

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

ALBERT SNYDER,  
Plaintiff

v.

FRED W. PHELPS, SR.,  
SHIRLEY L. PHELPS-ROPER;  
REBEKAH A. PHELPS-DAVIS; and  
WESTBORO BAPTIST CHURCH, INC.  
Defendants

Civil Action No. 06-CV-1389 RDB

**PLAINTIFF'S RESPONSE TO DEFENDANTS' PHELPS AND WBC  
STATEMENT OF MATERIAL FACTS**

Plaintiff, Albert Snyder, by and through counsel, hereby responds to the Statement of Material Facts submitted by Defendants Fred W. Phelps, Sr. and Westboro Baptist Church, Inc.:

1. Admitted.
2. Admitted.
3. Denied. To the contrary, defendants' 1,000 foot measurement was not a straight-line distance. Stated differently, defendants' measurements were taken as if the defendants were driving in a vehicle and on the road to the front door of the church. Phelps-Davis Depo. Ex. 2 at Appendix Ex. 1. Furthermore, defendants positioned themselves where plaintiff entered the church grounds during the funeral procession. Al Snyder Depo. p. 65, 67-69, 74 at Appendix Ex. 2. Indeed, the protest was visible from the entrance where the procession entered. Father Leo Affidavit ¶17 at Appendix Ex. 3.
4. Admitted that no picketers or protestors entered the physical confines of the church building.

5. Denied as stated. First, defendant Phelps has limited recollection of the funeral protest. Consequently, any testimony from Phelps is hearsay and not admissible. Put differently, Phelps' testimony is not competent for purposes of supporting summary judgment. See Sellers v. M.C. Floor Crafters, Inc., 842 F.2d 639, 643 (2d Cir. 1988); Evans v. Technologies Applications & Serv. Co., 80 F.3d 954, 962 (4<sup>th</sup> Cir. 1996). "I don't remember precisely." Phelps Depo. p. 35 at Appendix Ex. 4. "I don't remember exactly." Id. "[T]he only way I know any of this is by having it shown and told to me in preparation for this deposition." Id. at 36. "I have no independent recollection." Id. "[D]o you know who paid for the travel to get to Maryland? Well, I wouldn't have any separate, independent, distinct knowledge of that one picket." Id. Regardless, defendants specifically chose to travel to Westminster to picket Lance Corporal Snyder's funeral. Phelps-Davis Depo. p. 62, at Appendix Ex. 5. To suggest that police "selected" defendants' location is disingenuous. Indeed, defendants selected 43 Monroe Street. Long Depo. p. 25, at Appendix 6.

6. Denied. To the contrary, plaintiff saw the protestors and their hateful signs concerning his son as he entered the church area during the procession. Al Snyder Depo. 65, 67-69, 74 at Appendix Ex. 2. "The protest is visible from an entrance which the Snyder procession took on that day." Father Leo Affidavit ¶17, at Appendix Ex. 3.

7. Denied as stated. Defendant Phelps admitted to driving by the church and then driving several minutes before arriving at the area in which he protested. Phelps saw the church "when the policeman who escorted us in pointed to it sitting on a hill." Phelps Depo. p. 66 at Appendix Ex. 4. According to Phelps, he was in the "boondocks." Phelps Depo. p. 66-67, 69 at Appendix Ex. 4. Although Defendant Phelps and Phelps-Davis testified that they

did not see the funeral procession, it was visible from where they protested. Al Snyder Depo. 65, 67-69, 74 at Appendix Ex. 2; Father Leo Affidavit ¶17 at Appendix Ex. 3.

8. Denied as stated. The protestors stood on property maintained by the church staff. Father Leo Affidavit ¶8 at Appendix Ex. 3. Furthermore, the protestors stood in an area where the government, at best, had a right-of-way but certainly no ownership. According to Major Long, “it’s property adjacent to the road that -- that a local government or body may own, and allows for direction or traffic control signs, to put gutters in, to put drains in. In other words, when a road is built with just the paved portion of it, then there’s no area on the sides for the infrastructure that need to go with the road.” Long Depo. pp. 21-22 at Appendix Ex. 6.

