

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

WESLEY C. SMITH
Plaintiff

v.

CHERI SMITH, et als
Defendants

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Case No: 7:07-CV-00117

#5 - FACTS

A pdf copy of this document is available at: <http://www.liamsdad.org/court/civilrights>

Power is the great evil with which we are contending. We have divided power between three branches of government and erected checks and balances to prevent abuse of power. However, where is the check on the power of the judiciary? If we fail to check the power of the judiciary, I predict that we will eventually live under judicial tyranny. - Patrick Henry

INTRODUCTION

1. Cheri Smith moved out of the marital home at the end of May 2003 and about two weeks later on 06/11/2003 she filed a Bill Of Complaint for divorce.
2. Cheri Smith never served Wesley Smith with the Bill Of Complaint or the Subpoena In Chancery.
3. On Aug 8, 2003 Wesley Smith filed a Notice Of Appeal in the JD&R custody case to appeal the case to the Circuit Court and a hearing date set for September 11th, 2003. The appealed custody case was designated as Chancery 53810. On Sept 2, 2003 the clerk sent a notice for a hearing to be held on Sep 11, 2003. On Sept 10, 2003, a CMS FLYSHEET for Chancery 53810 shows the trial date as Sep 11th (the hearing had not be cancelled or rescheduled).
4. The First hearing in Chancery 53360 was held on Sept 10, 2003 the day before the scheduled hearing in Chancery 53810. Both parties thought the Sept 10th hearing was only about the Motion For Pendente Lite Relief filed on Sept 2, 2003 which requested the house to be sold and **did not**

ask for temporary custody. Neither party expected to address custody at the Sept 10th hearing in Chancery 53360 but expected to address it the next day in Chancery 53810.

5. Judge Potter has a wide reputation for prejudice against fathers and for refusing to grant them custody even if they are the better parent. His reputation is confirmed by several lawyers.

6. On Sept 10th, 2003 Judge Potter ruled verbally that he would save time by awarding custody at this hearing instead of holding the scheduled hearing the next day. No order was ever entered merging the cases. The Defendant Objected to the **surprise custody ruling.**

7. The surprise custody ruling prevented both parties from presenting evidence and witnesses. Neither party presented any witnesses (other than the parties) at the Sep 10th hearing. Neither party presented any significant evidence relating to custody. The Plaintiff presenting only a Monthly Expenses statement, Statement Of Joint Expenses, and Psychological Eval that was not admitted. The Defendant entered no written evidence. Thus the clerk record shows no admitted evidence relating to custody.

8. Given the contested nature of this case both Mr. Whitbeck and Ms. Vardy would have to be completely incompetent and guilty of malpractice to show up at a custody hearing without witnesses/evidence relating to custody

9. Judge Potter indicated his prejudice against fathers by making such statements as “if you don’t shape up you won’t get any visitation” (the JD&R ruled Wesley Smith was an excellent father and would have joint custody except we can’t work together) and “I gave you more visitation that I give most fathers”.

10. The ruling on custody on Sep 10th by Judge Potter was a significant change from the ruling by the JD&R court, with a significant reduction in visitation, without giving a chance to properly present evidence.

11. On Aug 10th 2004, Loretta Vardy scheduled a motion to be heard on Aug 17th during Wesley Smith's "uninterrupted" two-week visitation period. The motion requested the court to prevent Wesley Smith from "saying, printing or otherwise displaying or promulgating" certain statements about Cheri Smith, including "in any public venue, including but not limited to Television, the internet or newspapers."

12. Loretta Vardy should have know that the relief she was asking for was repugnant to the constitution and that previous court rulings had stated that such relief could not be granted in an equity case.

13. On Aug 13th Wesley Smith's attorney withdrew from the case

14. On Aug 17th 2004, Judge Farris held a hearing while Wesley Smith and his son were in Michigan visiting family. Wesley Smith had requested a continuance.

15. On Sep 23rd 2004, Judge Farris issued order restricting what Wesley Smith could say about Cheri Smith and also ordered Wesley Smith to "remove or cause to be removed" statements that had been previously made.

16. Wesley Smith made repeated motions for the court to vacate or recognize as void the illegal order of Sep 23rd 2004. Judge Potter has denied all such motions. Judge Potter added similar restrictions on the Free Speech of Wesley Smith in the Final Divorce Decree.

