Snyder v. Phelps et al Doc. 230

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

ALBERT SNYDER,
Plaintiff,
vs. Case No. 1:06-cv-1389-RDB

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEC 06 2007
CLERK'S OFFICE
AT BALTIMORE
BY _____ DEPUTY

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

REPLY OF
DEFENDANTS PHELPS-DAVIS & PHELPS-ROPER'S
TO PLAINTIFF'S RESPONSE TO
POST-TRIAL MOTION FOR STAY

Rebekah A. Phelps-Davis and Shirley L. Phelps-Roper, as pro se defendants herein, hereby jointly submit the following reply to plaintiff's response to their post-trial motion for stay.

1. Plaintiff asserts there should be no stay because no bond has been posted.[1] It is important to note that defendants are not refusing to post a bond. The simple reality is that they cannot secure a bond in the amount of the jury verdict. Plaintiff suggesting or arguing defendants have more assets than they have told the Court doesn't change that fact. First, as discussed in detail below, there is just simply no basis for saying anyone is misrepresenting assets. Second, even if there was some basis to quarrel over a few dollars – which there is not – there is certainly no basis

[1] In making assertions about "good cause" plaintiff is referencing case law under 28 U.S.C. § 1963, which is a statute that permits a prevailing plaintiff to move the Court for an order allowing registration of a foreign judgment in another federal court district. That motion is not before the Court.

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for suggesting that defendants have stashed away in secret places nearly $10 million, which is the gap between defendants' collective assets (including the many that are likely subject to exemption under Kansas law, see, e.g., K.S.A. 60-2301, *et seq.*) and the amount of the verdict. Everyone in this case knows better than to suggest such a thing as that.

Defendants have filed post-trial motions requesting a reduction in the award, which they believe the facts and law support; thus, it is premature to talk about a bond amount until a final judgment is determined by the Court. Once the post-trial motions are ruled on, if the Court believes some protective measure is required, and it can be done, the Court knows that these defendants obey the Court's orders. See, e.g., *Waffenschmidt v. Mackay*, 763 F.2d 711, 727 (5th Cir. 1985) (after reviewing judgment debtor's assets, the Court allowed him to pledge unencumbered items as collateral for the judgment pending appeal, rather than require supersedeas bond).

Further, these defendants and their fellow church members have been open and notorious in their views and activities; they have been in the same place all of their lives and, for many years doing the same thing. No one is going anywhere; and no one's assets are going anywhere. Whatever may be recoverable on a judgment in this case will be the same in six months or a year as it is today. The Court clearly has discretion in this matter, as to whether to require a bond or other protective measures, and if so, the nature, amount or scope. The Court observed after the announcement of the verdict of compensatory damages that the amount of

defendants' assets had already been surpassed; nothing has changed on that front, and that fact still remains true. Defendants believe at that point the punitive damages issue should not have been submitted to the jury, for many reasons, but including the fact that the compensatory damages award had already surpassed the assets of the defendants.

Finally, defendants believe there are substantial legal questions raised on appeal in this case, which may result in reversal of the verdict and judgment entirely. Defendants respectfully submit that these issues are so extensive and substantial that a stay is warranted in this case while those issues are under review.

2. Plaintiff asserts a stay should not be allowed because allegedly defendants have lied about their assets, from which plaintiff alleges defendants will transfer, hide or squander assets. This is not so and not supported in the evidence.

a. WBC assets. Plaintiff says the liabilities of the corporation are false because Timothy Phelps testified the real property was paid off; WBC's discovery response indicated no liabilities; and the bank account had a balance of $42,380.46 on June 29, 2007 (vs. $13,136 indicated in the financial statement submitted at the time of trial).

As for the bank statements,

- On May 30, 2007, WBC submitted a response through counsel to a request for production of documents. Item 1 asked for bank statements from January 1, 2006. The response attached redacted bank statements for the period from 1/31/06 through 4/30/07,

showing that the balance month-to-month was widely varied, like this:

Date	Amount
31-Jan	$ 2,471.42
27-Feb	$ 2,159.74
30-Mar	$ 4,176.56
28-Apr	$ 908.89
30-May	$ 2,269.34
28-Jun	$ 3,769.37
31-Jul	$ 4,336.68
28-Aug	$ 1,722.03
27-Sep	$ 1,854.97
30-Oct	$ (151.57)
29-Nov	$ 684.30
28-Dec	$ 6,427.88
31-Jan	$ 7,755.27
27-Feb	$ 18,748.80
30-Mar	$ 28,193.87
30-Apr	$ 37,527.70

Please see **Post Trial Motions Exhibit 1.** The range in the balance extends from $-151.57 to $37,527.70.

