

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WISCONSIN

Nicholas Scott Werling v. Frances Pizano and Joseph Allen Bell

Werling · No. 24-cv-590-jdp · Decided May 20, 2026

SUMMARY

The United States District Court for the Western District of Wisconsin grants Nicholas Scott Werling's motion for a hearing on damages following the defendants' default in his Fourth Amendment malicious prosecution claims. The court explains that Werling must prove compensable damages with reasonable certainty, may receive nominal damages if he cannot establish harm, and must satisfy the standard for punitive damages.

CASE DETAILS

COURT	United States District Court for the Western District of Wisconsin
WRITING FOR THE COURT	James D. Peterson
JURISDICTION	United States District Court for the Western District of Wisconsin
DECIDED	May 20, 2026
DOCKET	24-cv-590-jdp
DISPOSITION	other
PROCEDURAL POSTURE	After the court entered default against both defendants in the plaintiff's Fourth Amendment malicious prosecution action, the plaintiff moved for a default judgment and a damages hearing.
STANDARD OF REVIEW	A plaintiff seeking relief after default must establish entitlement to the relief sought and prove damages with reasonable certainty; damages cannot be based on speculation.
PRECEDENTIAL VALUE	Unpublished district court order; generally nonprecedential.
PARTIES	Nicholas Scott Werling v. Frances Pizano, Joseph Allen Bell

TOPICS

- default judgment
- damages
- section 1983
- civil procedure
- civil rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the plaintiff was entitled to an evidentiary hearing to establish damages after the defendants' default established liability.
2. What evidentiary showing is required to establish compensatory damages after default.
3. What showing is required to recover punitive damages for the defendants' conduct.

HOLDINGS

1. The plaintiff is entitled to proceed to a hearing on damages because his submission was sufficient to warrant an opportunity to present evidence, although he must still prove his entitlement to the relief requested.
2. The plaintiff must establish compensable losses and the amount of those losses with reasonable certainty; if he cannot prove compensable harm, the court will award nominal damages of \$1.
3. To recover punitive damages, Werling must show that the defendants acted with ill will or spite, or in reckless disregard of his rights.

KEY QUOTATIONS

“after the default is established, and thus liability, the plaintiff still must establish his entitlement to the relief he seeks.” (at 1)

“At that hearing, Werling must present evidence that establishes his damages with reasonable certainty.” (at 2)

“If Werling cannot prove any compensable harm, he will receive nominal damages of \$1.” (at 2)

“To recover punitive damages against defendants, Werling will have to show that they acted with “ill will or spite” or in “reckless disregard” of his rights.” (at 2)

FACTUAL BACKGROUND

Werling alleges that, while he was a minor in a shelter care facility, another minor assaulted him and the minor and facility staff lied to police, causing Werling to be prosecuted for physical abuse of a child. He sought compensatory damages for pretrial custody, lost wages, defense fees, lost opportunities, and emotional distress, as well as punitive damages. The court noted that Werling was also prosecuted and convicted in other cases, including a more serious felony involving firearm possession, creating uncertainty about whether the challenged prosecution caused the claimed additional custody and other losses.

PROCEDURAL HISTORY

The court previously granted Werling leave to proceed on Fourth Amendment malicious prosecution claims against staff members who allegedly lied to police. The clerk entered default against Pizano and Bell. The court directed Werling to provide further support for his requested compensatory and punitive damages. Werling filed

an amended motion for default judgment and moved for a hearing. The court granted the motion for a default hearing and directed that an in-person hearing be scheduled.

DISPOSITION

other

CASES CITED

- VLM Food Trading Int'l, Inc. v. Illinois Trading Co., 811 F.3d 247, 255 (7th Cir. 2016)
- e360 Insight v. Spamhaus Project, 500 F.3d 594, 602 (7th Cir. 2007)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN NICHOLAS SCOTT WERLING, Plaintiff, ORDER v. 24-cv-590-jdp FRANCES PIZANO and JOSEPH ALLEN BELL, Defendants. Plaintiff Nicholas Scott Werling, proceeding without counsel, alleges that when he was placed in a shelter care facility as a minor, another minor assaulted him and the minor and staff lied to police about Werling being the aggressor, leading to his unsuccessful prosecution for physical abuse of a child.

I granted Werling leave to proceed on Fourth Amendment malicious prosecution claims against the staffers who lied to police. This order concerns the default of both defendants, Frances Pizano and Joseph Allen Bell. In my previous order, I directed the clerk of court to enter default against both Pizano and Bell. Dkt. 15. I also directed Werling to respond with further explanation supporting his requests for \$500,000 in compensatory damages and \$500,000 in punitive damages against each defendant.

