UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Baltimore Division

ALBERT SNYDER,	:	
	:	
Plaintiff	:	Civ. No. 1:06-cv-01389-RDB
	:	
v.	:	
	:	
FRED PHELPS, et al,	:	
	:	
Defendant.	:	

DEFENDANT FRED PHELPS AND WESTBORO BAPTIST CHURCH'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Defendants Fred W. Phelps, Sr., and Westboro Baptist Church (collectively, Defendants), hereby reply as follows to Plaintiff's Opposition to Defendants' Summary Judgment Motion.

INTRODUCTION

The purpose and benefit of summary judgment litigation is to narrow the facts and issues in civil litigation so as to reduce the financial and money expense of litigation to the parties, and to conserve limited judicial resources so that courts may fairly and fully adjudicate courts' other civil and criminal matters on their dockets. See Fed. R. Civ. P. 56.

Through their Summary Judgment Motion, Defendants have tried in good faith to narrow the issues in this litigation by showing, *inter alia,* that Plaintiff has no good faith defamation claim; that he did not even see the picketers nor the words on their signs while approaching, entering, remaining at, and

leaving the church grounds where his son's funeral was held; that the First Amendment prevents the jury from considering the content of the picketers' speech; and that the First Amendment prohibits the jury and court from penalizing Defendants for any of their activities on the Internet, in the media, and anywhere else outside of Westminster grounds and outside of the live view of Plaintiff.

Unfortunately, Plaintiff goes kicking and screaming at almost every turn to preserve every allegation in the Complaint for the jury's ears, even to the point of repeatedly avoiding simply admitting or denying the Summary Judgment Motion's factual allegations by throwing in factual allegations that are not at the heart of the Motion's factual allegations. As a prime example, rather than simply admitting that Plaintiff did not see the picketers, Plaintiff repeatedly says he saw the picket, even though his sworn deposition testimony was "I saw the signs, not the people" and "I couldn't see what [the picketers'] signs said, but I knew what they were going to say because they had warned me before we went to the funeral." Plaintiff's Deposition at 69 (Ex. 2 to Opposition Motion).

This lawsuit amounts to a private effort to limit funeral protests more severely than what (1) Maryland's legislature ever has done -- Md. Crim. Code § 10-205 –- and (2) what law enforcement told the picketers about where they could or could

not picket. This lawsuit amounts to an effort to catapult the First Amendment backwards to the days when courts ignored the First Amendment to the point of imprisoning people for essentially looking at elected leaders cross-eyed through the Libel and Sedition Acts. *Street v. New York*, 394 U.S. at 592; *Knights of Ku Klux Klan v. Martin Luther King Jr. Worshippers,* 735 F. Supp. 745, 750 (M.D. Tenn. 1990). This lawsuit seeks to put Defendants out of the picketing business, when the only lawful way to do so is to amend the First Amendment, which, thank goodness, has never been amended.

ARGUMENT

A. SUMMARY JUDGMENT SHOULD BE GRANTED ON PLAINTIFF'S DEFAMATION COUNT.

The Amended Complaint alleges defamation at ¶¶ 29-40. Nowhere in its Opposition Motion has Plaintiff shown that a defamation claim exists.

"'Under Maryland law, a defamatory statement is one that tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person.'" *Murray v. UFCW Int'l, Local* 400, 289 F.3d 297, 305 (4th Cir. 2002) (citations omitted and emphasis added). Plaintiff has been unable to show that he, the sole Plaintiff, has been exposed "to public scorn, hatred, contempt or ridicule,

thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." *Id.* All he can do is to grab for an inexistent reed in referencing his deposition where he says that a co-worker said that his wife said that Plaintiff's son was gay, whereby the co-worker replied that he was not gay. Plaintiff's Deposition at 97. (Ex. 2 to Opposition Motion). Plaintiff simply is grasping at non-existent straws to try to maintain his defamation count, which count should be dismissed.

Remarkably, Plaintiff struggles to claim that the First Amendment has little force in a defamation suit, due to no parties being state actors. The Supreme Court already laid that notion to rest decades ago. *New York Times v. Sullivan*, 276 U.S. 254, 265, 84 S.Ct. 710, 718 (1964):

B. SUMMARY JUDGMENT SHOULD BE GRANTED ON PLAINTIFF'S PRIVACY INVASION COUNTS.

The invasion of privacy counts should be dismissed.

