

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ALBERT SNYDER,
Plaintiff

v.

FRED W. PHELPS, SR.,
JOHN DOES, JANE DOES, and
WESTBORO BAPTIST CHURCH, INC.
Defendants

Civil Action No. 06-CV-1389 RDB

**MEMORANDUM IN SUPPORT OF MOTION FOR COURT ORDER
FOR ALTERNATIVE SERVICE**

I. BRIEF FACTUAL BACKGROUND

The plaintiff files the within memorandum in support of his Motion for Court Order for Alternative Service and that motion is incorporated herein by reference.

On June 5, 2006, the plaintiff instituted the within action by filing a complaint alleging various wrongful acts committed by the defendants, to include: defamation, invasion of privacy, intentional infliction of emotional distress and civil conspiracy. After filing the complaint, the plaintiff employed a process server, Delbert R. White, to serve the defendants. Ex. D, ¶2. The defendants have intentionally evaded service while simultaneously refusing to waive service. Mr. White has attempted to serve defendant Phelps and the registered agent for defendant Westboro Baptist Church on approximately twenty-seven different occasions. Ex. D.

The Westboro Baptist Church is not your typical church. In fact, the so-called church is not open to the public and is contained within a block in which only family members live. The church property, as well as defendant Phelps and Abigail Phelps (the registered agent), is combined within a series of other buildings in a compound covering approximately one block -

all of which is enclosed by privacy fencing and closed gates - all of which is only accessible by defendant Phelps and his family members. Ex. D, ¶7-8.

Defendant Phelps, at one point in time, was an attorney. The Phelps family has their own law firm - Phelps Chartered. The attorneys employed at Phelps Chartered are various Phelps family members and members of defendant Westboro Baptist Church.

On June 12, 2006, Attorneys Margie J. Phelps and Rachel I. Hockenbarger, of the Phelps Chartered law firm, sent a letter to the plaintiff and plaintiff's counsel. In relevant part, Attorneys Phelps and Hockenbarger stated: We represent Westboro Baptist Church (WBC) and her members. Ex. A. Attorneys Phelps and Hockenbarger requested that the addressees respond to concerns raised in the letter. In turn, plaintiff's counsel responded to Attorneys Phelps and Hockenbarger explaining that they (Phelps and Hockenbarger) were mistaken on their purported knowledge of the facts and understanding of the law. Ex. B. Notably, Attorneys Phelps and Hockenbarger did not respond when they learned that their understanding of the facts giving rise to the within complaint were inaccurate.

Significantly, Attorneys Phelps and Hockenbarger were aware of the complaint that was filed against defendant Phelps and defendant Westboro Baptist Church: "You concocted some alleged legal claims, . . . , to prepare and file a complaint in the United States District Court for the District of Maryland, . . ."; "In addition to your abuse of process . . ."; "If you proceed with perfecting service in the federal case referenced above, . . ." Ex. A. The aforementioned quotes are merely examples contained within the letter, but it is clear that Attorneys Phelps and Hockenbarger were in possession of the complaint as early as June 12, 2006.

Additionally, after the plaintiff learned that defendants Phelps and Westboro Baptist Church were represented by legal counsel, the defendants were presented with the option of

waiving service. Ex. C. Faced with the option of waiving service or evading service, the defendants chose to evade service. On July 14, 2006, Attorneys Phelps and Hockenbarger were presented with the appropriate forms, the complaint and summons, along with a return envelope, so that their clients could waive service - the aforementioned documents were sent by facsimile and regular mail.

II. STATEMENT OF ISSUE INVOLVED

WHETHER THE PLAINTIFF HAS MADE GOOD FAITH EFFORTS TO SERVE THE DEFENDANTS AND OTHER MEANS OF SERVICE SHOULD BE ORDERED?

