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P R O C E E D I N G S

THE COURT: This is 18 CV 3122, Leonard Pozner versus James Fetzner. I see Mr. and Mrs. Fetzner here both appearing by Zoom. May I have the appearance for the remaining people on this call?

MR. PFLUM: Good morning, your Honor. Attorney Randy Pflum of Quarles & Brady appears on behalf of plaintiff Leonard Pozner.

MS. DAVENPORT: Good morning, your Honor. Andrea Davenport appears on behalf of State Bank of Cross Plains.

MS. FEINSTEIN: Good morning, your Honor. Attorney Emily Feinstein, and I'll also -- from Quarles & Brady also on behalf of the plaintiff, and I'll also make an appearance for Attorney Jacob Zimmerman, who's also here on behalf of plaintiff.

THE COURT: Welcome, everyone. Thank you, Ms. Davenport, for logging in. I don't think -- let's see. Mr. Pflum, are you going to do most of the talking?

MR. PFLUM: Yes, your Honor.

THE COURT: I don't think that the State Bank of Cross Plains is really an issue in this because the amount of money is below \$5,000. The focus of today's hearing and the objection of the creditor to the

1 debtor's answer was on the UW Credit Union where
2 apparently the retirement funds and Social Security
3 funds are deposited. Is that right, Mr. Pflum?

4 MR. PFLUM: Yes, your Honor.

5 THE COURT: Do we need Ms. Davenport? I'm sure
6 she's got a million things to do on St. Patrick's Day.

7 MS. DAVENPORT: Yes, your Honor. I don't need
8 to stay on. I was joining out of an abundance of
9 caution. But my understanding was the same. So I
10 certainly don't need to delay the proceedings or
11 distract anybody if my client is not gonna come up at
12 all today.

13 THE COURT: You are welcome to stay on. It's an
14 open and public proceeding. But you're certainly
15 welcome to take your leave. Nobody, I think -- my
16 understanding is that neither party -- well,
17 Mr. Fetzer, do you want the State Bank of Cross Plains
18 to remain in this hearing?

19 MR. FETZER: No. That's fine, your Honor. Not
20 involved.

21 THE COURT: Do you agree, Mr. Pflum?

22 MR. PFLUM: Yes, your Honor. I agree.

23 THE COURT: Thanks, Ms. Davenport. You can stay
24 or go, whatever you choose.

25 MS. DAVENPORT: Thanks, everyone. Have a great

1 day. I'll log off.

2 THE COURT: All right. So let me just recap
3 where we are here this morning on this matter.

4 The plaintiff, we'll call the creditor, is
5 seeking funds from the defendant, the debtor, and it
6 is seeking funds through the garnishment proceedings
7 set forth in Wisconsin Statutes as to three accounts.
8 Two of those accounts are not germane to the hearing
9 this morning, the creditor not objecting to the
10 debtor's answer.

11 The question for the Court this morning is what
12 to do, if anything, with the debtor's answer with
13 regard to the funds in the UW Credit Union. I
14 understand the issue is actually fairly clear and I
15 believe undisputed.

16 Mr. Pflum, I did research. This is not an area
17 in which I'm intimately familiar, but I have concluded
18 the following legal principles. And you can correct
19 me if I'm wrong.

20 It is, I believe, generally accepted, if not
21 undisputed, that Social Security money to an
22 individual is not subject to garnishment. Do you
23 agree?

24 MR. PFLUM: Yes, your Honor. We would agree on
25 that point.

1 THE COURT: Second, that other retirement funds,
2 401k or pensions, may be subject to garnishment. Mr.
3 Pflum, that's your position?

4 MR. PFLUM: Yes, your Honor. But if I may --

5 THE COURT: Please.

6 MR. PFLUM: It's -- we certainly recognize that
7 Dr. Fetzer has asserted certain exemptions that may
8 apply, and we acknowledge and agree that Social
9 Security income is -- under 407a of the United States
10 Code is not subject to garnishment.

