

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Albert Snyder,

*

Plaintiff

*

v.

Civil Action No. RDB-06-1389

*

Fred W. Phelps, Sr., *et al.*,

*

Defendants

* * * * *

SCHEDULING ORDER FOR PAYMENT OF CASH BOND

Having heard oral arguments on April 3, 2008, for the reasons stated on the record, it is
HEREBY ORDERED this 4th day of April, 2008, that the Post-Trial Motion for Stay filed by
Defendants Shirley L. Phelps-Roper and Rebekah A. Phelps-Davis. (Paper No. 212) shall remain
pending and the filing Scheduling Order is entered. By May 5, 2008, Phelps-Roper and Phelps-
Davis shall provide cash bonds to the Clerk of this Court to be held in the registry of this Court
in the following amounts:

Shirley L. Phelps-Roper: \$125,000 cash bond

Rebekah A. Phelps-Davis: \$100,000 cash bond.

The posting of said cash bonds pursuant to Rule 62(d) of the Federal Rules of Civil Procedure
shall result in the issuance of the Stay requested by Phelps-Roper and Phelps-Davis. ~~The failure~~
~~to post said cash bonds by May 5, 2008, shall result in the denial of the pending Motion to Stay~~
~~(Paper No. 212) and the Plaintiff may begin to conduct enforcement actions to collect amounts~~
~~due under the judgment entered in this case.~~ The Clerk of the Court shall transmit copies of this
Order to counsel of record and the *pro se* Defendants.

/s/

Richard D. Bennett
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION
4 ALBERT SNYDER, Civil No. RDB-06-1389
5 Plaintiff,
6 v. Baltimore, Maryland
7 FRED W. PHELPS, SR., April 3, 2008
8 et al.,
9 Defendants. 9:00 a.m.
10 -----/
11 TRANSCRIPT OF MOTIONS HEARING
12 BEFORE THE HONORABLE RICHARD D. BENNETT
13 UNITED STATES DISTRICT JUDGE
14 APPEARANCES:
15 For the Plaintiff: Barley Snyder LLC
16 By: SEAN E. SUMMERS, ESQ.
17 100 E. Market Street
18 York, PA 17401
19 Shumaker Williams PC
20 By: CRAIG TREBILCOCK, ESQ.
21 One E. Market Street
22 Suite 204
23 York, PA 17401
24 For the Defendants: Marks and Katz LLC
25 By: JONATHAN KATZ, ESQ.
1400 Spring Street
Suite 410
Silver Spring, Maryland 20910
Pro Se Defendants: SHIRLEY PHELPS-ROPER
REBEKAH PHELPS-DAVIS
Court Reporter Lisa K. Bankins RMR
101 West Lombard Street
Room 5012
Baltimore, Maryland 21201
Proceedings recorded by mechanical stenography,
transcript produced by notereading.

P R O C E E D I N G S

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THE COURT: Good morning. And on the line, I assume we have by telephone call, we have the individual defendants, Rebekah Phelps-Davis and Shirley Phelps-Roper. Is that correct?

MS. PHELPS-ROPER: That's correct.

MS. PHELPS-DAVIS: Correct, Your Honor.

THE COURT: Yes. Good morning.

MS. PHELPS-ROPER: Good morning.

MS. PHELPS-DAVIS: Good morning.

THE COURT: This hearing is being held -- and good morning, counsel. For the record for the plaintiff, Sean Summers and Craig Trebilcock are here. Mr. Snyder, the plaintiff, is here. And on behalf of the defendant, Fred W. Phelps, Sr. and Westboro Baptist Church, Incorporated, Jonathan Katz. Good morning, Mr. Katz.

MR. KATZ: Good morning, judge, and I do have a short preliminary matter.

THE COURT: Yes. I'll be glad to hear from you. And this hearing is being held on the motion of the defendants, Fred W. Phelps, Sr. and Westboro Baptist Church. The motion to stay, paper number 214, and the motion of defendants, Shirley Phelps-Roper and Rebekah Phelps-Davis, also a post-trial motion to stay, paper number 212. Both of those motions being motions to stay the execution of the judgment pending the appeal in this case. Yes, Mr. Katz?

MR. KATZ: As I think the plaintiff is agreeable to and I informed your law clerk because the defendants have been permitted to

2 closed hearing which I assume we're not, I would just ask that nothing
3 be put on the record that frustrates that. The opposing counsel
4 didn't --

5 THE COURT: The documents in terms of -- really, there's
6 very little that's been submitted by Fred Phelps, Sr. and the church
7 anyway. I'll go over that with you in a minute. Essentially hardly
8 anything's been submitted. So I can't imagine what confidentiality
9 concerns relate to that because nothing has essentially been submitted
10 other than Fred Phelps, Sr.'s tax returns. As to the material that's
11 under seal, I previously indicated, it's income tax, they are income
12 tax returns and they will remain under seal. With respect to a
13 discussion of assets and a consideration of an amount of a bond in
14 this case, clearly we're going to have to have some discussion. So I
15 intend to discuss recent income figures for the individual defendants
16 in terms of my consideration as well as charitable donation figures
17 reflected on some income tax returns. So to that extent, the matter
18 will be discussed in public. Other than that, the particular details
19 of their income tax returns would not be. So that is my ruling on
20 that, Mr. Katz, and to the extent that that's not the total relief
21 that you desire, certainly your exception is noted as to that.

22 Has there been a notice of appeal filed yet in this case,
23 Mr. Katz?

24 MR. KATZ: That's right.

25 THE COURT: Yes. Okay. So you have filed a notice of

1 appeal already. Correct?

2 MR. KATZ: Right. Not only within thirty days after the

3 judgment, but also within thirty days after Your Honor's rulings on
4 the remaining post-trial motions.

5 THE COURT: Yes. I had reduced the amount of the award in
6 this case essentially to \$5 million total. So the defendants have
7 filed a notice of appeal in this case with the United States Court of
8 Appeals for the Fourth Circuit and those appeals are pending.
9 Pursuant to Rule 62(d) of the Federal Rules of Civil Procedure, absent
10 a stay of execution of the judgment in this case, the plaintiff may
11 begin to conduct enforcement actions to collect the amount due under
12 said judgment. The defendants have moved under Rule 62(d) for a stay
13 without supersedeas bond. I have previously indicated to the
14 defendants that I'm not inclined to grant a stay without the posting
15 of any form of security. But I have indicated that I will not
16 necessarily require the posting of a bond equal to the full amount of
17 the judgment in light of the extent of the judgment in this case.
18 Accordingly, the parties have submitted financial information under
19 seal for this Court's review and I have permitted it to be under seal
20 with respect to their individual tax returns and that information
21 under seal has been made available this morning for review by
22 plaintiff's counsel. And Mr. Summers and Mr. Trebilcock, you had
23 occasion to review the material under seal in my chambers this
24 morning. Is that correct?

25 MR. SUMMERS: Yes, Your Honor.

1 THE COURT: All right. Okay. But obviously, it has not
2 been photocopied and it remains under seal. Now pursuant to Rule
3 62(d) of the Federal Rules of Civil Procedure, an appellant is
4 entitled to a stay as a matter of right upon the filing of a

5 supersedeas bond. Obviously, if the appellants posted a supersedeas
6 bond in the full amount of the judgment in this case, there really
7 wouldn't be an issue this morning. But obviously, the defendants have
8 indicated their inability to post a supersedeas bond in the full
9 amount of the judgment. Rule 62(d) of the Federal Rules of Civil
10 Procedure does not prohibit this Court from exercising its discretion
11 in either authorizing an unsecured stay and requiring, not requiring
12 any posting of a bond or the posting of a bond in an amount less than
13 the judgment. There is no direct Fourth Circuit authority on this
14 point. But the Supreme Court of the United States in *Hilton v.*
15 *Braunskill*, 481 U.S. 770, a 1987 opinion has set forth certain factors
16 to consider which I will consider. In short, I am mindful that the
17 purpose of requiring a bond on appeal is to preserve the status quo
18 and to protect the non-appealing parties' rights pending appeal. And
19 it has been noted in numerous cases that to totally waive the filing
20 of a supersedeas bond requirement, there must be extraordinary
21 circumstances. So accordingly, pursuant to Rule 62(d) of the Federal
22 Rules of Civil Procedure and with respect to my inherent discretionary
23 power to stay judgments in this case pending appeal on terms other
24 than a full supersedeas bond, this hearing is being conducted with
25 respect to what type of security should be posted.

1 What I want to do first given that it's the motion of the
2 defendants is let me first address the materials submitted by the
3 church and that is in the form of a declaration of Timothy B. Phelps.
4 He has noted that there are no tax returns of Westboro Baptist Church
5 obviously because the church doesn't file tax returns. There is very

6 limited information that has been filed with respect to the church. I
7 have essentially an appraiser's office notice of the property of the
8 church at 3701 Southwest 12th Street in Topeka, Kansas and that is in
9 Shawnee County. Is that correct, Mr. Katz?

10 MR. KATZ: Yes, Your Honor. Shawnee County.

11 THE COURT: All right. And the appraised value of the
12 church is \$442,800. I would note that that is consistent with the
13 document that was filed and is a matter of court record. Court
14 Exhibit Number 1 dated October 29, 2007, Document Number 197 which
15 contained information that was under seal until the jury returned a
16 verdict awarding compensatory damages and then it was unsealed so that
17 the jury could consider that with respect to addressing punitive
18 damages in this case and that document included the financial
19 statement of Shirley Phelps-Roper, the financial statement of Rebekah
20 Phelps-Davis and included also the financial statement of Fred Phelps,
21 Fred W. Phelps, Sr. as well as Westboro Baptist Church. Referring to
22 that document that was previously a matter of the record here and
23 public record in the court file, the church listed cash, checking
24 account assets and again I'm not referring to any material submitted
25 under seal. This is the matter of what was submitted in October. The

1 church listed assets cash, checking account of \$13,136. It listed
2 personal property in the amount of \$37,000. It listed the real estate
3 in the amount of \$442,800 which is consistent and supported by the
4 information from the appraiser's office which is among the items that
5 were submitted to the Court that were under seal. That submission in
6 October which was submitted under oath by Timothy Phelps as the,
7 Timothy B. Phelps, the clerk of the westboro Baptist Church,

8 Incorporated and was submitted under oath by Mr. Phelps reflected a
9 real estate mortgage of \$86,696. Now with respect to documents that
10 have been submitted by the church for purposes of this hearing, I
11 don't have any documentation as to that real estate mortgage, although
12 it appears that I might have the figure here. And Mr. Katz, I'm going
13 to have you approach the bench and take this. I think there may be a
14 slight variance. I think I have the document that supports that. Why
15 don't you approach the bench for one second here and take a look at
16 this document? And plaintiff's counsel has seen it. I think this is
17 the document that supports that indebtedness, but let me see if that
18 is correct.

