

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
22
2007 OCT 12 A 9:07

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 VARIOUS EXHIBITS**

Defendants make the following response to "Plaintiff's Motion in Limine"
concerning various exhibits:

Preliminary points

Many of these exhibits' relevance may shape up in one manner or another during
the evidence, and thus it may be inappropriate to resolve their relevance or admissibility
in a vacuum.

Rules referred to below are from the Federal Rules of Evidence.

All other arguments as to admissibility and relevance are hereby preserved
depending on how the evidence unfolds.

With that, below are reasons defendants believe the documents are admissible.

1. Exhibit 3 is an article that reports when Westboro Baptist Church had its first service.

It is corroboration of information that will be provided by some defense witnesses about the years they have been in existence as a church.

Since the motives of the defendants are at issue in this case, and their defense includes that they acted pursuant to sincerely held religious beliefs, this document is relevant. This document reflects (among other acts) that defendants Westboro Baptist Church, Inc. and Fred W. Phelps have engaged in public expressions of their religious beliefs for many years.

Given that the Court has suggested that the meaning of signs -- which go to core doctrinal expressions by defendants that go far beyond plaintiff or his son -- may have been contrived for this case, this history is important and relevant.

The news story is a **regularly kept record by the church**, which is **an exception to hearsay under Rule 803(6)** of the Federal Rules of Evidence.

Further, the news story is a **document in existence for over twenty years**, per Rule 803(16) **which is self authenticated per Rule 902(6)**; and is thus an exception to hearsay.

2. Exhibit 8 may or may not be offered, depending on if witnesses deny statements made at the time of the events at issue in this case.

If the article is offered to show a statement was made by a witness contemporaneous with the events at issue, it would be **a statement of their present sense impression per Rule 803(1).**

It would **also be a statement of then existing state of mind, emotion, or sensation per Rule 803(3).**

If the statement is plaintiff's statement, it would be an admission of a party, and thus not hearsay per Rule 801(2).

This exhibit is not being offered for the statements of opinion about whether defendants have the right to engage in religious picketing. The Court has indicated that the ultimate question of the First Amendment's application to this case is to be left to the Court (though we must preserve for the record the point that, in fact, that has been erroneously handed to the jury by the Court's rulings). This article does not purport to answer the ultimate question.

3. Exhibit 9 is an excerpt from the Patriot Guard Web site reflecting the plan of the PGR to demonstrate at plaintiff's son's funeral. Plaintiff has claimed repeatedly in this case that the Patriot Guard was invited to the funeral *because* defendants were going to be there. The information on the Web site will go to that question, and whether it is truthful. The exhibit will be used only if necessary to rebut plaintiff's claims.

The Patriot Guard Web page is **information regularly kept by the Patriot Guard organization, and thus is an exception to hearsay under Rule 803(6).**

Further, **statements on the Web page were present sense impressions by the declarant, which is also an exception per Rule 803(1).**

It is also a **statement of the declarant's statement of mind, which includes a plan;** it shows the plan of the declarant to "muster" and attend the funeral of plaintiff's son, **so it is covered by an exception to hearsay per Rule 803(3).**

4. Exhibit 17 (the motion says Ex. 16; the document at issue is Ex. 17) is a report prepared by Major Long of the Carroll County Police Department, contemporaneous to the events at issue, in performance of his official duties. The document is excepted from hearsay by,

Rule 803(3), then existing state of mind;

Rule 803(8), public records and reports; and,

Potentially Rule 803(5), if Major Long needs the document to refresh his recollection about the events.

As for the statement by Major Long reflecting his belief that the activities of the defendants (and the Patriot Guard Riders, and another group, Black Ladies, which had intended to picket at the funeral but ultimately did not) are protected by the First Amendment are not the ultimate conclusion in the case, but are relevant to the defense of First Amendment which the Court has indicated would be allowed.

5. Exhibit 18 (the motion says Ex. 17; the document at issue is Ex. 18) is an e-mail from the Carroll County Traffic Engineer that was included with the records and reports of

the Carroll County Sheriff's Department from the event at issue. The document is exempted from hearsay by,

Rule 803(8), records or statements in any form of public offices or agencies setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to which matters there was a duty to report;

Rule 803(3), statement of the declarant's then existing state of mind.