9. Denied. The government may have had a right-of-way to construct sidewalks or other public conveniences -- i.e., “traffic control signs, to put gutters in, to put drains in,” etc.; however, this right does not extend to defendants’ complete access to church property.

10. Admitted with clarification. The protestors contacted law enforcement in advance of the protest and notified law enforcement that their message “will not be well-received” and “people who opposed our message are tempted to try violence to silence it.” Phelps-Davis Depo. Ex. 4 at Appendix Ex. 7. In response to the protestors contact with law enforcement, the local CRT (i.e., the SWAT team) was activated, the state police command center was established (in the form of a Winnebago), EMTs and ambulances were on standby, and state, county and local police were present and on standby. Long Depo. p. 17 at Appendix Ex. 6; Maas Depo. pp. 19, 29-31 at Appendix Ex. 8. Furthermore, the protestors received an

escort by the Sheriff's office to the church to an area where they eventually protested the funeral. Maas Depo. p. 12 at Appendix Ex. 8.

11. Denied as stated. Defendant Phelps-Davis admitted that there is a propensity for violence anywhere the defendants conduct their protest. Phelps-Davis Depo. p.102 at Appendix Ex.5. Further, defendant Shirley Phelps-Roper's experience has been that people are tempted to use violence when the protestors are present. Phelps-Roper Depo. pp. 41-42 at Appendix Ex. 13; Phelps-Davis Depo. Ex. 4 at Appendix Ex. 7. Put differently, defendants expected violence but wanted police protection for their safety.

12. Admitted in part; denied in part. It is admitted that no physical violence was perpetrated on March 10, 2006. However, members of the general public witnessed defendants' heinous acts and stopped their cars in the middle of the street and had to be ordered back into their cars by law enforcement. Long Depo. p. 50 at Appendix Ex. 6. Further, members of the general public used hand gestures to display their dislike of the heinous acts perpetrated by the defendants. Long Depo. p. 46 at Appendix Ex. 6.

13. Admitted in part; denied in part. It is admitted that the Bureau of Engineering identified an area that law enforcement referred to as a right-of-way. It is denied that anyone identified a public "easement." Long Depo. p. 21-22 at Appendix Ex. 6. However, the protestors did stand on property maintained by the church. Father Leo Affidavit ¶8 at Appendix Ex. 3.

14. Admitted with clarification. Defendants selected 43 Monroe Street. Long Depo. p. 25 at Appendix Ex. 6. Law enforcement directed defendants to a designated area at the location defendants requested.

15. Admitted that Major Long did not see the funeral procession. However, plaintiff saw the protestors from the funeral procession. Al Snyder Depo. p. 65, 67-69, 74 at Appendix Ex. 2. Further, the protest was visible from the entrance where the procession entered. Father Leo Affidavit ¶17 at Appendix Ex. 3.

16. Admitted that Major Long testified that the defendants were singing “as loud as seven people can sing.”

17. Denied. The Carroll County Public Information Officer formed an area across the street from the protestors for the media. Long Depo. p. 31 at Appendix Ex. 6. Further, the protestors’ presence created a circus-like atmosphere for the media which focused on the protestors. Father Leo Affidavit ¶10 at Appendix Ex. 3. Further, the circus-like atmosphere resulted in one or more media members rushing across the street towards the protestors and that member of the media was ultimately turned away by law enforcement. Long Depo. p. 63 at Appendix Ex. 6.

18. Denied. The protestors arrived at 9:30 a.m. and left at 10:26 a.m. Long Depo. p. 44 at Appendix Ex. 6. The funeral began at 10:15 a.m. Phelps-Davis Depo. Ex. 4 at Appendix Ex. 7.

19. Denied. The protestors arrived at 9:30 a.m. and left at 10:26 a.m. Long Depo. p. 44 at Appendix Ex. 6. The funeral began at 10:15 a.m. Phelps-Davis Depo. Ex. 4 at Appendix Ex. 7.

20. Admitted.

21. Admitted with clarification. It is admitted that Ms. Francis testified as stated. However, plaintiff saw the protestors as he entered the church during the funeral procession.

