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CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

BY THE COURT:

DATE SIGNED: June 14, 2024

Electronically signed by Frank D Remington
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

LEONARD POZNER,

Plaintiff,

v.

Case No. 2018-CV-3122

JAMES FETZER,

Defendant.

DECISION AND ORDER
GRANTING LEONARD POZNER'S MOTION FOR DISBURSEMENT OF FUNDS

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. Fetzer still has not paid. Last year, Pozner moved for an order garnishing Fetzer's bank accounts. Five days after the motion was filed, I granted Pozner's motion. However, Pozner waited a day to mail his motion to Fetzer, so my order came one day short of the statutory minimum under Wis. Stat. § 801.15(4). Because this left Fetzer with four, rather than five, days to respond to the motion, Fetzer told the court of appeals that I "depriv[ed] him of an opportunity to respond with more information to correct the garnishment." Fetzer Resp. Br., dkt. 590:7 (Fetzer's response brief in this matter is

an excerpt from his appellate brief, *see* dkt. 588-89). The court of appeals agreed with Fetzner. *Pozner v. Fetzner*, No. 2023AP1001, unpublished slip op., ¶20 (WI App Feb. 8, 2024) (per curiam) (*Pozner III*).

On remand, the court of appeals instructs me to give Fetzner a better opportunity to “demonstrate legitimate reasons to reduce the amount of garnishment” *Id.*, ¶27. I obey the mandate by giving Fetzner opportunities to oppose Pozner’s motion in written briefing and also in oral argument. But if Fetzner’s promise of additional information sowed this litigation, then he reaps nothing—he wasted his opportunity to submit written argument by filing no brief, choosing to rely instead on an old brief addressing inapposite points, then wasted his opportunity to submit oral argument by insulting Pozner’s motion (“ridiculous on its face”) and me (“this court will be found in contempt”). In all, Fetzner did not produce a single shred of new evidence to dispute Pozner’s motion. I conclude, again, that Pozner satisfies his burden to show he is entitled to an order for garnishment.

Accordingly, I grant Pozner’s motion.

I. BACKGROUND

In this defamation action, Fetzner falsely accused Pozner of fabricating a death certificate as part of a conspiracy related to the 2012 mass shooting at Sandy Hook Elementary School. *Pozner v. Fetzner*, No. 2020AP121, unpublished slip op., ¶1 (WI App Mar. 18, 2021) (*Pozner I*). Following a trial in 2019, a jury awarded Pozner \$450,000 in damages. *Id.* The court of appeals affirmed the verdict. *Id.*

By April 2022, Fetzner had not paid what he owed, so Pozner sought the turnover of books and internet websites as a judgment creditor under Wis. Stat. § 816.08. *Pozner v. Fetzner*, No. 2022AP1751, unpublished slip op., ¶5 (WI App Sep. 14, 2023) (per curiam) (*Pozner II*). Following

multiple rounds of briefing and a hearing, I generously valued the websites and books at \$100,000 and granted Pozner's motion. *Id.*, ¶¶22-23; *see* Decision and Order (Aug. 29, 2022), dkt. 528 (the written order). Fetzer appealed this order, too, and the court of appeals affirmed. *Id.*, ¶42.

In December 2022, after crediting Fetzer with the \$100,000 for the books and websites, Fetzer still owed Pozner almost the entirety of the underlying defamation judgment. In partial satisfaction of the remaining deficit, Pozner moved to garnish three financial institutions that held accounts for Fetzer. *Pozner III*, ¶1. On March 17, 2023, in an evidentiary hearing held on Pozner's motion, Fetzer's wife Janice Fetzer testified about deposits she had made into Fetzer's accounts at those institutions. *See* Tr. of Mar. 17, 2023 Hr'g, dkt. 562. About a month later, on April 25, 2023, Pozner relied on Janice Fetzer's statements and a review of Fetzer's bank accounts and asked for an order garnishing those accounts for \$2,004.46. *Pflum Aff.*, dkt. 558 (summarizing the amounts in each account). On May 1, 2023, I granted Pozner's motion; I found that (1) Fetzer owed Pozner \$357,395.13, (2) that the financial institutions held \$2,004 in non-exempt accounts belonging to Fetzer and, as a result, I entered a garnishment order for that amount. *Garnishment Order* (May 1, 2023), dkt. 561.