19 MR. KATZ: That's right. That's the top copy. That's the
20 --

21 THE COURT: All right. All right. Thank you, Mr. Katz.
22 And Mr. Summers and Mr. Trebilcock have seen this this morning.
23 Essentially, the note balance reflects a note balance dated February
24 29, 2008 of \$89,879.42. That is at slight variance with what was
25 represented in the financial statement submitted by Mr. Phelps,

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1 Timothy Phelps, but I don't find it to be of any material variance and
2 certainly find it's been submitted in good faith. So that the note
3 balance is essentially \$89,879. Hold on one second. Which according
4 then to my calculations both in terms of what has been submitted for
5 purposes of this hearing and what was submitted in October reflects
6 equity in the church property of \$352,921. Would you concur with
7 that, Mr. Katz, if my arithmetic is correct?

8 MR. KATZ: I thought I had the financial statement with me.

9 Let me ask if Shirley --

10 THE COURT: If you want, I can hand you this. I'll give you
11 a copy of what was submitted to the Court.

12 MR. KATZ: Yeah. That will be a little easier.

13 THE COURT: But the figures varied somewhat. I'm just
14 getting to the matter of the equity in the church property. I'll need
15 that back for a minute. If you want to take a look at that? You'll
16 see that that one figure has changed. The appraised value is also
17 listed for the church as an asset. It would appear that there is
18 based upon the appraised value of the church property and
19 documentation of the mortgage, it would appear that there is a, it
20 would appear that there is \$352,921 in equity in the church property.
21 Now the church had listed \$13,000 in cash, checking accounts in
22 October offset by credit card debt. Essentially, there was that asset
23 of the church and the mortgage on the church. The church had
24 previously listed \$13,136 in cash in a checking account and personal
25 property worth \$37,000 and then current debt of \$19,288. The church

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1 had submitted information with respect to its title to the property
2 and it has submitted a one-page summary of a commercial checking
3 account the bank has not disclosed nor need it be at this time with a
4 balance of \$374. So again there's very little that's been submitted
5 by the church with respect to this hearing, very little in addition to
6 what had already been submitted. This was received last night by
7 email in my chambers around 9:30 last night. So that's all the
8 information I have, Mr. Katz. Is there any other information you want
9 me to consider as to the church? Incidentally, why was it so
10 difficult for me to get these documents? I know you kept calling my

11 chambers and said it was Fed Ex'ed and literally, we got it according
12 to the emails last night at 9:30.

13 MR. KATZ: I'll just have to rely on a courier when it's as
14 close as that. I mean it looks as though -- we sent the original Fed
15 Ex last Thursday. There was a Fed Ex received the next morning.
16 Apparently, it just never got to chambers --

17 THE COURT: All right. When Fed Ex sends you the bill, you
18 might want to take exception to them when they send your office the
19 bill.

20 MR. KATZ: Sometimes it takes more time than to challenge.
21 But I understand. Your Honor, as far as Your Honor talking about
22 relevant information, you know with the limited financial background I
23 have from before law school and all that and, you know, running my own
24 business, there really wouldn't be any more documentation to back up
25 the assets they have unless Your Honor, you know, want to see receipts

1 for the personal property, you know.

2 THE COURT: No. That's fine. Mr. Katz, also I note that in
3 terms again just focusing on the church, Exhibit 197, the Court
4 Exhibit, paper number 197 in the file, Court Exhibit Number 1, the
5 financial statement of Shirley Phelps-Roper, which we'll address in a
6 few moments and the financial statement of Rebekah Phelps-Davis we'll
7 address in a few moments and then the financial statement of Fred
8 Phelps, that document also listed real estate of \$232,900 with no real
9 estate mortgage, which appears to be a separate piece of property that
10 he lists on his personal financial statement separate from the church.
11 So I am presuming that we're talking about a separate piece of real

12 estate.

13 MR. KATZ: To make it easier, there are four pieces of real
14 estate involved for all the defendants. One piece of real estate for
15 each. You have the home of Shirley Phelps-Roper, the home of Rebekah
16 Phelps-Davis, the Westboro Baptist Church building. All those do have
17 mortgages on them and then you have the property owned by Fred Phelps
18 with his wife, Margie Phelps, is an office building.

19 THE COURT: All right. Totally separate. I'm just
20 verifying they're totally separate.

21 MR. KATZ: Right. And the office building is owned free and
22 clear without any loans.

23 THE COURT: Yes. Yes. Okay. Thank you very much. All
24 right. So then with respect to the church, certainly there is an
25 issue here that you clearly are entitled to take and should take to

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1 the appellate court on the First Amendment issue, the underlying issue
2 in this case and that clearly, the balancing that goes on here is in
3 terms of the securing the status quo under the standards that I've
4 just initially summarized here. It would seem to me that I've
5 indicated I wanted indication of deeds to the property or whathaveyou
6 and I've received copies of deeds. But it would seem to me that with
7 respect to the church, I'll hear from the plaintiffs in a moment, but
8 Mr. Katz, it would seem to me that in terms of the assets of the
9 church essentially are it's the church building is the property.
10 There's nothing else essentially.

11 MR. KATZ: Well, of course, you have the parsonage as part
12 of the church building which is where Fred Phelps, Sr. and his wife
13 live. So there's homestead --

14 THE COURT: ~~Well, there may or may not be. I don't need to~~
 15 ~~really address that yet. But~~
 16 MR. KATZ: Right. And --
 17 THE COURT: well, let me just cut to the core of this. It
 18 seems to me that it would be perfectly reasonable -- ~~let me preface~~
 19 ~~this by saying that this court certainly recognizes that the~~
 20 ~~defendants cannot post \$5 million in assets.~~ But it would seem to be
 21 perfectly reasonable to ~~place a lien on the church property. The lien~~
 22 ~~would be part of the security for the granting of the supersedeas bond~~
 23 ~~pending the appeal in this case. If the appeal is successful, the~~
 24 ~~lien is released. If the appeal is not successful either before the~~
 25 ~~united States Court of Appeals for the Fourth Circuit or if you seek~~

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1 ~~Review before the United States Supreme Court, then at some point, in~~
 2 ~~time, the lien then would be operable vis-a-vis execution by the~~
 3 ~~plaintiffs and obviously, at that point in time, you could raise what~~
 4 ~~you would contend would be a homestead exemption under Kansas law as~~
 5 ~~to a portion of that.~~ But it seems to me that would be the reasonable
 6 approach to take. What is your position on that?

7 MR. KATZ: I have a suggested substitute for Your Honor
 8 which I think approach reaches the same --

9 THE COURT: I'm going to hear from the plaintiff's counsel
 10 in a moment, but I want to see what your position is.

11 MR. KATZ: My proposal I think reaches the same goal without
 12 having any sticky issues about having to litigate any homestead or
 13 First Amendment or any issues like that which is we start with the
 14 practical reality, Your Honor, that all four of these pieces of real

15 estate have been owned by the same people since at least the 1980's.
16 working forward, my understanding is the Westboro Baptist Church
17 building, that's been there since the 1950's. The office building
18 that Fred Phelps owns, I understand that's been there for several
19 decades. He's been the same owner. But Shirley Phelps-Roper has
20 confirmed today that she's owned her home is confirmed -- this is all
21 confirmed by the deed materials I understand from everybody -- she's
22 owned her home, you know, with her husband since I understand since
23 1980.

24 THE COURT: Well, I'll get to Ms. Phelps-Roper in a moment,
25 but I think at some point in time the property was just in her name

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1 and then it was titled over to her name and her husband's name.

2 MR. KATZ: Right. That's what I want to say. I think that
3 I don't have that deed. And then Ms. Phelps-Roper represented to me
4 today that Rebekah Phelps-Davis by herself and/or with her husband has
5 owned her home since 1989. So we have substantial stability there.
6 And also the whole, well, not the whole world, but millions of people
7 in the world know about this case if they tried to get away from
8 anything. So I have confirmed with Ms. Shirley Phelps-Roper this
9 morning that all the individual defendants plus Timothy Phelps for the
10 church would be more than happy under the penalties of contempt to
11 sign a promise just to keep the status quo, not to sell the real
12 estate pending the outcome of the appeal. And by them doing that and
13 by not doing a lien or whatever, we just don't have any of this
14 messiness about things with First Amendment and arguments about
15 homestead and it just reaches the same result.

16 THE COURT: Well, I understand your argument on that. As to
Page 12

17 Fred Phelps, Sr., there is no homestead argument as to the office
18 building.

19 MR. KATZ: Well, there's the parsonage.

20 THE COURT: Yeah. But you're contending that there's a
21 ~~homestead argument as to the equity of the church property.~~

22 MR. KATZ: Well, as to where, I am connecting it as to the
23 part of the church building that --

24 THE COURT: Yes. ~~And that is an issue that would have to be~~
25 ~~resolved ultimately upon execution for purposes of execution of the~~

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1 judgment. ~~But it does not need to be resolved by me now in terms of a~~
2 ~~lien on the property securing the supersedeas bond. It obviously is~~
3 the defendant's motion. Absent a supersedeas bond, the plaintiffs are
4 free to proceed to execute on the judgment and I think that in this
5 case, some type of supersedeas bond is appropriate in order to have
6 your clients proceed with appeal without having efforts at execution
7 of a judgment. But we have to secure a portion of the judgment. So
8 anything further on this because the bottom line is ~~it seems to me~~
9 ~~that a lien placed by this court, registered with this court and the~~
10 ~~United States District Court for the District of Kansas and the local~~
11 ~~court authorities noting that there is a lien placed on the church~~
12 ~~property, a judgment lien placed, essentially a lien placed by this~~
13 ~~court, not a judgment lien per se in terms of execution of the~~
14 ~~judgment, but a lien, a supersedeas bond lien placed by this Court on~~
15 ~~the church property would accomplish the same thing legally without~~
16 ~~some promissory note essentially that nothing, that the church~~
17 ~~property could not be sold. There could not be any further mortgage~~

18 ~~placed on the church property and it just is frozen in time. If your~~
 19 ~~appeal is not successful, that security has been posted. No further~~
 20 ~~liens can be placed on it. The property cannot be sold. Then the~~
 21 ~~issue of the homestead exemption and whether it does or does not apply~~
 22 ~~can certainly be litigated at that time. I think that's a reasonable~~
 23 ~~approach.~~ I'd be glad to hear from you as to why you think that's an
 24 unreasonable approach.

25 MR. KATZ: Well, I mean aside from what I've already said

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1 since in parts since my understanding was today we were coming to see
 2 the extent to which Your Honor is willing to deviate from the local
 3 rule as far as supersedeas bond or whatever, that --

4 MS. PHELPS-ROPER: Could I be heard just for a moment,
 5 please?

6 THE COURT: Actually, Ms. Phelps-Roper, this is Mr. Katz is
 7 representing the church and so Mr. Katz will address it and I'll be
 8 addressing your individual situation in a moment, Ms. Phelps-Roper.
 9 But just as to the church, go ahead, Mr. Katz.

