

<p>COLORADO COURT OF APPEALS STATE OF COLORADO 2 East 14<sup>th</sup> Avenue Denver, CO 80203</p>	<p>DATE FILED: August 2, 2021 3:00 PM FILING ID: 7026C4F8C7B3A CASE NUMBER: 2021CA1142</p> <p style="text-align: center;">▲ FOR COURT USE ▲</p>
<p>Plaintiff-Appellee: AUTUMN SCARDINA,  &amp;  Defendants-Appellants: MASTERPIECE CAKESHOP INC. and JACK PHILLIPS,</p>	
<p><b><i>Attorneys for Defendants-Appellants:</i></b></p> <p>Jonathan A. Scruggs (AZ Bar No. 030505)* Jacob P. Warner (AZ Bar No. 033894)* ALLIANCE DEFENDING FREEDOM 15100 N. 90th Street Scottsdale, Arizona 85260 (480) 444-0020 jscruggs@adflegal.org jwarner@adflegal.org</p> <p>Kristen K. Waggoner (AZ Bar No. 032382)** John J. Bursch (MI Bar No. P57679)** 440 First Street NW, Suite 600 Washington, DC 20001 (202) 393-8690 kwaggoner@adflegal.org jbursch@adflegal.org</p> <p><i>*Admission Pro Hac Vice</i> <i>**Admission Pro Hac Vice Pending</i></p> <p>Samuel M. Ventola, Atty. Reg. #18030 1775 Sherman Street, Suite 1650 Denver, CO 80203 (303) 864-9797 (303) 496-6161 (facsimile) sam@samventola.com</p>	<p>Court of Appeals Case Number:</p> <p>District Court Case Number: 2019CV32214 County: Denver</p>
<p><b>NOTICE OF APPEAL</b></p>	

Defendants-Appellants Jack Phillips and Masterpiece Cakeshop (collectively, Phillips) submit this Notice of Appeal under C.A.R. 3.

## **I. Nature of the Case**

### **A. The Controversy**

Jack Phillips is a cake artist who owns Masterpiece Cakeshop. He serves everyone, but he cannot create custom cakes that express every message or celebrate every event. On the same day the U.S. Supreme Court decided to hear Phillips's prior case, a Denver attorney, Autumn Scardina, called his shop and asked for a custom cake—with a blue exterior and pink interior—that would symbolize and celebrate a gender transition. Phillips politely declined because that cake would have expressed messages that conflict with his faith. Scardina filed a charge with the Colorado Civil Rights Division, accusing Phillips of violating the Colorado Anti-Discrimination Act (CADA)'s prohibition on sexual-orientation discrimination. The Division found probable cause, and the Colorado Civil Rights Commission decided to prosecute Phillips.

After issuing a complaint and holding a hearing, the Commission dismissed the complaint against Phillips with prejudice. Scardina did not appeal that dismissal but instead filed this suit in district court, claiming that by declining to create the requested gender-transition cake, Phillips violated both CADA and the Colorado Consumer Protection Act (CPA). Phillips raised many defenses, including that the court lacked

jurisdiction; claim preclusion applied; Scardina failed to state a claim; and the federal and state constitutions protect Phillips's right not to speak, and to freely exercise his faith. At summary judgment, the district court dismissed the CPA claim. The court then held a trial on the CADA claim, before entering a judgment against Phillips for \$500.

**B. The Judgment Below and this Court's Jurisdiction**

Phillips seeks review of the district court's final order from a bench trial and judgment, dated June 15, 2021 and titled "Findings of Fact and Conclusions of Law." This Court has appellate jurisdiction over this appeal under C.R.S. § 13-4-102(1).

**C. Whether the Judgment Resolved All Issues**

The district court's judgment resolved all issues below. There are no outstanding disputes over stays, costs, or attorney's fees.

**D. Whether the Judgment is Final**

The district court's judgment is final. No certification under C.R.C.P. 54(b) was made or necessary, as the judgment resolved all claims as to all parties.

