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CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

BY THE COURT:

DATE SIGNED: October 4, 2024

Electronically signed by Frank D Remington
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 8

LEONARD POZNER,

Plaintiff,

v. Case No. 2018-CV-3122

JAMES FETZER,

Defendant.

DECISION AND ORDER
SANCTIONING JAMES FETZER UNDER WIS. STAT. § 802.05

INTRODUCTION

Any person who submits documents to a Wisconsin circuit court must certify, after "an inquiry reasonable under the circumstances," that the documents are "not being presented for any improper purpose, such as to harass …." Wis. Stat. § 802.05(2)(a). Any person who violates this rule subjects himself to sanctions "sufficient to deter repetition of such conduct …." Wis. Stat. § 802.05(3).

This is an order sanctioning James Fetzer for improperly publishing a child's statutorily-protected information despite having no proper purpose for doing so. Monetary sanctions will not deter repetition of the sanctionable conduct because, according to his other filings in this matter, Fetzer already refuses to pay an outstanding judgment against him for defaming the plaintiff. So,

because it is the only way to deter future violations of § 802.05, I order Fetzer to file no papers in any Wisconsin circuit court related to this matter unless Fetzer obtains either the prior written approval of a Wisconsin judge or the signature of a lawyer licensed to practice law in Wisconsin.

I. BACKGROUND

On June 20, 2024, Leonard Pozner moved to sanction Fetzer for repeatedly publishing unredacted images of his son Noah's passport. That motion follows a series of appeals of a jury verdict against Fetzer.[1] To summarize, Pozner's son Noah was murdered. Fetzer then published fake stories accusing Pozner of fabricating Noah's death certificate. Pozner sued Fetzer for defamation and a jury awarded him $450,000. Following remand by the court of appeals to decide a limited issue related to garnishment of Fetzer's property to pay that judgment, Fetzer took the opportunity to allege a vast conspiracy to commit fraud by "FEMA, the media, and the Obama administration …" as well as Pozner's attorneys and myself. Fetzer Fraud Mot., dkt. 599:1.[2] In support of his fraud accusation, Fetzer submitted more than five hundred pages of documents. Dkt. 599-611. Fetzer's trove of conspiracy documents included two unredacted copies of Noah's passport, including his passport number. Fetzer Aff. in Supp. of Fraud Mot., Ex. O, dkt. 603:49, 51.

As a result of this conduct, Pozner now asks me to sanction Fetzer by ordering that "Fetzer to not file any document without first seeking review" and that Fetzer also pay Pozner's costs in bringing the motion. *Id*. at 4.

[1] For a more thorough history of this litigation, *see Pozner v. Fetzer*, No. 2023AP1001, unpublished slip op. (WI App Feb. 8, 2024) (per curiam) (*Pozner III*).

[2] I liberally construed Fetzer's pro se motion as seeking relief from judgment, then denied the motion because Fetzer failed to prove he was entitled to relief under § 806.07 and/or the five-element test for fraud on the court as explained in *Dekker v. Wergin*, 214 Wis. 2d 17, 20, 570 N.W.2d 861 (Ct. App. 1997). Decision and Order (Jun. 20, 2024), dkt. 615.

II. LEGAL STANDARD

Pozner generally styles his motion as one seeking contempt under Wis. Stat. ch. 785. Under these circumstances, use of the contempt procedure could perhaps be appropriate, either because Fetzer violated a 2019 order commanding him to not publish Noah's passport or because § 801.19 specifically authorizes contempt for the release of protected information.

But contempt is not the only way to give Pozner the relief he seeks. Generally speaking, courts construe all papers "as to do substantial justice." Wis. Stat. § 802.02(6). This means that: "In ordinary civil cases … we look to the facts pleaded, not to the label given the papers filed, to determine whether the party should be granted relief." *bin Rilla v. Israel*, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983). The facts alleged here are simple: Fetzer has "repeatedly filed Noah Pozner's unredacted passport," including its statutorily-protected information, and he has done so "as part of an overarching, pervasive strategy whereby [Fetzer] uses efiling systems to spread confidential and protected information through absurdly frivolous filings." Pozner Br., dkt. 616:4.

Looking past the labels Pozner uses, the allegations in his motion plainly suggest a violation of Wis. Stat. § 802.05. Subsection (2) of that statute provides that, "by presenting a pleading, written motion, or other paper to a court, a person certifies that: … the paper is not being presented for an improper purpose, such as to harass …." Wis. Stat. § 802.05(2)(a). The statute further provides: "If, after notice and a reasonable opportunity to respond, the court determines that sub. (2) has been violated, the court may impose an appropriate sanction upon the attorneys, law firms, or parties that have violated sub. (2) or are responsible for the violation." Wis. Stat. § 802.05(3). Finally, a sanctions motion brought by a party "shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate sub. (2)." Wis. Stat. § 802.05(3)(a)1.