10 MR. KATZ: I do welcome Ms. Phelps-Roper after she hears
 11 what I'm about to say.

12 MS. PHELPS-ROPER: We can't hear, Mr. Katz.

13 MR. KATZ: Okay. Can you hear me now?

14 MS. PHELPS-ROPER: Yes.

15 MR. KATZ: Okay. After what I have to say, I would be
 16 interested if the judge would allow to let Shirley Phelps-Roper have
 17 to say about the church. Judge, my understanding is we're here on the
 18 hearing about amounts, not to place liens or whatever yet. My
 19 suggestion is that, you know, that Your Honor make your final decision

20 about what Your Honor will accept to stay the enforcement of the
21 judgment and if part of that is that you're only willing to do it if
22 there is a lien, then if each or collectively the defendants agree to
23 that, fine. If they don't, then my view is that a lien shouldn't be
24 placed. If they don't agree to that, a lien shouldn't be placed by
25 this court and all these sticky issues, you know, people are against

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1 that. You know, a lien should be placed locally, you know, through
2 the courts over in Kansas. Assuming that there's even any mechanism
3 that can enable the Court today to place a lien. That's what I want
4 to say. And if the Court would permit Shirley Phelps-Roper to speak
5 on this, I would appreciate it.

6 THE COURT: Certainly. Go ahead, Ms. Phelps-Roper. You can
7 speak as a member of the church on this.

8 MS. PHELPS-ROPER: I was going to suggest that if we had
9 just a brief moment to speak with Mr. Katz, we could resolve this
10 without all, an undue waste of time.

11 THE COURT: Well, I'm afraid we're conducting the hearing.
12 We've had plenty of time for people to speak with one another on this.

13 MS. PHELPS-ROPER: Okay.

14 THE COURT: Ms. Phelps-Roper, you know, if you have anything
15 further to add with respect to my calculations, I'm not going to issue
16 freezing orders on bank accounts or in any way undergo that mechanism.
17 I note there's been some deletion of a small amount of money in a
18 checking account, but it seems to me to be a very simple matter here
19 is the Court has the authority to just issue a bond, but issue the
20 terms of the bond and ~~one of them would be that there would just be a~~

21 ~~supersedes bond lien essentially noted here and as well as in the~~
 22 ~~United States District Court for the District of Kansas with respect~~
 23 ~~to the church property. As I've said, if the church is successful in~~
 24 ~~its appeal, then it's successful on appeal and the bond is released.~~
 25 ~~If the church is not successful on the appeal, then that property has~~

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1 ~~been secured and then the matter of -- the plaintiffs would then have~~
 2 ~~to seek an execution of judgment on that amount of money as to the~~
 3 ~~church and then there certainly the church at that point in time could~~
 4 ~~raise an issue as to any portion of the property it felt was subject~~
 5 ~~to the homestead exemption under Kansas law. I'm not ruling on that.~~
 6 ~~now.~~ I'm just trying to come to certain figures for each one of these
 7 four defendants so that I can grant the motion to stay the execution
 8 of the judgment. So anything further you want to add on that, Ms.
 9 Phelps-Roper, before I hear from the plaintiff's counsel?

10 ~~MS. PHELPS-ROPER: I was just going to suggest that~~
 11 ~~bounded like something that was not subject to.~~

12 THE COURT: All right. Well, that's fine. All right.
 13 Thank you very much. All right. Mr. Summers, Mr. Trebilcock,
 14 whichever one wants to argue on this, I'd be glad to hear from you.
 15 Essentially, the assets of the church appear to be pretty clear to me.
 16 Mr. Timothy Phelps has sworn under oath with respect to the financial
 17 statement and the documents which have been submitted appeared
 18 certainly as to the church property and the mortgage, certainly appear
 19 to be pretty consistent with what was represented to the Court in
 20 October and they've represented what's left in their checking account.
 21 So it seems to me that the assets of the church are the physical plant
 22 of the church and my proposal would be that that secures, that that

23 property is frozen and secured and then you're certainly, if you're
24 successful on appeal and -- strike that. If the defendants are not
25 successful on appeal and the judgment is upheld, then you can proceed

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1 to then seek execution of judgment on that amount. And at that point
2 in time if the defendants want to raise an issue of homestead
3 exemption, I would address it at that time. So I'll be glad to hear
4 from you, Mr. Summers.

5 MR. SUMMERS: Certainly, Your Honor. With respect to the
6 church, we obviously only have the same documents you have which are
7 limited. So I can't --

8 THE COURT: You have access to everything I've got.

9 MR. SUMMERS: Right. That's what I'm saying. There's not
10 much. So I can't dispute anything that, what's been said so far.

11 THE COURT: Well, you've seen the appraisal that was
12 submitted --

13 MR. SUMMERS: Correct.

14 THE COURT: -- of the church and it's absolutely right on
15 the, exactly the same figure as was listed in the financial statement
16 in October.

17 MR. SUMMERS: Correct. I guess my only larger point and it
18 would be the same for all these defendants, you can see from their
19 bank accounts, if you ordered any one of them here today, they
20 probably couldn't afford to buy the plane ticket to come here and at
21 the same time, they've traveled the country, the world. There's money
22 somewhere. But having said that, certainly the documents in front of
23 me don't reflect that money. So all I can do is surmise or guess as

24 to where all that money is coming from.

25 THE COURT: It's not for me to engage in conjecture at this

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1 point in time. Ms. Phelps-Roper's husband, for example, is not a
2 defendant in this case. To the extent that he perhaps pays for plane
3 tickets, he's not a party to the case. So other family members --
4 it's not, this is not a, ~~this is not a procedure in supplemental~~
5 ~~proceedings or interrogatories in aid of execution right now. It's~~
6 ~~just a matter of securing an appeal bond.~~ And the defendant, I think
7 the testimony in the case already was that the defendants paid for
8 their plane tickets here to Maryland at the time of the funeral of
9 Matthew Snyder out of their own funds. That the church didn't pay for
10 the plane tickets. So your point is noted. But I have no reason, ~~I~~
11 ~~have no reason as to Westboro Baptist Church to believe that there are~~
12 ~~any other assets other than what they've listed, which is essentially~~
13 ~~the church property and about \$350,000 worth of equity in that~~
14 ~~property.~~

15 MR. SUMMERS: And we have no reason to dispute that, Your
16 Honor. You're already accommodating them by reducing the bond amount.
17 I believe it's the better approach to post the bond itself. That way
18 it can just be collected upon if we prevail and obviously not
19 collected upon if they prevail.

20 THE COURT: Well, the bond, in terms of the bond, it can
21 either be a corporate bond or the Court can require a cash bond and
22 ~~the court can also require property be pledged.~~ Now Mr. Katz has
23 essentially noted the church's position. Ms. Phelps-Roper is not
24 representing the church. She's a member of the church. He's
25 essentially noted the church's position on this. I'm just trying to

1 go step by step as to the defendants. Right now we're just dealing
2 with the church and securing -- yes, Mr. Katz?

3 MR. KATZ: I can make things easier. Based on Ms.
4 Phelps-Roper's earlier representations that the church has no
5 problems, that ~~she doesn't think the church will have any problems~~
6 ~~with Your Honor's proposal there~~, I don't expect there's going to be a
7 problem.

8 THE COURT: All right. Well, then fine. ~~I'll put a lien;~~
9 ~~I'll put a total lien on the church. Part of the supersedeas bond~~
10 ~~will be a lien on the Westboro Baptist church, the property which is~~
11 ~~located at 3701 Southwest 12th Street, Topeka, Kansas in Shawnee~~
12 ~~County, Kansas and that lien will be noted here in the, as a condition~~
13 ~~of the supersedeas bond. The church has pledged that property to~~
14 ~~secure its appeal. That will also be registered in the United States~~
15 ~~District Court for the District of Kansas and no further liens, no~~
16 ~~loans, nothing of any kind can diminish the equity value in the~~
17 ~~church.~~ So we're just going to go step by step as to the defendants.
18 As to the church, the church has its property. It's got an appraisal
19 value that we note of \$442,800. We know the mortgage is \$89,000.
20 There's over \$350,000 in equity in that church property and I will
21 note that they've, essentially the church has pledged its equity. ~~The~~
22 ~~church is essentially pledging its equity in its property toward a~~
23 ~~supersedeas bond and that is a lien. So they can't borrow one more~~
24 ~~penny on the equity, Mr. Summers, on that church property. They can't~~
25 ~~get a second mortgage. That is frozen. And if the church goes up in~~

1 value, that is more asset that you may seek to attach when you execute
2 on the judgment. Is there anything further on matter of the church
3 property?

4 MR. SUMMERS: No, Your Honor. I just -- so I'm clear then
5 there would be no cap as far as the ceiling since we're not collecting
6 --

7 THE COURT: I'm putting a lien on it. Depending upon the
8 real estate market, the church value may go up, it may go down. And
9 if it goes up, I mean your judgment is -- the total amount of the
10 judgment in this case is \$5 million. Everyone should know the figure.
11 I'll pull it out exactly. I don't have the judgment in front of me.

12 MR. SUMMERS: That's correct, Your Honor.

13 THE COURT: It's \$5 million. So the church, you know, if
14 they find gold or oil under the church and it's worth \$12 million,
15 then, you know, that secures the judgment right there. But so we'll
16 just have to wait and see. But the church has agreed to pledge the
17 equity in the church property. And as to Westboro Baptist Church,
18 their motion to stay, I haven't ruled yet, but it seems to me can be
19 granted based upon their granting of, pledging the entire equity of
20 the church property as security for the supersedeas posting and that
21 can be done in that fashion. So that's how that would work. They
22 don't have to actually get a corporate bond is the point, Mr. Summers.
23 They can pledge property. In the case of these individual defendants,
24 we're going to go over in a moment the matter of cash bond and they
25 can put cash in the registry of the court. It's in an

1 interest-bearing account and in that fashion that's the way we can
2 handle individuals as well or they can buy a corporate bond if they
3 want of some sort. But as to the church, do you have anything further
4 to add on the church?

5 MR. SUMMERS: No, Your Honor.

6 THE COURT: All right. So that will be -- the motion of
7 the, the pending motion of the church for stay of the execution of the
8 judgment as to the Westboro Baptist Church will be granted for the
9 reasons stated on the record. And Madam Clerk, I'll be drafting an
10 order on all these rulings, but just keep your notes. And ~~the equity~~
11 ~~of the church of over \$350,000 is now pledged as to the bond and no~~
12 ~~further liens of any kind can be posted on the church property in any~~
13 ~~way. No second mortgages, no lines of credit and that will be noted~~
14 ~~here in this court and I'll go over the procedure with the clerk.~~ But
15 I think that, Mr. Katz, the way this will be handled will be it will
16 ~~also be a notice in the United States District Court for the District~~
17 ~~of Kansas.~~ So it's clearly of record as to the appeal in this case.
18 And ~~it's not a judgment lien. It's just a lien with respect to the~~
19 ~~taking of the appeal in this case.~~

20 Now as to --

21 MS. PHELPS-ROPER: Judge, could I ask one question --

22 THE COURT: Yes, Ms. Phelps-Roper.

23 MS. PHELPS-ROPER: -- for clarification?

24 THE COURT: Yes.

25 MS. PHELPS-ROPER: You said that all of this would also be

1 subject down the road if necessary to any discussion about the rights
2 of the parties to their homesteads and so forth. I just wanted to
3 make sure that that hadn't been --

4 THE COURT: Yes. I've not entered a judgment lien per se,
5 Ms. Phelps-Roper. ~~If you are not successful on your appeal, the~~
6 ~~plaintiffs can seek to execute on the full amount of the, essentially~~
7 ~~can seek to execute on the church property in satisfaction of their~~
8 ~~judgment. At that point in time, a defense can be raised with respect~~
9 ~~to the homestead exemption and I'll deal with it at that time and the~~
10 ~~parties can have an opportunity to debrief whether or not the matter~~
11 ~~of your father and your mother living on a parsonage there on church~~
12 ~~property would qualify them for what you have referred to as the~~
13 ~~homestead exemption under Kansas law. That can be asserted at that~~
14 ~~time and I would rule one way or the other on that. And whichever~~
15 ~~party is not satisfied could then take a subsequent appeal on that~~
16 ~~ruling after I had made that ruling.~~ Yes, Mr. Katz?

