

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ALBERT SNYDER,

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Plaintiff,

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v.

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Civil Action No. RDB-06-1389

FRED W. PHELPS, SR., et al.,

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Defendants.

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**MEMORANDUM OPINION**

This action arises out of a Complaint filed by Albert Snyder (“Plaintiff”) against Fred W. Phelps, Sr. (“Phelps”), Westboro Baptist Church, Inc. (“WBC”), Rebekah Phelps-Davis (“Phelps-Davis”), and Shirley Phelps-Roper (“Phelps-Roper”). Plaintiff alleges that the individual Defendants and other members of the WBC committed several intentional torts against him when they intruded upon and staged protests at the funeral for his son, a Lance Corporal in the U.S. Marines Corps who was killed in Iraq, and published defamatory information about Plaintiff and his family on the Internet. Pending before this Court is the Motion of Defendants Phelps-Davis and Phelps-Roper to Dismiss or for Summary Judgment and for Other Relief.<sup>1</sup> This Court has jurisdiction pursuant to 28 U.S.C. § 1332. The parties’ submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2004). For the reasons stated below, Phelps-Davis and Phelps-Roper’s Motion to Dismiss or for

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<sup>1</sup> Phelps-Davis and Phelps-Roper’s request for a scheduling conference is moot in light of a telephonic conference held March 29, 2007 discussing the schedule to be followed in this case and this Court’s letter order dated May 30, 2007 setting out the revised schedule. In addition, their request for reconsideration of the Order denying their Motion to Stay Discovery is moot as the motion sought only to stay discovery until they filed and this Court ruled upon a motion to dismiss—which ruling is set forth in this Memorandum Opinion and separate Order.

Summary Judgment is DENIED.

### BACKGROUND

The facts are viewed in a light most favorable to the Plaintiff. Albert Snyder is a resident of York, Pennsylvania. His son, Matthew Snyder, was a Lance Corporal in the U.S. Marine Corps. On March 3, 2006, Lance Corporal Snyder was killed in the line of duty while conducting combat operations in Iraq. After his body was transported back to the United States, Plaintiff and his family arranged for funeral and burial services to be held on March 10, 2006, at St. John's Catholic Church in Westminster, Maryland.

It is undisputed that Defendants Shirley Phelps-Roper and Rebekah Phelps-Davis ("Defendants"), along with other members of the Westboro Baptist Church, headed by their father, Defendant Fred W. Phelps, Sr., picketed Lance Corporal Snyder's funeral without invitation. (Am. Compl. ¶ 21; Defs.' Mem. Supp. Mot. Dismiss ¶¶ 37, 44-47, 51). Their messages included "Semper Fi Fags," "God Hates America," and other similar sentiments expressing their views against homosexuality, Catholicism, and the military. (Defs.' Mem. Supp. Mot. Dismiss ¶¶ 81-82.) WBC and the individual Defendants also maintain several websites in which they endorse the same messages and post accounts and pictures of their funeral protests. On one of the websites, [www.godhatesfags.com](http://www.godhatesfags.com), the Defendants posted specific comments that Plaintiff and his wife "raised [Matthew] for the devil," "RIPPED that body apart and taught Matthew to defy his Creator, to divorce, and to commit adultery," "taught him how to support the largest pedophile machine in the history of the entire world, the Roman Catholic monstrosity," and "taught Matthew to be an idolator."

On June 5, 2006, Plaintiff filed suit in this Court against WBC, Phelps, and unnamed

Jane and John Does who took part in WBC's activities but had not yet been identified. The Complaint alleged five separate causes of action: Count I - Defamation; Count II - Intrusion upon Seclusion (Invasion of Privacy); Count III - Publicity Given to Private Life (Invasion of Privacy); Count IV - Intentional Infliction of Emotional Distress; and Count V - Civil Conspiracy. On August 2, 2006, after repeatedly attempting in vain to serve Phelps and WBC with process, Plaintiff moved for a court order allowing alternative service of process (Paper No. 12). As a result of prior counsel having indicated representation of Defendants Phelps and WBC, this Court, by Order dated August 2, 2006, granted Plaintiff's motion and allowed Plaintiff to serve Defendants by alternative means. On August 29, 2006, the Plaintiff moved for attorney's fees and costs associated with serving Phelps and the church (Paper No. 20). This Court granted the motion and awarded the Plaintiff \$3150.00 on December 11, 2006.

Meanwhile, Defendants Phelps and WBC filed a Motion to Dismiss on September 18, 2006 (Paper No. 23), for insufficient service of process, lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, and failure to state a claim upon which relief can be granted. This Court denied Phelps and WBC's motion on October 30, 2006.