11 However, the way his answer -- we just simply
12 could not tell from what was filed whether or not the
13 other retirement -- other retirement funds are
14 commingled with those Social Security benefits where
15 we can't tell exactly what Social Security benefits
16 which are subject to the exemption and what other
17 retirement benefits that he receives, which certainly
18 may not be subject to the exemption.

19 And I will note that similar to tax exemptions,
20 the burden of proof is on the party seeking the
21 exemption. And I will also note that since opening
22 his GiveSendGo account, which I believe is
23 Dr. Fetzer's legal defense donation account, it
24 appears that he's received approximately \$17,865.

25 THE COURT: How about we make -- Mr. Pflum, I

1 understand the burden is on the debtor, but in the
2 interest of real expediency, rather than -- hear from
3 Ms. Fetzer, who Mr. -- Dr. Fetzer says is most
4 knowledgeable about the monies. I think a succinct
5 set of questions will get right to the heart of the
6 matter, if you're willing.

7 Ms. Fetzer, would you please raise your right
8 hand.

9 Do you solemnly swear the testimony you're about
10 to give will be the truth, the whole truth and nothing
11 but the truth, so help you God?

12 MS. FETZER: I do.

13 THE COURT: Ms. Fetzer, I'm gonna allow Mr.
14 Pflum to ask you a set of questions. And I just want
15 to give you background.

16 I think everyone is in agreement Social Security
17 funds are not subject to garnishment. It appears that
18 the UW Credit Union is a depository for more than
19 Social Security funds. It appears. We don't know for
20 sure. That's the purpose of today's hearing. Or any
21 other source of funds. Mr. Pflum is gonna ask you
22 some questions that will allow him and the Court to
23 more accurately define the exemptions available under
24 the law for you and your husband in the UW Credit
25 Union account. I'll let him ask you some questions.

1 You can answer them to the best of your ability, fine.
2 And then I'll let you tell me what additional
3 information you would like me to consider on the
4 question.

5 The ultimate question on this hearing is whether
6 I should allow or overrule the objection and allow
7 this creditor to take monies out of the UW Credit
8 Union account.

9 Go ahead, Mr. Pflum, with your
10 direct-examination to Ms. Fetzer.

11 Ms. Fetzer, could you state your full name,
12 please.

13 MS. FETZER: Janice Elaine Fetzer.

14 THE COURT: All right. Mr. Pflum.

15 MR. PFLUM: Good morning. Thank you, your
16 Honor.

17 JANICE ELAINE FETZER,

18 called as a witness, having been first duly
19 sworn, was examined and testified as follows:

20 DIRECT-EXAMINATION BY MR. PFLUM:

21 Q Good morning, Mrs. Fetzer. Thank you for appearing
22 today in today's -- thank you for appearing this
23 morning in today's hearing.

24 Do you remember back, you and I, we had -- I took
25 your supplemental exam with Dr. Fetzer I believe in

1 March of 2020, which seems to be a long time ago now.

2 Are you -- are you aware of your husband's legal

3 defense fund with GiveSendGo?

4 A I know he has one.

5 Q And how are those monies paid to Dr. Fetzer?

6 A He receives through the mail. People send him a

7 check.

8 MR. FETZER: If I might interject, State Bank of

9 Cross Plains is the recipient, your Honor.

10 THE COURT: Dr. Fetzer, this is your wife's turn

11 here this morning, and she's the one that's going to

12 talk. And if you want to testify later, you'll have

13 that opportunity. But let her speak.

14 MS. FETZER: I know he has an account. People

15 send him a check, and he will deposit it in that

16 account. But I have -- he takes care of that

17 completely by himself. I don't do anything with that

18 account.

19 THE COURT: Okay. Dr. Fetzer -- Dr. Fetzer, no

20 whispering to your wife in her ear. She's doing the

21 best she can to answer the questions.

