

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

2007 OCT 15 A 10:10

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND – BALTIMORE DIVISION

ALBERT SNYDER,

Plaintiff,

vs.

Case No. 1:06-cv-1389-RDB

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

Defendants.

**RESPONSE TO PLAINTIFF'S MOTION IN LIMINE**  
**REGARDING SEXUAL ISSUES**  
**OF DEFENDANTS PHELPS-DAVIS & PHELPS-ROPER**

Rebekah A. Phelps-Davis and Shirley L. Phelps-Roper, as pro se defendants herein, make the following response to "Plaintiff's Motion in Limine to Preclude any Evidence or Testimony Concerning Sexual Issues:"

1. One sexual issue that is highly relevant to this case is plaintiff's sexual activity. Plaintiff has alleged defamation and conspiracy based on a statement in a religious epic on a passive Web site that he taught his son adultery. Plaintiff testified that sex with anyone else after marriage is adultery (that's the clearest you can make of his testimony). Plaintiff's counsel repeatedly asked defense witnesses if they had any evidence plaintiff has had sex with anyone other than his wife. Defendants believe and

follow the Scriptural definition of adultery which is sex outside of the marriage bed, to the spouse of your youth. By any of these definitions, plaintiff's sexual activity with anyone besides his wife goes to the core of his claim, on which he is entitled to bear the burden of proving falsity. This is clearly a highly relevant issue in this case.

2. The second manner in which sexual issues are likely to come up pertains to whether plaintiff or his psychologist have engaged in a lifestyle or activity that is at odds with the oft-published religious viewpoint of the defendants, who are routinely (including in this case) referred to as "anti gay." During discovery plaintiff's counsel and the Court often referred to the anti-gay sentiment of defendants, as reflected in their signs and other publications. Against that backdrop, plaintiff is claiming emotional injury. The only evidentiary support for this claim is subjective statements by him and his psychologist that he is upset. The only way you get to upset (or emotional injury) in this case is by *getting to content*. When you get to content, you get to anti-gay. So if plaintiff and his psychologist are going to offer subjective statements of emotional injury, it is highly relevant to their assessment and claim if they themselves participate in a lifestyle that these defendants publicly rebuke. Experience teaches that if a person is actively involved in a sin, when a person articulates a religious statement that the activity is sin *that* is what upsets the sinner. If the real emotional distress in this case flows from a lifestyle-based disagreement with defendants' published religious message – rather than any genuine concern about the fact that on *one* occasion defendants published that message a thousand

feet away from the church of the funeral before the funeral began, which plaintiff did not see, and certainly his therapist did not see – that is relevant to their credibility. It would be patently unfair to permit plaintiff and his therapist to give emotive testimony about how tearful and upset plaintiff was, without allowing cross-examination of *both* on the question of whether what the real angst is over is the religious message published by these defendants.

Therefore, a motion in limine to exclude any reference to an issue that goes to core evidentiary questions in this case would be contrary to fairness and the rules of evidence.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**


We hereby certify that the foregoing response was served on October 12, 2007, as follows:

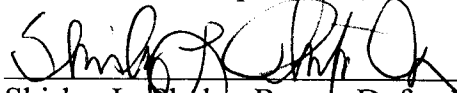
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