17 MR. KATZ: Judge, in addition I understand that the
18 defendant, Westboro Baptist Church, is left with all its legal
19 arguments it wishes to make against enforcement lien including First
20 Amendment arguments that a church has the right to --

21 THE COURT: Well, we'll deal with that later. If we get to
22 the stage where there's execution on the judgment, it would mean that
23 you have not prevailed in your First Amendment argument before the
24 United States Court of Appeals for the Fourth Circuit nor the Supreme
25 Court of the United States. And at that stage, Mr. Katz, I think we'd

2 an execution on the church where the plaintiffs could take complete
3 custody and title to the church property unless you were able to
4 assert successfully a ~~homestead exemption under Kansas law and I'm not~~
5 ~~putting on that. we'd have to wait and see and both sides would have~~
6 ~~an opportunity to brief it and I would review it and I may or may not~~
7 ~~certify that question to the Court of Appeals of Kansas, for example.~~
8 ~~I don't know.'~~

9 MR. KATZ: So my understanding is that the defendants are
10 left with all their legal defenses to raise. I mean I guess this is
11 perfectly analogous to a mechanic's lien where if a mechanic is owed
12 money for a house they've done work on and they haven't been --

13 THE COURT: Well, I'm not going to note whether I agree with
14 that position or not, Mr. Katz. It seems pretty clear to me the
15 church is pledging its property toward the bond so that they can take
16 an appeal and I'm granting the motion of the church to stay the
17 execution of the judgment ~~with their essentially posting and pledging~~
18 ~~the property of the church, specifically the church building and~~
19 ~~property at 3701 Southwest 12th Street in Topeka, Kansas in Shawnee~~
20 ~~County, Kansas.~~ And with respect to the execution on that property,
21 if you are not successful on your appeal, the plaintiffs are certainly
22 ~~free to seek, execute on the property, to take title to the property,~~
23 ~~to sell it in order to gain money to satisfy their judgment.~~ At that
24 point in time, you can raise a defense that some of that property
25 would be subject to a homestead exemption and I will deal with that

1 issue at that time.

2 MR. KATZ: I think that my client is going to want to be

3 able to raise any legal arguments in addition to homestead arguments
4 including, although Your Honor is saying if we lose on appeal, the
5 First Amendment argument is finished. I'm not sure. I haven't
6 researched the issue about whether there's a separate First Amendment
7 issue of a church being, you know, having a right to have, you know,
8 have some sort of real estate where they can worship.

9 THE COURT: Well, as to that, if that's the issue, your
10 issue is not a First Amendment issue as to what occurred at the
11 incident in question.

12 MR. KATZ: Right.

13 THE COURT: Your argument is if there's any case law as to
14 the entitlement of the church to have property of some sort.

15 MR. KATZ: Right.

16 THE COURT: To that extent, you could raise that argument,
17 Mr. Katz.

18 MR. KATZ: That's what I meant.

19 THE COURT: I don't know that there's any merit to it, but
20 you could raise that argument.

21 MR. KATZ: Thanks, judge.

22 THE COURT: All right. Now with respect then to the
23 defendant, Fred W. Phelps, Sr., Mr. Katz is here representing Fred W.
24 Phelps, Sr. As to Fred W. Phelps, Sr., first, I refer to the
25 financial statement which he filed which again is paper number 197, is

1 a matter of public record, Court's Exhibit Number 1. And the real
2 estate listed there, he listed \$157 in a checking account in cash,
3 \$7,219 in a savings account, \$1,000 of personal property and then he
4 as all the defendants, he did this under oath in October, property

5 listed in the value of the \$232,900 with no real estate mortgage on
6 that. And, Mr. Katz, this morning you referred to that as an office
7 building that he owns with his wife. Is that correct?

8 MR. KATZ: That's right, judge.

9 THE COURT: Now I don't have in his submissions which are
10 limited at best -- he essentially submitted his tax returns. I'm
11 sorry. I misspoke. He submitted his tax returns. And in those
12 materials, there is an appraisal sheet, a 2008 notice of appraisal on
13 property and there is a value listed there, appraised value, 2005,
14 appraised value of, I'm sorry, in 2006 of \$232,900. That is the exact
15 same figure as was listed in the financial statement. So this is in
16 fact the appraisal sheet that I have here and his materials relates to
17 that office building property. Is that correct, Mr. Katz?

18 MR. KATZ: Yes. I assume you're looking at the same
19 document --

20 THE COURT: Yes. And you can clarify for me. I'm looking
21 at this document and I think you obviously would know this. You're
22 his lawyer. What is the address of that property?

23 MR. KATZ: That's the property on Topeka Avenue as I
24 understand it.

25 THE COURT: Yes. If you could give me the actual address,

26

1 please? I'm looking at it here. It's 15 Huntins and I can't really
2 read --

3 MR. KATZ: I'd like to ask if Shirley Phelps-Roper can
4 confirm that it's 1414 Southwest Topeka Boulevard actually.

5 MS. PHELPS-ROPER: That's correct. That's correct.

6 THE COURT: Well, I'm sorry. That's an office building at
7 1414 Southwest --

8 MR. KATZ: Topeka Boulevard.

9 THE COURT: Topeka Boulevard in Topeka, Kansas. Is that
10 correct, Mr. Katz?

11 MR. KATZ: Yes, judge.

12 THE COURT: All right. Now it would seem to me and then I
13 would note that the, his checking account information only listed \$412
14 in a checking account and then his personal tax returns -- I'm not
15 going to go into the details of the tax returns, but it's necessary as
16 a matter of public record to at least discuss the income level.
17 According to his 2006 income tax return filed presumably by April 15,
18 2007, Mr. Fred W. Phelps, Sr. with his wife lists a total adjusted
19 gross income of \$14,708 according to his tax returns and that's
20 consistent with the returns of 2002, 2003, 2004, 2005 and 2006, that
21 approximate income level. So it would certainly appear that his major
22 asset, Mr. Katz, is this office building that's not subject to a
23 mortgage. Would you concur with that?

24 MR. KATZ: Yes, judge.

25 THE COURT: All right. Now as to that, in terms of his tax

1 return, I would note that his tax return has not reflected -- it
2 reflects some itemized deductions, but I don't have -- his tax returns
3 did not enclose his itemized deductions. Do you have any knowledge of
4 what these itemized deductions generally are? For example, he's
5 listed \$12,300 in itemized deductions in the year 2006. I assume it's
6 to charity. I'm going to get to Ms. Phelps-Roper and Ms. Phelps-Davis
7 in a few moments. I assume it's to charity and I assume it's to the

8 church. Is that right, Mr. Katz? Can you educate me on this?

9 MR. KATZ: If I can double check -- if Shirley Phelps-Roper
10 knows the answer?

11 MS. PHELPS-ROPER: I don't know where you're looking at,
12 judge. Can you be a little more specific?

13 THE COURT: Yeah. I'm looking at the -- well, actually,
14 it's not fair to you, Ms. Phelps-Roper. I'll just ask Mr. Katz. Mr.
15 Katz, these tax returns, he's listed -- I've got a sheet for
16 supplemental income and loss. And you can come up and look at what
17 I've got in case for some reason I didn't get what I was supposed to
18 receive. But I don't see any itemization of the --

19 MS. PHELPS-ROPER: Is it a Schedule E?

20 THE COURT: Yeah. I don't have it there. Take a look if
21 you will.

22 MR. KATZ: You're not talking about 2006 --

23 THE COURT: All of them. I don't have any listing of these
24 itemized deductions. It appears all of those reflect the same
25 approximate adjusted income figure. But it's, there's the \$12,000

1 deduction that I assume from itemized deduction, I assume it's just a
2 contribution to the church. Suffice it to say that the asset of
3 almost \$233,000, the office building is the primary asset of Mr. Fred
4 W. Phelps, Sr. as you've noted. Let me hear from plaintiff's counsel
5 on this because quite frankly, Mr. Katz, it seems to me we can do the
6 same thing with this property. We can have Mr. Phelps, Sr. pledge
7 that property, have no mortgage of any kind placed on the property.
8 That again the plaintiff's counsel would be free to assert an

9 execution of judgment on that building also and at that time to the
10 extent there's any defense with respect to the fact that it's owned
11 jointly with his spouse or it's subject to a homestead exemption, we
12 would certainly address that at that time in terms of an effort to
13 execute a judgment. Is there any reason why the same procedure should
14 not be followed as to this property as well, Mr. Katz?

15 MR. KATZ: Unless Shirley Phelps-Roper --

16 MS. PHELPS-ROPER: Could I speak --

17 MR. KATZ: One second.

18 MS. PHELPS-ROPER: -- just to that for a moment and one
19 other --

20 MR. KATZ: Just one moment.

21 MS. PHELPS-ROPER: Can I say something?

22 THE COURT: Just one second, Ms. Phelps-Roper. Let Mr. Katz
23 finish.

24 MR. KATZ: Unless Shirley Phelps-Roper or Rebekah
25 Phelps-Davis already know Fred Phelps, Sr.'s wishes, I would just ask

1 that to be able to pass the, pass or take a break briefly for me to
2 double check that with him.