22 Go ahead, Mr. Pflum.

23 MR. PFLUM: Thank you, your Honor.

24 Q Have you -- do you know where the funds for that legal

25 defense fund were made? Do you know where he --

1 A The State Bank of Cross Plains, I believe.

2 Q Do you know when he receives those monies?

3 A When?

4 Q When. Yes.

5 A Whenever anyone sends him a check.

6 Q Have you ever performed accounting of the funds
7 deposited in the State Bank of Cross Plains?

8 A I keep a record of the people who send him money.

9 Q And do you know how those funds were spent?

10 A He uses them for his legal defense. He pays the
11 lawyer and he pays to do his filings.

12 Q But he's -- he currently doesn't have an attorney
13 right now; correct?

14 A He has -- he has an attorney, but we've not been going
15 to him, his past attorney.

16 Q Has Dr. Fetzner -- since Dr. Fetzner is primarily
17 involved with handling the GiveSendGo, we'll just call
18 it the legal defense fund, are you aware of any
19 deposit of those funds in the UW Credit Union
20 accounts, account or accounts?

21 A The only time anything from that account has gone into
22 the UW account is he has a lot of expenses for the
23 lawsuit. And he -- the legal defense fund has no
24 credit card or debit card. It only has a checking
25 account. So when he's done xeroxing to send filings

1 or he's paid, you know, all this kind of stuff, he
2 puts it on our credit card. And then some of the time
3 he has paid me back out of the defense fund to pay for
4 the stuff for the case. Only for the case.

5 Q How much?

6 A I can give you different times that he's given me
7 money.

8 Q Yes. Please do.

9 A Okay. I've just done the taxes. And all the expenses
10 that he has done for the year come out to \$3,239.25.

11 Now, he has given me -- he gave me -- one time he
12 gave me \$391.05.

13 Q Do you know when that was?

14 A Um, May 6th.

15 Q Of 2022?

16 A Yes.

17 Q And then so do you deposit -- so when Dr. Fetzer gives
18 you -- gave you the \$391.50, what did you do with that
19 money? Did you deposit it?

20 A I put it in -- I put it in the retirement account
21 because that's the account that I pay my UW credit
22 card bill out of.

23 Q So is it -- am I understanding -- so is it fair to say
24 that, yes, certain funds of the legal defense fund has
25 trickled into the UW Credit account?

1 A Money he has owed me to pay for the our UW credit card
2 he has given me back, and I have paid that money to
3 the credit union account.

4 Q Do you deposit any other funds into the UW Credit
5 Union account?

6 A Well, any funds I have for -- all I -- okay. The only
7 money we get to live on is some retirement money of
8 \$1,700 a month and our Social Security. Now, I put
9 other money -- I put a federal tax return I put in the
10 account. My daughter and I go to Costco, and I have a
11 card; she doesn't. When I -- when she puts it on my
12 card, she writes me a check. I deposit that. I
13 deposit money from our retirement minimum distribution
14 account. And then my one daughter sent me birthday
15 money, and I put that in my account. Mainly tax
16 returns, that kind of stuff. No -- we -- no other
17 income to go into those two accounts. And Jim gives
18 me -- he pays me back what he has spent for the legal
19 defense that he has put on our credit card so that I
20 can use it to pay off the credit card. Otherwise, I
21 wouldn't be able to pay off the credit card very
22 easily.

23 Q Can you tell us exactly how much he has paid for the
24 legal defense?

25 A To me?

1 Q Overall, either to you or, if you know -- if you know,
2 overall, and then I'll ask a follow-up question to
3 you.

4 So do you know how much he has paid his attorneys
5 out of the legal defense?

6 A No, I don't. I don't do that account. I have nothing
7 to do with it. He takes care of it completely. I
8 have -- I have just the amounts he has given me to pay
9 me back for, like, FedEx. He spent -- several times
10 he xeroxed and sends through FedEx, and he puts it on
11 the credit card, and then he gives me the money so I
12 can pay the credit card bill.

13 I gave you the \$391.

14 Q And that's -- that's --

15 A That's not the only one.

16 Q Can you please -- yes. Can you tell us exactly how
17 much Dr. Fetzer has paid you --

18 A Okay.

19 Q -- for the legal defense, not this year, I mean over
20 the course of the -- since he has opened it?

21 A Oh, okay. I have another one for September 2nd of
22 2022 was \$94.96. And then 12-1 of 2022 he gave me
23 \$1,000. That was -- I have all the FedEx bills that
24 he gave me to pay for.