Rule 805 states that hearsay within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules. So the Sheriff's statement repeated by the Traffic Engineer – in his official record – found in the files of the Carroll County Sheriff's Department – in their official record – is exempted from the hearsay rule.

6. Exhibit 21 (the motion says Ex. 20; the document at issue is Ex. 21) is a report from the National Climatic Data Center which includes wind levels on the day and at the time in issue. It is not likely that plaintiff will continue to dispute the inability to see or hear defendants; but if he does, this may become relevant. This document is a **record of the National Climactic Data Center of the National Weather Service, and thus is an exception to hearsay per Rule 803(8), public records and reports.** Further, **defendants have listed a Representative of the National Weather Service**

in Silver Spring, MD as a witness if necessary in connection with this document, in the Pretrial Order, at p. 11.

7. Exhibit 22 (the motion say Ex. 21; the document at issue is Ex. 22) is a press release issued by plaintiff and his counsel, including a statement by plaintiff, on June 5, 2006. This document is **not hearsay per Rule 801(d)(2)** (statements which are not hearsay; admission by a party), **because it is plaintiff's own statement, in either an individual or a representative capacity, or a statement by a person authorized by the party to make a statement concerning subject, or a statement by the party's agent concerning a matter within the scope of the agency or employment.** Whether this statement of plaintiff (by him or his agents) is relevant will depend upon his testimony at trial.
8. Exhibit 23 (the motion says Ex. 22; the document at issue is Ex. 23), are copies of documents from plaintiff's divorce file reflecting a dispute between him and his former wife about child support and co-pay on medical costs for their children. **If plaintiff presents testimony about his love for his son, the question of why he had unpaid child support or medical payments for his children may become an issue necessary to pursue. If, as the Court has suggested, this point is not belabored, this exhibit may not be necessary.** But the Court has already ruled that the divorce file is admissible in this case. Further, the court file is an official record of a public agency, and thus is an exception to hearsay under Rule 803(8).

9. Exhibit 25 (the motion says Ex. 23; the documents at issue are Ex. 25) are stories from the early 1950's and 1979 about defendant Fred Phelps' activism which is religious-driven. The documents include statements by defendant Phelps about his message to the people-at-large that they should stop sinning and repent or they will not receive the blessings of God. Thus, **per Rule 801(d)(1)(B), they are prior statements of a witness consistent with the declarant's testimony, offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.** This goes to the heart of the claim here that defendants acted intentionally to harm and with other nefarious motives; further, on 10/15 the Court suggested that *now* defendants have decided the messages on their signs are directed to the entirety of mankind; these statements by Pastor Phelps show otherwise.

Further, these are **records maintained by Westboro Baptist Church, and thus would be an exception to hearsay under Rule 803(6).**

Further these documents are an exception to hearsay as they are **statements in ancient documents (over 20 years old) per Rule 803(16), which are self-authenticated pursuant to Rule 902(6).**

10. Exhibit 26 (the motion says Ex. 25; the documents at issue are Ex. 26) are some of the hundreds of e-mails written by plaintiff, in response to people who wrote him on his

Web page, www.matthewsnyder.org. There are three possible ways these e-mails could become relevant:

First, *if plaintiff testifies to something different* from what he said in his responses to e-mails, they would be his prior statements offered to impeach him.

Second, the e-mails to plaintiff are *very supportive of plaintiff and his deceased son*; and very praising of him and his son (with one exception, and that person is in disagreement with defendants, so his statement that plaintiff's son got what he deserved is not attributable to anything defendants said); *this goes to the claim of damages*.

Third, *the statements by plaintiff about his thoughts about and towards defendants, show a great contempt for everything they believe; this too goes to his claim for damages on the question of why he would care what defendants say*; and in that if he is claiming he had "fun" and "had a good laugh," because of defendants, this is inconsistent with his claims of distress; thus his words may be offered to impeach him on his damages claim.