Then in October 2007, ***expressly contrary to what plaintiff asserts***, defendants updated their discovery responses with updated financial records. Please see **Post Trial Motions Exhibit 2**.[2] These

[2] The letter from Mr. Katz bears a date of April 30, 2007. This is a typographical error, because the letter refers to updated redacted bank records (thus it had to have been sent *after* the original records response of May 30, 2007); and the records enclosed cover a period past April 30, 2007. Further, the letter refers to filming of the scene when plaintiff's counsel was present, which the record in this case reflects refers to video footage taken by Kramer & Associates on June 18, 2007. So the letter had to have been sent after June 18, 2007. Further, as noted in the body of this reply, plaintiff attached a copy of a redacted bank statement dated 6/29/07. Clearly this had to have been provided *after* May 30, 2007, showing again that updated discovery responses were made.

records include updated redacted bank statements for the period from 5/31/07 through 9/27/07. **Clearly plaintiff's counsel received these updated redacted records, because they attached the 6/29/07 redacted bank statement to their response, and referred to that date in their response.** So it is simply inaccurate for plaintiff to state that WBC did not provide updated bank records during discovery.[3]

The updated redacted bank records show the following balances from May through September of 2007:

Date	Amount
31-May	$ 34,692.41
29-Jun	$ 42,380.46
31-Jul	$ 11,057.59
31-Aug	$ 6,186.74
27-Sep	$ 815.87

[3] It is noteworthy that on 9/12/07, the Court held a telephone discovery hearing in this case, and during that hearing plaintiff moved to compel production of unredacted bank records. The fact that there had been such a delay by counsel in making the motion – which pertained to the May 30, 2007, discovery responses – caused the Court to deny the motion. Nothing prevented plaintiff's counsel from taking further depositions, asking more questions of the individual defendants during their depositions, or issuing records subpoenas if they felt they were entitled to more details about the financial condition of any of these parties. They knew they were making a punitive damages claim from the outset. They asked very few questions of any of the parties, and sought very few records, including not following up on Timothy Phelps' deposition after he identified the church treasurer and responded to preliminary questions about financial issues. It is most untoward factually and legally for them to now make strong claims of falsehood when they failed to pursue more information, and when they rest their claims of falsehood on tenuous or inaccurate factual allegations. The tone of visceral personal hostility that has been set in this case is the only explanation; it is of such a nature and degree, that it makes it virtually impossible for defendants to be fairly heard in this matter. This concern has been raised with the Court repeatedly, yet nothing has been done to restrain these personal attacks by plaintiff's counsel.

Again, these records show a wide variance in the monthly balance, from $815.87 to $42,380.46. It is grossly misleading for plaintiff to present one month's balance – out of 21 months provided – and use that gesture to suggest falsehood by defendants. A balance at the time of trial of $13,136 is not at all out of line (and in fact in 16 out of the 21 months covered by the statements produced, the balance was less than this amount). The balance being at the lower end at the time of trial should not be surprising; considering it was coming at a time when the church's expenses were being tapped to defend this case in a protracted trial with numerous people housed and staying out-of-state, and lots of other expenses.

As to the liabilities of the church,

- In the original response by WBC, when plaintiff asked for documents showing liabilities over $500, as the response at Post Trial Motions Exhibit 1 reflects, there were none. The updated response at Post Trial Motions Exhibit 2 shows a note balance of $71,696.24 as of 9/28/07. Given the expenses of this case, an increase in the debt of the church should not come as any surprise to plaintiff. After all, costing defendants lots of money to pressure them to shut up was the precise goal of plaintiff. By the time the financial statements were required at trial, the debt was at $105,984. That is the sworn testimony; there is not one scrap of

evidence that it is false; it is completely consistent with the patterns shown in the records, and the realities that face the church.

