

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

ALBERT SNYDER,

Plaintiff,

vs.

Case No. 1:06-cv-1389-RDB

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

ATTACHMENT 17

IN SUPPORT OF
MOTION OF DEFENDANTS
PHELPS-DAVIS & PHELPS-ROPER
TO DISMISS OR FOR SUMMARY JUDGMENT

E-Mail to Mr. Summers

Becky and Shirley

From: Becky and Shirley [beshsnecs@cox.net]
Sent: Monday, May 07, 2007 6:45 AM
To: 'Summers, Sean E.'; 'Jon Katz'
Cc: 'trebilcock@shumakerwilliams.com'
Subject: RE: Deposition dates

Hello Mr. Summers.

Thank you for your e-mail.

We have filed a motion for summary judgment, and a motion for reconsideration of the denial of the motion for stay, among other requests for relief. Our position is that we have raised substantial threshold questions which should be resolved before we are put to the cost of litigation, and which we believe should be resolved, according to the undisputed facts and the case law, in our favor in the form of dismissal or summary judgment. We have seen or heard nothing from the plaintiff pursuant to Rule 56(f) and other authorities, which refutes the facts which we set forth in detail in our motion. Further the substantial documentation of the events in question, including photographs and contemporaneous records, suggests there are no facts to dispute our version. For these reasons, we believe these motions need to be addressed and resolved at this stage of the litigation, including pursuant to the United States Supreme Court's recent decision in *Scott v. Harris*, ---- S.Ct. - ---, 2007 WL 1237851 (U.S., 4/30/2007), and because of the substantial constitutional issues we have raised.

Our understanding of the case law is that if we participate in discovery at this stage, particularly depositions, we will waive the challenges to jurisdiction we've raised in the motions.

Our understanding of the case law is that if a defendant is sued in a different jurisdiction, that defendant is entitled to be deposed in the city of her residence. If the Court allows discovery to proceed, and you bear the cost of the space, we are willing to present ourselves in Kansas City, Missouri, near MCI, so you do not feel the need to distract this process with some phantom concern about being served or some such thing as that. That is offered simply as a courtesy, not because we believe the law requires us to make this gesture.

Our understanding of federal procedure and local rules is that the Court is required to conduct a scheduling conference, and from there discovery takes place. We have not received notice of any such scheduling conference, and don't anticipate this will occur until our motions are resolved, and we have had an opportunity to seek any necessary interlocutory review, and thereafter file an Answer (all of which we believe would not be consistent with the substantial case law set out in our motion).

For all these reasons, we believe your request to take depositions and your written discovery items are premature. We would intend to move for a protective order if you

5/20/2007

proceed with discovery at this time, or schedule our depositions in Maryland. Once all of the above issues are resolved, if depositions are to proceed, we will gladly provide you with alternative dates and work with you to accommodate your schedule.

Please advise if you have any questions.

Thank you.

Rebekah A. Phelps-Davis
Shirley L. Phelps-Roper

From: Summers, Sean E. [mailto:ssummers@barley.com]
Sent: Friday, May 04, 2007 11:32 AM
To: Jon Katz; Becky and Shirley
Cc: trebilcock@shumakerwilliams.com
Subject: Deposition dates

Please let me know your availability for the depositions of Shirley Phelps-Roper and Rebekah Phelps-Davis. I believe both depositions can be completed in one day. I am proposing the following dates.

June 7, 8, 11, 20, 21 or 25.

The deposition will be in or around Westminster, Maryland.

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