3 THE COURT: All right. Yes, Ms. Phelps-Roper? You want to
4 be heard on that, Ms. Phelps-Roper?

5 MS. PHELPS-ROPER: Well, first, I wanted to say that when
6 you're looking at that tax return and you're talking about itemized
7 deductions, if you read the rest of that line 40, it says or standard
8 deductions. There's 12,300 is simply the standard deduction allowed
9 under the law --

10 THE COURT: All right. Thank you, Ms. Phelps-Roper.

11 MS. PHELPS-ROPER: There's no itemized.
12 THE COURT: All right. Thank you.
13 MS. PHELPS-ROPER: You're welcome.
14 THE COURT: That's helpful. So your father does not appear
15 to have itemized deductions.
16 MS. PHELPS-ROPER: No. He did not itemize deductions.
17 THE COURT: All right. Thank you very much. Now with
18 respect to your father's ownership of the office building at 1414
19 Southwest Topeka Boulevard, Topeka, Kansas, Ms. Phelps-Roper, is that
20 where you maintain your law practice in that building?
21 MS. PHELPS-ROPER: Yes. That's correct.
22 THE COURT: All right. And Ms. Rebekah Phelps-Davis, you
23 also maintain your law practice in that building?
24 MS. PHELPS-DAVIS: Yes, Your Honor.
25 THE COURT: All right. What other offices are in that

30

1 building?
2 MS. PHELPS-DAVIS: There are no other offices.
3 THE COURT: All right. So am I fair to understand that the
4 building is owned in the name of your mother and father and that you
5 and other family members utilize, certainly you and Ms. Phelps-Davis
6 utilize that building for your law offices?
7 MS. PHELPS-ROPER: Okay. I'm sorry. I was --
8 THE COURT: I'll repeat it. Who else utilizes that
9 building?
10 MS. PHELPS-ROPER: Phelps Chartered utilizes that building.
11 ~~there have been attempts in the past to rent the building. But of~~

12 ~~course in this environment -- any parts of that building. There is~~
13 ~~no other renters in that building.~~

14 THE COURT: All right. So essentially --

15 MS. PHELPS-ROPER: It's only Phelps Chartered.

16 THE COURT: I'm just trying to verify in addition to Shirley
17 Phelps-Roper and Rebekah Phelps-Davis utilizing that building for
18 their law practices, what other family members utilize that building?

19 MS. PHELPS-ROPER: You mean in the law firm of Phelps
20 Chartered?

21 THE COURT: Yes. Anybody else in the building. I'm just
22 trying to clarify what the building is.

23 MS. PHELPS-ROPER: There's only one entity that rents any
24 part of that building, utilizes it at all and it's Phelps, Chartered.
25 It's a law firm and Rebekah and I are two of the attorneys in that law

31

1 firm and the other two attorneys are Jonathan Phelps and Rachel
2 Harkenbarger.

3 THE COURT: All right. Thank you very much, Ms.
4 Phelps-Roper. Now with respect then to that office building and
5 equity being in the office building owned by your father which you and
6 your sister utilize, are you prepared to state what your father's
7 position is on that because I'm considering taking the same approach
8 on that building as I've taken with respect to the church property in
9 terms --

10 ~~MS. PHELPS-ROPER: My father's position is that he would --~~
11 ~~in line with what you spoke to that you would put a lien on the~~
12 ~~property and that it would be subject at any time of execution to all~~
13 ~~the words that you said about the church property, all rights and~~

14 ~~interest of the parties would be looked at and any legal rights that~~
15 ~~they have would be, they would be permitted to make his position is,~~
16 ~~is that with respect to his half of that building, he's fine for you~~
17 ~~to put a lien on that property.~~

18 THE COURT: Well, I'm not talking about as to half. I'm
19 talking about the entire equity in the building. That my
20 consideration would be in light of the facts of the matter that the
21 entire, the building itself just as the church property would be
22 pledged, is being pledged, that that property would be pledged for
23 your father. To the extent that there's any assertion of homestead
24 exemption under Kansas law --

25 MS. PHELPS-ROPER: Or the rights of the co-owners is what

32

1 I'm --

2 THE COURT: And with respect to the rights of any co-owners,
3 that's a matter that can be addressed at another time in terms of
4 seeking to execute on the judgment. Right now we're just talking
5 about posting of security for the supersedeas bond for the appeal. So
6 I'm not talking about half the property. I'm talking about the entire
7 property being pledged --

8 MS. PHELPS-ROPER: Okay. Could I have just a moment,
9 please?

10 THE COURT: Certainly.

11 MS. PHELPS-ROPER: Could I have just a moment? Thank you.
12 (Pause.)

13 THE COURT: I'm certainly going to hear from you, Mr.
14 Summers, in a moment on this. I'm just trying to find out what the

15 position of the defendant is and go step-by-step on this.

16 MS. PHELPS-ROPER: Your Honor?

17 THE COURT: Yes.

18 MS. PHELPS-ROPER: Okay. With all the rights of the parties
19 being protected for the future at such a time as any execution at any
20 time as all appeals are exhausted and we would like, please, to make
21 sure, he's requesting that you include the language that at such a
22 time as any reversal or the appeals are exhausted and this matter is
23 done and reversed, that the lien is removed.

24 THE COURT: Yes. Clearly, if you were successful on your
25 appeal, Ms. Phelps-Roper, all of these liens, the liens for the bond

33

1 for the appeal would be released. It is only -- we're addressing the
2 eventuality that your appeals are not successful either before the
3 United States Court of Appeals for the Fourth Circuit or to the
4 Supreme Court of the United States. At which time Mr. Summers and
5 Mr. Trebilcock on behalf of the plaintiff, Mr. Snyder, are then free
6 to seek to execute on the judgment and just as the church property
7 would have been pledged, this office building property would be
8 pledged. At that point in time, there could be an assertion of
9 certain defenses. I've said that you can assert the issue with
10 respect to whether or not the homestead exemption under Kansas law
11 would apply because your mother resides there with your father on the
12 church property. To the extent that there would be a homestead, not a
13 homestead exemption necessarily, but the issue with respect to joint
14 ownership, the fact that your mother is apparently listed on the title
15 to the office building, then that issue could be asserted at that
16 point in time and I'd rule upon it.

17 If your appeals are not successful, Mr. Trebilcock and
18 Mr. Summers will then seek to execute on the judgment and in seeking
19 to execute on the judgment, we would then have a hearing on the
20 execution of the judgment and I would make a determination as to
21 whether or not they can go ahead and take the church property as well
22 as take the office building there at 1414 Southwest Topeka Boulevard
23 and whether or not they could sell those in total or whether or not
24 they could only have rights to half of those sales. I would make the
25 ruling at that time. So you would still have the same, preserve the

34

1 same rights as have been preserved by the church with respect to the
2 church property. We're just talking now about security for a
3 supersedeas bond during the pendency of the appeal.

4 MS. PHELPS-ROPER: I understand that. All I was telling you
5 is that was his concern that that language be included in the
6 document. That my mother, the co-owner, that her leasehold interests
7 are preserved for those future -- he's just concerned about the
8 language being included in your document.

9 THE COURT: All right. The issue is preserved. I'm not
10 ruling on it one way or another.

11 MS. PHELPS-ROPER: Yes. I understand that.

12 THE COURT: I'm not agreeing that the plaintiff can seek it
13 nor am I agreeing that it's exempt. I'm just saying that --

14 MS. PHELPS-ROPER: I understand that.

15 THE COURT: All right. Fine.

16 MS. PHELPS-ROPER: I understand that.

17 THE COURT: And the language will be the same. All right.

18 Then I'm prepared then to address that with respect to Fred W. Phelps,
19 Sr. I'll be glad to hear from you, Mr. Summers. Anything further, if
20 you have any other arguments you want to raise vis-a-vis Fred W.
21 Phelps, Sr.?

22 MR. SUMMERS: None other than that should be the starting
23 point in the entire equity in the property, Your Honor.

24 THE COURT: Well, I mean in terms of -- it doesn't appear
25 based upon the documents I have that there are other assets that

35

1 Mr. Fred W. Phelps, Sr. has, quite frankly, based upon what's been
2 presented to me.

3 MR. SUMMERS: That's my interpretation of the documents
4 presented --

5 THE COURT: All right. Thank you very much. All right.
6 The motion of the defendant, Fred W. Phelps, Sr., with respect to the
7 motion to stay, he joined in that motion and essentially, the motion
8 of Fred W. Phelps, Sr. and the Westboro Baptist Church, post trial
9 motion to stay, paper number 14, will be granted for the reasons
10 stated on the record with the security as stated on the record. The
11 security being the pledging of property, complete pledge of property
12 at 3701 Southwest Street, Topeka, Shawnee County, Kansas as well as
13 the office building at 1414 Southwest Topeka Boulevard in Topeka,
14 Kansas. The church property being valued at almost \$353,000 net
15 equity and the office building being valued at almost \$233,000 net
16 equity which means that essentially there is security of \$586,000
17 being posted by these defendants with respect to the judgment in this
18 case. And any legal issues with respect to the execution on the
19 judgment have been preserved by all the parties and would be addressed

20 at a later hearing depending upon whether or not the appeals were or
21 were not successful. So I will prepare the necessary order granting
22 that motion to stay and that bond will be, a supersedeas bond will be
23 prepared noting those liens and it will be filed with this court and
24 will also I believe be filed with the United States District Court for
25 the District of Kansas and I will note the consent of the defendants

36

1 with respect to that order.

~~2 All right. Now we're now going to address the matter of~~

3 Shirley Phelps-Roper. Hold on one second, please. With respect to
4 the defendant, Shirley Phelps-Roper, those materials were submitted
5 timely and I will note they were not submitted late in the evening and
6 ~~I thank Ms. Phelps-Roper and Ms. Phelps-Davis for their prompt~~
7 ~~submission of materials.~~ Essentially, those tax returns for the years
8 2002, 2003, 2004, 2005 and 2006 were submitted to the Court under seal
9 and will remain under seal. That type of information is not
10 accessible to the public at this point in time until perhaps execution
11 on the judgment. But it will remain under seal pending these appeals.

12 The tax returns, the submissions also and Mr. Trebilcock and
13 Mr. Summers reviewed these in my chambers this morning and no copies
14 have been made of those documents by opposing counsel. There is an
15 ~~appraisal of the property at 3640 Churchill Road~~, Topeka, Shawnee
16 County, Kansas, which was attached and that property is jointly owned
17 by Ms. Phelps-Roper and her husband. And there is a notation of a
18 portion of that property being exempt under the Homestead Act. There
19 was some bank account information that was listed. But I would note
20 that in the tax returns here, the most recent -- approaching this as I

21 did with respect to her father, the most recent tax return -- hold on
22 one second.

23 Actually, before I get to the tax returns, let me address it
24 this way. First of all, in the Document Number 197, which was Court
25 Exhibit 1 introduced in October of 2007, Ms. Phelps-Roper listed the

37

1 real estate having a value of \$238,500. I gather and then it was
2 subject to a mortgage of \$49,299. I assume that that is the property
3 at 3640 Churchill Road in Topeka, Kansas. Is that correct, Ms.
4 Phelps-Roper?

5 MS. PHELPS-ROPER: That's correct.

6 THE COURT: All right. And there is equity in that property
7 and I don't -- I'm looking for the appraisal here.

8 MS. PHELPS-ROPER: It looks slightly different than the
9 other --

10 THE COURT: Yes. I noticed it did look different. Hold on
11 one second. According to what you've submitted, Ms. Phelps-Roper,
12 there is, essentially is that correct, there's a \$45,000 mortgage on
13 that property now, not a ~~\$49,000 mortgage?~~

14 MS. PHELPS-ROPER: Yes.

15 THE COURT: And I see that the appraisal value that's
16 attached here, appraised market value as of 2007 and 2008 is ~~\$219,900~~
17 and not 238,500. Is that correct?

