

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

RESPONSE TO DEFENDANTS' MOTION FOR STAY PENDING APPEAL

I. BACKGROUND

After initiating the within action, the plaintiff requested that the defendants waive service of the complaint and summons. Fed. R. Civ. P. 4(d). Thereafter, the defendants avoided service on numerous occasions. Consequently, the plaintiff requested that the defendants be ordered to pay the costs of service, to include attorney fees. On December 11, 2006, this Honorable Court granted the plaintiff's motion for costs and fees.¹ Subsequently, on December 20, 2006, the defendants appealed the cost and fee award.

After appealing this Honorable Court's Order and Opinion, the defendants filed the within Motion for Stay. This brief responds to the defendants' Motion for Stay.

II. ARGUMENT

Initially, Rule 4's sound policy bears repeating:

According to the Rule's legislative history, "[t]he purpose of this provision is to encourage the prompt return of the form so that the action can move forward without unnecessary delay," and "[f]airness requires that a person who causes another additional and unnecessary expense in effecting service ought to reimburse the party who was forced to bear the additional expense."

¹ The fee request was partially reduced.

Premier Bank, Nat. Ass'n v. Ward, 129 F.R.D. 500, 502 (M.D. La. 1990) (quoting H.R. 7154, 97th Cong., 2d Sess., Section 2 at 8); *Double "S" Truck Line, Inc. v. Frozen Food Express d/b/a FFE*, 171 F.R.D. 251, 253 (D.Minn. 1997).

The defendants' argument is that the Order requires payment of a *substantial* amount of money and there is no guarantee that the money will be returned if the defendants prevail on appeal. Def's Br. at 4. In addition, the defendants argue that they will suffer irreparable harm and that \$3,150 is a large amount for the defendants to pay. Id. at 4-5.

The defendants' reliance on *People Who Care v. Rockford Bd. of Educ.*, 272 F. 3d 936 (7th Cir. 2001), is misplaced. In *People Who Care*, the attorney fee award was \$800,000 to a small and apparently fragile law firm (the plaintiff did not contest this characterization). The defendant, in *People Who Care*, was a school district, which presumably would be hugely impacted by a \$800,000 payment. On the other hand, in the present case, there is no evidence that the plaintiff cannot repay \$3,150.² Further, there is no evidence that the defendants will be effected if ordered to pay \$3,150. In fact, the defendants, as discussed below, appear to have unlimited resources.

The defendants attempt to mislead the Court by claiming the "[d]efendants are a preacher and a small church, and \$3,150 is no small sum for Defendants to lose." Def's Br. at 6. Regardless of defendant Westboro Baptist Church, Inc.'s (WBC) size or

² The defendants' purported evidence concerning the plaintiff's ability to pay is of no moment. First, the defendants cite to a five year old child support petition, which is addressed in the Rule 11 sanction discussion below. Next, the defendants claim that the plaintiff is seeking donations for the costs of this litigation. Although the plaintiff is seeking costs for this litigation, that proves nothing. By analogy, the American Civil Liberties Union routinely seeks donations, litigates matters *pro bono*, and attempts to recover its fees from the opposing party. This does not mean the ACLU or its clients are not capable of paying.

defendant Phelps' position, the defendants have unlimited funds to travel the country. For example, the defendants will be in Wisconsin and California on December 29, 2006 and in Missouri, Montana and Colorado on December 30, 2006. They had representatives in Connecticut, Pennsylvania and Texas on December 27, 2006. *See* www.godhatesfags.com (last visited December 27, 2006).³ In addition, WBC has announced that its members will travel to Ohio on January 13, 2007 and to New Jersey on February 19, 2007. *Id.* Recently, school children were killed in a bus crash in Alabama. *Id.* Incredibly, WBC sent members to protest the children's funerals. *Id.* Just before the death of those children in Alabama, there was a school shooting in Lancaster, Pennsylvania. *Id.* WBC threatened to protest and a radio announcer offered WBC air-time if WBC members agreed to forgo protesting the Amish funerals. On a moment's notice, WBC sent two members to New York from Kansas. *Id.*

Where, as here, the defendants travel budget appears to be limitless, they should not be heard to complain about the potential irreparable harm of a relatively small sum or to make "no small sum" arguments. Indeed, the defendants are responsible for the consequences of the fee and cost award. If the Court Orders a stay, it will effectively nullify the sound purpose of Rule 4 (d) -- there will be no consequences for the defendants' conduct (i.e., dodging the process server and refusing to fulfill their duty to waive service).⁴

³ *See* <http://www.godhatesfags.com/news/wbcnews.html> for news articles. *See* <http://www.godhatesfags.com/news/wbcnews.html> for WBC travel.

⁴ The plaintiff will request, at the appropriate time, that this Court or the Fourth Circuit award costs and fees for responding to this motion and responding to the appeal of this Honorable Court's Order and Opinion granting costs and fees.

III. RULE 11 SANCTIONS

By presenting to the Court a “written motion, . . . an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;” and “ (3) the allegations and other factual contentions have evidentiary support.” Fed. R. Civ. P. 11(b).

When the defendants presented the March 20, 2002 petition concerning child support to this Court, they violated Rule 11. More specifically, the defendants intended to harass and intimidate the plaintiff by claiming that his ability to potentially repay \$3,150 at some future date is related to his child support payments made nearly five years ago. Since the defendants were able to retrieve court documents in an unrelated child support action, they should have been able to present to this Court the current status of child support payments -- there is no line of decency that the defendants will not cross. Stated differently, the defendants’ allegations do not have any evidentiary support and the defendants are attempting to mislead this Honorable Court.

Rule 11 sanctions can be initiated by several methods. It has become apparent that the defendants intend to litigate every possible issue to its fullest – notwithstanding the lack of merit to some of the issues raised. Rather than litigate Rule 11 sanctions, the plaintiff will simply request that “the court . . . enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.” Fed. R.

Civ. P. 11(c)(1)(B). In particular, the defendants should be tasked with explaining why they failed to present to the Court the current state of plaintiff's child support.

IV. CONCLUSION

Plaintiff Albert Snyder respectfully requests that this Honorable Court deny the defendants' request for a stay.

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