- Further, what Timothy Phelps said in his deposition was this: "Q. Is there a mortgage on that property [that WBC sits on]? A. I don't believe so, but I know that they recently did some renovations and there may have been a loan. But I think it's paid off now, so I think it's owned outright." (Response Appendix, Exhibit C, p. 29 of Timothy Phelps deposition.) So it is no surprise that the church gets loans for renovations. A simple drive by the church over the summer months would have seen the replacement of the roof, which was 25-years-old and beginning to leak; the replacement of an oft-vandalized fence (which was vandalized anew on the heels of the verdict in this case, see copy of photos attached showing vandalism done on the day of or after the verdict); and some extensive cement work that needed replacing. Maintaining the property and making capital improvements is not waste; it is responsible and it maintains the value of the property.

This church has been in this place for over 50 years; improvements have been made on the property periodically to maintain it properly; there is not a hint of any fact to suggest that the property is about to be sold, wasted, transferred or otherwise disposed of or misused. Defendants believe the Court erred in allowing this case to go to trial, and will assert that position in every place

lawfully allowed. Defendants are not going anywhere; and there is absolutely zero risk to the assets of the corporation, unless you count plaintiff's design to bankrupt the church and its members.

b. Assets of defendant Phelps-Davis. This assertion of falsehood by Phelps-Davis is not supported by the evidence.

- First is the claim that Phelps-Davis misrepresented the value of her homestead. Defendant Phelps-Davis is raising four children in a home that is valued at a modest $146,600. (Apparently plaintiff is not prepared to go so far as to suggest this is not Phelps-Davis' homestead. Which means whatever its value is, it's not available for any collection on the judgment that may occur at some point in the future.)

  The deed is in Phelps-Davis' name. She plainly stated this in her deposition. Plaintiff's counsel did *not* ask her if she *owned* the home, as they now assert. (*Response*, p. 4: "However, in her deposition, Phelps-Davis acknowledged that the property was owned by her and her alone." *Deposition*: "Q. Is the deed in you and your husbands [*sic*] name? A. No. Q. Whose name? A. Mine." See Response Appendix, Exhibit G, p. 165 of Rebekah Phelps-Davis Deposition.)

  Whose name is on the deed, and what ownership there may be under all the applicable property laws are two entirely different

things. Phelps-Davis believes, and therefore properly said in her financial statement, that her husband has a right to claim a half interest in the homestead, see K.S.A. 60-2301, K.S.A. and 60-2302.[4] Whether Phelps-Davis is correct on this view or not, a) does not make her a liar, and b) doesn't matter anyway because **the full value of the property was included in the figure in the financial statement and given to the jury**. (Compare at Response Appendix, Exhibit G, the figure of $146,600 for the real estate in Phelps-Davis' financial disclosure, to Exhibit H, the figure of $146,600 by the Shawnee County Appraiser.) So how, pray tell, was the jury misled in this matter, or how does this equal

[4] K.S.A. 60-2301. Homestead; extent of exemption.

A homestead to the extent of 160 acres of farming land, or of one acre within the limits of an incorporated town or city, or a manufactured home or mobile home, occupied as a residence by the owner or by the family of the owner, or by both the owner and family thereof, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon. The provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife, when that relation exists.

K.S.A. 60-2302. Designation of homestead.

Whenever any levy shall be made upon the lands or tenements of a householder whose homestead has not been selected and set apart, such householder, the householder or householder's spouse, when the marriage relationship exists, or an agent or attorney of the householder may notify the officer in writing at the time of making such levy, or at any time before the sale, of what the householder regards as the homestead, with a description thereof, and the remainder alone shall be subject to sale under such levy.

Phelps-Davis having plans to transfer the homestead? If anything, the figure given to the jury was too high, because this is the family homestead, a fact which no one disputes. One of the things plaintiff made an issue of during this case about defendants was that they all lived close together; that is a well-established fact, and there is simply nothing suggesting that Phelps-Davis is about to change that arrangement by transferring or otherwise disposing of her family's homestead property.

* Then, without a stitch of evidence, plaintiff claims Phelps-Davis is lying because her personal checking account balance at the time of her financial statement at the time of trial was $306. Where is the evidence of any falsehood? The only fact offered is that Phelps-Davis will not yield to the effort by plaintiff to make her be silent about what she believes. If anything, that fact *substantiates* a low checking account balance. There is no mystery about what is going on here. These defendants don't store up treasures on this earth, and they have a Bible basis for that position.[5] Phelps-Davis tends to her

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[5] E.g., Luke 12:

16 And he spake a parable unto them, saying, The ground of a certain rich man brought forth plentifully:

17 And he thought within himself, saying, What shall I do, because I have no room where to bestow my fruits?

18 And he said, This will I do: I will pull down my barns, and build greater; and there will I bestow all my fruits and my goods.

