

FILED
11-04-2019
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,
Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER;
MIKE PALECEK;
Defendants.

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

Plaintiff Leonard Pozner, by and through his attorneys, hereby requests that this Court order Defendant Fetzer pay his reasonable attorney fees as a consequence for Defendant's conduct throughout this litigation and at trial. Since this case was filed, Defendant made repeated false statements to this Court, used the rules of civil procedure to gather further grist for his conspiracy mill, used this process to raise money for himself, and, after all that, had the gall to challenge Mr. Pozner's motives. Defendant litigated in bad faith and only an equitable award of attorney fees can hold him accountable for his actions.

While the equitable award of attorney fees is an extraordinary step, here this Court can simply review the egregious facts of Defendant's conduct and apply the clear law on point. Below, Mr. Pozner will focus on four major concerns regarding Defendant's conduct. First, Defendant repeatedly made untrue statements, to the Court, throughout this case. Second, Defendant used his conspiracy theories to ignore the rules. Third, Defendant is seeking to raise money off the jury's verdict and has promised to prevent any such funds from being used to

satisfy the judgment. Fourth, Defendant attempted to blame Mr. Pozner for Defendant's actions. Taken separately and together, this conduct warrants the award of attorney fees.

FACTS

1. Dr. Fetzer Ignored the Facts and His Own Statements Throughout This Case.

Dr. Fetzer has repeatedly taken positions in this case that were unsupported by facts or by law. In his very first filing, he introduced himself to the Court by suggesting that Mr. Pozner was not a real person. (Doc. 5, Fetzer Answer, ¶¶ 1, 28; *see also* Doc. 27, Fetzer Response to Motion to Strike Answer at 4). Dr. Fetzer insisted, “Leonard Pozner’ is a fake name to conceal [Plaintiff’s] true identity.” (Doc. 27 at 4). He insisted that Noah Pozner, “appears to be a fiction.” (*Id.* ¶ 28).

Dr. Fetzer also repeatedly stated that the death certificate at issue was, “inauthentic and fake” because, among other things, “it includes text which was plainly enough photoshopped. (Doc. 5, at ¶ 8) Dr. Fetzer specifically identified the various ways the text was “photoshopped,” taking issue with type size and even certain letters typed on the certificate. (*Id.*, at ¶¶ 9-14). Fetzer had no evidentiary support for his statements and, on summary judgment, admitted they were incorrect. (Doc. 231, Transcript of Summary Judgment Hearing at 38:23-39:18). Dr. Fetzer told this Court, “I don’t believe—I mean, that was one of the reasons I had at the time, Your Honor, but I no longer believe—my conclusion was correct but many of my premises were wrong.” (*Id.*)

Indeed, Dr. Fetzer could not even keep the tall tales he was telling this Court straight. At times he was confident that, “Plaintiff was involved in fabricating the death certificate for ‘Noah Samuel Pozner.’” (Doc. 27 at 4). On other times, Dr. Fetzer took offense at the suggestion that he believed that Mr. Pozner was involved in fabricating the death certificate. (Stedman Affidavit (“Stedman Aff.”), Ex. A, Trial Transcript Excerpt from Day One at 78:2-6 (“My concern, Your

Honor, is that the diagnosis is based on hearsay, false statements, such as that I claimed that Mr. Pozner had faked the death certificate, which I have never done.”)).

2. Dr. Fetzer Used His Conspiracy Theories to Ignore the Rules.

Because Dr. Fetzer insisted that Noah Pozner was not a real person and neither was his father, Dr. Fetzer ignored laws protecting their confidentiality. For example, on more than one occasion, he filed a document containing an image of Noah Pozner’s passport without redacting the passport number. (*See* Doc. 92, Plaintiff’s Motion to Enforce Wis. Stat. § 801.19 at 1).