18 MS. PHELPS-ROPER: That's correct.

19 THE COURT: All right. So essentially we're looking at
20 \$219,900 in value. There's a \$45,000 mortgage on that property.
21 According to my calculations, that would come to ~~\$174,900 in equity.~~
22 Is that correct, Ms. Phelps-Roper?

23 MS. PHELPS-ROPER: Yes. It sounds right.

24 THE COURT: All right. All right. So that will be the
25 total equity value. Then I note in your tax returns that the tax

38

1 returns reflect -- they are joint returns which you had filed with
2 your husband, Brent Roper, and -- hold on one second. The income tax
3 returns in terms of your total income, joint income with your husband,
4 the income figures, the adjusted gross income figures -- hold on one
5 second -- appear to be fairly consistent. There's a total of ~~\$148,000~~
6 in total income after deductions with you and your husband in the tax
7 ~~year of 2006~~. There's almost 155,000 in 2005 and there is 146,000 in
8 2004. So it appears to be fairly consistent in terms of your joint
9 income with your husband. And then I would note that with respect to
10 your itemized deductions, you itemized your deductions on your tax
11 returns and ~~80 to 90% of your itemization of your deductions relates~~
12 ~~to charitable deductions and I assume that the charity that is~~
13 ~~reflected here with your deductions is your church~~. Is that correct,
14 Ms. Phelps-Roper?

15 MS. PHELPS-ROPER: ~~That's the largest portion of it.~~

16 THE COURT: I mean if there are any other charities which
17 you're giving -- you don't need to list them all. But it would appear
18 to me that ~~you and your husband are quite supportive of the church, and~~
19 ~~your itemized deductions for 2006 for charitable deductions are a~~
20 ~~little over \$64,000 in 2006~~. They are over \$54,000 in 2005. It was
21 over \$40,000 in 2004. So I'm going on a presumption that you
22 certainly are supporting the church there, the Westboro Baptist Church
23 with your tax deductible deductions to the tune of fifty to sixty

24 thousand dollars each year. Is that correct?

25 MS. PHELPS-ROPER: Well, for those two years that you said,

39

1 but not other than that.

2 THE COURT: All right.

3 MS. PHELPS-ROPER: ~~But we definitely tithe. That is a part~~
4 ~~of our duties to serve the Lord our God.~~

5 THE COURT: I understand.

6 MS. PHELPS-ROPER: ~~That is our duty.~~

7 THE COURT: I understand and I'm just reflecting that
8 essentially, the \$64,282 to charity in 2006 which is an itemized
9 deduction which is deducted from your overall taxable income in 2006
10 on your itemized deduction sheet, the Schedule A on the Form 1040 for
11 your 2006 returns, that \$64,282 was essentially given to Westboro
12 Baptist Church. Correct?

13 MS. PHELPS-ROPER: No. That's not correct.

14 THE COURT: Well, how much was given, ma'am?

15 MS. PHELPS-ROPER: Well --

16 THE COURT: Most of it was. Isn't that correct?

17 MS. PHELPS-ROPER: ~~I would say that probably a little more~~
18 ~~than half of that was tithes.~~

19 THE COURT: One-half?

20 MS. PHELPS-ROPER: ~~Contributions to the church.~~

21 THE COURT: All right. In other words, you're saying that
22 these charitable deductions in 2006, only half of those went to the
23 church?

24 MS. PHELPS-ROPER: ~~I'm saying that probably, maybe slightly~~
25 ~~over half was contributions to the church.~~

1 THE COURT: All right. So let us say that of the
2 64,000-plus dollars that you gave to charity that's listed on your tax
3 returns in 2006, certainly thirty-five to forty thousand dollars of
4 that went to Westboro Baptist Church. Is that right?

5 MS. PHELPS-ROPER: ~~I would say probably 35,000 --~~

6 THE COURT: All right. \$35,000 to the Westboro Baptist
7 Church.

8 MS. PHELPS-ROPER: Yes. That's right.

9 THE COURT: And then the same thing in 2005, you have
10 charitable deductions of over \$54,000. You would say more than half,
11 perhaps maybe \$30,000 of that went to the church?

12 MS. PHELPS-ROPER: Probably 30 or slightly under.

13 THE COURT: All right. Approximately \$30,000. So we're
14 ~~looking at the income that you claimed jointly with your husband,~~
15 ~~we're looking at the total equity in your residence that is available~~
16 ~~to you and then we're looking at the amount of money that you make~~
17 ~~available in terms of your tithing.~~ I'd be glad to hear from you.
18 You're going to need to post a -- I can certainly permit you to post a
19 cash bond, Ms. Phelps-Roper, or you can buy a corporate bond and be
20 paid premium on it and quite frankly, the easier and better way to go
21 for litigants is to post a cash bond. It's placed in the registry of
22 the court and you receive interest on the money. I don't have it
23 before me exactly what the rate of interest is. I'll try to have Ms.
24 Preston-Banks, the deputy clerk of court, determine what the interest
25 rate might be while we're proceeding with this. And then you don't

1 pay a premium and you essentially post a cash bond in the registry of
2 the court pending the appeal. ~~So unless you want to engage in a~~
3 ~~pledge of real estate~~, we're going to address now the amount of money
4 you believe would be appropriate to pledge in light of your financial
5 circumstances which is the reason I've summarized it and then I'll
6 hear from the plaintiff's counsel. What is your position on how much
7 you could pledge so as for me to grant a stay with respect to the
8 execution of judgment upon you?

9 MS. PHELPS-ROPER: ~~Well, what I have is my income which, of~~
10 ~~course, you were talking about our income and a very small piece of~~
11 ~~that is my income and, of course, my husband has made it crystal clear~~
12 to me by his words and his actions -- oh, excuse me just a moment.
13 Could I have just a moment?

14 THE COURT: Yes.

15 (Pause.)

16 MS. PHELPS-ROPER: Okay. What I'm saying is is that he, ~~this~~
17 ~~primary responsibility is to support the nine children of our eleven~~
18 ~~children. Nine still live at home, all in school ranging from 5 to 22,~~
19 in age and his primary responsibility is to support those children ~~and,~~
20 ~~to do his duty to serve the Lord his God in truth which includes~~
21 ~~titithing.~~ So I'm thinking that you're assuming that there is some big
22 portion of that income that's mine and of course, it's not.

23 THE COURT: What portion of your joint income with your
24 husband comes from your earnings, Ms. Phelps-Roper?

25 MS. PHELPS-ROPER: Well, on that year that you're looking

1 at, well, on any year, I can say safely that it's ~~twenty-some~~
2 ~~thousand.~~ This year will not be that. But in that year it was.
3 ~~those years that you're looking at it was, it might have been low 20's~~
4 ~~to mid 20's.~~

5 THE COURT: In terms of your residence and you've noted the
6 matter of your residence and homestead exemption. Obviously, your
7 husband is on the title with you to your property at 3640 Southwest
8 Churchill Road in Topeka, Kansas. Correct?

9 MS. PHELPS-ROPER: Yes. That's correct and ~~that is our~~
10 ~~homestead.~~

11 THE COURT: ~~Your husband is the treasurer,~~ is listed in the
12 documents of the church as being the treasurer of the church, but ~~he~~
13 ~~was not a named party in this litigation. Nor is there any judgment~~
14 ~~against your husband.~~ But there is equity in your home, portions of
15 which to which you're entitled as well as he is entitled and I guess
16 the question becomes the extent to which equity in your home is
17 pledged or you take an equity line out and gain cash to support a
18 supersedeas bond with respect to a motion to stay and that's the
19 question before the Court.

20 MS. PHELPS-ROPER: So you're asking me to really be willing
21 to get an equity line of credit so that we can put money in a
22 supersedeas bond?

23 THE COURT: No. I'm not asking you to do anything, Ms.
24 Phelps-Roper. I'm trying to --

25 MS. PHELPS-ROPER: I'm just asking if that's what you're

1 suggesting --

2 THE COURT: Yeah. I'm looking here. You have essentially
3 \$175,000 in equity in your home according to the appraisals which
4 means that you -- half of that, according to my quick calculations up
5 here, ~~you have some eighty-seven to eighty-eight thousand dollars in~~
6 ~~equity to which you're entitled as the half owner of the property.~~
7 ~~you also earn \$20,000 a year in income independent of your husband.~~
8 Your father has essentially pledged an asset that has a value, your
9 father has pledged an asset that has a value of almost \$233,000 in the
10 form of the office building. The church has pledged the church
11 property which has a value of \$353,000. So there's security of
12 \$586,000 right there. Now with respect to your situation, the fact
13 that your husband is on the title to the property, I am certainly not
14 going to, would not entertain a lien against the property itself
15 absent your husband's consent to support you in terms of pledging that
16 for a supersedeas bond on appeal. But the alternative is for me to
17 require a cash bond in a certain amount and then you could procure the
18 cash bond in whatever fashion you want. You have equity in your home
19 and given the great amount of equity you have in your home, you have a
20 home that's worth \$219,900 according to your submissions subject to a
21 mortgage of 45,000 which leaves again net equity of almost \$175,000.
22 So you could certainly get an equity line and take equity out of your
23 home or you could pledge your property toward this appeal --

24 MS. PHELPS-ROPER: Okay.

25 THE COURT: -- and I'm asking what you would prefer.

2 current events this year because ~~I'm working substantially less~~, I'm
 3 not able to work any more because of other requirements of my time. ~~I~~
 4 ~~will make something over \$15,000~~. Now I don't know about a bank
 5 ~~giving me a loan to do such a thing~~. What I would be willing to agree
 6 ~~to with respect to liens is to my portion of the equity of this house~~.
 7 But of course, I can't think that anybody doesn't know that a
 8 homestead where 11 people are living could possibly ever be proper or
 9 available to be used to secure any judgment for anything under any
 10 kind of a view of it. It's a homestead. And so I don't know what the
 11 value of that is to you. I don't know what to tell you here except
 12 those are the circumstances. Are you suggesting an amount?

13 THE COURT: Well, I'm going to have to -- I'm going to hear
 14 from the plaintiff's counsel in a moment, Ms. Phelps-Roper. ~~You're~~
 15 ~~going to be required to post a cash bond in lieu of the pledging of~~
 16 ~~some assets and I'm trying to come to a figure~~. I've indicated your
 17 father has essentially satisfied this Court with respect to the
 18 pledging of -- the church and your father have pledged \$586,000 in
 19 assets. Now you're going to have to either pledge assets to support a
 20 supersedeas bond or you're going to have to post a cash bond. I
 21 haven't determined the amount yet and I was trying to get a feel from
 22 you in terms of what you thought was an appropriate amount. As I've
 23 previously indicated to all of you, no stay is going to be issued in
 24 this case. I'm not going to grant a motion to stay without the
 25 posting of some security of some sort and that's why I summarized the

1 law in this area when we started the hearing this morning. And so
 2 that's the question is the amount and the process. The alternative is

3 is that the plaintiff is then free to execute on the judgment and are
4 free to then proceed to execute on the judgment against you and no
5 motion to stay will be granted as to you. So I'm trying to get your
6 position in terms of what you think is a fair amount to post. ~~I'm~~
7 ~~looking at what your share of the equity in the home is as well as~~
8 your income ability and the fact that you're a licensed attorney and I
9 have a little bit of a feel for what I think is a fair amount. But
10 I'm waiting to hear what you think is a fair amount and then I'm going
11 to hear from Mr. Summers or Mr. Trebilcock. Is there an amount that
12 you think is fair that you could post in the way of a cash bond? You
13 certainly have an asset on which you can borrow money.