**E. Judgment Date**

This district court entered its judgment on June 15, 2021.

**F. Whether Extension to Seek Post-Trial Relief was Given**

The district court has not granted any extensions of time for a party to seek post-trial relief. Neither party has sought such relief.

**G. Date Motion for Post-Trial Relief Filed**

Not applicable.

**H. Date Motion for Post-Trial Relief Denied**

Not applicable.

**I. Whether Extension to File Notice of Appeal Given**

The district court has not granted any extensions of time for a party to file a notice of appeal. Neither party has sought such relief.

**II. Advisory List of Issues for Appeal**

Without waiving any issue preserved for appeal below, *Giampapa v. Am. Family Mut. Ins. Co.*, 919 P.2d 838, 840 (Colo. App. 1995), Phillips provides this advisory list of issues for appeal:

- Whether the district court erred by ruling that it could exercise jurisdiction over the CADA claim.
- Whether the district court erred by ruling that Scardina had satisfied CADA's claim-processing rules.

- Whether the district court erred by ruling that Scardina had exhausted administrative procedures and remedies before suing Phillips under CADA in district court.
- Whether the district court erred by ruling that claim preclusion did not bar the CADA claim.
- Whether the district court erred by denying Phillips’s motion to deposit with the court \$500.01 plus any court-ordered costs incurred to date to moot the CADA claim.
- Whether the district court erred by ruling that the CADA claim was not moot after Phillips moved to deposit \$500.01 plus costs incurred to date with the court.
- Whether the district court erred by ruling that the CADA claim was not moot after Phillips tendered to Scardina \$500.01 plus any court-ordered costs incurred to date.
- Whether the district court erred by ruling that Phillips violated CADA by declining to create a custom cake—with a blue exterior and pink interior—to symbolize and celebrate a gender transition, when the court found that Phillips would not create that cake for anyone.

- Whether the district court erred by ruling that CADA did not violate Article II, Section 10, of the Colorado Constitution and the First Amendment to the United States Constitution when CADA required Phillips to create a custom cake—with a blue exterior and pink interior—to symbolize and celebrate a gender transition.
- Whether the district court erred by ruling that CADA did not violate Article II, Section 4, of the Colorado Constitution and the First Amendment to the United States Constitution when CADA required Phillips to create a custom cake—with a blue exterior and pink interior—to symbolize and celebrate a gender transition in violation of Phillips’s religious beliefs.

### **III. Transcripts Needed for Appeal**

Phillips needs transcripts of all hearings in the district court to resolve the issues raised on appeal, including transcripts of: (1) the motion to dismiss hearing held April 9, 2020; (2) the case management conference held September 18, 2020; (3) the pre-trial conference held March 11, 2021; and (4) the full trial held March 22-24, 2021.

### **IV. Consent to Trial by Magistrate Judge**

Not applicable.

## V. Counsel for the Parties

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## **VI. Appendices to this Notice of Appeal**

Phillips includes these appendices to this Notice of Appeal:

- Findings of Fact and Conclusions of Law dated June 15, 2021
- Omnibus Order re: Motions in Limine dated March 8, 2021
- Order: Defendants' Motion to Deposit Funds Under Rule 67(a) and for Partial Summary Judgment dated December 14, 2020
- Order Denying Defendants' Motion to Dismiss Amended Complaint dated July 8, 2020.
- Order Denying in Part Defendants' Motion to Dismiss dated April 29, 2020.

Respectfully submitted this 2nd day of August, 2021.

Attorney for Defendants-Appellants Masterpiece  
Cakeshop Inc. and Jack Phillips

*/s/ Samuel M. Ventola*

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 2nd day of August, 2021, served a true and correct copy of the foregoing NOTICE OF APPEAL (with attachments) via the Colorado Courts E-Filing system to the Colorado Court of Appeals and to the Denver County District Court, and on all counsel of record:

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