17. Wesley Smith has continued to engage in the "prohibited" exercise of his First Amendment Right to free speech and has added the responsible judges to his website pointing out their misconduct and treason.

18. Judge Farris also refused to vacate or recognize as void the illegal order restricting free speech and made a statement to Wesley Smith that yes the court order is unconstitutional but I'll still put you in jail if you don't follow it.

19. Cheri Smith has made repeated motions for the court to enforce the order. The court has denied all such requests and eventually told her to stop asking, as trying to enforce the order would be “unproductive” – a tacit admission the order is null and void due to being unconstitutional.

20. On Dec 28, 2004 the Loretta Vardy filed Emergency Motion To Amend Visitation And Issue A Rule To Show Cause and scheduled it to be heard on Jan 3rd 2005.

21. Neither the Loretta Vardy nor the Court contacted Wesley Smith to schedule the hearing.

22. Neither Loretta Vardy nor the Court called the Defendant to let him know the hearing was scheduled. The Defendant has a cell phone with him and both Loretta Vardy and Court were aware of the phone number.

23. Loretta Vardy’s Certificate Of Service claims she mailed the motion to Wesley Smith via overnight mail. The package clearly states it was sent by two-day mail.

24. On Friday, December 31, 2004 New Years Eve at 2:40 p.m Wesley Smith received a copy of the Emergency Motion To Amend Visitation And Issue A Rule To Show Cause which was scheduled for very next business day.

25. Wesley Smith wrote and faxed a letter to Judge Alston explaining that he was in Michigan and could not attend, and requested a continuance. The Wesley Smith also provided copies of statements made by Cheri Smith about how much our son looked forward to spending time with his father and how cutting off visitation in the past had been hard for him.

26. The fax sent to Judge Alston contained these quotes by the mother Cheri Smith:

Nov 1, 2001 12:30:49 PM - “Thanks for breakfast - **it was nice to have Liam dressed** and coffee waiting when I came down. I'm so spoiled :-)”

Nov 30, 2001 12:00:27 PM - “Would you mind picking Liam up this evening? **He'd probably rather see you anyways, since I'm a Bad Mother.**”

Dec 27, 2001 10:44:12 AM - “Liam liked seeing you this morning. When you were holding him, he. Watching you make coffee while holding him...”

Jan 2, 2002 11:26:03 AM - "Liam seemed to have a good morning - **he likes it when you get him up.**"

Feb 19, 2002, 11:45 AM - **Thanks for spending time with him - I know he likes it. You're more fun than I am.**

Feb 20, 2002, 1:42 PM - **Thanks for taking him to the Dr.**

May 9, 2002, 7:56 AM "...took him potty twice, but he didn't do anything, so I guess you emptied him out."

May 22, 2002, 12:30 PM - **I was thinking in the car on the way to work that you would both be better off without me.** I used to not think that, but I do now.

Aug 7, 2002, 2:59 PM - "...since **you've always taken very good care of him**"

Sep 4, 2002, 10:14 AM - **I guess I forget that the two of you do fine without me there - just my controlling nature...**

Sep 11, 2002, 11:00 AM - **"I thought it was very nice that you would read to him. I think you are very good for him..."**

December 21, 2004 8:36:12 AM - "It took me a while to coax him out of his coat and shoes last night after we got home, because he "wanted to be ready for my Dad." **He will be crushed if you don't come tonight.**"

27. Son on Dec 21 2004 Cheri Smith states that our son would be "crushed" if he misses one day of visitation with his father and only 7 days later Loretta Vardy files to suspend visitation.

28. Loretta Vardy was aware that Wesley Smith had moved to Michigan.

29. Although the motion used the word 'Emergency' the motion did not state any emergency, nor claim any harm to our son but only inconvenience to Cheri Smith, and even admitted the act complained of was in compliance with the court order. Our son was with Cheri Smith when she filed the motion.

30. Judge Alston had **PERSONAL knowledge that some of the claims made by Loretta Vardy in her 'emergency' motion were false.** Such as the claim that Cheri Smith was unaware that Wesley Smith would be moving. Judge Alston personally heard and denied the motion about release of funds to avoid eviction/move. Judge Alston not only knew himself that Wesley Smith would be moving but by their presence at the hearing was aware that both Loretta Vardy and Cheri Smith were aware of the pending move.

