

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. 1:06-cv-1389-RDB  
Judge Bennett

**BRIEF IN OPPOSITION TO DEFENDANTS', SHIRLEY L. PHELPS-ROPER AND  
REBEKAH A. PHELPS-DAVIS, MOTION FOR STAY OF DISCOVERY AND MOTION  
FOR ADDITIONAL TIME TO FILE MOTIONS TO DISMISS AND FOR OTHER  
APPROPRIATE RELIEF PRIOR TO FILING AN ANSWER**

**I. Procedural History**

The within action was initiated on June 5, 2006. Subsequently, defendants Westboro Baptist Church, Inc. ("WBC") and Fred W. Phelps, Sr. ("Phelps") successfully evaded service for several weeks. Importantly, the process server attempted to serve WBC and Phelps at the Phelps-Chartered Law Firm. The within movants are licensed attorneys and employed at Phelps-Chartered (the family law firm). See [www.phelpschartered.com](http://www.phelpschartered.com). After finally serving WBC and Phelps, defendants WBC and Phelps filed a Motion to Dismiss. Appropriately, the Motion to Dismiss was summarily denied and WBC and Phelps answered the Complaint.

Defendants WBC and Phelps challenged this Court's jurisdiction in the Motion to Dismiss. Furthermore, WBC and Phelps challenged the Complaint by asserting a so-called First Amendment defense. Therefore, this Honorable Court has already ruled on these issues.

On March 26, 2007, defendants Shirley Phelps-Roper (“Roper”) and Rebekah Phelps-Davis (“Davis”) were served with the Amended Complaint naming them as defendants in the instant matter. The Amended Complaint has no substantive changes other than to change the “Doe” defendants to specifically identify Roper and Davis as defendants. Similar to WBC and Phelps, Roper and Davis are claiming they will assert the same jurisdictional challenges and defenses asserted by the non-moving defendants (i.e., WBC and Phelps). Put differently, they are trying to re-litigate the same issues that defendants WBC and Phelps have already litigated - ultimately increasing the cost of litigation and prolonging the within action. In addition to re-litigating already adjudicated issues, Roper and Davis are seeking a stay of the proceedings and stay of discovery based upon the aforementioned futile Motion to Dismiss.

## **II. Argument**

### **1. Motion for Additional Time to File Motion to Dismiss Should be Denied.**

Defendants request additional time to prepare and file their Motion to Dismiss. Incredibly, Roper and Davis suggest that they are not familiar with the legal basis for the within claims. “Defendants would show the Court in this regard that neither of these defendants has had any role in this pending litigation that pertain to or require research and briefing the legal issues related to the defense of this case until they were served herein.” See Memorandum in Support of Motion for Additional Time to File Motions to Dismiss and for Other Appropriate Relief Prior to Filing an Answer, ¶ 4. Curiously, plaintiff requested communications by or between Roper and Davis and WBC and Phelps in a discovery request. The requested discovery is being withheld under a purported attorney-client privilege. According to Mr. Katz (counsel for WBC and Phelps), “the retainer agreement between [Mr. Katz] and WBC and Fred Phelps,

Sr., designates Margie Phelps and Shirley Phelps as the people who will be my primary contact people on behalf of said defendants WBC and Fred Phelps.” See attached Ex. A. The communications between Mr. Katz and Roper were not limited to the retainer agreement. Mr. Katz has “had many written communications (mainly by e-mail) with Shirley Phelps, including messages by [Mr. Katz] that I have directed to both Margie Phelps and Shirley Phelps, and messages from Shirley Phelps that she has copied to Margie Phelps. Numerous of these communications have been part of ongoing communications among the three of us. Consequently, while I have retained such messages, they are not being provided, because they [sic] are protected by the attorney-client privilege and attorney work product doctrine.” Ex. A. Although Plaintiff vehemently disagrees with this assertion of the attorney-client privilege based upon repeated representations by Mr. Katz that he does not represent Roper or Davis,<sup>1</sup> this representation by Mr. Katz nonetheless clearly indicates that Roper has provided assistance to WBC and Phelps from the onset of this litigation.<sup>2</sup>

As an additional basis to delay these proceedings, Roper and Davis (without much explanation) claimed personal obligations such as their children prevent them from responding to the Complaint under the timelines dictated pursuant to the Federal Rules of Civil Procedure. While plaintiff is sympathetic to personal commitments, Roper apparently has time to travel the country with her children continually protesting at religious institutions. See [www.godhatesfags.com/featured/epics/2007/20070402\\_oklahoma-city-ok-epic.pdf](http://www.godhatesfags.com/featured/epics/2007/20070402_oklahoma-city-ok-epic.pdf) (last checked

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<sup>1</sup> At a subsequent date, plaintiff will file a motion to compel the withheld documents unless plaintiff and WBC and Phelps resolve the matter.