Suggested Answer: *In the affirmative.*

A. The defendants have a duty to waive service.

The Federal Rules of Civil Procedure are unambiguous - defendants have a duty to waive service of the summons and complaint. Fed. R. C. P. 4(d)(2). Even if the defendants were unaware of their duty to waive service, they were provided with the appropriate forms and notices requesting a waiver of service. And if that was not enough, the plaintiff notified the defendants, by and through counsel, that the defendants had a duty to waive service. Ex. C. In addition, the defendants were notified that the costs of filing the within motion would be sought against the defendants, to include attorney fees. Notwithstanding the foregoing, defendant Phelps was an attorney and the Phelps Chartered law firm consists of various family members related to defendant Phelps and Abigail Phelps who are attorneys. Evidently the defendants have chosen to evade service fully aware of their obligation to waive service.

In sum, the defendants have more than adequate legal advice at their disposal. The defendants were given the opportunity to fulfill their duty to waive service. Even after being notified that the plaintiff will be seeking costs and attorney fees, the defendants have refused to

waive service. With that background, the only logical conclusion is that the defendants intend to continuously evade service.

B. The plaintiff, by and through Mr. White, made reasonable attempts to serve the defendants.

Mr. White was retained to serve the defendants. The plaintiff has attempted to serve the defendants “pursuant to the law of the state in which the district court is located, or in which service is effected,” Fed.R.C.P. 4(e)(1); *see also, Izen v. Catalina*, 256 F.3d 324, 327 (5th Cir. 2001). The plaintiff must serve the defendants pursuant to the laws of Kansas or Maryland. Generally speaking, both states require personal service. Md. Rule 3-121(a); K.S.A. § 20-107.

Mr. White attempted to serve the defendants on approximately twenty-seven occasions. Ex. D. Remarkably, on the same day that the Phelps Chartered law firm purports to represent the defendants, *see* Ex. A., the law firm members claim that they have no knowledge of the defendants whereabouts. *Compare* Ex. D., ¶9(b). This story is even more incredible when one considers that the defendants are family members that reside in the same compound and attend the same so-called church!

Notwithstanding the amazing story told by members of the Phelps Chartered law firm concerning their clients, Mr. White made attempts to serve defendant Fred Phelps, Sr. at his residence and at defendant Westboro Baptist Church. Ex. D. Unfortunately, the compound is surrounded by a fence and gates which deny access to non-family members - making service particularly difficult. Ex. D., ¶7. On numerous occasions, Mr. White knocked on compound doors. Even though he could occasionally hear people inside, no one answered the door. *See, e.g.,* Ex. D., ¶9(x).

Mr. White attempted to serve Abigail Phelps at her place of employment. Ms. Phelps works at the Kansas Juvenile Corrections Complex. On several occasions, Mr. White attempted

to serve Ms. Phelps at work. On one notable occasion, Ms. Phelps was called by the receptionist and the receptionist requested that she come to the reception area to meet Mr. White. Ex. D., ¶9(z). Rather than cooperate, she refused to come to the reception area. Similar to the compound, Ms. Phelps is not accessible to the public at her place of employment.

C. The defendants evasion of service require “other means” of service.

Mr. White’s “good faith efforts to serve the defendant pursuant to section (a) of this Rule have not succeeded and that service pursuant to section (b) of this Rule is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice.” Md. Rule 3-121(c).

Appropriate “other means” is service by “nail and mail.” In other words, once the plaintiff has made good faith efforts to serve the defendants (which he has) by a process server, this Honorable Court can order that service be accomplished by mailing the summons and complaint to the last known address of the defendants and by posting a copy of the same at the residence. *Pickett v. Sears, Roebuck & Company*, 365 Md. 67, 775 A.2d 1218 (2001). After all, the purpose of serving a party is to ensure that a party has “actual notice” of the allegations against him or her. In this matter, the defendants are using their compound as a shield to evade service and hide - even though they already have actual notice of the complaint and allegations against them.

III. CONCLUSION

The defendants can run but they cannot continue to hide. Their blatant refusal to waive service and continuous evasion of service is nothing more than a consciousness of guilt. The policy behind Fed. R. C. P. 4 is to avoid costs - not increase costs.

The plaintiff respectfully requests that this Honorable Court order the plaintiff to serve the defendants by: (1) posting a copy of the complaint and summons at the defendants’ last

known addresses; (2) mailing a copy of the complaint and summons to the defendants via first-class mail to their last known addresses; and (3) mailing a copy of the complaint and summons to the defendants' attorneys via first-class mail.

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