

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 DEFENDANTS' SUPPLEMENTAL
REPLY TO PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANTS' BILL OF COSTS**

Presently, Defendants requested that their "costs" at the trial level be taxed to Plaintiff. In their Bill of Costs, Defendants claim the total amount of \$96,740.21 for various items. On March 8, 2010 the United States Supreme Court granted Certiorari to hear the case (Supreme Court No. 09-751). On March 26, 2010, the Fourth Circuit issued an order denying Plaintiff's objections to appeal costs without explanation. On April 8, 2010, Defendants submitted a *supplement* to their reply to Plaintiff's brief in opposition to Defendants' Bill of Costs. Neither the Federal Rules of Civil Procedure or Local Rules of the United States District Court for the District of Maryland provide grounds for Defendants to supplement their reply to Plaintiff's brief in opposition to Defendants' Bill of Costs.

Defendants have filed a motion for costs pursuant to Federal Rule of Civil Procedure 54(d), which provides, “costs -- other than attorneys’ fees -- should be allowed as of course to the prevailing party unless the court otherwise directs.” Fed.R.Civ.P. 54(d). Courts applying Rule 54(d) have stressed that, although the Rule creates a presumption in awarding costs to the prevailing party, “federal courts have a wide discretion in the apportionment and taxation of costs.” *Jones v. Schellenberger*, 225 F.2d 784, 794 (7th Cir. 1955).

Although Defendants prevailed on appeal, the United States Supreme Court has granted Certiorari to review the decision of the Fourth Circuit (Supreme Court No. 09-751). If this Honorable Court should decide to render a decision on Defendants’ claim for costs, the particular circumstances of the present case warrant the Honorable Court to exercise its wide discretion to deny Defendants’ claim for costs. Specifically, denial of Defendants’ Bill of Costs is warranted because (1) the case was particularly close and difficult, and Plaintiff proceeded in good faith, (2) Defendants’ conduct prior to and throughout the litigation was reprehensible, and (3) Plaintiff is unable to pay the costs. Alternatively, Plaintiff requests that this Honorable Court abstain from making its decision regarding Defendants’ Bill of Costs until the Supreme Court has made a final determination in the case.

The closeness of the present action cannot easily be disputed, as Plaintiff prevailed at the trial level. On March 8, 2010 the United States Supreme Court granted Certiorari to review the Fourth Circuit’s decision to reverse this Honorable Court (Supreme Court No. 09-751). In particular, this Honorable Court was required to intricately balance the First Amendment rights of both parties, while at the same time considering state tort law issues. In applying these legal

doctrines, the court was asked to perform a detailed factual analysis and hear the testimony of various fact and expert witnesses. The United States Supreme Court's grant of Certiorari confirms that the case dealt with exceedingly difficult questions of both law and fact.

Defendants have not *genuinely* disputed that Plaintiff suffered physical and emotional damage as a result of the Defendants' actions, which were targeted, specifically, towards him because his son happened to die while serving in the military. Plaintiff pursued the action to recover for these injuries. Indeed, Defendants have consistently maintained that the First Amendment allows them to intentionally harm Plaintiff and Plaintiff should not have any recourse for Defendants' intentional acts.

Another factor that courts have considered in denying a prevailing party's claim for costs has been the conduct of that party both prior to and during the litigation. Plaintiff will not reiterate his previously stated position. *See* Doc. No. 289. As yet another example of Defendants' behavior during litigation, Defendants filed a "Supplement" to a previously filed motion. If this Honorable Court rewards Defendants for filing a "Supplement" to a previously filed motion, it will only encourage more baseless filings. By means of an additional example of Defendants' litigation tactics, Defendants' actively avoided service and, consequently, were required to pay service costs and now seek to be reimbursed for this misbehavior. As this Honorable Court knows, Defendants are attorneys and know that the Rules require the parties to mitigate the cost of service.

Defendants benefited (at the Plaintiff's expense) both prior to and during the underlying litigation. Defendants should not be permitted to benefit further by obtaining payment of their

alleged costs from Plaintiff. Accordingly, this Honorable Court should exercise its discretion and require Defendants to pay their own costs.

Plaintiff submits that, based on the factors set forth in his original response (Doc. No. 289), this Honorable Court should exercise its wide discretion to deny Defendants' claim for costs altogether. However, in the event the Court does not deny the claim altogether, it should reduce the Bill of Costs to those which are actually permissible. When the items contained in Defendants' Bill of Costs are considered in turn, it is clear that they are entirely devoid of merit, and should be reduced to a fraction of the amount claimed.

WHEREFORE Plaintiff requests that this Honorable Court deny Defendants' request (and "Supplemental" request) to require Plaintiff, Albert Snyder, to pay Defendants' Costs and Attorney Fees.

Respectfully submitted,

BARLEY SNYDER LLC

s/ Sean E. Summers

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing Response to Defendants' Supplemental Reply to Plaintiff's Brief in Opposition to Defendants' Bill of Costs is being filed via the Court's CM/ECF system, that the Response to Defendants' Supplemental Reply to Plaintiff's Brief in Opposition to Defendants' Bill of Costs is being served on counsel via the Court's CM/ECF system, and is being mailed to pro se Defendants by first class mail, postage prepaid, addressed as follows:

Via ECF:
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BARLEY SNYDER LLC

s/ Sean E. Summers

Sean E. Summers

April 26, 2010