

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 BRIEF IN OPPOSITION TO DEFENDANTS FRED W. PHELPS’ AND WESTBORO BAPTIST CHURCH’S POST-TRIAL MOTIONS, INCLUDING: MOTION FOR JUDGMENT AS A MATTER OF LAW; MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT; MOTION FOR RECONSIDERATION AND REHEARING; MOTION TO ALTER OR AMEND THE JUDGMENT; MOTION FOR NEW TRIAL AND/OR REMITTUR; MOTION FOR RELIEF FROM JUDGMENT; AND/OR MOTION FOR ANY OTHER RELIEF IN LAW AND EQUITY WARRANTED UNDER THE FACTS AND LAW

I. Introduction

The evidence did not target one religious viewpoint over another. To the contrary, plaintiff testified that he did not care what defendants' purported religious beliefs were. Further, defendants' own expert testified that defendants' so-called religion did not require them to protest funerals. Just because defendants claim that their religion was on trial does not make it so, and indeed, would conflict with common sense and their own expert's testimony.

Defendants seek to reincorporate by reference all oral motions made by them during the trial under Fed. R. Civ. P. 50. Courts have repeatedly disregarded “incorporation by reference” arguments. *See, e.g., Cray Communications, Inc. v. Novatel Computer Systems, Inc.*, 33 F.3d 390, 396 n.6 (4th Cir. 1994); *see also Longworth SK # 4812 v. Ozmint*, 302 F. Supp. 2d 535, 542 n.4 (D.S.C. 2003) (“The Court also rejects any attempt by Petitioner to maintain objections by

incorporating arguments presented in earlier briefs by reference.”). Assuming, *arguendo*, that defendants may incorporate all of their previous arguments by reference, plaintiff hereby incorporates all of his previously filed documents and any and all arguments made at any proceeding.

1. Defendants misstate the law. "We glean no legislative intent to protect individuals from the economic consequences of intentional misconduct. In sum, § 11-108's cap does not apply to intentional torts." *Cole v. Sullivan*, 110 Md. App. 79, 93, 676 A.2d 85, 92 (Md. Ct. Spec. App. 1996).

2. Damages are within the sound discretion of the jury. Phelps and WBC also fail to realize that they take the plaintiff as they find him. Plaintiff's experts testified that defendants interjected themselves into plaintiff's grieving process. Consequently, plaintiff will be required to remember defendants' actions for the rest of his life. The jury, appropriately so, concluded that compensatory damages were \$2.9 million.

3. There was no evidence that the jury demonstrated any "hatred for defendants' religious views" and just because defendants continually say so does not make it true. What defendants fail to realize is that no one cares about their religious beliefs -- as hateful as they may be. The evidence presented at trial was that defendants disrupted plaintiff's son's funeral. Plaintiff did not disrupt defendants' purported religion.

4. The jury is allowed to consider deterrence as an appropriate purpose to award punitive damages. Defendants repeatedly claimed that they will continue disrupting funerals

regardless of the jury verdict. Additionally, defendants had the opportunity to apologize for their actions and explicitly refused to do so -- they expressed no sorrow for their misdeeds.¹

5. The jury verdict was appropriate based upon the facts presented at trial.

6. Plaintiff did not refer to religion to inflame passions. Regardless, defendants so-called religion is of no consequence. Defendants disrupted plaintiff's son's funeral -- plaintiff did not disrupt defendants' religious service. Defendants' proclaimed beliefs were not the basis of any evidence presented by plaintiff. Ironically, defendants' own expert -- Dr. Balmer -- testified that defendants' religion did not require them to disrupt funerals or harass grieving families.

7. Punitive damages were supported by the facts, especially when taken in the light most favorable to plaintiff.

8. Defendants' *application of Bowden v. Caldor, Inc.*, 350 Md. 4, 710 A.2d 267 (Md. 1998), is misplaced. Again, the facts must be construed in a light most favorable to plaintiff (defendants continuously ignore this standard). The *Bowden* court noted that "[t]he most important legal rule in this area, applicable to every punitive damages award, is that the amount of punitive damages 'must not be disproportionate to the gravity of the defendant's wrong.'" *Id.*, 710 A.2d at 278. Defendants disrupted plaintiff's son's funeral. As defendants were told years ago, protesting a funeral is tantamount to kicking a person while they are down. *Westboro Baptist Church, Inc. v. City of Topeka, Kansas*, Case No. 95-CV-1031, District Court of Shawnee County, Kansas (Doc. No. 78, filed 5/11/07). Defendants knew or should have known that plaintiff would be in a fragile mental state when he was burying his only son. As