25 Let's see. I'm trying to find -- okay. He did

1 give me from another account that he -- I deposited in
2 3 -- March 3rd of 2022, he gave me \$180, which was
3 also FedEx. I believe those are the only ones he gave
4 me out of the three -- I guess there were three of
5 them or four of 'em that he gave me to pay for the --
6 for his legal stuff.

7 Q Thank you. Circling back, you said tax returns get
8 deposited into that account as well. How much was
9 your tax return?

10 A My tax return? Ah, let's see. Wisconsin, \$1,486.
11 And federal I think we had to pay \$521. We didn't get
12 any money back on that one, on the federal.

13 Q And sorry. I know I'm jumping around, Ms. Fetzner, and
14 I apologize. Has Dr. Fetzner paid you back for any
15 other expenses that you have deposited in the UW
16 Credit Union account?

17 A Yes. He did pay me back for a computer that he
18 bought, a laptop computer. It was \$1,400.

19 Q Okay.

20 A And I think -- I think that's -- that's all.

21 Q Okay.

22 A I wrote down everything that -- all the deposits I
23 have made that was not retirement money or Social
24 Security money, and those are the ones that Jim paid
25 me for. Nothing else.

1 Q And what's -- what's the total? I mean, what's the
2 grand, I guess the end, you know, end total of the
3 monies that Dr. Fetzner has paid you that are -- that
4 you've deposited into the UW Credit Union account that
5 is not -- that is not Social Security money-related?

6 A I'm sorry. I don't understand. You mean of the total
7 I gave you just now?

8 Q Yes. Did you --

9 A I haven't totaled it. I just wrote it out on my
10 paper.

11 Q Okay.

12 A So it was \$391.94, \$1,400 for the computer, and \$180
13 for xeroxing also. So I have, you know, the
14 retirement account and then the Social Security
15 account, the two accounts, and we have no other
16 accounts.

17 Q So you said that you get approximately \$1,700 from
18 retirement?

19 A Yes.

20 Q Is that from -- is that money from a 401k that then
21 gets deposited into your -- into this account, into
22 the UW account?

23 A It's an IRA, I believe.

24 Q Okay. But the UW Credit -- the UW Credit Union
25 account that you deposit the \$1,700 into, that is not

1 an IRA?

2 A I believe it was. He had a retirement -- well, I'm
3 not sure. We had a retirement account through
4 TIAA-CREF, and we transferred some of it, most of it,
5 into Schwab, and it was -- I think it was an IRA,
6 before tax, money that was in his account before he
7 paid federal and paid any taxes on it. So anything
8 taken out we pay taxes on.

9 Q So you have an IRA -- to your knowledge, you have an
10 IRA account at Schwab?

11 A Yes. I think it's an IRA.

12 Q And that's separate -- that is entirely from the --
13 from your UW Credit Union account?

14 A Yes. Schwab -- Schwab sends us a check the first of
15 every month for \$1,700. We live on that with Social
16 Security.

17 Q And then looking solely at the UW Credit Union
18 account, I believe there's 11,700-some-odd dollars in
19 there?

20 A No. I can give you the exact amount.

21 Q We're -- particularly for this hearing, we are
22 concerned with once a garnishment is filed, it's like
23 a snapshot of your account, and this garnishment would
24 be subject to that \$11,700 that UW Credit Union filed
25 an answer on.

1 A Okay. Well, we don't have that -- we don't have that
2 amount in now.

3 Q Okay.

4 A I think we have about \$8,000, maybe, a little over
5 \$8,000. Our garage door went out, had to get a new
6 garage door opener for \$500. My dishwasher went out
7 the same day. I had a \$600 dishwasher.

8 THE COURT: Welcome to the joys of home
9 ownership, Ms. Fetzer. We're less concerned with your
10 bills like the rest of us.

11 Any other questions, Mr. Pflum?

12 MR. PFLUM: No, your Honor. No, your Honor.
13 Not at this time.

14 THE COURT: Seems to me that the whole purpose
15 of this inquiry, Mr. Pflum, is to determine whether
16 the nonexempt funds are fairly traceable in the UW
17 Credit Union. I'm not sure they are. What is your
18 position, now having heard from Ms. Fetzer as to
19 monies? I do know -- I think I was unaware that
20 there's now an additional account from Schwab that's
21 not the subject of this garnishment proceeding. What
22 are you asking me to do, if anything, this morning?