Pozner's motion satisfies all of the requirements of a sanctions motion under § 802.05. Specifically, the motion was made separately, it describes specific sanctionable conduct, and more than twenty-one days have passed after service of the motion upon Fetzer. Assuming the motion also satisfies the requirements for contempt, and having considered the limited relief Pozner seeks, there is no practical difference between contempt under § 785.03 and sanctions under § 802.05 except that contempt explicitly requires at least one additional hearing—under Wis. Stat. § 785.03(1)(a), a court may impose a remedial sanction only "after notice and hearing …." But holding an additional hearing is not necessary to decide Pozner is entitled to the relief he seeks and construing a motion to require an unnecessary hearing would not advance the cause of justice. Given the choice between two alternative procedures, I construe Pozner's motion as one for sanctions under § 802.05.

III. DISCUSSION

Proceeding under § 802.05, I need only make three determinations to decide whether Pozner is entitled to the relief sought by his motion. First, I must decide whether Fetzer presented a paper for any improper purpose. If so, I must next decide whether Fetzer had notice and a reasonable opportunity to respond to Pozner's motion. I then conclude by determining what sanction will deter repetition of that conduct.

A. Fetzer presented statutorily protected information for an improper purpose.

I first address Fetzer's purpose in publishing Noah's unredacted passport. To begin, it is important to emphasize that our legislature has chosen a policy of protecting certain categories of personal information from disclosure in court files. Specific to this case, passport numbers are part of a group of "protected information" that generally must be redacted. Wis. Stat. §§ 801.19(1)(a)1. and 5. If a litigant publishes protected information, then "the court may impose reasonable

expenses, including attorney fees and costs, or may sanction the conduct as contempt." Wis. Stat. § 801.19(2)(f)3. Although § 801.19(2)(f)3. remains silent about whether publication of protected information could also be sanctioned as frivolous, that does not mean that the remedies in that section are exclusive. I cannot read statutory text in isolation to produce the absurd result of insulating a litigant who violates § 801.19 from the protections established in § 802.05. *Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 ("statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole … and reasonably, to avoid absurd or unreasonable results.").

As noted, § 802.05 bars litigants from submitting papers for any improper purpose. Any person who publishes a child's protected information will probably struggle to explain a proper purpose for doing so. But whether or not it could be proper, under the right circumstances, to publish a child's protected information, in this case, Fetzer will face at least three additional hurdles.

First, I have already issued a written order commanding Fetzer to stop publicly disclosing Noah's protected passport information. Order (May 8, 2019), dkt. 129. That order, which tells Fetzer to "refrain from any future filing of protected information in unredacted forms," followed oral arguments specifically referencing Wisconsin's statutory scheme for protecting passport numbers. Tr. of Apr. 26, 2019, Mot. Hr'g, dkt. 123:4 ("state law explicitly prohibits passport numbers from being filed …") (citing Wis. Stat. § 801.19). A person who is told both in writing and orally, in open court, to stop publishing protected information likely lacks a proper purpose in continuing to do so.

The second problem with Fetzer's publication of the protected information is that, as Pozner puts it, Fetzer "has spent a decade harassing and vilifying" Pozner by "relentlessly

pursu[ing] a strategy of publishing information to enable Fetzer's hoaxer followers to also harass and threaten Mr. Pozner." Pozner Br., dkt. 1-2. I need not further summarize the evidence suggesting Fetzer's harassment of Pozner because that has always been the subject of this action—the very first paragraph of the complaint alleges "Fetzer has a long history of harassing Plaintiff and other Sandy Hook parents with defamatory lies …." Compl., ¶1, dkt. 1. Suffice it to say the jury agreed and compensated Posner accordingly. A person who is told by a jury, effectively, to stop making defamatory lies probably lacks a proper purpose in continuing to do so.

A third problem arises from context. Fetzer's publication of the protected information could never have much of a practical impact because this case remains in the circuit court to decide only one narrow issue: to allow Fetzer to "demonstrate legitimate reasons to reduce the amount of garnishment ….." *Pozner v. Fetzer,* No. 2023AP1001, unpublished slip op., ¶20 (WI App Feb. 8, 2024) (per curiam) (*Pozner III*). In other words, Fetzer lost his jury trial, lost his appeals and now, five years later, Fetzer has no ability to unwind that result. It seems unlikely that the relatively unimportant matters left for resolution could ever justify a proper purpose for publishing a child's protected information.