14 MS. PHELPS-ROPER: Okay. Of course, they would not look at
15 anything except my income and ~~I'm thinking that there's not going to~~
16 ~~be a lot of interest in light of the fact that there is a very highly~~
17 ~~publicized judgment pending against me, I don't know what bank would~~
18 ~~loan me money under these circumstances.~~ Nevertheless, I'll say again
19 ~~that the portion of this house that I own under the same rules and~~
20 ~~circumstances including protecting the homestead interest or whatever~~
21 defenses are available to me, then I would agree to the same kind of
22 an arrangement wherein the Court took a lien on my property for my
23 portion of this house.

24 THE COURT: Well, that would come to approximately \$88,000
25 of your portion of the equity. The difficulty with that is whereas we

1 have the lawyer for the church, Mr. Katz, who's been authorized to
2 consent to this type of pledging of property as well as your father's
3 pledge of the office building, we would need your husband's consent
4 with respect to the pledge of equity which causes me to think that I

5 have no basis on which to require your husband to consent to that. So
6 we may have to be looking at a cash bond. I know that you're
7 referring to half of your equity which would come to \$88,000.

8 Let me hear from Mr. Summers or Mr. Trebilcock on this.
9 You've had occasion to review in the documents under seal in my
10 chambers Ms. Phelps-Roper's income tax returns with her husband.
11 You've heard her submissions to the Court in terms of her income level
12 as well as you've seen her financial statement which is a matter of
13 public record, again paper number 197 in the file that was dated
14 October 29, 2007. Mr. Trebilcock?

15 MR. TREBILCOCK: Thank you Your Honor. Before stating a
16 legal position, I need a factual clarification based on the tax return
17 because the information is sketchy. From 2002 through 2006, there's a
18 rental property listed at 3642 Huntun in Topeka, Kansas, but no deed
19 was submitted and no information regarding market value or mortgages.
20 So I'm not sure what that is.

21 THE COURT: Right. Okay. Ms. Phelps-Roper, there was a
22 rental property that you and your husband owned that you sold.
23 Correct?

24 MS. PHELPS-ROPER: Actually, yes. It was technically a
25 rental property. It was. Yes.

47

1 THE COURT: That's not the same building that we're talking
2 about at 1414 Southwest Topeka Boulevard, is it?

3 MS. PHELPS-ROPER: No. No, no.

4 THE COURT: Separate building. It was owned by you and your
5 husband?

6 MS. PHELPS-ROPER: It was. Yes.

7 THE COURT: And it was sold and I don't have the document in
8 front of me. As I recall, it appears that you received \$90,000 in net
9 cash for that. Is that correct?

10 MS. PHELPS-ROPER: No.

11 THE COURT: How much did you receive --

12 MS. PHELPS-ROPER: That's not correct at all.

13 THE COURT: How much did you receive net gain after you sold
14 the property?

15 MS. PHELPS-ROPER: Well, we didn't net gain anything. We
16 got back a portion of what we put into it. We purchased the property
17 because we had one of our loved ones that needed to build onto their
18 house and they had a family that was too big to build around. So we
19 purchased the property so they could live in the property. They
20 rented it for some months until that job was done and then we were
21 left with the property. So we used it as a rental property for a
22 couple of years until someone else needed a home and then we evicted
23 ~~or~~ you know, it was a mutually convenient and agreeable where the
24 renters who were students at Washburn, when it came time for them to
25 go, it all worked nicely together. We held off selling the property

1 until their semester was done. When they moved out, we went ahead and
2 let the people, sold the house to the people who were looking to buy
3 it.

4 THE COURT: And did you --

5 MS. PHELPS-ROPER: We didn't want to keep the property. We
6 bought it only for that purpose and then we disposed of it and we got
7 back, we probably invested way more into it because it had to be

8 ~~totally renovated~~. It was some very old, elderly people who had lived
9 there and one died and blah, blah, blah. The point is is that we
10 spent a lot more money than we ever got back on it. We didn't have
11 any net gain. We got a little bit of our equity back from the
12 purchasers.

13 THE COURT: And did you sell the property to a family member
14 or to whom did you sell the property?

15 MS. PHELPS-ROPER: No. But it is, it's ~~some people that we~~
16 ~~care about~~.

17 THE COURT: All right.

18 MS. PHELPS-ROPER: ~~But it was not anyone that's related to~~
19 ~~us~~.

20 THE COURT: All right. Any other questions on that, Mr.
21 Trebilcock, before I hear from your position?

22 MR. TREBILCOCK: No, Your Honor.

23 THE COURT: All right. What is the position of the
24 plaintiff in terms of an appropriate amount of cash bond for Ms.
25 Phelps-Roper?

1 MR. TREBILCOCK: Your Honor, I would think an appropriate
2 amount would be in the neighborhood of \$125,000. She has nearly
3 \$88,000 in equity, supposedly \$20,000 in personal income and there's a
4 concern, there's a certain circular logic if that family is giving
5 \$30,000 a year to a co-defendant who's also under a judgment against
6 us. I don't think that's in any way protected or can be backed out
7 mathematically to say well, we're going to give money to a
8 co-defendant. So if you took that number for equity and the income, I

9 think \$125,000 would be reasonable cash. Just the papers are what
10 they are. There's a concern from plaintiff to just simply that. We
11 have no W-2's. We have no K-1's. We have what sounds like an oral
12 offhand assertion plus or minus \$10,000 from this defendant saying
13 well, it's about \$20,000. She's had plenty of time. So she's not
14 exactly carrying her burden here on her own motion. Thank you.

15 MS. PHELPS-ROPER: And I'm unclear what it is I haven't told
16 you.

17 THE COURT: Yes. Go ahead, Ms. Phelps-Roper.

18 MS. PHELPS-ROPER: I'm not clear what he means. What is the
19 question? I'm not clear about --

20 THE COURT: He's noted, Mr. Trebilcock has aptly noted that
21 your tax returns don't include a W-2 for you. So that we just have to
22 rely upon your oral representation as to what portion of the joint
23 income is actually earned by you. The W-2 forms for you and your
24 husband are not attached to the tax returns which you submitted and
25 Mr. Trebilcock has made the point that it is your burden because it is

50

1 your motion with respect to the --

2 MS. PHELPS-ROPER: Okay. And here's the thing. In the
3 interim while Mr. Trebilcock was talking, I was able to talk with my
4 husband. First of all, the no W-2 forms is there because these are
5 electronically filed and there's no W-2 filed with them. It didn't
6 even enter my -- it wasn't a not showed you and I can pull these files
7 and give you more info if you need. But in the meantime, ~~my husband~~
8 ~~said that he is comfortable under these circumstances with giving an~~
9 ~~agreement that my equity would be available for this lien, my equity,~~
10 subject to all of these things that Your Honor did on these other --

11 THE COURT: Ms. Phelps-Roper, as to that, ~~the court is not~~
 12 ~~inclined to accept that~~. The reason being that there is a significant
 13 doubt in my mind with respect to the assertion of the ~~homestead~~,
 14 privilege as to the church property. Furthermore, as to the matter of
 15 the office that's pledged by your father and the church rather and as
 16 to the office building property pledged by your father, the issue
 17 becomes one that can be addressed at an execution on a judgment as to
 18 the sale of that building. There's no homestead exemption. It's just
 19 a question of distribution of the assets when it's sold. As to your
 20 personal residence, that's another matter. So the Court is going to
 21 proceed by way of a cash bond which you can post and you can determine
 22 how you want to assert that. But the Court is going to require a cash
 23 bond. The Court finds that the position of the plaintiff based upon
 24 the returns and the position as to it being your burden on certain
 25 matters as well as the amount of money you're continuing to give the

51

1 church, I think the position of the plaintiff is a proper one. The
 2 Court is going to ~~require a \$125,000 cash bond~~ by you to be filed
 3 within the next thirty days. In the event that a \$125,000 cash bond
 4 is not filed by you within the next thirty days, then your motion to
 5 stay will be denied and the plaintiff will be permitted to proceed
 6 with execution on the judgment. Now with respect to the \$125,000 cash
 7 bond, you would supply that to the registry of the court. There is
 8 interest that would be given to you on that. And Ms. Preston-Banks,
 9 have you been able to determine the amount of the interest?

10 THE CLERK: I'm waiting for it right now.

11 THE COURT: Well, I'll be able to give that to you in a

12 moment, Ms. Phelps-Roper. It's essentially putting money into a
13 savings account. If you're successful on appeal, the \$125,000 is
14 returned to you with interest and you gain interest as well. But that
15 is the, in light of the nature of these proceedings and it clearly as
16 to your residence there at 3640 Southwest Churchill Road, that is a
17 residence and the very argument you've raised, I've considered in
18 terms of your home and the home you share with your husband and your
19 nine of your eleven children. So I'm not going to accept any pledge
20 of property as to that.

21 MS. PHELPS-ROPER: Okay. I understand. But could I say one
22 more thing just for the record --

23 THE COURT: Certainly. Certainly.

24 MS. PHELPS-ROPER: -- because Mr. Trebilcock raised it.
25 That he said I gave money to a co-defendant and of course, ~~that money~~

52

1 ~~includes what my husband gives and he's not a defendant and as for~~
2 ~~everything that you have in front of you, I was never a defendant or~~
3 ~~co-defendant with anyone until March of 2007.~~ So I just wanted to be
4 sure that was clear on the record.

5 THE COURT: All right. That's fine, Ms. Phelps-Roper. The
6 Court is requiring a \$125,000 cash bond. ~~We will withhold ruling on~~
7 ~~your motion to stay and we'll issue an order noting that I'm giving~~
8 ~~you thirty days from today's date and thirty days from today's date is~~
9 ~~precisely --~~

10 MS. PHELPS-ROPER: ~~May 3.~~

11 THE COURT: Hold on one second. It will be four weeks from
12 today and that Friday after that fourth week.

13 MS. PHELPS-ROPER: Okay. Thank you.

14 THE COURT: Hold on one second. I'm just waiting, Ms.
15 Phelps-Roper. I'm waiting for the clerk to give me the date as well
16 as the interest rate. You just run off four weeks from today and then
17 add two days to Friday. It will be Friday. And what is the date?