19 And I will say to my soul, Soul, thou hast much goods laid up for many years; take thine ease, eat, drink, *and* be merry.

responsibilities, including taking care of four children, and then uses her resources to travel doing what she is profoundly convinced is her duty to God and man. She testified to this belief and manner of life in detail. Re-asserting a mocking disbelief over how she lives does *not* constitute evidence of falsehood. Further, again, at the time account balances were requested by the Court, Phelps-Davis was in the midst of a protracted trial that came at the end of protracted

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20 But God said unto him, *Thou* fool, this night thy soul shall be required of thee: then whose shall those things be, which thou hast provided?
21 So *is* he that layeth up treasure for himself, and is not rich toward God.
1 Timothy 6:
6 ¶ But godliness with contentment is great gain.
7 For we brought nothing into *this* world, *and it is* certain we can carry nothing out.
8 And having food and raiment let us be therewith content.
9 But they that will be rich fall into temptation and a snare, and *into* many foolish and hurtful lusts, which drown men in destruction and perdition.
10 For the love of money is the root of all evil: which while some coveted after, they have erred from the faith, and pierced themselves through with many sorrows.
11 But thou, O man of God, flee these things; and follow after righteousness, godliness, faith, love, patience, meekness.
12 Fight the good fight of faith, lay hold on eternal life, whereunto thou art also called, and hast professed a good profession before many witnesses.
13 ¶ I give thee charge in the sight of God, who quickeneth all things, and *before* Christ Jesus, who before Pontius Pilate witnessed a good confession;
14 That thou keep *this* commandment without spot, unrebukeable, until the appearing of our Lord Jesus Christ:
15 Which in his times he shall shew, *who is* the blessed and only Potentate, the King of kings, and Lord of lords;
16 Who only hath immortality, dwelling in the light which no man can approach unto; whom no man hath seen, nor can see: to whom *be* honour and power everlasting. Amen.
17 Charge them that are rich in this world, that they be not highminded, nor trust in uncertain riches, but in the living God, who giveth us richly all things to enjoy;
18 That they do good, that they be rich in good works, ready to distribute, willing to communicate;
19 Laying up in store for themselves a good foundation against the time to come, that they may lay hold on eternal life.

litigation, all halfway across the country from her home. It should be no surprise that she has a low balance in her checking account. There is no evidence she lied, because she didn't.

c. Possible homestead claim on some portion of the church property. Plaintiff suggests that defendants have demonstrated an intent to "transfer, hide and squander assets" because they noted there may be a question of whether Pastor Phelps and/or his wife have a homestead claim in some part of the church property. This is not evidence of any intent to do anything, but instead is a simple statement of reality. Pastor Phelps and his wife have lived in the parish at the church for over 50 years; it is their home; they have invested equity in the living quarters. Given the state of the law, why would it come as a surprise to anyone to hear that they – or either of them (one of whom is not a party in this action) -- may have a right to claim a homestead interest? See K.S.A. 60-2301; K.S.A. 60-2302; Kan. Const. Art. 15, § 9; *Redmond v. Kester*, 284 Kan. 209, 216, 218, 159 P.3d 1004, 1009, 1010 (2007) ("Following the precedent established since the inception of the Kansas Constitution, we hold that debtors may claim the homestead exemption based on any interest in real estate, whether legal or equitable, as long as the debtors have not abandoned their occupation of or intent to occupy the real estate." "Defining the term 'owner' in K.S.A. 60-2301 broadly to include occupants of real estate who hold any type of interest, including an equitable interest, is consistent with the public

policy of protecting Kansas citizens from the hardships associated with losing the family home.")