Moreover, Dr. Fetzer repeatedly used this case to gather information to further promote his conspiracy theories about Mr. Pozner and his family. He asked this Court to order DNA tests of Mr. Pozner’s ex-wife’s prior husband, and Mr. Pozner’s step-son. (Doc. 88, Fetzer Motion for Expansion of DNA Testing). Dr. Fetzer argued that Mr. Pozner’s step-son looked too much like Noah Pozner. (*Id.* at 4). In addition, Dr. Fetzer insisted up on taking the video deposition of Mr. Pozner, even though there was no legitimate need for a video deposition in this case. Then, upon obtaining a copy of the video deposition, which was marked confidential under the stipulated Protective Order in this case, Dr. Fetzer sent the video deposition to a former lawyer he knew was not allowed to represent him, and authorized it to be sent to at least two other individuals, at least one of whom shared excerpts from it with multiple other people. (Doc. 267, email of Wolfgang Halbig to multiple recipients).

3. Dr. Fetzer Used This Lawsuit to Sell His Book And Make Money.

Indeed, Dr. Fetzer used the trial to try and promote his book. In opening statements, his attorney told the jury, “the book, for instance, *Nobody Died at Sandy Hook*, while it may be provocative in many respects, I think you’ll find that it is, in fact, a serious book of academic research.” (Stedman Aff., Ex. A at 48:3-8.)

Later, when he testified, Dr. Fetzer repeatedly made statements to promote his book. When asked whether he stopped trying to promote his book when Amazon decided not to sell it, Dr. Fetzer evaded the question answering instead that in publishing the book he, “brought together 13 experts on various aspects of the case.” (Stedman Aff., Ex. B, Trial Transcript Excerpt from Day Two at 68:1-7). Later, Dr. Fetzer testified that three of the statements the Court ruled were defamatory were only “allegedly defamatory statements.” (*Id.* at 69:19-25). Dr. Fetzer later told the jury, “indeed the statements were non-defamatory because they are true.” (*Id.* at 74:3-8).

Moreover, throughout the course of this lawsuit, Dr. Fetzer used his unsupported allegations on the internet to raise money for himself. (*See, e.g.*, Stedman Aff., Ex. C, <http://www.jamesfetzer.org/2019/01/the-sandy-hook-pozner-v-fetzer-lawsuit-for-dummies/>, entry dated Jan. 2019, last visited 11/4/19 (quoting Defendant Fetzer’s Answer in full and seeking donations)). Since the jury awarded Mr. Pozner \$450,000 in actual damages, Dr. Fetzer has established a “Legal Defense Fund.” (*See, e.g.*, Stedman Aff., Ex. D, <https://jamesfetzer.org/2019/10/stephen-lendman-us-show-trial-punishes-truth-telling/>, last visited 11/4/19; *see also*, Stedman Aff., Ex. E, James Fetzer, Ph.D. Legal Defense Fund, <http://www.jamesfetzer.com>, last visited 11/4/19). In doing so, Dr. Fetzer assures his readers:

None of the money raised will be used to offset the absurd \$450,000 verdict but only to support the appeal that will set that award and the trial that I have been denied to correct the record, expose Sandy Hook and, to the extent possible under these circumstances, restore respect for the 1st Amendment, freedom of speech and freedom of the press.

(Stedman Aff., Ex E). Dr. Fetzer also assures his reader that “100% of the funds raised go to Dr. Fetzer’s attorney and legal defense,” and invites them to call him at his home phone number, “to verify that this is his official donation site.” (*Id.*)

4. Dr. Fetzer Repeatedly Told the Jury that Mr. Pozner Was Widely Censoring Him and Others.

At trial, Dr. Fetzer and his attorney, over and over again, accused Mr. Pozner of censoring Dr. Fetzer and others. Dr. Fetzer's attorney began by emphasizing that Mr. Pozner tried, "to get content removed from the internet." (Stedman Aff., Ex. B at 59:18-21). "I think you indicated that you had had over 1,500 items of content removed from, I believe—I believe it was YouTube; is that correct?" (*Id.* at 60:1-4). Even after objections to this line of questioning were sustained, Dr. Fetzer's attorney continued, "have you ever filed a lawsuit in order to show hoaxers that they will be taken to court and it will drag on for a long time." (*Id.* at 61:18-20).