Pozner III is Fetzer's appeal of that garnishment order. The court of appeals' decision focused on the events of the March 17 hearing. Although no authority for how courts should determine a litigant's expectation for future hearings is cited, or how to gauge the reasonableness of such an expectation, the court of appeals held that Fetzer reasonably expected "that the court would give him an opportunity to make affirmative claims . . ." *Pozner III*, ¶22. Then, because no other hearing followed in-between the March 17 hearing and Pozner's April 25 motion, the court of appeals concluded that:

[T]he record does not reflect that Fetzer was sufficiently placed on notice that his affirmative claims of exemption in this action had to be stated once and for all before or during an inconclusive hearing, at which he was informed the hearing would be reconvened

Id. Emphasizing that it “express[ed] no conclusions regarding the merits of Fetzer’s arguments ...,” the court of appeals remanded the matter to “give Fetzer the chance to carry his burden of production.” *Id.*, ¶23.

Following remand, on April 25, 2024, I scheduled written briefing and oral arguments. Dkt. 586. On June 11, 2024, the parties again appeared for a hearing on Pozner’s motion. Later in the afternoon of the day of the hearing, Fetzer filed a document titled “response to query by the Court.” Dkt. 596. Therein, Fetzer provides an immaterial statement concerning names on credit cards. However, Fetzer’s uninvited, supplemental statement is inadmissible because it is neither sworn nor does it satisfy the requirements for an unsworn declaration. *See* 2023 Wisconsin Act 245 (amending Wis. Stat. § 887.015 to authorize the use of unsworn declarations in certain situations). To the extent Fetzer means to rely on this document as evidence to prove an unexplained category of exemption from garnishment, I disregard it.

II. LEGAL STANDARD

Pozner III summarized the law applicable to garnishment actions as follows:

In a garnishment action, the plaintiff, here Pozner, bears the burden to establish by a preponderance of the evidence the essential facts entitling the plaintiff to recovery. *See Maxcy v. Peavey Publ’g Co.*, 178 Wis. 401, 405, 190 N.W. 84 (1922). Once Pozner made a prima facie case that a disputed amount was non-exempt, the burden of production would shift to Fetzer, but the burden of proof always was Pozner’s. *See Reinke v. Personnel Bd.*, 53 Wis. 2d 123, 133, 191 N.W.2d 833 (1971).

Pozner III, ¶23.

III. DISCUSSION

Pozner asks the Court to garnish three banks in which Fetzer has accounts. I proceed by examining Pozner's submissions to determine whether he has made a prima facie case that these banks contain non-exempt property, then turn to see whether Fetzer can show any exemption to garnishment applies.

The first step in a garnishment action requires Pozner to establish a prima facie case. *Maxcy*, 178 Wis. at 405. Pozner has done so by pointing to the admissions of the banks holding Fetzer's accounts, plus testimony about the contents of the bank statements. Pozner Reply Br., dkt. 594:4-5 (citing answers filed by State Bank of Cross Plains, Summit Credit Union, and UW Credit Union and the affidavit of Randy Pflum, dkt. 543, 546, 660, 558).¹ Here, according to Pozner, is a table of Fetzer's non-exempt property:

Deposit Date	Deposit Account	Amount
3/3/2022	UW Account (Deposit)	\$549.59
3/21/22	UW Account (Deposit from daughter)	\$65.32
3/30/2022	UW Account (WI Tax Return)	\$1,486
4/6/2022	UW Account (Fed. Tax Return)	\$521.00
5/6/2022	UW Account (the Debtor's reimbursement for lawsuit)	\$391.05
6/15/2022	UW Account (Deposit from Daughter)	\$159.00
8/8/2022	UW Account (Deposit from Daughter)	\$153.88
9/2/2022	UW Account (Deposit from the Debtor for Fed Ex)	\$94.96
9/23/2022	UW Account (Deposit)	\$100.00
12/1/2022	UW Account (Deposit from the Debtor for Fed Ex)	\$1,000
12/21/2022	Summit Credit Union Answer	\$46.06
12/27/2022	State Bank Cross Plains Answer	\$2,437.60
	Claimed Exemption Wis. Stat. § 815.18(3)(k)	-\$5,000
	Amount Subject to Garnishment	\$2,004.46

Pflum Aff., dkt. 558:2.² According to Pozner, Fetzer's wife "specifically identified" these deposits

¹ Pozner repeatedly cites *Capital One Bank v. Gabriel*, No. 2013AP1755, unpublished slip op. (WI App July 9, 2014) (summary disposition). Pozner Reply Br., dkt. 594:4 & n.1, 5 & n2, 8. Pozner asserts this citation is lawful under § 809.23(3)(b), but that section expressly prohibits citation to summary disposition orders and, even if it was citeable, § 809.23(3)(c) required Pozner to file a copy of the opinion. I disregard Pozner's unlawful citation.