Whether it ever comes to this question or not; and whether these defendants are correct in their understanding of the law on this matter or not; none of this is a reflection of any intent to change anything about current assets and property. Rather, it is to point out to the Court that if plaintiff is allowed to execute on the judgment in this case, before the issues are reviewed on appeal – particularly given that there is not another case we can find published anywhere of this kind, and given the indisputable fact that there are weighty First Amendment issues raised by this case – it may result in property being conveyed to someone who may ultimately not be able to keep the property, and/or there may be unnecessary spin-off litigation. It just doesn't make sense to proceed given the nature of the few assets of these defendants, and that the main assets are real estate (many of which are likely to have homestead exemptions raised). Litigating these homestead questions prematurely does not seem wise.

d. Other allegations. In a flurry of words, plaintiff tries to suggest other alleged falsehoods that have *nothing* to do with financial statements or assets. These suggestions are unfounded and unfortunately distracting. They will be briefly addressed here to allay any concerns by the Court. (Defendants believe it is a fair statement that this record shows this is not a case about falsehoods. It is a case about disagreement on some fundamental issues, but it is not about

falsehoods. That is why the Court found it unnecessary to include an instruction to the jury about prior inconsistent statements, and plaintiff's counsel agreed with the Court. It is not helpful to complicate an already extraordinary and difficult case with contrived allegations of falsehood.)

Affidavits and deposition testimony of pro se defendants. These two pro se defendants filed affidavits in support of their motions for summary judgment. (The applicable paragraphs have been cut-and-pasted into an attachment hereto for ready reference.) In Phelps-Roper's affidavit, at paragraphs 109 and 110, she described an Excel table she prepared that summarized various e-mails, letters and cards plaintiff received and produced (addressing an issue related to damages, given how overwhelmingly positive the missives were). In her deposition, counsel asked a few questions about documents Phelps-Roper reviewed, starting with "Before we get into specific document [*sic*], did you review any documents prior to coming here today?" Response Appendix, Exhibit A, p. 37 of Phelps-Roper deposition. Phelps-Roper responded that she wasn't sure what documents he was referring to; said she had seen some things filed; and she did not recall seeing documents that counsel had produced. If plaintiff's counsel had a question about what he perceived to be a discrepancy, he could have asked that question at the time of the deposition. What sense would it make to try to be misleading about this topic, since the affidavit was filed in this case, and copied to the same counsel asking the questions, all on April 24, 2007, some months before the deposition? There is simply no indication that Phelps-Roper was deceitful in her testimony, in

spite of two efforts (in the latest filing and an earlier filing) by plaintiff to suggest otherwise.

In her affidavit Phelps-Davis did not indicate in any manner that she had reviewed anything produced by plaintiff or his counsel. Instead Phelps-Davis just referred to the Excel table and what it showed, as reflected in paragraphs 99-103 (copy attached). In her deposition, at pp. 93-94, Phelps-Davis was asked about documents exchanged; she thought at one point, at least, that counsel was talking about things she (Phelps-Davis) had requested; and she said she did not review anything that was requested by Mr. Katz. There is no discrepancy between the deposition testimony and the affidavit. Again, if counsel deposing Phelps-Davis genuinely thought there was some discrepancy, he could and should have just asked about it at the deposition.

The claim that these pro se defendants lied in their depositions is a contrivance. At worst there was a misfire between question and answer. And the deposition testimony about what documents were reviewed *certainly* has nothing to do with the question of how much or the value of any defendants' assets.

Also of zero relevance to the question of the value or existence of assets is the reference to *State v. Phelps*, 226 Kan. 371, 598 P.2d 180 (1979). Neither of these defendants was a party in *State v. Phelps*. These defendants believe it was error to allow any testimony on it at trial, as there was no issue in the trial (or the case) about whether defendant Fred Phelps was being truthful. But of most importance at this hour, plaintiff is not claiming that defendant Fred Phelps lied in

his financial statement. So what is the relevance of this reference? Is it plaintiff's argument that since defendant Fred Phelps allegedly lied in the past, therefore *someone else* is lying now? What sense does that make?

Also not applicable to the issue at hand is the complaint on p. 4 that defendant Phelps claimed he "never thought children would be at Matt Snyder's funeral." The way defendants remember that exchange at trial, counsel asked defendant Phelps if it crossed his mind or occurred to him that children would be there, or if he gave thought to that matter. When defendant Phelps attempted to say that the issue of whether children were present did not cross his mind, because *in his mind* it was not a relevant factor (on whether he, a preacher, should publish a message he believed applied at the time and place at issue), the Court stopped him, directing him that the Court would determine what was relevant. The line of questions – as did several during the trial – touched on the question of defendants' intent or thoughts. We can all safely guess that plaintiff does not agree with the thoughts that defendant Phelps has – on any topic. That doesn't make his thoughts or beliefs false, and certainly doesn't establish falsehoods in the financial disclosures of anyone.