On February 23, 2007, Snyder filed, by leave of Court, an Amended Complaint adding as Defendants Shirley L. Phelps-Roper and Rebekah A. Phelps-Davis ("Defendants"), two daughters of the Defendant Fred W. Phelps, Sr. The substance of the Amended Complaint is similar to the original Complaint, bringing the same five causes of action—defamation, intrusion upon seclusion, publicity given to private life, intentional infliction of emotional distress, and civil conspiracy—against all four named Defendants.

Phelps-Roper and Phelps-Davis, proceeding in proper person, filed a Motion to Stay

Discovery (Paper No. 72) on April 16, 2007, which this Court denied on April 17. The two Defendants filed a Motion to Dismiss or for Summary Judgment and for Other Relief on April 24, 2007 (Paper No. 76), essentially reiterating the issues raised by their father in his previously denied motion to dismiss. This pending motion seeks dismissal under Rule 12(b) of the Federal Rules of Civil Procedure, summary judgment under Rule 56.

#### STANDARDS OF REVIEW

“In deciding a motion to dismiss, all inferences must be drawn in favor of the plaintiff, and ‘the facts must be viewed as the plaintiff most strongly can plead them.’” *Three M Enters., Inc. v. Tex. D.A.R. Enters., Inc.*, 368 F. Supp. 2d 450, 454 (D. Md. 2005) (quoting *Sun Dun, Inc. of Washington v. Coca-Cola Co.*, 740 F. Supp. 381, 385 (D. Md. 1990)).

#### **I. Subject Matter Jurisdiction**

The individual Defendants first move to dismiss Plaintiff’s case for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. “The plaintiff bears the burden of proving that subject matter jurisdiction properly exists in the federal court.” *Biktasheva v. Red Square Sports, Inc.*, 366 F. Supp. 2d 289, 294 (D. Md. 2005). A court may “consider evidence outside the pleadings” in a 12(b)(1) motion to determine if it has jurisdiction over the case. *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). “The court should grant the 12(b)(1) motion only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law.” *Biktasheva*, 366 F. Supp. 2d at 294 (quoting *Richmond*, 945 F.2d at 768).

#### **II. Personal Jurisdiction**

The individual Defendants next argue under Rule 12(b)(2) that this Court lacks personal

jurisdiction over them. “When a court’s personal jurisdiction is properly challenged by motion under Federal Rule of Civil Procedure 12(b)(2), the jurisdictional question thereby raised is one for the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction by a preponderance of the evidence.” *Mylan Labs., Inc. v. Akzo*, 2 F.3d 56, 59-60 (4th Cir. 1993) (citing *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989); *Dowless v. Warren-Rupp Houdailles, Inc.*, 800 F.2d 1305, 1307 (4th Cir. 1986)). In order for a district court to assert personal jurisdiction over a nonresident defendant, two conditions must be satisfied: (1) the exercise of jurisdiction must be authorized under the state’s long-arm statute; and (2) the exercise of jurisdiction must comport with the due process requirements of the Fourteenth Amendment. *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 396 (4th Cir. 2003).

Although “Maryland courts have consistently held that the state’s long-arm statute is coextensive with the limits of personal jurisdiction set by the due process clause of the Constitution,” *Carefirst of Maryland, Inc.*, 334 F.3d at 396-97, the Maryland Court of Appeals still requires an analysis under the long-arm statute to establish personal jurisdiction. *Mackey v. Compass Mktg., Inc.*, 892 A.2d 479, 493 n.6 (Md. 2006). As to the second prong, a court’s exercise of jurisdiction over a nonresident defendant comports with due process if the defendant has “minimum contacts” with the forum state, such that requiring the defendant to defend its interests in that state “does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

### **III. Improper Venue**

A defendant may move to dismiss a claim for improper venue under Rule 12(b)(3). The plaintiff has the burden of showing that venue is proper. *Gov't of Egypt Procurement Office v. M/V Robert E. Lee*, 216 F. Supp. 2d 468, 471 (D. Md. 2002). In diversity cases filed in federal court, venue is proper in:

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(a).

#### **IV. Statement of Claim upon Which Relief Can Be Granted**

Phelps-Davis and Phelps-Roper finally seek to dismiss Snyder's action pursuant to Rule 12(b)(6). "The purpose of Rule 12(b)(6) is to test the legal sufficiency of a complaint" and not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006) (citing *Edwards v. City of Goldsboro*, 178 F.3d 231, 243-44 (4th Cir. 1999)). The "Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Rather, Rule 8(a)(2) requires only a "short and plain statement of the claim showing that the pleader is entitled to relief." *Migdal v. Rowe Price-Fleming Int'l Inc.*, 248 F.3d 321, 325-26 (4th Cir. 2001); *see also Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002) (stating that a complaint need only satisfy the "simplified pleading standard" of Rule 8(a)). Therefore, a 12(b)(6) motion to dismiss "should only be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true, it appears certain that the plaintiff

cannot prove any set of facts in support of his claim entitling him to relief.” *Migdal*, 248 F.3d at 325; *see also Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 420 (4th Cir. 2005).