18 THE CLERK: Thirty days from today would be May 2nd.

19 THE COURT: All right. And is that a Friday?

20 THE CLERK: That's a Saturday. So it would have to be ~~May~~
21 ~~5th~~.

22 THE COURT: Today is Thursday. I'm sorry. So you would
23 have until I'll give you until Monday, May the 5th to post \$125,000
24 cash bond and if that is posted, I will grant your motion to stay,
25 Ms. Phelps-Roper, and if it is not posted, then your motion will be

53

1 denied. The interest rate on that and we're still waiting to get it.
2 So I'll give you that in a moment once we proceed here with the
3 interest.

4 Now with respect to Ms. Phelps-Davis -- hold on one second,
5 please. Now as to Ms. Phelps-Davis, there's been information that's
6 been supplied as to Ms. Phelps-Davis. As to the individual tax return
7 of Ms. Phelps-Davis, I would note, first of all, there has been --
8 joint returns were filed in 2002 and 2003 and then 2004, 2005, 2006,
9 there were separate, but not joint returns filed. Is that correct,
10 Ms. Phelps-Davis?

11 MS. PHELPS-DAVIS: That's correct, Your Honor.

12 THE COURT: All right. Now with respect to those tax
13 returns, your individual tax returns for -- hold on one second. And
14 again these are under seal and were reviewed by plaintiff's counsel

15 this morning. Your 2006 individual income tax return which reflects
16 your adjusted gross income individually reflects an income of \$55,697
17 for the year 2006. So it appears you're doing much better financially
18 than your sister in terms of the practice of law. You're practicing
19 law with your sister. Is that correct?

20 MS. PHELPS-DAVIS: Your Honor, I practice full time.

21 THE COURT: All right.

22 MS. PHELPS-DAVIS: She practices part-time.

23 THE COURT: All right. So you have adjusted gross income
24 after any deductions of -- no. Adjusted gross income before any
25 deductions of ~~\$55,697~~ in 2006. You have adjusted gross income of

54

1 \$58,114 in 2005. You have adjusted gross income in 2004 individually
2 again filing an individual return of \$56,237 for the last three years.
3 So you're averaging some \$56,000 in income each year for the last
4 years that have been reported on income tax returns. Your charitable
5 donations just for you individually reflect almost ~~\$13,000 in 2006~~
6 \$12,500 in 2005 and \$16,400 in 2004. I presume most of that is to the
7 church. Is that correct?

8 MS. PHELPS-DAVIS: ~~It's a little over half,~~ Your Honor.

9 THE COURT: A little over half. The same as your sister.

10 So --

11 MS. PHELPS-DAVIS: Approximately, yes.

12 THE COURT: So let's say maybe ~~\$7,000 to the church in 2006~~
13 and maybe the same in 2005 and perhaps \$9,000 in 2004. Would they be
14 reasonable approximations?

15 MS. PHELPS-DAVIS: I would agree with that, Your Honor.

16 THE COURT: All right. Okay. What do you propose to post
Page 52

17 in the way of -- ~~is your husband's name still on the title to your~~
18 residence, Ms. Rebekah Phelps-Davis?

19 MS. PHELPS-DAVIS: No, it isn't, Your Honor.

20 THE COURT: All right. ~~I gather did you and your husband~~
21 ~~divorce?~~ Is that correct?

22 MS. PHELPS-DAVIS: ~~No.~~ That's not correct, Your Honor.

23 THE COURT: All right. But your husband's name is not on
24 the title of the property. So what is your home address to your
25 property? Because I looked at your personal financial statement that

55

1 was previously filed in October of this year and you have real estate
2 listed and it reflects a value of ~~\$146,600~~, and subject to a mortgage
3 of ~~\$65,000~~. Is that right?

4 MS. PHELPS-DAVIS: That's correct, Your Honor.

5 THE COURT: And what is the address there of that property?

6 MS. PHELPS-DAVIS: 1216 Southwest Cambridge Avenue.

7 THE COURT: 1216 Southwest Cambridge Avenue?

8 MS. PHELPS-DAVIS: Correct.

9 THE COURT: In Topeka, Kansas?

10 MS. PHELPS-DAVIS: Yes.

11 THE COURT: All right. And the property, let me see if I
12 have an appraisal from you on that. You have attached an appraisal
13 that has been reviewed here and it is consistent with the documents
14 you filed in that the appraised valuation for both 2007 and 2008 is
15 \$146,600 subject to the mortgage of \$65,000, which essentially gives
16 you ~~\$81,000 in equity that's available to you in that home.~~ All
17 right. Ms. Phelps-Davis, with respect to your submissions before the

18 Court, I don't know that I have any -- hold on one second.

19 MS. PHELPS-DAVIS: Okay.

20 THE COURT: I have the mortgage information. I have your
21 taxes. I don't know that I have any checking account information from
22 you.

23 MS. PHELPS-DAVIS: Yes, Your Honor. It was submitted.

24 THE COURT: All right. Hold on one second. Yes. I'm
25 sorry. I see that you have checking account information of \$241 in a

56

1 checking account.

2 MS. PHELPS-DAVIS: That's correct.

3 THE COURT: You just have one checking account. Is that
4 right?

5 MS. PHELPS-DAVIS: That's correct, Your Honor.

6 THE COURT: All right. What is your position in terms of
7 the cash bond that would be posted by you, Ms. Phelps-Davis?

8 MS. PHELPS-DAVIS: ~~My position is that I could post a cash~~
9 ~~bond of \$5,000?~~

10 THE COURT: All right. Well, obviously that's considerably
11 less than I've asked of your sister and considerably less than has
12 been pledged by your father and I don't think that's going to be a
13 realistic figure. But I'll rule on that in a moment. Mr. Trebilcock,
14 if you'll --

15 MS. PHELPS-DAVIS: Your Honor, if I may add to that?

16 THE COURT: Yes.

17 MS. PHELPS-DAVIS: ~~I have four children to take care of and~~
18 ~~a house to run and so I'm just taking all that into consideration.~~

19 THE COURT: I understand.

20 MS. PHELPS-DAVIS: ~~All minor children.~~

21 THE COURT: Yes. Mr. Trebilcock, I'd be glad to hear from
22 you or Mr. Summers.

23 MR. SUMMERS: Your Honor, just to back up a second. The
24 mortgage isn't signed in that packet. I assume there is a signed one
25 somewhere. The one I reviewed --

57

1 THE COURT: Ms. Phelps-Davis has submitted under oath --

2 MR. SUMMERS: Okay.

3 THE COURT: -- previously in October the amount of the, the
4 accuracy of her financial statement. The documents seem to support it
5 in terms of the value of her home and the real estate mortgage.

6 MR. SUMMERS: And the other thing that I wanted to clear up,
7 I thought I saw -- I took some notes. I thought I saw a mortgage
8 balance of \$57,943 in her packet as opposed to the 65 balance.

9 THE COURT: What is the amount of the balance of the
10 mortgage now, Ms. Phelps-Davis?

11 MS. PHELPS-DAVIS: Your Honor, I submitted a mortgage
12 statement effective as of ~~March 1~~ and it's \$57,943.12.

13 THE COURT: All right. Thank you.

14 MS. PHELPS-DAVIS: You were addressing before what I --

15 THE COURT: That's correct.

16 MS. PHELPS-DAVIS: -- submitted in October. Right?

17 THE COURT: Thank you. Go right ahead again,
18 Mr. Trebilcock. So it basically is ~~\$89,000 in equity in the home,~~
19 Mr. Summers.

20 MR. SUMMERS: Yes, Your Honor. We propose the \$125,000

21 Shirley Phelps-Roper is posting and that's based upon the equity in
22 her house, the amount she gives to the church --

23 MS. PHELPS-DAVIS: I cannot hear him, Your Honor.

24 MR. SUMMERS: We propose \$125,000 and that's the same amount
25 Ms. Shirley Phelps-Roper is posting. We generally arrive at that by

58

1 looking at the equity in the house, what she's giving to the church
2 and her earning capacity. I know she said she has the four children
3 there, but she also has a husband. So that income on her tax returns
4 is strictly from her and not her husband. Thank you.

5 THE COURT: All right. Thank you very much. The Court
6 finds that based upon the financial assets of Rebekah Phelps-Davis the
7 ~~amount of money still being given, that's available to her, her own~~
8 ~~income in the full time practice of law and the equity that's~~
9 ~~available to her with respect to gaining -- she does not have the same~~
10 ~~access to equity as does her sister and also the amount of the~~
11 ~~judgment is different as to this defendant, the Court finds that~~
12 ~~\$100,00 and not \$125,000 is an appropriate cash bond in this case.~~
13 The Court will issue the same order. I'll withhold ruling with
14 respect to the motion, paper number 212, the joint motion of both
15 Ms. Phelps-Davis and Ms. Phelps-Roper, motion to stay. It will be
16 stayed. That motion to stay will remain pending until May 5, 2008. I
17 will give Ms. Phelps-Davis until Monday, May the 5th to post a
18 \$100,000 cash bond into the registry of the court.

19 I would note for the record for both Ms. Phelps-Davis and
20 Ms. Phelps-Roper that the rate of interest on that is 0.75% interest
21 compounded daily. So there is a daily rate, a compounded daily rate
22 of interest on those funds of 0.75% according to the clerk of the

23 court. And in the event that the appeal was successful, the money is
24 returned to these defendants with interest on the money that's been
25 deposited. So that the ruling of the Court is that we essentially, I

59

1 am ordering and will grant, issue an order today as to granting a
2 motion to stay of the defendants, Fred Phelps and Westboro Baptist
3 Church based upon their pledge of almost \$586,000 in property of the
4 corporate defendant and the individual defendant, Fred W. Phelps, Sr.
5 There is an additional \$125,000 cash bond required of Shirley
6 Phelps-Roper and she shall have until May 5th to post that and there's
7 another \$100,000 required of Ms. Phelps-Davis and she shall have until
8 May 5th to post that. In the event that either party does not post
9 it, that the motion will be denied as to either one who did not post
10 the adequate cash bond of security. They are the rulings of the Court
11 and I will issue an order later today, Mr. Katz, with respect to your
12 clients. Anything further from the point of view of the plaintiff,
13 Mr. Summers or Mr. Trebilcock?

14 MR. SUMMERS: No, Your Honor.

15 THE COURT: Anything further from the point of view of the
16 defendants, Fred W. Phelps, Sr. or Westboro Baptist Church, Mr. Katz?

17 MR. KATZ: No, judge. Thanks for the time of you and
18 everyone else in the court.

19 THE COURT: And Ms. Phelps-Roper and Ms. Phelps-Davis,
20 anything further from your respective positions?

21 MS. PHELPS-ROPER: Not me. This is Shirley Phelps-Roper.

22 THE COURT: Ms. Phelps-Davis, anything further from you?

23 MS. PHELPS-DAVIS: I have nothing further, Your Honor.

24 THE COURT: All right. This Court stands in recess for ten
25 minutes until we proceed with the sentencing in the criminal case.

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1 (Proceedings concluded.)

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6 I, LISA K. BANKINS, certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.

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9 _____
Signature of Court Reporter
Transcriber

_____ Date

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Typed or Printed Name

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