

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS, et al.,

Plaintiffs,

vs.

Civil Action No. 1:06-cv-01207-JDB

WALTER MCGILL d/b/a
CREATION SEVENTH DAY
ADVENTIST CHURCH, et al.,

Defendant.

RESPONSE TO MOTION FOR SANCTIONS AND PERMANENT INJUNCTIVE RELIEF

Comes now, the Defendant, Walter McGill (“Pastor McGill”), and files this Response to Plaintiffs’ Motion for Sanctions and Permanent Injunctive Relief (D.E. # 85). Pastor McGill admits that the factual summary of the procedural background is substantially correct. Pastor McGill also acknowledges that his conduct may support sanctions and/or a default judgment on the remaining claims that were not disposed of by the Court’s June 11, 2008, Order granting in part, and denying in part, Plaintiffs’ summary judgment motion. (D.E. # 70). The primary purpose of this Response is to make clear to the Court that Pastor McGill’s actions are not intended to be “dilatatory,” “boasting,” “evasive,” or “flagrant.” Pastor McGill humbly and respectfully submits to the Court that his actions amount only to civil disobedience.

A. Default Judgment and Sanctions

From the outset, Pastor McGill has viewed this case as a challenge to his First Amendment right to religious freedom under the U.S. Constitution. The history of individuals who have religious beliefs that conflict with civil law is well established in the jurisprudence of this Country. It bears repeating that this country was founded by individuals seeking freedom to practice their religion. From the first settlements to today, the boundaries of acceptable religious expression have always been in a constant state of flux. In 1878, the United States Supreme Court posed these questions in a case involving religious freedom:

Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

Can a man excuse his practices to the contrary because of his religious belief? T[o] permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Reynolds v. United States, 98 U.S. 145, 166-67 (1878). Certainly, this case deals with religious beliefs far less concerning than those hypothesized by the Supreme Court, but Pastor McGill does not seek to excuse his actions. He has no disrespect for the law or the courts. In fact, he respectfully believes the law protects his right to use the words Seventh-Day Adventist in describing his faith. For Pastor McGill, however, his faith dictates that when the two collide, he is bound to follow the laws of God:

Then went the captain with the officers, and brought them without violence: for they feared the people, lest they should have been stoned. And when they had brought them, they set them before the council: and the high priest asked them, Saying, Did not we straitly command you that ye should not teach in this name? and, behold, ye have filled Jerusalem with your doctrine, and intend to bring this man's blood upon us. Then Peter and the other apostles answered and said, We ought to obey God rather than men.

Acts 5:26-29.

As the Court of Appeals for the Tenth Circuit has observed, civil disobedience of the law can be an act of great religious and moral courage and society may ultimately benefit, but, the worthiness of one's motives cannot excuse the violation in the eyes of the law. *United States v. Platte*, 401 F.3d 1176, 1181 (10th Cir. 2005). Pastor McGill understands this; he only asks this Court to understand that his failure to attend the mediation is not an attempt to usurp the Court's authority.

This Court has previously recognized that Pastor McGill chose the name of his church based on a divine revelation and that it was not his intent to confuse the public into thinking he was affiliated with Plaintiffs' church. *See* Order Granting in Part and Denying in Part the Plaintiff's Motion for Summary Judgment, p. 22 (D.E. # 70). It is also undisputed that Pastor McGill is required to use the name of his faith in his church. Def's Response to SUF, ¶7 (D.E. # 56-2). Pastor McGill did not participate in the mediation because doing so would infer that he has room to compromise on the name of his church when his convictions do not allow him to compromise his faith. Motion to Amend Pre-Trial Order, ¶4 (D.E. # 71). While Plaintiffs may view Pastor McGill's actions as a choice to disobey the Court, as Justice Souter has noted, "a Hobson's choice, is not a choice, whatever the reason for being Hobsonian." *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (Souter, J., dissenting).

For these reasons, Pastor McGill asks that Plaintiffs' motion for sanctions and default judgment be denied. He prays that the Court understands his position, and he realizes that the Court must take such actions as it deems appropriate for his failure to comply with the Court's orders.

B. Permanent Injunctive Relief

Pastor McGill denies Plaintiffs are entitled to injunctive relief. The proposed injunction is overly broad and unduly restrictive.

Respectfully submitted,

SPRAGINS, BARNETT & COBB, PLC

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CERTIFICATE OF SERVICE

I, Charles L. Holliday, hereby certify that on November 26, 2008, I electronically filed the foregoing with the Clerk of the Court for the Western District of Tennessee via the Electronic Filing System with notice to Plaintiffs' attorneys, Emily C. Taube and Joel Galanter, and all parties listed on the Electronic Filing Receipt.

s/ Charles L. Holliday
CHARLES L. HOLLIDAY