23 MR. PFLUM: Your Honor, what we would like is
24 the account history for the UW Credit Union account
25 that we can review it -- so that we can review it to

1 determine, yes, this is all Social Security subject to
2 the exemption whereby we would remove, we would lift
3 our objection.

4 But according to Dr. -- according to Ms.
5 Fetzer's testimony today, it appears that these --
6 that these funds are pretty -- are regularly
7 commingled with other payments that she receives from
8 Dr. Fetzer, payments that she receives as a
9 reimbursement from her daughter, tax returns that get
10 deposited into the UW Credit --

11 THE COURT: Okay. So you want her bank records
12 from UW Credit Union.

13 MR. PFLUM: Yes, your Honor.

14 THE COURT: For what period of time?

15 MR. PFLUM: We would ask 30 days. For what
16 period of time as a look-back?

17 THE COURT: Right.

18 MR. PFLUM: Six months from -- six months of
19 bank records.

20 THE COURT: Ms. Fetzer, so the purpose of
21 today's hearing is to determine, they were asking me
22 to basically take part of your UW Credit Union
23 account.

24 Here's what I know so far. In the UW Credit
25 Union account, you have Social Security monies going

1 in. You have monies that transferred over from State
2 Bank of Cross Plains. And then you have this monthly
3 distribution of the Schwab account.

4 Ultimately, the debtor has the obligation of --
5 well, I think you've established, it's undisputed,
6 these funds are all commingled. Whether they're
7 fairly traceable, the term "fairly traceable" means,
8 like, we want to protect the integrity and sanctity of
9 your Social Security funds because the creditors can't
10 take those. The question is is whether in almost a
11 forensic look-back, the Court or the creditor would be
12 able to determine, or how would it determine that what
13 money is going into your account are fairly traceable.
14 The burden would rest on you.

15 The creditor says for purposes of today's
16 hearing, all they want now is 30 days back on your UW
17 -- what did you say?

18 MR. PFLUM: So sorry, your Honor. If I --
19 sorry, your Honor. If we could have all of 2022
20 payment -- deposit history for the UW Credit Union
21 account, and we would have -- we would get 30 days to
22 review all those deposits -- deposit history, and then
23 perhaps we could set this hearing -- if I may, perhaps
24 we could set this hearing over, and we would -- by
25 that set-over date we would either withdraw our

1 objection or say, your Honor, here are the -- here are
2 the funds we believe are subject to our garnishment.

3 THE COURT: Did you ask the Fetzers for these
4 documents in connection with a supplemental
5 examination?

6 MR. PFLUM: We did, your Honor. But that was
7 thee years ago.

8 THE COURT: Well, I'm not sure under the
9 garnishment laws, we sort of, once we grab 'em by sort
10 of the pants leg we can hang on to 'em. I mean, I
11 think you have the right to ask for this information
12 in a supplemental examination and then with that
13 information commence another garnishment proceedings.

14 Ms. Fetzer, do you -- do you still -- because I
15 have money in the UW Credit Union. Most of it's
16 electronic. Do you get these records from UW Credit
17 Union on paper still?

18 MS. FETZER: Yes, I do. I do have two accounts.
19 The retirement money goes into a separate account from
20 the Social Security money. I do not have them
21 commingled, those two.

22 THE COURT: Okay. I did not know that. Did you
23 know that, Mr. Pflum?

24 MR. PFLUM: No, I did not know that, your Honor.

25 MS. FETZER: I have -- I have the \$1,700 goes

1 into one account and the Social Security money goes
2 into a different account. So I have two accounts. I
3 keep the retirement money separate from the Social
4 Security money. We were told to do that when we got
5 the lawsuit against Jim.

