

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

O. JULIUS BANANABERRY, ELSPETH  
BLUENOSE, WORTHINGTON  
FARNSWORTH, and ZBIGINEW  
KORWICZSKI

PLAINTIFFS

v.

No. 2009-2321

DIONYSIUS HIPPI

DEFENDANT

**RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

O. Julius Bananaberry, Elspeth Bluenose, Worthington Farnsworth, and Zbiginew Korwiczski, by and through their attorneys, Compton and Stackhouse, respond to defendant's Motion for Summary Judgment and as grounds therefor state:

1. Defendant's assertion that he was inspired to create the spectacle he has created in his front yard by "the Gods" is no defense to a suit for public nuisance.
2. Plaintiffs challenge the good faith of defendant's assertion of divine inspiration, nevertheless, even if it were the case that he believes he was inspired by "the Gods" to create the eyesore he has created, the law nevertheless permits the state to impose reasonable time, place, and manner restrictions on land use, even when the purpose is public speech, so long as the restrictions are not discriminatory based on the content of the speech.
3. Any conspicuous display of this nature, regardless of the message or the content, would be a public nuisance.
4. Defendant's reference to the case of *Osborne v. Power*, 318 Ark. 858, 890 S.W.2d 570 (1994), *cert. denied*, 515 U.S. 1143, 115 S.Ct. 2580, 132 L.Ed.2d 829 (1995) is not helpful to defendant. In that case, the Arkansas Supreme Court held that a

“massive and commercial size” Christmas light display at a private residence was such as to constitute a nuisance. The chancellor’s decision to enjoin the nuisance was upheld.

5. A brief in support of this response is filed contemporaneously herewith.
- 6 Affidavits are filed herewith, including:
  - a. Supplemental affidavit of O. Julius Bananaberry
  - b. Supplemental affidavit of Elspeth Bluenose
  - c. Supplemental affidavit of Worthington Farnsworth
  - d. Supplemental affidavit of Zbiginew Korwiczski
  - e. Affidavit of Patrick F. Fitzgerald, Ph.D., D.D.,
  - f. Affidavit of Rev. M.K. Landsmann, D.D.S.

WHEREFORE, defendant’s Motion for Summary Judgment should be denied.

Respectfully Submitted,

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William Compton  
COMPTON & STACKHOUSE  
Attorneys at Law  
RED CROSS BUILDING  
Suite 1313  
2101 Chiroptera Lane  
Little Rock, AR 72201

### **CERTIFICATE OF SERVICE**

I, William Compton, hereby certify that I have served a copy of the above and foregoing Response to Motion for Summary Judgment upon the defendant by providing a copy to Dionysius Hipp, 14 Par Court, Little Rock, AR 72223.

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William Compton