With this background in mind, I turn to Fetzer's papers to see whether he explains any proper purpose in disclosing the protected information. I begin with some context on the disclosure itself. Fetzer disclosed the protected information as part of his attempt to prove a conspiracy to commit fraud. As part of that attempt, Fetzer believed it was important to demonstrate that Pozner, one of the alleged conspirators, fabricated the passport. To show that fabrication, Fetzer published an unredacted image of the passport alongside a series of what he labels "proofs" of the document's falsity. Only the first of these "proofs" deals with the passport: therein, Fetzer relies on the conclusions of a person named "Anonymous2" who apparently reviewed video footage of Noah

discussing the 2002 movie *Spiderman*. Fetzer Aff. Ex. O, dkt. 603:51. Fetzer then compares the date of the "Anonymous2" video and the release date of *Spiderman* to conclude, somehow, that Noah must be significantly older than the age listed on his passport. *Id*. The disclosure itself thus suggests Fetzer's purpose was to continue to defame Pozner. Turning next to Fetzer's written response to Pozner's motion, Fetzer does not explain his purpose except to emphasize his belief that some matters "ought to have been accepted as evidence" in the 2019 trial. Fetzer Resp. Br., dkt. 637:5.

To summarize the above, Fetzer thinks *Spiderman* discredits the passport. His purpose in presenting the protected information depicted on that passport was to explain that belief. The problem with this purpose, setting aside serious questions about timing and logic, is that it has nothing to do with the protected passport number—Fetzer could have offered the exact same explanation with a partially-redacted form of the passport. But because Fetzer failed to do this, and having considered the unique history of this case, the only reasonable inference I can draw is that Fetzer published the protected information for the improper purpose of harassing Pozner and/or protracting this litigation.

B. Fetzer had notice and an opportunity respond.

Having determined Fetzer violated § 802.05 by filing papers in the circuit court for an improper purpose, I turn next to sanctions. As noted, a court cannot impose sanctions unless the sanctioned party has "notice and a reasonable opportunity to respond." Wis. Stat. § 802.05(3). Here, Fetzer has plainly had notice and an opportunity to respond because, on July 24, 2024, he filed a six-page written response to Pozner's motion.

C. Sanctions.

All that remains is to impose a sanction "limited to what is sufficient to deter repetition of

such conduct or comparable conduct by others similarly situated." Wis. Stat. § 802.05(3)(b). Although Pozner asks for an award of attorney fees, he also acknowledges "Fetzer is essentially judgment-proof." Pozner Br., dkt. 616:4. An award of attorney fees against a judgment-proof debtor will not deter repetition of sanctionable conduct, so I cannot order this sanction.

But this does not mean that the public must continue to expend judicial resources dealing with Fetzer's improper filings. Indeed, "[w]thout an order prohibiting future filings related to the same issues, these statutes [prohibiting improper filings] would be virtually useless against a pro se party who cannot pay." *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991). Wisconsin courts have thus concluded that "[a] court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's access to the court." *Vill. of Tigerton v. Minniecheske,* 211 Wis. 2d 777, 785, 565 N.W.2d 586 (Ct. App. 1997) (citing *Stoll v. Adriansen,* 122 Wis. 2d 503, 511, 362 N.W.2d 187 (Ct. App. 1984) and *Lysiak v. Commissioner,* 816 F.2d 311, 313 (7th Cir. 1987)). Pursuant to this authority, "a court may impose conditions upon a litigant—even onerous conditions—so long as they … are, taken together, not so burdensome as to deny the litigant meaningful access to the courts." *Id*.

Under these circumstances, an order limiting Fetzer's right to access to Wisconsin courts is necessary to achieve a balance between Fetzer's rights and "the taxpayers' right to not have frivolous litigation become an unwarranted on drain on their resources and the public interest in maintaining the integrity of the judicial system." *Minniecheske*, 161 Wis. 2d at 749.

ORDER

For the reasons stated,

IT IS ORDERED that, in accordance with Wis. Stat. § 801.19(3), the Dane County Clerk shall redact the statutorily-protected information James Fetzer improperly presented in a public court filing.

IT IS FURTHER ORDERED that James Fetzer shall file no papers in any Wisconsin circuit court related to all of these subjects:

- Leonard Pozner,
- Noah Pozner,
- any other member of the Pozner family,
- Sandy Hook Elementary School,
- any other person who attended, or whose child attended Sandy Hook Elementary School,
- any conspiracy related to Sandy Hook Elementary School, and
- any members of such a conspiracy.

This order shall not prohibit Fetzer from filing papers necessary to pursue an appeal, nor shall it prohibit Fetzer from filing any papers with either the prior written approval of a Wisconsin judge or the signature of a lawyer licensed to practice law in Wisconsin.

This is a final order for purpose of appeal. Wis. Stat. § 808.03(1).