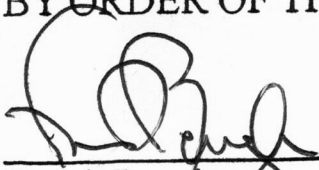


BY ORDER OF THE COURT



 Frank Remington Date 6/20/24
 Circuit Court Judge

FILED
JUN 20 2024
 DANE COUNTY CIRCUIT COURT

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

LEONARD POZNER,

Plaintiff,

v.

Case No. 2018-CV-3122

JAMES FETZER,

Defendant.

DECISION AND ORDER
DENYING JAMES FETZER'S MOTION FOR RELIEF FROM JUDGMENT

INTRODUCTION

James Fetzer published fake stories accusing Leonard Pozner of fabricating his child's death certificate. Pozner sued for defamation and, in 2019, a jury awarded him \$450,000. Now, five years later, Fetzer complains that the verdict was the product of a vast conspiracy to commit fraud. As a result of my participation in the supposed fraud, Fetzer asks me to sanction myself then order a new trial. I liberally construe Fetzer's rambling papers to seek relief from judgment under Wis. Stat. § 806.07, then deny Fetzer's motion because it does not establish any grounds for relief.

DECISION

I. Liberally construing his papers, Fetzer seeks relief from judgment.

Before turning to his argument, I recognize that Fetzer represents himself. Courts liberally construe pro se litigants' filings. *bin-Rilla v. Israel*, 113 Wis. 2d 514, 520-21 (1983). However, "we have long required pro se litigants, just like those with an attorney, to act reasonably in defense of their rights." *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶24, 389 Wis. 2d 516, 936 N.W.2d 587. This means that "while we construe pro se petitions, motions, and briefs to make the most intelligible argument we can discern, we do not impute to pro se litigants the best argument they could have, but did not, make." *Id.*, ¶25.

I next apply this standard to determine what sort of relief Fetzer seeks. On its face, Fetzer's motion seeks three principal remedies: he asks (1) that the 2019 judgment against him "must be vacated," (2) that both myself and two of Pozner's attorneys be "sanctioned and subject to suitable penalties," and (3) "the case remanded for trial on the merits." Fetzer Mot., dkt. 599:26. Fetzer cites no legal authority that might entitle him to any of these remedies. Liberally construing his papers, however, it is clear that Fetzer alleges a wide-ranging conspiracy to commit fraud upon the court. *Id.* at 1 ("The extrinsic fraud was by FEMA, the media, and the Obama administration ..."). As best I can tell, the purpose of Fetzer's new papers are to submit evidence on which I should find the existence of a fraud upon the court and then grant relief from the 2019 judgment against him. I therefore construe the papers as a motion for relief from judgment.

II. Legal standard for relief from judgment.

Wisconsin Stat. § 806.07(1) allows relief from judgment "upon such terms are just" To prevail, the moving party "bears the burden to prove that the requisite conditions existed." *Connor v. Connor*, 2001 WI 49, ¶28, 243 Wis. 2d 279, 627 N.W.2d 182. After proving a reason for relief,

the movant must also show the motion was made “within a reasonable time” Wis. Stat. § 806.07(2). “Any credible evaluation of a motion’s timeliness will necessarily consider the reasons for the moving party’s delay as well as the prejudice visited upon the non-moving party.” *State ex rel. Cynthia M.S. v. Michael F.C.*, 181 Wis. 2d 618, 627, 511 N.W.2d 868 (1994).

In addition to the enumerated reasons for relief in § 806.07(1), the plain statutory text of § 806.07(2) also authorizes “an independent action, based on fraud upon the court, to set aside a judgment.” *Dekker v. Wergin*, 214 Wis. 2d 17, 20, 570 N.W.2d 861 (Ct. App. 1997) (citing *Walker v. Tobin*, 209 Wis. 2d 72, 79, 568 N.W.2d 303 (Ct. App. 1997)). Although the statutory text authorizes an “independent action,” courts have treated fraud upon the court as grounds for a motion for relief from judgment. *See* 11 Wright & Miller, *Federal Practice & Procedure Civ.* § 2868 (3d ed. 2024) (“A party is not bound by the label used in the party's papers. A motion may be treated as an independent action or vice versa as is appropriate.”); *see Bankers Mortg. Co. v. United States*, 423 F.2d 73, 78 (5th Cir. 1970) (explaining the history of the “independent action”); *see also Nelson v. Taff*, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (Ct. App. 1993) (Wisconsin courts may rely on federal cases interpreting analogous rules).

A movant claiming fraud upon the court must prove five elements:

- (1) a judgment which ought not, in equity and good conscience, to be enforced;
- (2) a good defense to the alleged cause of action on which the judgment is founded;
- (3) fraud, accident, or mistake which prevented the appellant in the judgment from obtaining the benefit of his claim;
- (4) the absence of fault or negligence on the part of appellant; and
- (5) the absence of any remedy at law.

Dekker, 214 Wis. 2d at 21 (alterations omitted).

III. Fetzter's motion fails under either procedure.

Although it appears Fetzter actually seeks relief under the “independent action” procedure in § 806.07(2), I begin by examining Fetzter’s motion to see whether he can prove he is entitled to relief from judgment for any of the reasons set forth in § 806.07(1). Fetzter says a series of frauds occurred during this litigation in 2019, the proof of which was contained in a book he wrote in 2015. Fetzter Br., dkt. 599:19. For example, borrowing his words, Fetzter says the fraudulent complaint was “so manifestly defective that even a first-year law student would have rejected it” Fetzter Br., dkt. 599:17. But if these frauds occurred in 2019, and if Fetzter knew about them either because they were obvious to a first-year law student or because Fetzter had already written a book on the topic, then § 806.07(2) required Fetzter to explain some reason why his five-year delay in bringing a motion for relief from judgment was reasonable. He offers no such explanation, so I deny Fetzter any relief from judgment under § 806.07(1).

I turn, next, to the independent action procedure for relief from judgment in § 806.07(2). This inquiry goes nowhere because, beyond Fetzter’s repeated use of the phrase “fraud upon the court,” he addresses none of the elements of an independent action for relief from judgment. *See generally* Fetzter Br., dkt. 599. While I have liberally construed Fetzter’s motion to seek relief under this section, I cannot develop an argument for him. *Richardson*, 2019 WI 110, ¶25. In any event, an independent action based on fraud could never entitle Fetzter to relief unless he acted “seasonably” and “without inexcusable negligence in the action.” *Dekker*, 214 Wis. 2d at 22 (quoting *Laun v. Kipp*, 155 Wis. 347, 371 (1914)). Here, to repeat, Fetzter professes his belief in a massive conspiracy to commit fraud but, to the extent his new motion is not already precluded by previous litigation, Fetzter has sought no relief for five years. As a result, even if I believed that

“FEMA, the media, and the Obama administration” defrauded this court, I would still deny Fetzer’s motion because he inexplicably waited too long. *See, e.g., id.* at 19 (dismissing independent action under § 806.07(2) after plaintiff “failed to act in a timely or prudent fashion to protect his own interests”).

ORDER

For these reasons,

IT IS ORDERED that James Fetzer’s motions for relief from judgment are denied.

This is a final order for purpose of appeal.