

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 RESPONSE TO SUPPLEMENT TO:
REPLY OF DEFENDANTS PHELPS-DAVIS AND PHELPS-ROPER
TO PLAINTIFF'S RESPONSE TO POST-TRIAL MOTION FOR STAY**

On December 6, 2007, the Court of Appeals for the Eighth Circuit decided Phelps-Roper v. Nixon, Docket No. 07-1295, --- F.3d ---, WL 4258633 (8th Cir. 2007). Thereafter, Rebekah A. Phelps-Davis ("Davis") and Shirley L. Phelps-Roper ("Roper") filed a supplement to their previous pleas for a stay. Doc. No. 232. However, Phelps-Roper v. Nixon is of no consequence to the within matter.

Importantly, Phelps-Roper v. Nixon concerned the challenge of a Missouri statute. On the other hand, the within matter involves a private civil dispute by and between non-government individuals and a corporation. Further, this Honorable Court appropriately determined that plaintiff and his son were not public figures. The Eighth Circuit determined that Roper alleged that an injunction will not cause substantial harm to others. Id. at 11. In the instant matter, the jury has already factually determined that Roper and Davis have caused substantial harm to plaintiff (and his family).

In Missouri, Roper purportedly alleged that she “believes funerals are the only place where her religious message can be delivered in a timely and relevant manner.” Phelps-Roper v. Nixon at 3. (Doc. No. 232-2) Notably, Dr. Balmer testified that there was no religious consequence concerning protesting at a particular location, to include someone else’s funeral. Indeed, defendants learned years ago that “[t]here is no religious consequence imposed for failing to picket at a specific location or event.” Westboro Baptist Church, Inc., et al., v. City of Topeka, et al. at 76. (Doc. No. 78) Contrary to Davis’ and Roper’s assertion that “the Eighth Circuit has stated clearly [that their actions are] protected activity,” the Court did no such thing. In fact, the Court expressly stated that “[w]e do not determine the constitutionality of the Missouri statute at issue.” Phelps-Roper v. Nixon at 6. As an additional matter, in Phelps-Roper v. Nixon, the Court was resolving the legal merits of a denial of a preliminary injunction. As the Court stated, “the Eighth Circuit has rejected a requirement that a ‘party seeking preliminary relief’ prove a greater than 50% likelihood that he will prevail on the merits.” Phelps-Roper v. Nixon at 6. (Internal citations omitted.) In the instant matter, plaintiff has already proven his case before a jury and the facts have been resolved. However, the Eighth Circuit did “not decide the merits of Phelps-Roper’s claim.” Phelps-Roper v. Nixon at 9.

Aside from Phelps-Roper v. Nixon being a statute interpretation case, the Eighth Circuit further distinguished Phelps-Roper v. Nixon because the relevant statute did “not limit itself to activity which targets, disrupts, or is otherwise related to the funeral, memorial service or procession.” Phelps-Roper v. Nixon at 10. (Internal citations omitted.) In our case, plaintiff has proven (1) that the Snyder family was targeted, (2) defendants disrupted the funeral, and (3) plaintiff’s claims related to Matthew Snyder’s funeral, memorial service and procession.

Repeatedly, defendants ignore plaintiff's rights and suggest that this Court should interpret the First Amendment to allow them to say anything, anywhere and at any time. Although defendants have never cited a case which holds that a court becomes "government action" for purposes of a non-public figure,¹ this Court would favor defendants' supposed religion over plaintiff's religion if the First Amendment is interpreted in a manner which allows defendants to disrupt plaintiff's religious service. The purpose of the Establishment Clause is to ensure that government will not sponsor or promote any particular religion. See Walz v. Tax Comm'n, 397 U.S. 664, 669 (1970). The First "Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions, than it is to favor them." Everson v. Board of Ed. of Ewing Tp., 330 U.S. 1, 18 (1947). If the Court follows Roper's and Davis' logic - allowing them to do and say anything, at any time and any place under the guise of religion - the Court will choose defendants' religion over plaintiff's religion.

Assuming *arguendo*, and in conclusion, that this Honorable Court finds that Phelps-Roper v. Nixon is even remotely relevant to the within matter, it can be distinguished by the following: the instant matter (1) does not involve government action, (2) is not a statute interpretation case, (3) is a civil case, (4) Dr. Balmer clearly stated that Roper's religion does not require her to protest funerals, (5) plaintiff has proven his case by a preponderance, (6) the jury has determined the merits of plaintiff's claim, (7) defendants did target the funeral, (8)

¹ In New York Times v. Sullivan, 376 U.S. 254 (1964), the U.S. Supreme Court was concerned with public figures as a plaintiff but the same principle has not been extended to a non-public figure plaintiff.

defendants did disrupt the funeral, (8) defendants' activities were related to plaintiff's son's funeral, memorial service and procession, and (9) plaintiff was substantially harmed.² By way of further contrast, in Phelps-Roper v. Nixon, (1) government action is required to enforce a statute, (2) Roper claims that there is some religious consequence for protesting a funeral (this Court knows that this is not true), (3) Roper was not required to demonstrate a likelihood of success of even 50%, and (4) an injunction would not cause substantial harm to others.³

WHEREFORE, plaintiff Albert Snyder respectfully requests that this Honorable Court deny defendants' request for a stay.

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² In our case, a jury concluded that defendants caused substantial harm. However, a court has arrived at the same conclusion. "Further, it seems factually beyond dispute that picketing funerals is, per se, to some degree immediately injurious to family and close friends of the deceased," and the court further explained that defendants' "presence may, as a medical fact, cause some mourners actual physical distress and injury." Westboro Baptist Church, Inc., et al., v. City of Topeka, et al. at 24. Defendants' actions are tantamount to "kicking a person while they're down and correspondingly it hurts these defenseless persons, both physically and mentally." Id. at 25. Furthermore, defendants' actions "may properly and legally be seen as disorderly and immediately injurious to some mourners there present, both emotionally and to some likely degree, physically." Id. at 145.

³ Although the Eighth Circuit did not find substantial harm, the district court, after a factual hearing, will likely conclude the same as our jury and a Kansas state court -- that defendants' actions cause substantial harm.

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CERTIFICATE OF SERVICE

I hereby certify that on this date true and correct copies of Plaintiff's Response to Supplement to: Reply of Defendants Phelps-Davis and Phelps-Roper to Plaintiff's Response to Post-Trial Motion for Stay are being served in the following manner:

Via ECF:

Jonathan R. Katz, Esq.

Via First Class Mail:

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Date: December 10, 2007