or not Sandy Hook ever happened is for another day in another place.** The only question for me is to guide the parties into engaging in discovery that either proves the death certificate was -- was true, was real, was accurate and legitimate or not. So I'm not concerned with Mr. Pozner's litigation against, quote, Sandy Hook skeptics. That's not relevant and not likely to lead to the discovery of anything relevant that will be admitted in this court. (Emphasis added) (R51:49-50) (App.110-111)

There are no other relevant facts to be found or determined to answer the questions of law remaining before this Court regarding judicial estoppel and abuse of process.

ARGUMENT

Having established that the facts relevant to the issues on appeal have been agreed to by all parties and known and expressed on record by the circuit court, we only need to ask the following questions of law:

Does Wisconsin law allow the taking of any type of property for its effective destruction?

The law is silent on the taking of property for its destruction for good reason. However, we can glean from other law that property executed upon for satisfaction of a money judgment must be protected for both the judgment creditor and debtor. "Generally, a temporary receiver is appointed only to preserve the property and to protect the rights of all parties therein. *M. H. McCarthy & Co. v. Central Lumber & Coal Co.*, 204 Iowa 207, 215 N.W. 250, 54 A.L.R. 1116 (1927)." *Insurance Management, Inc. v. McLeod*, 194 So.2d 16 (Fla. App. 1966).

The person who takes property of another should be accountable for its loss and prevented from taking it for the purpose of its effective destruction. *Belk's Department Store, Miami, Inc. v. Scherman*, Fla.App.1960, 117 So.2d 845, Id. wherein it was said:

"When a person's conduct is restrained, or his business or property handed over to a receiver, the protection which such bonds afford should not be lightly dispensed with, but should be zealously guarded and uniformly enforced by the courts. Such orders for injunction and receivership may have serious and far reaching effects on a person's liberty of action and his property or business. The party who initiates such drastic writs and processes should be made to place himself in a position of accountability at least to the extent that the law specifies, to recompense his adversary for losses sustained, if it

should be concluded ultimately that his action which brought it about was irregularly or improvidently invoked, or his cause without merit."

If such a burden is placed upon a receiver and "the party who initiates such drastic writs and processes" to protect the taken rights and assets, what are we to conclude about directly transferring assets to the judgment creditor for effective destruction of intellectual property? Is that not "improvidently invoked" by "irregularity" or abuse of process? It is an abuse of process for the judge to allow the taking of property he stated would be effectively destroyed or shut down for which Pozner and his attorneys should be accountable, and the judge too if he were not immune?

Is Pozner Judicially Estopped from claiming the Nobody Died books have any lawful economic ability to reduce his money judgment?

Pozner asserts that the deduction of \$100,000 from the money judgment by Pozner is proof that the books have value to Pozner. Yes, Pozner will offer a deduction to take the books. But that does not change the fact that his purpose is not to earn money from it to reduce the money judgment but rather proof he will pay money to destroy Dr. Fetzer's intellectual property forever and prevent Dr. Fetzer and his other 12 coauthors from ever publishing anything in those books without infringing on Pozner's taken copyright. Fetzer has proven in his Brief that all the elements of judicial estoppel are present against Pozner taking this property. Pozner should never be allowed to take a major asset that Fetzer has to earn money which was ruled "not relevant" to this lawsuit to prevent him from

defending himself with its contents and then take the books to destroy them. It is now obvious that this lawsuit was wickedly contrived to destroy the books without disproving their contents by the abuse of judicial process from start to finish. And knowing now what Judge Remington has most recently revealed on record, the whole lawsuit should be reversed and dismissed with prejudice to save the integrity of the Wisconsin judicial system.

CONCLUSION

Based upon conclusions of the foregoing issues and arguments, this Court should:

1. Reverse the denial of Fetzer's Motion for Reconsideration inter alia (R538) seeking to vacate the Amended Taking/Turnover Order (R510).
2. Determine that Pozner is judicially estopped from seeking or taking the Nobody Died books by any means.
3. Award Fetzer his cost of defending against the Taking/Turnover Order in the amount of Six Thousand Two Hundred Seventy Seven & 50/100 Dollars (\$6,277.50), as it was and is an abuse of process.
4. Reverse the Summary Judgment (R230) and this Court's prior affirmation of same and dismiss the judicially disgraceful Pozner v. Fetzer case with prejudice as the lawsuit was an abuse of process initiated upon Fundamental and Substantial error as Fetzer's alleged tort was never connected to the object of the tort.

February 10, 2023

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