The First Amendment protects ugly speech as much as it protects speech that is widely popular. *Street v. New York*, 394 U.S. at 592; *Knights of Ku Klux Klan v. Martin Luther King Jr. Worshippers,* 735 F. Supp. 745, 750 (M.D. Tenn. 1990) ("as the threat of violence could not be used to abridge the First Amendment rights of civil rights marchers in 1965, it may not be used to abridge the rights of the Ku Klux Klan in 1990").

In this instance, rather than slipping into Westiminster, Maryland, in the cover of the night, the individual adult Defendants contacted law enforcement in advance, picketed where law enforcement told them to, followed law enforcement directives, and did not shout while picketing. Any publicity provided by any Defendant about Matthew Snyder's funeral was geared to obtain publicity of the individual Defendants' message, rather than to interfere with the funeral taking place one thousand feet (more than three football fields) away from the individual defendants. Under such circumstances, any Internet or news media activities by any of the Defendants were all the more attenuated than standing one thousand feet from Matthew Snyder's funeral.

If the First Amendment means anything, it means the right for people to get on the Internet and on broadcast news to state their opinions, without fear of such a lawsuit as that filed by Plaintiff. *Street v. New York*, 394 U.S. at 592; *Knights of Ku Klux Klan v. Martin Luther King Jr. Worshippers,* 735 F. Supp. 745, 750 (M.D. Tenn. 1990). Plaintiff has no privacy invasion cause of action for any of the Amended Complaints' allegations about Internet, broadcast television and radio, and print media coverage of any of the Defendants.

C. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO PUNITIVE DAMAGES.

Plaintiff seeks punitive damages. However:

> Awarding punitive damages based upon the heinous

> nature of the defendant's tortious conduct furthers the historical purposes of punitive damages -- punishment and deterrence. *Schaefer v. Miller, supra*, 322 Md. at 321, 587 A.2d at 503; *Embrey v. Holly*, 293 Md. 128, 142, 442 A.2d 966, 973 (1982); *First Nat'l Bank v. Fid. & Dep. Co.*, 283 Md. 228, 232, 389 A.2d 359, 361 (1978). Thus, punitive damages are awarded in an attempt to punish a defendant whose conduct is characterized by evil motive, intent to injure, or fraud, and to warn others contemplating similar conduct of the serious risk of monetary liability.

Owens-Illinois, Inc. v. Zenobia, 325 Md. 420, 454 (1992); *see also* Md. Civ. Patt. Jury Inst. 10:12.

As discussed in the Summary Judgment Motion, punitive damages are inapplicable here, where the Defendants' motives were not evil nor intended to injure nor defraud, but to spread the word of God as they saw it. Defendants' picketing, online, and media activities as to Plaintiff clearly are protected by the First Amendment's protection of free expression and free exercise of religion, and are not amenable to the First-Amendment-violative chill of punitive damages.

D. **THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS COUNT SHOULD BE DISMISSED.**

Defendants have preserved their intentional infliction of emotional distress arguments by reincorporating by reference their original Motion to Dismiss. Plaintiffs cite inapplicable and unpersuasive case to prevent such reincorporation by

reference. The grounds in the Motion to Dismiss for dismissing the Emotional Distress Count are sufficient to dismiss this count, in part because Plaintiff has failed to show any proximate cause between Defendants' actions and his claimed injuries.

E. **ADDITIONAL ARGUMENTS**

Once again, Plaintiff floats the inapplicable red herring argument that the *Westboro v. Topeka* case carries some sort of res judicata effect here. Nothing could be further from the truth. For one thing, Plaintiff has not even attached to its Opposition the unpublished state trial court opinion to which it refers. For another thing, the *res judicata* test fails here, where, in part, the *Westboro v. Topeka* case was a challenge against laws limiting funeral picketing and disorderly conduct. When Defendants picketed on the incident date, Maryland had no laws limiting funeral picketing. Moreover, this is a case against Defendants for their alleged actions, and not an action by Defendants to limit government statutory limits on their activities. *Res judicata* is inapplicable here.

Plaintiff is quite right that Defendant Shirley Phelps is solely responsible for any communications of hers on the Internet or television, and that cannot be applied to Defendants; the facts do not support that.

CONCLUSION

For the foregoing reasons, Defendants' Motion for summary judgment should be granted. This is a lawsuit, at best, about attenuation, with the picketers a far distance from the funeral,

and with any electronic media activities being far from Plaintiff in terms of physical distance and time.

Respectfully submitted,

___/s/_____
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by the CM/ECF system to counsel of record, and to the pro se defendants by first-class mail, postage-prepaid, on October 5, 2007, to:

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