Id. (citing VLM Food Trading Int'l, Inc. v. Illinois Trading Co., 811 F.3d 247, 255 (7th Cir. 2016) (“after the default is established, and thus liability, the plaintiff still must establish his entitlement to the relief he seeks.” (internal quotation omitted))).

In particular, I noted that Werling hadn't explained how defendants' lies leading to his malicious prosecution for physical abuse of a child actually harmed him, given that he was also prosecuted for—and convicted of—two other crimes. Dkt. 15, see also Rock County Case No. 2022CF472. Werling has responded with an amended motion for default judgment, Dkt. 17, and a motion to hold a hearing, Dkt.

24. Werling discusses the following types of injuries or classes of damages: • Time spent in pretrial custody (more than 600 days) on his felony charge that was far longer than the maximum sentences for the misdemeanors that he was ultimately convicted of, and that he was forced to serve due to extremely large bail amounts (\$500,000) assessed given the felony charge. • Lost wages for his extra time in pretrial custody. • Fees paid to his defense attorneys to defend against

the physical-abuse-of-a-child charge. • Loss of “opportunit[ies] to work, pursue education, maintain important relationships, and many other things.” • Emotional distress. • Punitive damages.

Dkt. 18. Werling’s submission is sufficient for me to conclude that this case should proceed to a hearing on his damages. At that hearing, Werling must present evidence that establishes his damages with reasonable certainty. *e360 Insight v. Spamhaus Project*, 500 F.3d 594, 602 (7th Cir. 2007).

The evidence that Werling has provided thus far isn’t sufficient to meet this standard concerning most of his asserted damages. For instance, it doesn’t appear that Werling actually spent extra time in pretrial custody because of his later-dismissed felony physical-abuse-of-a-child charge. Online court records show that shortly after Werling was arrested on this charge, he was charged in a separate case with possessing a firearm in violation of an order not to possess a firearm in conjunction with a civil commitment, a more serious Wisconsin felony than the physical-abuse-of-a-child charge, and detained on that charge (and later convicted).

See Milwaukee County Case No. 2022CF2289.1 And Werling doesn’t explain anything about the “opportunities” that he missed out on during this time that would justify an award of damages. At the hearing, Werling will not need to prove that defendants violated his rights because that has been established by defendants’ default. Werling is entitled to reasonable compensation for the losses that he suffered as a result of defendants’ conduct, and he will have to provide evidentiary support for the compensation that he requests.

If Werling cannot prove any compensable harm, he will receive nominal damages of \$1. To recover punitive damages against defendants, Werling will have to show that they acted with “ill will or spite” or in “reckless disregard” of his rights. Fed. Civ. Jury Instr. of the Seventh Circuit 7.28. Werling may present his own testimony about the harm he suffered in a narrative form (that is, without asking himself questions).

His testimony should be based on his own observations and experience. If Werling wants compensation for any expenses related to his claims, he should bring documentation to the hearing, such as medical or financial records, to prove those expenses. Werling should submit copies of any proposed exhibits to the court at least two weeks before the hearing. One final point.

I will direct the clerk of court to send defendants a copy of this order along with other documents from this case. I would ordinarily have the clerk send those documents to defendants at the addresses listed in the Marshal’s service return forms. But Werling—who throughout this litigation has submitted certificates of service stating that he has sent defendants copies of his filings—states that defendant Pizano’s address has changed 1 Available at <https://wcca.wicourts.gov>. from the address at which she was served the complaint.

See Dkt. 11-2. I'll direct the clerk to send copies to Pizano at both the previous and updated address. I will also direct Werling to respond to this order, explaining how he knows that the new address is correct. ORDER IT IS ORDERED that: 1. Plaintiff's motion for a default hearing, Dkt. 24, is GRANTED. 2.

The clerk of court is directed to work with the Wisconsin Department of Corrections to schedule an in-person hearing on plaintiff's motion for default judgment, and to issue a writ of habeas corpus ad testificandum for plaintiff's appearance at that hearing. 3.

The clerk of court is directed to provide this order, notice of the default hearing, and copies of Dkts. 15–18 to defendant Bell at the residence listed in Dkt. 8, and copies of these documents to defendant Pizano at both the residences listed in Dkt. 7 and Dkt. 11-2. 4. Plaintiff may have until June 3, 2026, to respond to the court regarding his knowledge of defendant Pizano's address.

Entered May 20, 2026. BY THE COURT: /s/ _____
JAMES D. PETERSON District Judge