31. On Jan 3, 2005, Judge Alston held the ex parte hearing and suspended visitation until a hearing set for the Jan 18th. The Jan 3rd 2005 order suspending visitation did not make any finding

of harm or risk to our son. The order did not cite any law to justify its ruling. The order did not cite any evidence or reason to justify its ruling.

32. Judge Alston himself described the Jan 3rd hearing as “Ex Parte” in his order of January 26th 2005.

33. According to the clerk notes Ronald Fahy, the GAL, made an oral motion to suspend visitation. Ronald Fahy never discussed the topic with Wesley Smith, nor did Ronald Fahy notify him in advance that he would do so.

34. Ronald Fahy was aware that Wesley Smith could properly care for his son and that his son desired to spend time with his father.

35. This is not the first time that Loretta Vardy and Cheri Smith had attempted to get the courts to cut off contact between Mr. Smith and his son. They filed a false ppo in Sep 2002 that was not only dismissed but expunged due to complete lack of basis.

36. Further indication of just how false the Cheri Smith & Loretta Vardy’s claims were, Judge Becker by court order removed our son from daycare and placed him back in the care of the Mr. Smith, and granted him visitation time **in addition to daycare time** with our son. Judge Becker recognized that the Wesley Smith was a good father, had been actively involved in the care of our son, and had a close relationship with him.

37. Cheri Smith had also filed a complaint (or more) with CPS alleging abuse. All CPS claims were ruled as unfounded without even contacting Mr. Smith, except for the claim about August 2004 and that was also ruled unfounded after Mr. Smith proved he had no contact with his son during the time period in question (Mr. Smith had swapped visitation days with Cheri Smith)

38. Judge Alston set the Jan 18th hearing date knowing that the GAL Ronald Fahy would not attend (see clerk notes) and directed him to prepare a report.

39. Ronald Fahy did prepare a report, but did not contact Wesley Smith to get his side of the story. Mr. Fahy did not provide Wesley Smith with a copy of the report, nor even advise him that a report would be prepared until Mr. Smith was walking into the courtroom on January 18th.

40. Mr. Fahy, the GAL, did not attend the hearing on January 18th 2005, about suspending visitation.

41. The 1 ¼ page 'report' prepared by Ronald Fahy, GAL, supported suspending visitation due to Wesley Smith pursuing Cheri Smith's adultery as grounds of divorce. The report admitted that Wesley Smith could properly care for his son and that his son wanted to spend time with him. The report did not allege any harm that would occur with visitation.

42. State policy and court case law is that visitation is presumed to be beneficial to the child unless demonstrated that harm would occur.

43. Our son loves his father and desires to spend time with him. Father and son do many fun things together during visitation. Photos of which are posted on Mr. Smith's website.

44. At the hearing, the Wesley Smith attempted to present evidence that the Cheri Smith & Loretta Vardy had lied in their motion, had even lied about notifying the Wesley Smith of the Jan 3rd hearing, and to present evidence that visitation was best for our son.

45. Judge Millette threatened Wesley Smith with jail for his attempts to show that the Loretta Vardy had intentionally misled the court. Judge Millette stated he was not going to let Mr. Smith call "an officer of the court" a liar.

46. A observer in the courtroom, Ron Jagannathan, signed a sworn affidavit that Judge Millette threatened Mr. Smith with jail for presenting evidence Loretta Vardy committed fraud.

47. Since Loretta Vardy had lied in her motion, this prevented Mr. Smith from being able to present his case. For example the motion claims Cheri Smith was unaware that Wesley Smith was going to moving, yet Mr. Smith had evidence to show that he had discussed it with Cheri Smith

via e-mail, that a motion had been filed about it, that a court hearing had been held about it, that Cheri Smith had been offered, and picked up items from Mr. Smith when he was packing to move.

48. Loretta Vardy also lied in the motion about phone calls, attempting to paint Mr. Smith as refusing to communicate with Cheri Smith. Mr. Smith had brought to court, phone records to prove her claim false and to demonstrate that he had our son call his mother as soon as he got her voice mail.

