

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE WILLIAM COUNTY

Cheri Smith,  
Plaintiff,

v.

Chancery No.53360-00

Wesley C. Smith,  
Defendant.

AMENDED BILL OF COMPLAINT

TO: Wesley C. Smith  
c/o John Whitbeck, Jr., Esquire  
Kazam, Whitbeck, Seck & Kazem, P.L.C.  
15-D Loudoun Street, S.W.  
Leesburg, VA 20175

**COMES NOW**, Plaintiff, Cheri Smith, who in support of her Amended Bill of  
Complaint, respectfully represents as follows:

Plaintiff, Cheri Smith, resides at 11450 Huntsman Drive, Manassas, Virginia, 20112.

1.

2. Defendant, Wesley C. Smith, resides at 11411 Huntsman Drive Manassas,  
Virginia, 20112.

3. Plaintiff and Defendant were married on November 23, 1988 in South Jordan,  
Utah.

4. Plaintiff is domiciled in and has been a bona fide resident of the Commonwealth of  
Virginia for more than six months next preceding the commencement of this suit.

5. Plaintiff and Defendant are over the age of 18 years, are of sound mind, and neither of them is in the military service of the United States.

6. Plaintiff's social security number is 529-49-8449. Defendant's social security number is 369-90-9588.

7. There was one child born of this marriage, namely, Liam Raleigh Smith, six years of age, born on July 22, 1997, whose Social Security Number is 227-79-9743.

8. Plaintiff and Defendant last cohabited at 11411 Huntsman Drive Manassas VA 20112.

9. Plaintiff is employed by SAIC, Inc., 1710 SAIC Drive, McLean, Virginia. Defendant is currently employed by CSC.

10. That *Pendente Lite* Order was entered by this Court on October 2, 2003 granting the Plaintiff sole Legal and Physical Custody and establishing Child Support to be paid by the Defendant.

11. The best interests of the minor child of the parties require that responsibility for his care and custody be granted to the Plaintiff.

12. The parties have both legal and equitable interests in a variety of assets and debts, which require distribution in accordance with section 20-107.3 of the Code of Virginia.

13. Plaintiff desires to resume use of her maiden name, to wit: Cheri Jones

COUNT I

CRUELTY

14. The Plaintiff incorporates each of the aforesaid allegations contained in Paragraphs 1 through 13 above.

15. The Defendant has been guilty of cruelty toward the Plaintiff, in that the Defendant has abused, threatened, humiliated, and degraded the Plaintiff and subjected her to his acts of cruelty.

16. Beginning around 1996 and continuing intermittently, the Defendant has made untrue allegations that the Plaintiff suffered from mental illness; however, during May 2002, these allegations escalated.

17. During the marriage, the Defendant has behaved aggressively towards the Plaintiff on several occasions.

18. In 1999, the Defendant slapped the Plaintiff in the face.

19. In 2001, the Defendant while attempting to prevent the Plaintiff from leaving a room in the marital home, did bruise the Plaintiff's arm.

20. On or about May 2002, the Defendant began to harass the Plaintiff with untrue allegations that she is mentally ill. This harassment continued and escalated both in frequency and hostility. The Defendant has made these allegations not only to the Plaintiff but also to third parties and to their child, Liam.

21. Since May 2002, the Defendant has insisted that the Plaintiff is mentally ill. The alleged mental illness has not always been specified; however since May 2002, the Defendant has alleged that the mental illness is bi-polar disorder.

22. Since May 2002, Defendant has demanded that the Plaintiff obtain treatment or prove to his satisfaction that she is not mentally ill.

## COUNT II

### Constructive Desertion

23. The Plaintiff incorporates each of the aforesaid allegations contained in paragraphs 1 through 22 above.

24. The Defendant has attempted to force the Plaintiff out of the marital home. The Defendant by his actions and harassment has caused the Plaintiff to remove herself from their shared bedroom in the marital home and finally from the marital home itself.