There is no evidence that any of these defendants have lied in this record, in particular about their financial worth or assets. There are many issues in dispute in this case, but the real net worth of the defendants or whether assets are about to be squandered are not among them.

3. As to the four factors to consider when a stay is requested,

a. The post-trial motions reflect significant issues, both as to the First Amendment rulings, the Court taking personal jurisdiction, and the nature and size of the punitive damages award. There are no cases like this case that defendants have found in published jurisprudence. The Court broke new ground, to say the very least, in how broad it set the time, place and manner limits. Setting aside visceral disagreement with the message, it must be recognized that there are substantial appellate issues in this case. This is not a case that involves a disruption of a funeral; the Court specifically said on October 15, 2007 (as near as these defendants understood the rulings that day), that the case was not limited to a specific distance, and liability did not require actual disruption; instead, the Court allowed the question to go to the jury on whether plaintiff had a reaction to the content of the words within a broad period after the funeral; and if so liability was allowed to attach. That is unprecedented, and defendants believe not supported by existing law. The significance of the issues and the novelty of the rulings are such , that this factor should weigh in defendants' favor.

b. Will defendants suffer irreparable injury if the requested stay is denied? If the Court is wrong in its rulings about the First Amendment, or the massive punitive damages award is unjustified, pressuring defendants and other church members to stop engaging in First Amendment activity, and seizing their assets, clearly would cause irreparable harm. That should not require further discussion. The Supreme Court has recognized the chilling effects of litigation

aimed at stopping protected activity. See *Nike, Inc. v. Kasky*, 539 U.S. 654, 663, 123 S.Ct. 2554, 2558-2559, 156 L.Ed.2d 580 (2003); *Cloer v. Gynecology Clinic, Inc.*, 528 U.S. 1099, 120 S.Ct. 862, 145 L.Ed.2d 708 (2000), Scalia and Thomas, JJ dissenting. A chill on or loss of First Amendment activity or freedoms, even temporary, is irreparable injury.

In *Elrod v. Burns*, 427 U.S. 347, 373-374, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976), the Court said:

> The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. See *New York Times Co. v. United States*, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822 (1971). [FN29] **Since such injury was both threatened and occurring at the time of respondents' motion** and since respondents sufficiently demonstrated a probability of success on the merits, the Court of Appeals might properly have held that the District Court abused its discretion in denying preliminary injunctive relief. See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67, 83 S.Ct. 631, 637, 9 L.Ed.2d 584 (1963).
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> FN29. The timeliness of political speech is particularly important. See *Carroll v. Princess Anne*, 393 U.S. 175, 182, 89 S.Ct. 347, 352, 21 L.Ed.2d 325 (1968); *Wood v. Georgia*, 370 U.S. 375, 391-392, 82 S.Ct. 1364, 1373-1374, 8 L.Ed.2d 569 (1962).
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> "(T)he purpose of the First Amendment includes the need . . . 'to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people

> have conferred upon them,' " *Id.*, at 392, 82 S.Ct., at 1374 (quoting 2 T. Cooley, Constitutional Limitations 885 (8th ed. 1927)). (Emphasis added.)

See also *Rossignol v. Voorhaar,* 316 F.2d 516, 522 (4th Cir. 2003).

c. Will there be injury to another party that denying the stay can address? Plaintiff suggests that he will incur further emotional or psychological injury if the stay is granted. First, the Court set a time period for words or actions by defendants for which plaintiff can recover. On October 15, 2007, after setting that period at a few days after the funeral, the Court then set it at several weeks after the funeral, to the date Phelps-Roper wrote her epic. While defendants believe that time is entirely too broad (and have preserved and raised that issue), nevertheless the time has been set, and we are well past it. Second, in the case plaintiff relies on, *Sisters of Mercy Health Sys. V. Kula*, 2006 WL 1090090 (W.D. Okl. 2006) – which involved allegations that a psychiatrist sexually abused the plaintiff, not allegations of harm caused by words -- the plaintiff testified to the fact that the pendency of the lawsuit was causing her emotional injury, as did her mental health provider. In sharp contrast, here plaintiff testified in his deposition that the lawsuit did *not* cause him stress. "Q. But, hasn't this lawsuit added to your stress or troubles, relating to Matt's death? A. Not the lawsuit in itself. The people have. Q. Hasn't the lawsuit been a component of it? A. Maybe a small component of it. But mostly the whackos, the cult is the problem. ..." (Please see **Post Trial Motions Exhibit**