49. Judge Millette stated Judge Alston had already made a ruling on the Cheri Smith's claims and refused to make a new ruling based on the evidence of fraud in the motion or due to evidence that our son enjoyed visitation with his father.

50. Judge Millette made it clear that he was aware of Judge Alston's ruling and that he intended to go along with Judge Alston no matter what the law or evidence indicated.

51. Judge Millette issued an order continuing to suspend visitation, again with no finding of harm or risk to our son. His order claims to be based on the GAL memo which is hearsay and inadmissible and itself does not give any grounds justifying suspending visitation under Virginia law but rather that the GAL was unhappy about the Wesley Smith pursuing the mother's adultery as grounds for divorce.

52. Judge Millette's order is partially typed and partially handwritten. The typed part states that visitation is suspended until the final divorce hearing. Given that this part of the order was typed in advance of the hearing it indicates that he was not giving due consideration to the evidence at the hearing and that the hearing was a sham.

53. On Jan 26th 2005 Judge Alston denied the motion to reconsider by Wesley Smith. In part he based his ruling on the sarcastic statement of "at there is no legal excuse for Respondent's failure to present his full defense at or before the time of entry of the decree dated January 18, 2005; "

54. Apparently Judge Alston does not consider threat of jail by Judge Millette as a “legal excuse” for presenting evidence.

55. During the history of the case, Judge Alston has refused to enforce the rules when Loretta Vardy violates them including discovery rules, one week notice rule, rules about frivolous motions etc. Has enforced the rules more strictly against pro-se Wesley Smith.

56. Judge Alston scheduled a hearing for Jan 3 2005 knowing that one week notice was not provided to Wesley Smith per rule, and when he knew that Wesley Smith was not provided adequate time to prepare for or travel to the hearing from Michigan as required by law. He refused the request to continue the hearing. He then followed this up by scheduling a hearing for January 18th 2005 when he knew the GAL would not be able to attend. Clearly Judge Alston didn't intend for it to be an honest trial but rather just to inconvenience Wesley Smith requiring him to drive to/from Virginia for nothing.

57. Judge Alston also allowed Loretta Vardy to file a motion on Oct 5, 2004 for a hearing on Oct 8th, 2005.

58. After visitation was suspended Wesley Smith continued to have phone contact with our son per court order. Our son loves his father and desires to spend time with him. Our son would regularly ask his father to come pick him up, or to come visit him during the 17 months visitation was suspended.

59. As a result of having been denied access to his father in the past our son has become “clingy”.

60. After visitation was suspended our son became depressed and was diagnosed with depression.

61. Wesley Smith has been ruled indigent and can't afford a court reporter at every hearing. He has made repeated request to record hearings, many of which have been denied. The court started

denying his request to record hearings when the court found out he was using the recordings to prove Loretta Vardy was lying in court. The court allows attorneys to record hearings.

62. The Court did not provide a Jury Trial, which Wesley Smith had requested multiple times in writing.

63. The Court did not force Cheri Smith & Loretta Vardy to comply with Discovery and went out of its way to prevent Wesley Smith from using Discovery to obtain proof of adultery by Cheri Smith.

64. Judge Alston also quashed a subpoena for records relating to adultery, not on legal grounds, but on the grounds that he didn't want to do anything different than Judge Potter.

65. The Court eventually did rule on one of the motions to compel and did rule that Cheri Smith had to provide some documents but then assigned Loretta Vardy the opposing attorney to draft the order. The order was never entered. The Court has never had Wesley Smith draft an order when the opposition won a ruling.

66. Cheri Smith repeatedly plead the 5th amendment when asked about her relationship with Igor Bakhir.

67. Igor Bakhir also plead the 5th during his deposition when asked about Cheri Smith. Mr. Bakhir also made many false statements during his deposition. Including stating that he didn't have any friends, and being unaware that he and Cheri Smith worked for the same supervisor, or that he went to lunch with her etc.

68. None of the defendant judges forced Cheri Smith to answer the question when she took the 5th, in spite of case precedence presented that showed that the 5th may not be asserted due to their being no realistic chance of prosecution.

69. Igor Bakhir was subpoenaed as a witness for the May 2006 final trial. Mr. Bakhir refused to comply and sent the court a letter saying he could not attend. Mr. Bakhir did not present himself to the court to be called as a witness but was spotted in the courthouse for at least an hour.