## V. Summary Judgment

Summary judgment is appropriate under Rule 56(c) of the Federal Rules of Civil Procedure when there is no genuine issue as to any material fact, and the moving party is plainly entitled to judgment in its favor as a matter of law. In *Anderson v. Liberty Lobby, Inc.*, the Supreme Court explained that, in considering a motion for summary judgment, “the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” 477 U.S. 242, 249 (1986). A dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. Thus, “the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented.” *Id.* at 252.

In undertaking this inquiry, a court must view the facts and the reasonable inferences drawn therefrom “in the light most favorable to the party opposing the motion.” *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)); *see also E.E.O.C. v. Navy Federal Credit Union*, 424 F.3d 397, 405 (4th Cir. 2005). However, the opponent must bring forth evidence upon which a reasonable fact finder could rely. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). “Once the movant has established the absence of any genuine issue of material fact, the opposing party has an obligation to present some type of evidence to the court demonstrating the existence of an issue of fact.” *Pension Ben. Guar. Corp. v. Beverley*, 404 F.3d 243, 246-47 (4th Cir. 2005)

(citing *Pine Ridge Coal Co. v. Local 8377, UMW*, 187 F.3d 415, 422 (4th Cir. 1999)). The mere existence of a “scintilla” of evidence in support of the nonmoving party’s case is not sufficient to preclude an order granting summary judgment. *Anderson*, 477 U.S. at 252.

## DISCUSSION

### **I. Subject Matter Jurisdiction**

Defendants Shirley Phelps-Roper and Rebekah Phelps-Davis have challenged this Court’s jurisdiction over the pending lawsuit on a number of grounds.

#### **A. Diversity Jurisdiction**

Plaintiff Albert Snyder claims that this Court has jurisdiction over his case based on diversity of citizenship, pursuant to 28 U.S.C. § 1332.<sup>2</sup> (Am. Compl. ¶ 2.) Federal district courts “have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000” and is between citizens of different states. 28 U.S.C. § 1332(a). The Defendants contend that Plaintiff’s case lacks both requirements.

##### **1. Amount in Controversy**

First, Defendants contend that Plaintiff failed to show that the matter in controversy “exceeds the sum or value of \$75,000.” (Defs.’ Mem. Supp. Mot. Dismiss 46.) Specifically, they argue that “[t]here is insufficient evidence to sustain a claim for damages” because “*all* of the evidence indicates that his reputation, if anything, was enhanced by defendants’ words.” (*Id.* (emphasis in original).)

Where the amount in controversy is challenged, the United States Court of Appeals for

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<sup>2</sup> Paragraph 2 of the Amended Complaint asserts that “[t]he Court has jurisdiction under 28 U.S.C. § 1332, which provides for original district court jurisdiction for diversity of citizenship and where the amount in controversy exceeds \$75,000.” (Am. Compl. ¶ 2.)

the Fourth Circuit has set forth a test for district courts to follow:

First, the court should look to the face of the complaint itself to determine whether it is a legal certainty that plaintiff's claims do not reach the required amount. Unless the claim for an amount over the jurisdictional prerequisite is made in bad faith, or unless it is plain from the complaint that an amount less than the jurisdictional amount is all that is at issue, the district court has jurisdiction over the case. . . . Second, if some event subsequent to the complaint reduces the amount in controversy, . . . the court must then decide in its discretion whether to retain jurisdiction over the remainder of the case.

*Shanaghan v. Cahill*, 58 F.3d 106, 112 (4th Cir. 1995) (internal citations omitted). Plaintiff's Amended Complaint contains five separate causes of action and expressly seeks general, special, and punitive damages, plus costs, which could easily total more than \$75,000. As noted in this Court's previous Memorandum Opinion, under the *Shanaghan* test, there is no indication that Plaintiff asserted damages in bad faith or that "it is plain from the complaint" that less than \$75,000 is at issue. The Defendants note that the "real issue here is that plaintiff doesn't like defendants' words, which is insufficient to establish damages." (Defs.' Mem. Supp. Mot. Dismiss 46.) However, whether Snyder actually sustained damages is for the finder of fact to determine. Thus, Plaintiff's Amended Complaint satisfies the amount in controversy requirement of 28 U.S.C. § 1332.