6 THE COURT: So in the retirement account, that's
7 the account that you deposit your Schwab monthly
8 payments?

9 MS. FETZER: Yes.

10 THE COURT: Is the only money going into that
11 account the monthly payment from Schwab?

12 MS. FETZER: As far as income, yes. I put in
13 money from my daughter. I mean, what am I gonna do
14 with it when she pays me a check? Do I need a third
15 account?

16 THE COURT: Well, again, the question in
17 garnishment, Ms. Fetzer, so you understand, is we're
18 trying to trace money to make sure nobody's taking
19 your Social Security funds. So far, I don't know what
20 the answer is, but -- and there's nothing wrong with
21 commingling. Everybody does that. The question is is
22 whether in a retrospective analysis we can figure out
23 how to -- what money is coming from where and into
24 what account.

25 Mr. Pflum, I think -- well, first of all, Ms.

1 Fetzner --

2 MS. FETZER: Yes.

3 THE COURT: -- well, actually, Mr. Pflum, I'm
4 not sure you really need the bank records for the,
5 well, I'll call it the commingled UW Credit Union
6 account. I think if in fact Ms. Fetzner deposits the
7 Schwab in a separate, distinct account, certainly then
8 we're not worried about commingling the Social
9 Security money. And I don't know that you have that
10 information from the UW Credit Union. Did they
11 disclose that they had two separate accounts?

12 MR. PFLUM: I don't believe -- let me just
13 quickly pull up their answer, your Honor.

14 They said that they have a savings and checking
15 too, and then they don't provide any other information
16 other than that they're holding gross assets, gross
17 value of assets of \$11,305.72. And then UW Credit
18 Union says that there is an exemption of \$11,798. But
19 once again, we -- our position is that those -- that
20 that exemption, while that may apply, we think that,
21 you know, as I argued before, as I argued earlier, we
22 believe those funds, that there's commingling with
23 those funds that may be --

24 THE COURT: Mr. Pflum -- I'm sorry to rush you;
25 I do have a 9:30 -- what are you asking me to do this

1 morning?

2 MR. PFLUM: Once again, your Honor, we would
3 like Dr. Fetzer -- we would like the bank records for
4 the UW Credit Union account so that we can review them
5 and either, again, withdraw -- either withdraw our
6 objection to the answer --

7 THE COURT: Fine. Ms. Fetzer, this is -- I'm
8 not gonna make any decision today. If you are
9 willing, Ms. Fetzer, would you please make a photocopy
10 of your UW Credit Union bank statements. Now, those
11 statements should have all your accounts, maybe two
12 accounts or three accounts.

13 MS. FETZER: It has two. It has both.

14 THE COURT: Could you then please make a copy of
15 the last, let's say, 12 months starting with the most
16 recent account, so not all of 2022, but just give me
17 -- if they come monthly, give me the last 12 that you
18 have, not give me, but send those to Mr. Pflum.

19 MS. FETZER: I will. But now, on my bank
20 statement, when the bank sends 'em, it just gives a
21 deposit of so much money. It doesn't say where it's
22 from.

23 THE COURT: Don't worry about it. That's
24 Mr. Pflum's problem to interpret that. Then Mr.
25 Pflum -- Ms. Fetzer, please provide those to Mr. Pflum

1 in the next two weeks. Today is the 17th. I'm gonna
2 ask that you send those to him no later than the end
3 of the month, March 31st.

4 MS. FETZER: Okay.

5 THE COURT: I'm gonna then continue this
6 hearing. Mr. Pflum, then after you receive these
7 statements, I'm gonna ask you within the next 30 days
8 thereafter to apprise the Court what, if anything, you
9 want me to do, either reconvene and then continue the
10 examination to determine whether the funds are fairly
11 traceable out of the specific account or not, or
12 whether the plaintiff wants to sort of start over,
13 regroup and come back with a new garnishment with a
14 little bit better information.

15 MR. PFLUM: Thank you, your Honor.

16 THE COURT: I won't schedule anything today.
17 We'll wait and see after Mr. and Mrs. Fetzner, after
18 the -- after Mr. Pflum gets these records what the
19 plaintiff wants to do next.

20 Thank you very much for coming this morning.

21 MR. PFLUM: Thank you, your Honor.

22 THE COURT: We're adjourned.

23

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25