The exhibits would only be offered if plaintiff denies his own words.

All of the statements by plaintiff within the e-mails are statements of a party and not hearsay per Rule 801(d)(1).

Any statements by those writing to plaintiff would not be offered to prove the truth of the matter asserted, but rather would be offered to show the state of

mind or emotion of the writers (an exception under Rule 803[3]) to show they were very sympathetic towards and supportive of plaintiff.

As to volume, these are all items generated and produced by plaintiff. Defendant has no desire or plan to offer hundreds into evidence; rather samples will be used if/as necessary and relevant.

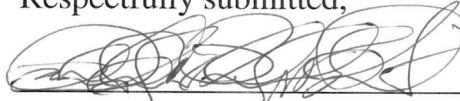
11. Exhibit 29 (the motion says Ex. 28; the documents at issue are at Ex. 29) is a list of **various news items collected by defendants demonstrating incidents of misconduct by members of the military**. Since the core beliefs of defendant are on trial, these media items may become relevant. E.g., defendants routinely track news stories on the institutions of this nation because of their fervent religious interest in how the nation is faring with God. Thus, **these items are records of regularly conducted activity by Westboro and her members, thus an exception to the hearsay rule under Rule 803(6); and they are self-authenticated per Rule 902(6)**. They go to the motive of the defendants in what they do. They are not offered for the truth of the matter asserted, but rather as information that defendants had available that shapes their views about this nation and its relationship with God, particularly through its military branches.
12. Exhibits 31 and 32 (the motion says Exs. 30 and 32; the documents at issue appear to actually be Exs. 31 and 32) are a Patriot Guard posting (that appears to be made, in part, by plaintiff's former brother-in-law) and a news story about a memorial held for

plaintiff's deceased son in October 2006, which was attended by the Patriot Guard Riders. This event may become relevant depending on plaintiff's testimony. The author of the PGR page will be called to testify if necessary, and if plaintiff gives testimony about this event, and/or is inconsistent in what he says to how these events were described at the time.

13. Exhibit 35 (the motion says Ex. 34; the documents at issue are Ex. 35) are **two letters from defendant Phelps-Roper to law enforcement concerning the March 10 picket. One of the two letters – the one dated March 8 – is plaintiff's Ex. 1.** Thus, it is difficult to understand why plaintiff would object to this letter. The second letter was sent after the picket, on March 30. **Both letters are statements of a party and thus not hearsay per Rule 801(d)(2). Both letters are prior statements by a witness that are consistent with her current testimony offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, and thus non-hearsay per Rule 801(d)(1).** Both letters show what the purpose of the picketing was, as described contemporaneous with the event, before this suit was filed, consistent with what defendants say it was today. As for statements by defendant Phelps-Roper about her belief that the First Amendment affords her the right to do the picketing at issue, the Court has already ruled that defendants would be permitted to argue this defense.

14. Exhibit 37 (the motion says Ex. 36; the document at issue is Ex. 37) is an article with information about Dr. Randall Balmer's involvement in the Ten Commandments case. The Court has already ruled on this issue, and defendants do not intend at this time to offer this exhibit. Should that change, defendants will notify the Court and counsel to see if there is still an issue or objection.

Respectfully submitted,



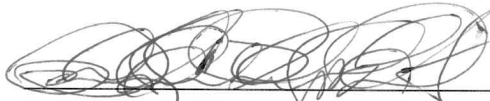
Rebekah A. Phelps-Davis
Pro Se Defendant
1216 Cambridge
Topeka, KS 66604
785.845.5938
785.233.0766 – fax
beshsnscs@cox.net




Shirley L. Phelps-Roper
Pro Se Defendant
3640 Churchill Road
Topeka, KS 66604
785.640.6334
785.233.0766 - fax
beshsnscs.@cox.net

CERTIFICATE OF SERVICE

We hereby certify that the foregoing response was served on October 22, 2007, by hand delivery to the Court and counsel.



Rebekah A. Phelps-Davis, Defendant Pro Se



Shirley L. Phelps-Roper, Defendant Pro Se