¹ Tellingly, defense counsel removed the accusations against the Court and counsel in his submission on behalf of Defendants' Phelps and WBC. Implicitly, defense counsel concurs in plaintiff's position that the pro se defendants' accusations directed towards the Court and plaintiff's counsel are unwarranted and worthy of sanctions. Compare Phelps and WBC paragraph 4 (Doc. No. 215) with pro se defendants' paragraph 5 (Doc. No. 211-2). Similarly, compare pro se page 13, *id.*, to the end with Phelps and WBC's lack thereof.

defendants conceded, they knew the Snyder family was Catholic. According to Dr. Doka (not to mention common sense), the Snyder family would necessarily rely upon their religion when they were attempting to grieve and defendants' words and actions tarnished the Snyder family's only opportunity to bury their son.

Defendants' continued claims that someone has a "hatred for their religious viewpoint" simply ignores the evidence. Defendants' "wrong" was traveling to Westminster, Maryland for the sole purpose of disrupting Lance Corporal Matthew A. Snyder's funeral -- with complete disregard for the harm to the Snyder family. Defendants freely admit that they could have protested anywhere on March 10, 2006, and plaintiff testified to the same. "Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *Bowden*, 710 A.2d at 278 (internal citations omitted).

Admittedly, defendants' ability to pay should be considered when assessing the appropriate amount of punitive damages. Where, as here, defendants have made deliberate misstatements under oath, they should not be permitted to benefit from their misstatements and half-truths. If the Court is willing to entertain this factor, it is appropriate to hold a hearing concerning defendants' previous testimony, and if applicable, the Court should make findings of fact concerning defendants' truthfulness, or lack thereof.

Interestingly, defendants claim that plaintiff's purpose "is to bankrupt and impoverish defendants." However, there was no evidence presented to the jury concerning this claim so this red herring can be summarily dismissed.

As defendants concede, “one of the purposes of punitive damages is to deter the defendant from engaging in the type of conduct forming the basis for the award, the deterrence value of the amount awarded by the jury, under all of the circumstances of the case, is relevant.” *Bowden*, 710 A.2d at 279. Defendants readily admit that they would continue to disrupt funerals and, consequently, this admission was considered by the jury. Even though defendants have been repeatedly told that they are injuring grieving families, they continue their actions.

Aside from the heinous acts perpetrated on plaintiff in this matter, the Court can consider whether defendants took “remedial or corrective action, promptly after the misconduct giving rise to the award of punitive damages.” *Bowden*, 710 A.2d at 279. Defendants took no remedial actions and have repeatedly claimed that they will continue to carry out their misdeeds. “On the other hand, repeated or frequent misconduct of the same nature, misconduct of long duration, attempts to conceal or cover-up the misconduct, failure to take corrective action, and similar circumstances, support the deterrence value of a significant award.” *Id.* Here, defendants conduct is repeated and of the same nature. Additionally, defendants have made deliberate misstatements to mitigate the gravity of the punitive damage award. In an attempt to mislead the jury, defendants lied about the positioning of their signs at the funeral (i.e., cover-up) and have failed to take any corrective action. For example, defendants could have apologized and stated that they have learned their lesson and will not protest more funerals.

Defendants’ next fallback position is that plaintiff has incurred no legal expenses. In other words, defendants are asking the Court to reward defendants for plaintiff’s counsel’s pro bono activities. Common sense dictates that this is nonsensical.

The ratio of punitive damages to compensatory damages is appropriate. Defendants' argument depends on the assumption that there is a cap on non-pecuniary damages. However, this argument is simply incorrect. *See Cole v. Sullivan*, 110 Md. App. 79, 93, 676 A.2d 85, 92 (Md. Ct. Spec. App. 1996). The ratio of compensatory to punitive damages is approximately 2.5 times -- clearly, this is a reasonable ratio.

Defendants fail to identify any alleged errors in the Court's legal instructions to the jury at the beginning and end of the trial; hence their motion for judgment as a matter of law on this ground should be refused.

WHEREFORE, Plaintiff, Albert Snyder, respectfully request your Honorable Court to dismiss Defendant's Post-Trial Motions in their entirety and affirm the verdict and award of the jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date true and correct copies of the foregoing Brief in Opposition to Post-Trial Motions of Defendants Fred W. Phelps, Sr., and Westboro Baptist Church, Inc., are being served in the following manner:

Via ECF:

Jonathan L. Katz, Esq.

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Dated: December 3, 2007