25. Since May 2002, Defendant has tried repeatedly to force the Plaintiff to leave the marital home. He has repeatedly told the Plaintiff that she must leave the house or he will be forced to take their child from the Plaintiff in order to protect the child from her.

26. On or about the first week in June 2002, the Defendant issued an ultimatum to the Plaintiff that she either get treatment or move out of the house.

27. On or about the first week in June 2002, to avoid further harassment and believing it to be necessary for her personal safety, the Plaintiff moved to the guest bedroom in the marital home.

28. Sometime on or around mid-June 2002, the Defendant began locking the door to the master bedroom in the marital home.

29. Beginning in June 2002, and continuing until October 2002, the Defendant threatened to take the parties' minor child to Michigan or Mexico if the Plaintiff did not receive treatment for her alleged mental illness.

30. During the first half of September 2002, the Defendant did on several occasions lock the parties' minor child in a bedroom with himself and refuse to allow the child out unless and until the Plaintiff left the house.

31. On September 16, 2002, after an argument with the Defendant, the Plaintiff did leave the marital home and seek refuge with a neighbor. While the Plaintiff was at the neighbor's house, the Defendant did place the Plaintiff's clothing and other possessions in the driveway of the marital home at 11411 Huntsman Drive. The police were called and the Plaintiff returned to the marital home to retrieve some things for herself and her child.

32. On September 17, 2002, a Preliminary Protective Order granting the Plaintiff exclusive use of the marital home for herself and her son, was issued by the Juvenile and Domestic Relations Court for the County of Prince William, Case Number A42997-01-00.

33. The Plaintiff and Defendant have not cohabited since September 17, 2003. They have separated bedrooms, maintain separate bank accounts. The Plaintiff has performed the normal family tasks such as doing laundry, bathing, food shopping and preparation for herself and her son only. Defendant has provided for his needs

34. Since September 17, 2002, it has been the intention of the Plaintiff that the parties live separately and apart.

35. On October 1, 2002, a Permanent Protective Order was denied by the Juvenile and Domestic Relations Court for the County of Prince William, Case Number A42997-01-00.

36. On or about October 1, 2002, through October 21, 2002, the Defendant refused to remain in the marital home when the Plaintiff was also present in the marital home.

37. On several occasions, during the period from October 1, 2002 through October 21, 2002, the Defendant took the parties' son and left the marital home.

38. In October 21, 2002, a Temporary Custody Order granting custody of the parties' son to the Plaintiff was entered by the Juvenile and Domestic Relations Court for Prince William County, Case Number: J85032-01/02/03-00.

39. On or about November 1, 2002, the Defendant left the marital home without notifying the Plaintiff.

40. On or about December 28, 2002, the Defendant returned to the marital home without prior notification to the Plaintiff.

41. On February 5, 2003, An Agreed Order for Temporary Visitation was entered by the Juvenile and Domestic Relations Court for the County of Prince William. As part of this

Agreed Order, Defendant was granted the exclusive use of the master bedroom and Plaintiff was granted exclusive use of the guest bedroom in the marital home.

42. On May 13, 2003 a Temporary Custody Order was entered by the Juvenile and Domestic Relations Court for the County of Prince William, granting Joint Legal Custody of Liam R. Smith to the Plaintiff and Defendant. The Plaintiff was granted Primary Physical Custody and the Defendant was granted the same visitation schedule as was contained in the Order entered on October 21, 2002. This Order allowed the Defendant to provide daycare for the parties' son until he secures employment.

43. On or about the first weekend in June 2003, the Plaintiff removed herself and the parties' son from the marital home.

44. Beginning on or around May 31, 2003, the Defendant has neglected to give the Plaintiff copies of School communications which are sent home with the parties' son. In addition, the Defendant attitude and conduct towards the Plaintiff has become more aggressive. His communications with her have become more ascorbic and hostile.