3, p. 122 of Albert Snyder's deposition.) (The fact that plaintiff believes defendants are whackos and a cult is not legally cognizable injury touching upon the decision whether to grant a stay.) Further, Dr. Mann, plaintiff's medical doctor, testified that in filing the lawsuit plaintiff has actually been able to better deal with the grieving that was allegedly interrupted by defendants. "So the process of filing a lawsuit is actually helping him to cope with this aspect of the interrupted grieving." (Please see Post Trial Motions Exhibit 3, pp. 116-117 of Scott Russell Mann, M.D. deposition.)

d. Will the public interest be served by granting the stay? As previously noted in defendants' motion, if this activity is protected, than *a fortiori* the public interest is served by the stay. Plaintiff argues that Maryland has a strong interest in protecting grieving families. According to the Maryland legislature, the interests of Maryland are protected by a 150-foot distance. That interest has already been protected to the degree the Maryland legislature deems it necessary. Over-protecting the grieving process, at the expense of public words in a public place on a public topic is not in the state's or citizens' interest. Otherwise the legislature would have placed such limits, and the Supreme Court would have defined public rights-of-way as something other than traditional public fora. What has *not* been balanced in this case is the right of defendants to speak. The public is not served by overbroad restrictions on speech based on disagreement with content.

4. Regarding K.S.A. 60-3004(a), in *Estate of Rains*, 249 Kan. 178, 184-185, 815 P.2d 61, 65-66 (1991), the Kansas Supreme Court said:

> In the Kansas Uniform Enforcement of Foreign Judgments Act (UEFJA), K.S.A. 60-3001 *et seq.*, **the enforceability of a judgment is affected by an appeal of the foreign judgment**. K.S.A. 60-3001 defines foreign judgments as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Therefore, the judgment obtained by FDIC is enforceable under the UEFJA. The UEFJA provides:
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> "If the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, **or** that a stay of execution has been granted, *the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires,* or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered." K.S.A. 60-3004(a). (Emphasis supplied.)
>
> K.S.A. 60-3004(a) permits the filing of foreign judgments which have been appealed or are subject to appeal, **but stays enforcement thereof until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated**.
>
> K.S.A. 60-3004(a) does not require that the foreign judgment be a "final judgment" **but stays enforcement until, in effect, it becomes final. Obviously, attempts to enforce a foreign judgment which is subject to modification would be a waste of everyone's time**. (Emboldened and underlined emphasis supplied; italicized emphasis in original.)

This case appears to say exactly what defendants said in their motion, to wit, under the Kansas statute, a foreign judgment is not enforced until the appeal is final *or* the stay of execution expires or is vacated.

In conclusion, defendants submit there is no evidence of any falsehood about the assets of any of the defendants; nor have any assets been misused or misrepresented. Requiring the posting of a bond the size of the verdict in this case would simply be an impossible requirement. Further, defendants have filed post-trial motions requesting that the Court reduce the award size, which they believe is not supported by the evidence; thus, it is premature to talk about the size of a bond until a final figure is determined by the Court.

Given the significant legal issues raised by this case, and that many (if not most) of the assets appear to be impacted by homestead issues, and other exemptions under Kansas law – all of which would have to be addressed if the judgment was subject to execution; and given the Kansas statute about foreign judgments; defendants believe a stay in this case is proper. If the verdict is upheld, it will be for alleged harm that has already occurred, none that will occur hereinafter as to this plaintiff. Plaintiff does not have standing to force defendants to stop picketing anywhere else, so that issue is not properly before this Court. For all these reasons, defendants respectfully submit that a stay in this matter is appropriate, pending final appeal of the verdict and all rulings of the Court which have been raised on appeal.

Respectfully submitted,

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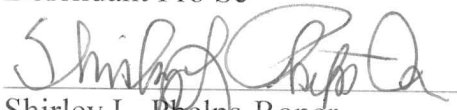

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CERTIFICATE OF SERVICE

We hereby certify that the foregoing reply was served on December 5, 2007, as follows:

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