

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

**MOTION FOR AWARD OF COSTS AND FEES PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE 4(d)**

AND NOW, Plaintiff, Albert Snyder, by and through his undersigned counsel, files the following Motion for Costs and Fees Pursuant to Federal Rule of Civil Procedure 4(d):

1. On June 5, 2006, the plaintiff filed a complaint against the defendants alleging defamation, invasion of privacy, intentional infliction of emotion distress and civil conspiracy.

2. Thereafter, in accordance with the Federal Rules of Civil Procedure, the plaintiff employed a process server to serve the defendants with the summons and complaint.

Fed.R.Civ.P. 4(c).

3. On June 12, 2006, the defendants' legal counsel notified the plaintiff, by and through counsel, that the defendants were represented by counsel. Based upon those representations, all further communications were directed through counsel. M.R.P.C. 4.2.

4. On June 22, 2006, the defendants were requested to waive service, *see* Fed.R.Civ.P. 4(d), and the defendants were notified that they had "a duty to avoid unnecessary costs of serving the summons." Fed.R.Civ.P. 4(d)(2). *See* attached Ex. A.

5. Subsequently, the defendants failed to waive service, and in fact, actively sought to avoid service. There are consequences for the defendants' actions. "If a defendant . . . fails to

comply with a request for waiver made by the plaintiff . . . , the court shall impose the costs subsequently incurred in effecting service . . .” Fed.R.Civ.P. 4(d)(2).

6. The defendants successfully avoided service on approximately 27 different occasions. The costs associated with those attempts and ultimately serving the defendants were \$490. *See* Invoices attached as Ex. B; and affidavit of Mr. White attached as Ex. C.

7. Eventually, the plaintiff was required to seek relief from this Honorable Court by filing a Motion for Alternative Service. That relief was granted by this Honorable Court and the defendants were served on August 8, 2006.

8. The cost to prepare and file the Motion for Alternative Service was \$3,078. These costs were incurred as a result of the necessary research and preparation for the Motion for Alternative Service, to include the requisite accompanying Memorandum of Law, *see* L.R. 105.1. Again, the defendants could have avoided this expense but instead chose to avoid service.

9. The consequences of refusing and failing to waive service, include a “reasonable attorney’s fee.” Fed.R.Civ.P. 4(d)(5). Indeed, “According to the Advisory Committee Notes, “[i]n the absence of such a provision, the purpose of the rule would be frustrated by the cost of its enforcement, which is likely to be high in relation to the small benefit secured by the plaintiff.” *1993 Advisory Committee Notes to Rule 4.*” *Double “S” Truck Line, Inc. v. Frozen Food Express d/b/a FFE*, 171 F.R.D. 251, 254 (D.Minn. 1997).

10. “The Rule [Fed.R.Civ.P. 4(d)(2)], by its terms, is mandatory absent a showing of good cause.” *Whatley v. District of Columbia*, 188 F.R.D. 1, 2 (D.D.C. 1999). The defendant cannot carry their burden of demonstrating “good cause.”

11. After the plaintiff filed his Motion for Alternative Service, Shirley Phelps-Roper<sup>1</sup> stated “There are rules for service. They have to follow them. We’re not going to do their job for them.” Mrs. Phelps-Roper is accurate – the defendants can force the plaintiff to serve the defendants pursuant to Fed.R.Civ.P. 4(c) but there is a consequence for that choice. The consequence is paying for the costs of service, to include attorney fees.

12. According to the defendants, they will file a motion to dismiss but that is of no moment for purposes of the within motion.<sup>2</sup> “As to timeliness, the commentary to Rule 4(d) makes abundantly clear that a defendant’s duty to avoid unnecessary costs of service is not related to the merits of the underlying case and, therefore, there is no cause to delay an award of costs . . .” *Double “S” Truck Line, Inc. v. Frozen Food Express d/b/a FFE*, 171 F.R.D. 251, 253 (D.Minn. 1997).

13. Sean E. Summers, Esquire, is a senior litigation associate at Barley Snyder LLC, in York, Pennsylvania and has been primarily responsible for litigating this matter thus far.

14. Mr. Summers concentrates his matters in civil and commercial litigation.

15. Mr. Summers expended 16.2 hours preparing the Motion for Alternative Service, at a rate of \$190 an hour, for a total of \$3,078, and 12.5 hours preparing the within motion at the same rate, for a total of \$2,375. Both motions included the requisite Memorandum of Law in support of the respective motion.

16. Attached as Exhibit D is an Unsworn Declaration of Sean E. Summers, Esquire, reflecting his relevant activities in this matter.

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<sup>1</sup> Mrs. Phelps-Roper refers to herself as the spokesperson for defendant Westboro Baptist Church, Inc. Upon information and belief, Mrs. Phelps-Roper is an attorney and the daughter of defendant Fred W. Phelps, Sr. In addition, she is a member of defendant Westboro Baptist Church, Inc. The above referenced quote was reported in the *York Daily Record* on August 3, 2006 and attributed to Mrs. Phelps-Roper.

<sup>2</sup> The plaintiff will respond to any Fed.R.Civ.P. 12 motion at the applicable time, but there is no merit to any such motion.

17. The Supreme Court has held that “[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 1939, 76 L.Ed.2d 40 (1983).

18. Considering the relatively modest costs and fees accumulated, the costs and fees are reasonable.

WHEREFORE, the plaintiff respectfully requests that this Honorable Court award costs and fees as follows:

\$490 for costs of service;

\$3,078 for the cost of preparing the motion for alternative service; and

\$2,375 for the cost of preparing the within motion, for a total of \$5,943.

BARLEY SNYDER LLC

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