### COUNT III

#### SEPARATION OF THE PARTIES EXCEEDING ONE YEAR

45. The Plaintiff incorporates each of the allegations contained in Paragraphs 1 through 44 above.

46. Since on or before September 17, 2002, the parties have not co-habited together.

47. Since September 17, 2002, it has been the intention of the Plaintiff to live separate and apart from the Defendant and to end the marriage.

48. During the period from September 17, 2002 through approximately May 31, 2003, the parties resided in the same home at 11450 Huntsman Drive, Manassas, Virginia, 20112; however, each occupied separated bedrooms.

49. During the period from September 17, 2002 through approximately May 31, 2003, while occupying the same residence, the Plaintiff and Defendant did not share normal family activities such as sharing meals, or taking family vacations.

50. During the period from September 17, 2002 through approximately May, 2003, the Plaintiff did not shop for the Defendant, prepare meals for him or do his laundry.

51. During the period from September 17, 2002 through approximately May 2003, the Plaintiff and the Defendant spent minimal time together participating in activities related to their minor son, Liam.

52. On or about the first weekend in June 2003, the Plaintiff moved herself and her son out of the marital home.

53. No reconciliation is probable.

**WHEREFORE**, the Plaintiff prays:

1. That she be granted a Final Decree of Divorce *a vinculo matrimonii* pursuant to Section 20-91 (A) (9). of the Code of Virginia, based upon the grounds of the separation of the parties for a period exceeding one year;

2. Or, that in the alternative that she be granted a Divorce *a mensa et thoro* on the grounds of cruelty and constructive desertion with leave to merge in to a Decree of Divorce *a vinculo matrimonii* as of the end of one year from the date of separation as determined by the Court;

3. That the Plaintiff be granted custody of their minor child, Liam Raleigh Smith;

4. That the Current *Pendente Lite* Custody, Visitation *and Child* Support Orders be entered as permanent;

5. That Spousal Support be awarded to the Plaintiff;

6. That if Spousal Support for the Plaintiff is not awarded at the time of the entry of the final decree, the Plaintiff's right to Spousal Support be reserved;

7. That an Order be entered determining the equities, rights, and interests of each Party as to the properties whether real or personal comprising the marital estate pursuant to § 20-107.3;
8. That an Order be entered determining the identity, nature and equitable distribution of the marital debt pursuant to § 20-107.3 of the Virginia Code;
9. That upon entry of a final decree in this matter, the Court grant the Plaintiff all rights and remedies afforded by section §20-107.3 of the Code of Virginia;
10. That an Order be entered enjoining the Defendant from threatening, harassing, harming, or abusing the Plaintiff in any way, or from entering any premises where the Plaintiff resides or is known to be present;
11. That the Plaintiff be allowed to resume use of her maiden name, Cheri Jones;
12. That the Plaintiff be awarded costs and a reasonable attorney fee at the conclusion of this suit; and
13. That the Plaintiff may have such other and further relief as the nature of this case may require.

Cheri Smith

Cheri Smith

COMMONWEALTH OF VIRGINIA

COUNTY OF Prince William, to-wit:

I, Cheri Smith, the Plaintiff herein, being duly sworn, say that I have read the foregoing Amended Bill of Complaint and know the contents thereof, and that the same is true to the best of my knowledge, information, and belief.

Given under my hand this 23 Day of February 2004.

Cheri Smith

Cheri Smith

Subscribed and sworn to/affirmed before me this 23<sup>d</sup> of February, 2004 by Cheri Smith.

Frances R. Leonard  
Notary Public

My commission expires: 1/31/2005

*Loretta Vardy*

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Loretta Vardy, Esquire  
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VSB# 22625  
Counsel for Plaintiff

CERTIFICATION OF SERVICE

I hereby certify that a true and accurate copy of this pleading was sent via facsimile on the 20<sup>th</sup> day of February 2004 and by first class mail postage prepaid, on the 23rd day of February, 200 to John C. Whitbeck, Jr., Esquire, Kazem, Whitbeck, Seck & Kazem, PLC, 15-D Loudoun Street, SW, Leesburg, VA 20175

*Loretta Vardy*

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