² Pozner's table includes the exemption for depository accounts in Wis. Stat. § 815.18(3)(k), which reads, in relevant part:

as not being associated with Fetzer's pension and/or social security benefits. Pflum Aff. Ex. A, dkt. 595:4-5.

In the second step of the garnishment procedure, the burden shifts to Fetzer to "affirmatively claim an exemption," Wis. Stat. § 815.18(6)(a), then produce evidence that might show any disputed amounts should not be garnished. In other words, after Pozner produced evidence that Fetzer owned all of the garnishable property in the table above, Fetzer's burden was to produce evidence that might show he did not own the property or, if he did, why some exemption from garnishment applied. Fetzer failed to do this—he neither claims any exemption under § 815.18(3) nor has he submitted any evidence in opposition to Pozner's motion.³

Instead of submitting any evidence to meet his burden of production, Fetzer repeatedly offered his own unsupported characterization of the property that Pozner seeks to garnish. To illustrate, I turn to the first piece of property that Pozner seeks to garnish: the \$549.59 deposited into Fetzer's account on March 3, 2022 (row one in the table accompanying the Pflum Aff., dkt. 558:2). Pozner made a prima facie case that this money was subject to garnishment based on the written admissions of the putative garnishee banks, written admissions from Fetzer's wife that the money was not exempt, and testimony that Pozner's attorney had "reviewed the Debtor's UW Account statements" Pflum Aff., ¶6, dkt. 558.

(3) The debtor's interest in or right to receive the following property is exempt ...

(k) Depository accounts in the aggregate value of \$5,000, but only to the extent that the account is for the debtor's personal use and is not used as a business account.

³ As best I can tell, Fetzer thinks that the property should not be garnished not because of any exemption but rather because it belongs to his wife. After all, a creditor can only garnish the debtor's property, *e.g.*, *Prince Corp. v. Vandenberg*, 2016 WI 49, ¶34, 369 Wis. 2d 387, 882 N.W.2d 371, and Fetzer's wife is not a debtor. However, the only evidence of record anywhere that might suggest Fetzer does not own this property is Janice Fetzer's testimony on March 17, 2023. For example, at one point, Janice Fetzer vaguely describes how "my one daughter sent me birthday money, and I put that in my account." Tr. of Mar. 17, 2023 Hr'g, dkt. 562:11. This vague testimony does not support any reason for denying Pozner's motion because the phrase "my account" refers to Fetzer's account.

The burden then shifted to Fetzer. Here is Fetzer's written explanation for why, given the opportunity to do so, he could meet that burden:

The March 3, 2022 deposit contained three sources all of which were exempt ... Janice Fetzer has [evidence explaining why] in her check book which could have been submitted as evidence had a hearing been held.

Fetzer Resp. Br., dkt. 590:8 (Fetzer's brief in response to Pozner's motion is a collection of excerpts from his appeal brief in *Pozner III*). Fetzer did not meet his burden because Fetzer has not produced this check book or any other evidence relevant to the March 3 deposit. Indeed, as noted above, Fetzer conceded at oral argument that he did not dispute any facts asserted by Pozner's motion.

Fetzer's remaining challenges to Pozner's prima facie case for garnishment fare similarly. Fetzer says that other monies are exempt as gifts, or for tax reasons, or because of a novel and unsupported argument that garnishing a legal defense fund "would be instigating a fraud on the public." Fetzer Resp. Br., dkt. 590:10. Assuming these were lawful reasons for exempting property from garnishment under Wis. Stat. § 815.18(3), Fetzer's arguments would still fail because, crucially, arguments are not evidence.

In sum, the court of appeals has remanded this matter for one narrow reason: to "give Fetzer the chance to carry his burden of production." *Pozner III*, ¶23. I followed the mandate by giving Fetzer two opportunities—in writing and in person—to carry that burden. However, a person cannot meet their evidentiary burden of production by not producing any evidence. Fetzer produced no evidence, so he has not met his burden to show any of the § 815.18(3) exemptions apply.

Accordingly, I grant Pozner's motion for disbursement of funds.

ORDER

For the reasons stated,

IT IS ORDERED that Leonard Pozner's motion for disbursement of funds is granted. Pozner should promptly submit a proposed final order for the Court's signature.

This is NOT a final order for purpose of appeal. Wis. Stat. § 808.03(1).