## **2. Diversity of Citizenship**

Second, the Defendants challenge diversity of citizenship by incorporating the arguments raised by Defendants Phelps and WBC in their September 18, 2006 Motion to Dismiss. (Defs.' Mem. Supp. Mot. Dismiss 47.) It is clear that both Shirley Phelps-Roper and Rebekah Phelps-Davis are residents of Topeka, Kansas, and Plaintiff is a resident of York, Pennsylvania. In addition, this Court previously held in the October 30, 2006 Memorandum Opinion that Phelps

and WBC are residents of Kansas. Accordingly, there is diversity of citizenship pursuant to 28 U.S.C. § 1332.

**B. First Amendment Issue**

The Defendants also argue that this Court lacks subject matter jurisdiction over all the claims in the case, because “ultimately in order to determine the outcome of this case, the Court or jury would be required to determine whose religious viewpoint is right.” (Defs.’ Mem. Supp. Mot. Dismiss 24.) It is well-established that “the civil courts of our country are obliged to play a limited role in resolving church disputes”—a restriction “premised on First Amendment principles that preclude a court from deciding issues of religious doctrine and practice, or from interfering with internal church government.” *Dixon v. Edwards*, 290 F.3d 699, 714 (4th Cir. 2002). “When a civil dispute merely involves a church as a party, however, and when it can be decided without resolving an ecclesiastical controversy, a civil court may properly exercise jurisdiction.” *Id.*

At this stage in the litigation, it is not clear whether the trier of fact would have to resolve “an ecclesiastical controversy” on any or all of Plaintiff’s claims. Discovery has not commenced as to Defendants Phelps-Davis and Phelps-Roper, nor has it been completed as to Defendants Phelps and WBC. As a result, this Court cannot determine at this time exactly what statements Snyder contends gave rise to his causes of action or whether they are religious in context. For example, some of the so-called religious phrases and messages cited by the Defendants in their memorandum were not even mentioned in the Amended Complaint. (See Defs.’ Mem. Supp. Mot. Dismiss 24.)

A Rule 12(b)(1) motion should be granted “only if the material jurisdictional facts are not

in dispute and the moving party is entitled to prevail as a matter of law.” *Biktasheva v. Red Square Sports, Inc.*, 366 F. Supp. 2d 289, 294 (D. Md. 2005) (quoting *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991)). With an incomplete record, this Court cannot find that the jurisdictional facts are “not in dispute.” Accordingly, Defendants’ Motion to Dismiss for lack of subject matter jurisdiction is DENIED.

## **II. Personal Jurisdiction**

Defendants Phelps-Davis and Phelps-Roper next argue that this Court does not have personal jurisdiction over them. (Defs.’ Mem. Supp. Mot. Dismiss 30-32.) The Defendants acknowledge that this Court’s October 30, 2006 ruling on Phelps and WBC’s motion to dismiss addressed essentially the same issue. (*Id.* at 30.) However, they challenge two of this Court’s conclusions as to the second prong of the jurisdictional test articulated in *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 396 (4th Cir. 2003). That prong requires that exercising personal jurisdiction complies with the due process requirements of the Fourteenth Amendment. As noted above, this can be achieved if the defendant has “minimum contacts” with the forum state, such that requiring the defendant to defend its interests in that state “does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

### **A. Minimum Contacts: General Jurisdiction vs. Specific Jurisdiction**

In order to determine what minimum contacts Phelps-Davis and Phelps-Roper must have with Maryland, the first inquiry is whether this Court has general or specific jurisdiction over them.

#### **1. General Jurisdiction**

“General jurisdiction, which permits a court to subject a non-resident defendant to a suit in the forum state wholly unrelated to any contact it has with that forum, exists only where the foreign defendant’s in-state activities amount to ‘continuous and systematic’ contact with the state.” *Gov’t of Egypt Procurement Office v. M/V ROBERT E. LEE*, 216 F. Supp. 2d 468, 471-72 (D. Md. 2002) (citing *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984)). In this case, there is not enough information in the pleadings to conclude that Phelps-Davis and Phelps-Roper have maintained “continuous and systematic” contact with Maryland, nor has the Plaintiff asserted that general jurisdiction exists. Accordingly this Court must focus on whether it has specific jurisdiction over Defendants.

## 2. Specific Jurisdiction

“[T]he level of ‘minimum contacts’ necessary to confer specific jurisdiction is significantly lower than that required for general jurisdiction.” *Id.* (citing *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 623 (4th Cir. 1997), *cert. denied*, 523 U.S. 1048 (1998)). Specific jurisdiction exists when a defendant purposefully established minimum contacts with the state and the cause of action arises out of those contacts. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477-78 (1985); *ESAB Group*, 126 F.3d at 625 (quoting *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957)). “In determining whether specific jurisdiction exists, we consider (1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs’ claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally ‘reasonable.’” *Carefirst of Maryland, Inc.*, 334 F.3d at 397 (citing *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 711-12 (4th Cir. 2002), *cert. denied*, 537 U.S. 1105

