

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs.

Case No. 18CV3122

JAMES FETZER,

Defendant.

PLAINTIFF'S REPLY BRIEF FOLLOWING HEARING ON PLAINTIFF'S
MOTION FOR ORDER TO SHOW CAUSE

Without denying his dishonesty and repeated use of this case to harass and publicly vilify Mr. Pozner, Defendant Fetzer asks the Court to not issue a remedial sanction ordering him to pay Plaintiff Leonard Pozner's attorney's fees for the entire underlying case. Plaintiff, relying on Wis. Stat. § 785.04(1)(e), asserts that this Court may enter such a remedial sanction and that such a sanction is appropriate here given the close connection between the underlying substantive issues in the case and Defendant Fetzer's stated rationale for once again violating a court order.

I. Defendant Fetzer's contempt is connected to the underlying case.

For a second time, Defendant Fetzer intentionally violated this Court's Confidentiality Order (Dkt. No. 408). Defendant Fetzer admitted to sharing Plaintiff's confidential deposition transcript in violation of the Confidentiality Order and for the purpose of furthering his "research." (Dkt. No. 380, ¶ 14). Therefore, the Court once again held Defendant Fetzer in contempt. Dkt. No. 410 at 14:11-15:13. At the

contempt hearing, the Court asked the parties to brief a narrow issue: “the nexus between the fees incurred in the underlying case” and Defendant Fetzter’s “actual contemptuous behavior.” Dkt. No. 410 at 43:21-23. The Court did not ask the parties to address its previous findings and determinations.

Plaintiff’s brief addressed that narrow issue. The gist of the underlying case is that Defendant Fetzter and his hoaxer followers have been attacking Leonard Pozner for years—accusing him of being a conspirator in the Sandy Hook coverup, defrauding the public, and even faking his own existence and that of his murdered son. Defendant Fetzter did not contest that fact. Nor did Defendant Fetzter contest the fact that he sent Mr. Pozner’s confidential deposition transcript to a hoaxer who transmitted it to other hoaxers, and collectively they intended to use that confidential transcript to continue to publicly denigrate Mr. Pozner.

It is clear that a remedial sanction is necessary to secure Defendant Fetzter’s compliance. Despite the word “confidential” appearing on every page of the transcript, and having previously been warned that he could not send confidential information to his hoaxer colleagues, Defendant Fetzter sent it to Alison Maynard. Defendant Fetzter blamed Mr. Pozner’s lawyer, stating that he was “coaxed” into the “confidentiality business” “without [his] informed consent.” Dkt. No. 410 at 35:12-18. This is false. Defendant Fetzter previously told the Court that he understood the Confidentiality Order and any consequences he would face for violating it. (Dkt. No. 123 at 44:20-47:15). And, at the September 5, 2019 hearing, the Court read back to Defendant Fetzter his acknowledgment of the potential consequences of violating the

Confidentiality Order. Dkt. No. 284 at 86:7-87:20. The sharing of the confidential deposition transcript, for the purpose of continuing his “research,” and the blatantly false statements about his understanding of the Court’s Confidentiality Order, demonstrate that Defendant Fetzer does not take these proceedings, the Court’s Confidentiality Order, or the Court’s contempt findings seriously. Defendant Fetzer has previously taken the position that there is nothing the Court can do to him—he already has a judgment against him for \$450,000. A meaningfully substantial sanction, likely not dischargeable in bankruptcy, is reasonably likely to secure Defendant Fetzer’s compliance.

II. The court’s imposition of a sanction under Wis. Stat. § 785.04(1)(e) is an alternative purge condition.

Defendant Fetzer is wrong to claim that the Court erred by failing to offer a purge condition. The potential remedial sanction requiring Defendant Fetzer to pay Plaintiff’s attorney’s fees *is* the purge condition.

A purge condition is required only when a contemnor is incarcerated. *Frisch v. Henrichs*, 2007 WI 102, ¶ 61, 304 Wis. 2d 1, 31, 736 N.W.2d 85, 100. Courts are “not otherwise required to grant purge conditions.” *In re Marriage of Larsen*, 165 Wis. 2d 679, 685, 478 N.W.2d 18, 20 (1992). Where contempt is ongoing, a court may issue a purge condition that can be satisfied as an alternative to compliance with the court order. *Id.* In that situation, the remedial sanction is the same as the purge condition. *Id.*

Where a court issues a purge condition, it should serve remedial aims, the contemnor should be capable of fulfilling it, and it should be “reasonably related to the cause or nature of the contempt.” *Larsen*, 165 Wis. 2d at 685.

The remedial sanction proposed by the court meets the requirements of Wisconsin law. It is clearly intended to coerce Defendant Fetzer to comply with the Court’s confidentiality order. Although Defendant Fetzer claims he cannot pay the amount, that is not at all clear. Plaintiff is engaged in an ongoing process of discovering Defendant Fetzer’s assets. Although he probably does not have cash in the bank, Defendant Fetzer owns assets, including intangible assets such as intellectual property, that may be used to help satisfy the remedial sanction/purge condition. Finally, as stated in Plaintiff’s opening brief, the proposed nature of the sanction is reasonably related to the cause or nature of the contempt.

I. CONCLUSION

Defendant Fetzer, for a second time, disclosed Plaintiff’s confidential information to his hoaxer colleagues, allowing them to continue to attack Mr. Pozner. Defendant Fetzer did this in order to spread his version of “truth” to a wider audience. His defamatory statements served that goal. His first contempt served that goal. His second contempt served that goal. His statements on March 17, 2020 display his continued pursuit of that goal. These actions create the nexus between the underlying case and Defendant’s ongoing contempt and allows the Court to order Defendant Fetzer to pay Plaintiff’s attorney’s fees and costs for the entire litigation.

Dated: April 21, 2020.

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