Dr. Fetzer continued to push this theory with his own testimony. When asked whether the public could buy the Second Edition of the book, Dr. Fetzer answered, "The public could buy it until this lawsuit led to the book being no longer available." (*Id.* at 73:10-19.)

ANALYSIS

From the very beginning of this lawsuit, Dr. Fetzer made it clear that he intended to use this lawsuit to promote his conspiracy "research." While this Court repeatedly warned Dr. Fetzer that his conduct was inappropriate, Dr. Fetzer never let up. Even after he retained counsel, Dr. Fetzer continued to promote his debunked theories, including to the jury. Perhaps individually, Dr. Fetzer's actions did not require sanctions—except his flaunting of the protective order—but taken together, Dr. Fetzer's actions require a meaningful consequence.

Wisconsin Courts have the power to award attorney fees as an equitable remedy when they, "are necessary to effect an adequate remedy." *Nationstar Mortgage, LLC v. Stafsholt*, 2018 WI 21, ¶ 28, 380 Wis. 2d 284, 908 N.W.2d 784 (citing 3 Robert J. Kasieta et al., *Law of Damages in Wisconsin*, § 37.17 (7th ed. 2017)). Traditionally, courts used this equitable remedy, "to prevent the use of the courts as a machinery for extortion or chicanery." *Id.*, ¶ 32 (citation omitted). In

order to award attorney fees as an equitable remedy, this Court must look to see if the Defendant acted in bad faith.

In *Nationstar*, the circuit court reviewed the cumulative conduct of the at-fault party, both before and during litigation, and awarded attorney fees against it, and awarded attorney fees based on equitable principles. *Nationstar Mortgage, LLC*, 2018 WI 21, ¶¶1, 3. At issue was not just the fact that the at-fault party's conduct necessitated the litigation, but also that party's conduct during the litigation. *Id.* at ¶ 35. For example, the at-fault party caused the dispute and then doubled-down on its bad faith by continuing to maintain its position during litigation. *Id.*

Here, Dr. Fetzer made it clear from the beginning that he would seek to use the litigation process to promote his research. He repeatedly sought this Court's assistance to prove things he had already claimed as facts in his writings. Most obvious, Dr. Fetzer asked this Court to require Reuben and Michael Vabner to undergo DNA testing to try to prove a theory he had already repeatedly told his readers was fact—that Noah Pozner never existed and was instead his older step-brother, Michael. Just as egregious, Dr. Fetzer insisted on Mr. Pozner providing a video deposition, at significant additional expense, but no additional value as Mr. Pozner, as the Plaintiff, surely had to appear at trial. Even after being warned about the fact that the deposition was confidential under the Protective Order, Dr. Fetzer ignored the order and shared the video deposition with other hoaxers.

Addressing these problems individually, the Court repeatedly warned Dr. Fetzer. Over the course of this litigation, however these individual problems began to add up. Despite careful warnings from the Court, Dr. Fetzer charged ahead. At trial, both he and his attorney attempted to convince the jury that the book containing three of the statements that the Court had already found to be false and defamatory—statements that alleged that the death certificate of the youngest child

slaughtered at Sandy Hook Elementary School—was a “serious book of academic research.” While this Court was careful to address these issues individually, often with warnings to Dr. Fetzer, this Court must take into account the cumulative effect of Dr. Fetzer’s conduct.

As if these actions were not enough, Dr. Fetzer is now using the jury’s verdict to raise money and promising potential donors that money given to him will not be used to satisfy the verdict. Before this Court has entered the judgment in this case, Dr. Fetzer has already promised that he will take steps not to pay it.

CONCLUSION

Taking into account the cumulative effect of Dr. Fetzer’s conduct, this Court should order that Dr. Fetzer be required to pay Mr. Pozner’s reasonable attorney fees.

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