70. Mr. Bakhir refused to comply with the subpoena for documents.

71. At the final Trial Cheri Smith did admit to committing adultery with Igor Bakhir. And stated that her affair with him started 6 months before his deposition at which he denied knowledge about her. Her testimony under oath directly contradicts his testimony under oath.

72. Mr. Smith had also submitted photos indicating that Cheri Smith and Igor Bakhir were sleeping over at each others apartments. Mr. Smith also submitted e-mail, and other evidence to document their relationship.

73. In spite of the photos and other paper evidence and in spite of Cheri Smith admitting to the adultery, Judge Potter ruled that adultery was not proven.

74. Judge Potter ruled that the parties separated in Dec 2003, or 6 months after filing for divorce, and ruled the divorce on the grounds of one-year separation. Mr. Smith had filed a motion showing that the Virginia Court Of Appeals did not allow one year separation as it did not occur prior to filing for divorce.

75. At the final trial on May 22, 23 2006, Judge Potter refused to let Wesley Smith make a Proffer for the Appeals court when he attempted to do so. Judge Potter cut off questioning of the GAL, and suggested the GAL not stay for the remainder of the trial.

76. Judge Potter repeated his refusal to allow proffers in April of 2007. Even though Wesley Smith used the word 'proffer' for the appeals court and in spite of being very insistent on it. It was clear Judge Potter was attempting to keep information out of the court file.

77. Judge Potter continued with the hearing in April of 2007 after he knew that Wesley Smith was suing him. Judge Potter refused to rescue himself even when an oral motion to do so was made.

78. Ronald Fahy, the GAL, did not present any witnesses, did not cross-examine any witnesses, did not present any evidence, and left early the first day and did not attend the second day of the trial. He did not present any credentials to show him an expert in any field relating to child custody, childcare, parenting, etc. He was not present for the testimony of our son.

79. Virginia state guidelines require GAL's to do an independent investigation of the facts, to submit motions, to present witnesses and evidence to support their case. Ronald Fahy did none of these.

80. Ronald Fahy refused to comply with a subpoena for records.

81. While he did not attend a hearing on suspending visitation, or the final custody hearing, Ronald Fahy has attended and billed for several hearings that were just about money and not related to our son.

82. Court employees have, from the courthouse, been browsing the Defendant's website, in particular the hall of shame pages about Judges of the Prince William Circuit Court.

83. The browsing of the Defendant's website from the courthouse has shown a pattern where activity picks up when the case file is sent from the clerks office to the Judge's chambers.

84. The law library at the courthouse has computers for public use, but in order to use them you must type in the password "Mother5x". A pretty blatant statement on the bias of the court itself not just individual judges.

85. The Defendant has been ruled indigent and can't afford a court reporter at every hearing. The Defendant has made repeated request to record hearings, many of which have been denied.

86. Loretta Vardy made statements in court that her client had followed the court order. Loretta Vardy had personal knowledge this was not the case as she came to Mr. Smith's house and personally observed that Cheri Smith had called the police to interfere with Mr. Smith spending time with his son as required by the court order.

87. Mr. Smith submitted photos of Loretta Vardy at the scene as well as a recording of her statement to the court to prove her lying to the court.

88. The Court has refused to impose sanctions on Loretta Vardy for her violations of Court Rules and VA law.

89. Judge Chitwood refused to show in the record what gave him jurisdiction to hear the case. He also refused to rule on the merits of Mr. Smith's motions but stated the Prince William Circuit Court had already addressed them.

90. Judge Chitwood gave no appearance at all of considering the merits of the case that Mr. Smith presented, in spite of Mr. Smith presenting significant case rulings and DCSE presenting no case rulings to support its views nor even any legal argument other than "we think it's a valid order".

91.

**Respectfully Submitted,
Wesley C. Smith**

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May 15th, 2007

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CERTIFICATE OF SERVICE

I hereby certify that I have mailed copies of the foregoing to the following parties/counsel on
May 15th 2007:

Ronald Fahy, 9236 Mosby St # A, Manassas VA 20110

Loretta Vardy, 12388 Silent Wolf Dr., Manassas VA 20112

Wesley C. Smith