Al Snyder Depo. p. 65, 67-69, 74 at Appendix Ex. 2. Further, the protest was visible from the church entrance for the funeral procession. Father Leo Affidavit ¶17 at Appendix Ex. 3.

22. It is admitted that Dr. Mann stated “I don’t believe he did.” Mann Depo. p. 119 at Appendix Ex. 9. However, it is unclear if Dr. Mann stated that plaintiff communicated this specific fact to Dr. Mann.

23. Denied as stated. Ms. Francis testified that she thought her casualty assistance officers contacted the Patriot Guard. Francis Depo. p. 17 at Appendix Ex. 10. Regardless, plaintiff Snyder wanted a private funeral for the burial of his son. Snyder Depo. p. 75, 83-84 at Appendix Ex. 2. By way of further response, it is admitted that defendants protested and disrupted plaintiff’s son’s funeral and in response a Patriot Guard member raised his middle finger at the protestors. Long Depo. p. 50 at Appendix Ex. 6. It is further admitted that the protestors continued with their protest and Major Long did not see the protestors respond in kind. Further, any statements made by Ms. Francis concerning the casualty assistance officer must be disregarded as hearsay. See Sellers v. M.C. Floor Crafters, Inc., 842 F.2d 639, 643 (2d Cir. 1988); Evans v. Technologies Applications & Serv. Co., 80 F.3d 954, 962 (4<sup>th</sup> Cir. 1996).

24. Admitted with clarification. It is admitted that plaintiff was not aware of anyone posted at the front of the church preventing anyone in particular from entering the church. Snyder Depo. pp. 83-84 at Appendix Ex. 2. However, plaintiff requested a private funeral. Snyder Depo. p. 84 at Appendix Ex. 2. By way of further response, the defendants’ protest disrupted the funeral service. Father Leo Affidavit ¶9 at Appendix Ex. 3.

Furthermore, defendants discouraged other parish families who were present to share the Snyder family's grief. Id. at ¶11 at Appendix Ex. 3.

25. Admitted. By way of further response, the policemen, fire trucks and children did not disrupt the funeral or station themselves outside the church area where the funeral procession enters.

26. Admitted with clarification. Ms. Francis did not plan the picketing. "I didn't plan the picketing." Francis Depo. p. 20 at Appendix Ex. 10. However, defendants' "presence did not allow us to have normal access to the campus and changed the entire atmosphere of the services." Father Leo Affidavit ¶9 at Appendix Ex. 3.

27. Denied as stated. It is admitted that Mr. Fisher did not see the protestors. However, it is denied that Mr. Fisher was "a few cars behind the vehicle plaintiff was in." Fisher Depo. p. 24-25 at Appendix Ex. 11.

28. Admitted with clarification. It is admitted that Mr. Fisher stated that people along the highway stopped to honor and salute Matt, to include police, fire police and military and that Mr. Fisher thought that was a beautiful tribute. Fisher Depo. p. 36 at Appendix Ex. 11.

29. Denied as stated. Plaintiff received an outpouring of support because his son was killed, except, of course, from the defendants. By way of further response, it is admitted that plaintiff has received encouragement for bringing this lawsuit to make defendants pay for the damage they have caused.

30. Admitted that plaintiff divorced his wife in 1998 and that one of the reasons was because he believed she was too tough on their children.

31. Admitted. By way of further response, plaintiff missed work because of plaintiff's actions but disability insurance covered that time away from work.

32. Admitted in part; denied in part. Admitted that plaintiff learned the night before or the morning of the funeral that the protestors were going to protest his son's funeral. Snyder Depo. pp. 63-64 at Appendix Ex. 2. By way of further response, plaintiff was at the funeral home when he learned that the protestors were going to disrupt his son's funeral. Snyder Depo. p. 64 at Appendix Ex. 2. It is also admitted that plaintiff tried "to put ugly out of my mind." Snyder Depo. p. 64 at Appendix Ex. 2. In addition, plaintiff's son was on the forefront of his mind and he attempted to put the protestors in the back of his mind. Snyder Depo. pp. 64-65 at Appendix Ex. 2. Any implication that defendants were not on plaintiff's mind is denied, but it is true that plaintiff was trying to focus on his son.