<sup>2</sup> In addition, Roper has been quoted extensively concerning this matter -- many of these quotes have been repeatedly cited in other filings by plaintiff and will not be repeated again. In any event, it is clear that Roper has been actively involved in this litigation since it began.

4/12/07). (This WBC posting, upon information and belief, shows Roper and her children protesting at another funeral *after* she was served with the Amended Complaint. Sadly, there are children depicted holding signs such as “Pray for more dead soldiers” and “You eat your kids”.)

According to defendants, they plan to protest military funerals in 13 different states over a five day period. See attached Ex. B. If defendants have time to travel the country, they certainly have enough time to file an Answer. In addition and according to Phelps, Roper is responsible for the majority of the work on WBC’s various websites - maintaining these websites is tantamount to full time employment. In other words, Roper and Davis will not be prejudiced by curtailing their protest activities or their hateful postings on the internet.

Any lawsuit necessarily requires some time commitment by all parties. If Roper and Davis are forced to curtail their disruption of funerals, they will suffer no prejudice. In fact, plaintiff would not object to additional time to file an Answer, as opposed to the futile Motion to Dismiss that Roper and Davis claim that they will file.

## 2. Motion for Stay of Discovery Should be Denied.

Plaintiff does not concur in a stay of discovery for numerous and obvious reasons. First, the Motion to Dismiss is futile because these issues have already been litigated and adjudicated. Next, defendants had repeatedly attempted to delay this matter - - most notably by evading service for several weeks.<sup>3</sup> Plaintiff and the non-moving defendants have already agreed to depose the WBC corporate designee and plaintiff Albert Snyder on April 20, 2007. Furthermore, defendant Phelps was deposed on April 16, 2007. According to Mr. Katz, he has communicated

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<sup>3</sup> Technically, Phelps and WBC evaded service. However, Roper and Davis were complicit in this evasion by refusing to cooperate with the process server when the process server attempted to serve Phelps and WBC at Phelps Chartered.

with Roper concerning “arranging my travel arrangements to Fred Phelps’ deposition, and assisting me with scheduling Fred Phelps and Tim Phelps’ available deposition times.” Ex. A. It follows that Roper has been aware of the ongoing discovery schedule, to include deposition dates. All of these deposition dates were established after Roper and Davis were identified via an Amended Complaint. From a factual standpoint, Roper and Davis have failed to carry their burden demonstrating “good cause.”

The Motion to Stay Discovery is, from a legal standpoint, equally unavailing. Plaintiff has an equal right to seek his day in court. Defendants’ reliance on Norfolk Southern Railway Company v. Power Source Supply, Inc., Slip Copy, 2007 WL 709312 (W.D. Pa. 2007), is misplaced. Importantly, the Norfolk Southern court lifted the stay 24 days later. See Norfolk Southern Railway Company v. Power Source Supply, Inc., 2007 WL 965874 (W.D. Pa. 2007). In any event, in the instant matter, there is an ongoing case amongst other parties. In addition, this Honorable Court has already resolved any questions of jurisdiction, as opposed to the jurisdictional questions in Norfolk Southern.

Similarly, defendants’ reliance on Jarvis v. Regan, 833 F.2d 149 (9th Cir. 1987), is of no moment. Once again, the Jarvis court did not need discovery to resolve a Motion to Dismiss. If defendants mean what they say, Roper and Davis will allege that this Honorable Court lacks jurisdiction and Roper and Davis will assert a First Amendment defense. If either of these assertions are true, the merits of these arguments necessarily require discovery prior to resolution by the Court. Defendants Roper and Davis have not carried their burden demonstrating “good cause” and their Motion to Stay Proceedings must be denied.

In Turner Broadcasting System, Inc. v. Tracinda Corporation, 175 F.R.D. 554 (D. Nev. 1997), the court denied a similar Motion to Stay because “[t]he Court is interested in moving this case forward and recognizes that it will require much discovery. The parties themselves have requested a discovery period longer than suggested by the Local Rules.” Id. at 556. In the instant matter, discovery is ongoing and has already been prolonged. Furthermore, all parties have expressed an interest in moving this matter forward to resolution.

### **III. Conclusion**

Plaintiff Albert Snyder respectfully requests that this Honorable Court deny defendants’ Shirley Phelps-Roper and Rebekah Phelps-Davis’ request for additional time to file a Motion to Dismiss and deny the Request to Stay Discovery.

BARLEY SNYDER LLC

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Brief in Opposition to Defendants', Shirley L. Phelps-Roper and Rebekah A. Phelps-Davis, Motion for Stay of Discovery and Motion for Additional Time to File Motions to Dismiss and for other Appropriate Relief Prior to Filing an Answer was served on April 17, 2007, as follows:

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