33. Denied as stated. Plaintiff saw the protestors as he entered the church during the funeral procession. Snyder Depo. p. 65, 67-69, 74 at Appendix Ex. 2.

34. Admitted in part; denied in part. It is admitted that plaintiff entered his son's name in google.com. Unfortunately, plaintiff was directed to an article written by defendant Shirley Phelps-Roper styled as "The Burden of Matthew Snyder." Snyder Depo. p. 109 at Appendix Ex. 2. Consequently, plaintiff was directed to defendants' website, www.godhatesfags.com. Snyder Depo. pp. 109-112 at Appendix Ex. 2; Phelps-Davis Depo. Ex. 12 at Appendix Ex. 12.

35. Admitted with clarification. Plaintiff was interviewed by the York, Pennsylvania local newspaper, to include the morning and afternoon version. In addition,



plaintiff was interviewed by the *Baltimore Gazette*. Snyder Depo. pp. 125-126 at Appendix Ex. 2.

36. Denied. Plaintiff appeared on CNN without defendant Shirley Phelps-Roper after he filed his lawsuit. Snyder Depo. p. 127 at Appendix Ex. 2. By way of further response, plaintiff Snyder did not testify that he ever made a joint appearance on a radio station with defendant Shirley Phelps-Roper and, tellingly, the cited references do not support defendants' position concerning the same. Furthermore, defendant Phelps-Roper could not confirm that she participated in a radio interview with plaintiff. Phelps-Roper Depo. p. 99-100 at Appendix Ex. 13. By way of further response, plaintiff was interviewed on Fox News after he filed his lawsuit and his interview was immediately followed by defendant Shirley Phelps-Roper. Snyder Depo. p. 132 at Appendix Ex. 2.

37. It is admitted that Defendant Shirley Phelps-Roper testified that she wrote information concerning Matthew Snyder on the internet. However, the cited reference does not support defendants' position. In addition, Margie Phelps posted information concerning plaintiff on the internet. Tim Phelps Depo. Ex. 11 at Appendix Ex. 14. All defendants made it clear that they are in full agreement concerning any decision.

38. Admitted with clarification. By way of further response, WBC members are, however, in full agreement with every decision. Tim Phelps Depo. pp. 16, 57, 100 and 118 at Appendix Ex. 15. With that agreement in mind, Margie Phelps wrote "[a]nother curse is those Amish girls dying, right in the backyard of Rendell and those perverts at Barley Snyder who dared to defy the armies of the Living God and take up slander and attack on the Church of God." Tim Phelps Depo. Ex. 11, p. 2 at Appendix Ex. 14. Another WBC member wrote

“Governor Rendell conceived that mischief (Job 15:35) on top of the offense against God of the Barley, Snyder law firm, who with their pudgy-faced squally client, Al Snyder, tried to abuse the court system to seek revenge on the voice of God in this earth, because their stark rebellion against the righteous judgments of the Most High.” Tim Phelps Depo. Ex. 12, p. 1-2 at Appendix Ex. 16.

39. Admitted. However, defendants did agree on traveling together with the intent to protest the funeral. Put differently, they had a “collective discussion” concerning the protest. Phelps Depo. p. 39 at Appendix Ex. 4.

40. Denied. Plaintiff’s reputation was damaged at his place of work. Snyder Depo. pp. 97-98 at Appendix Ex. 2.

41. Denied as stated. Plaintiff has been damaged by defendants’ activities. He wakes up in the middle of the night thinking about defendants. Snyder Depo. p. 136 at Appendix Ex. 2. He thinks about the defendants all of the time. Id at 62; Report of Chaplain (MAJ) Terry Callis at Appendix Ex. 18; Report of Kenneth J. Doka, PhD at Appendix Ex. 19; Report of Scott R. Mann, M.D. at Appendix Ex.20; Report of Jeffrey D. Willard, Ph.D. at Appendix Ex. 21.

BARLEY SNYDER LLC

/s/ Sean E. Summers

By:

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date true and correct copies of Plaintiff's Response to Defendants' Phelps and WBC Statement of Material Facts are being served in the following manner:

Via ECF:

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Date: September 21, 2007