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Visitation Dates
Clarify

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,)
)
 Complainant,)
)
 v.) Chancery No. 53360
)
 WESLEY C. SMITH,)
)
 Defendant.)

MOTION FOR PENDENTE LITE RELIEF

COMES NOW the Defendant, Wesley C. Smith ("the Husband"), pro se, and moves this Court pursuant to Va. Code Ann. § 20-103, for entry of an Order granting him *pendente lite* relief as requested below:

1. A Pendente Lite order entered October 2, 2003 and modified by an order on March 19, 2003 has several conditions that the parties need the court to clarify.
2. The order states that for summer vacation the parties are to have 4 weeks with the child divided into two two-week periods.
3. The periods stated for the Defendant is from 7pm on the second Friday in July until 7pm on the fourth Friday in July, and from the second Friday in August until the fourth Friday in August. Which in 2004 is July 9 to July 23, and August 13 to August 27.
4. The periods stated for the Plaintiff is from 7pm on the third Friday in June until 7pm two weeks later and from the fourth Friday in July until the second Friday in August. Which in 2004 is June 18 to July 2, and July 23 to August 13. Note that the second period is three weeks instead of two weeks as the order states it should be.
5. The order also states that the Defendant is to have visitation for the weekend that

includes Fathers Day. In 2004 this is the weekend of June 18-20, which is part of the period specified above for the Plaintiff.

6. The order also grants the Defendant overnight visitation on Tuesdays with visitation 'ending Wednesday morning when he shall return the child to school', and weekend visitation every other weekend 'starting after school on Friday'.

7. The parties have discussed the overlapping dates and three-week period. The Defendant has offered to shift the Plaintiffs first vacation period two days from June 18 to June 20 to continue until two weeks afterwards. The Plaintiff has refused this offer.

8. The Plaintiff is insisting that the Defendant give up his overnight visitation on July 6 as a condition of her agreeing to resolve the conflicts in the order. Apparently the Plaintiff has made plans to spend time with the child during the Defendants court ordered visitation.

9. The Plaintiff made similar plans and demands in December 2003, and when the Defendant did not agree to her demands, she ignored the court order and kept the child out of state making the child miss visitation with the Defendant on Dec 2, 2003, and causing the child to miss two days of school and speech therapy.

10. On March 3, 2004 the court acknowledged the Plaintiffs violation of the order but did not hold her in contempt due to the courts claim the action was not willful. It is not apparent to the Defendant how the court could construe her actions as not being willful given that she purchased plane tickets about a month in advance with a return date that would not return the child to Virginia until after the Plaintiff was to have the child available for visitation, and stated to the Defendant that the child would not be available for visitation. Such actions clearly show she was aware of the violation and simply chose not to follow the order.

11. The Plaintiffs actions according to VA 18.2-49.1, and appeals court rulings that when a

non-custodial parent attempts to exercise visitation he becomes for the duration the custodial parent and the custodial parent becomes the non-custodial parent, constitute a class 6 felony and should have been treated as such by the court.

12. The Plaintiff has further insisted that the Defendants visitation end on Wednesday mornings at 9 am instead of continuing the practice of the Defendant returning the child to Seven Oaks Academy daycare at any time in the morning, and picking him up at any time in the afternoon, on days were school is not in session.

13. The last day of school this year is June 15.

14. There has also been confusion as to what time visitation starts for the Defendant when multiple visitation times overlap, such as weekend visitation starting 'after school' on Friday and holiday or vacation visitation stating that visitation starts at 7pm on the same day.

15. The Defendant lives in Woodbridge, works at Ft Belvoir, and Seven Oaks Academy daycare is in Manassas, thus all day visitation when the Defendant must work requires an extra two hours commuting.

16. The Plaintiff has also informed the Defendant that she planned to use an out of network provider for the child's non-emergency health care needs which dramatically increased the cost of treatment, and has been unwilling to discuss her choice of procedure that appears to the Defendant to not necessarily be best for the child.

17. The Defendant has made suggestions and offered assistance to help obtain the healthcare from an in-network provider, but the Plaintiff has made no response.

18. The Plaintiff has insisted that the Defendant pay a share of the increased costs per the court order. Given the financial stress the Plaintiff has put on the Defendant with her legal actions, instead of settling via mediation, and her refusal to allow the Defendant access to his share of the

marital assets, it appears the Plaintiff is choosing a out of network provider more to harass the Defendant rather than the needs of the child..

19. The Defendant has been regularly taking the child to speech therapy on Wednesday mornings during his visitation. He has signed the child up for therapeutic riding and taken him to it during his visitation periods. He has made arrangements for Occupation Therapy during his spring break visitation.

20. The Defendant has already talked to therapists about scheduling during his summer visitation, and has informed the Plaintiff of his actions.

21. In spite of the Defendants proven record of supporting and being actively involved in therapy for the child, the Plaintiff has insisted on being able to schedule therapy and events for the child during the Defendants visitation period. Given that the Defendant is fully capable and willing to schedule and arrange therapy during his visitation such actions by the Plaintiff are unnecessary and appear that her actions are aimed at controlling and inconveniencing the Defendant rather than facilitation therapy for the child.

WHEREFORE the Husband requests the following relief *pendente lite*:

1. An order requiring resolving the conflicting statements and clarifying others.
2. That the Plaintiffs first vacation period will start on June 20 at 7pm this year so as to allow the Defendant visitation on Fathers Day.
3. Deny the Plaintiffs attempts to take July 6th visitation away from the Defendant.
4. Remind the Plaintiff that settlements via court instead of mediation will result in orders inconvenient for both parties not just the Defendant and that she should not refuse to work out issues relating with the Defendant simply to attempt to take a visitation day away from the Defendant instead of arranging her schedule around the order she had imposed on the both of them.

5. Require the Plaintiff to respect the visitation awarded to the Father and provide immediate and specific punishment for failure to comply, such as immediate arrest and jail time, or an immediate change in custody of the child. Given the courts lack of enforcement via contempt hearings on two occasions, more immediate remedies are required if the order is to have any meaningful impact on the Plaintiff.

6. Remove all language referring to school or provide alternative guidelines when school is not in session, such as the Defendant's visitation on Wednesday mornings will extend until he returns the child to Seven Oaks Academy before noon, and that for Friday visitations the Defendant may pick the child up at Seven Oaks Academy at any time the child is there and that the Plaintiff must have the child there by noon unless agreed to otherwise by the Defendant.

7. That during his vacation periods, the Defendant may place the child in a daycare close to home to allow the Father and Child to spend more quality time together during their visitation.

8. That the child support payment for July and August be reduced 50% to help the Defendant pay for daycare close to home to allow him to spend more time with the child.

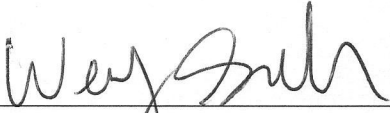
9. That any non-emergency health care costs the Plaintiff chooses will not require any additional payment by the defendant.

10. That the Plaintiff shall not schedule any therapy or events during the Defendants visitation.

11. Require the Plaintiff to pay the Defendant for the time he had to take off work to deal with this issue.

12. An order such further relief as the nature of the case or the goals of equity require.

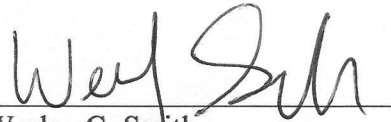
Respectfully submitted,
WESLEY C. SMITH
Defendant



Wesley C. Smith
3215 Ridge View Ct. Ap 104
Woodbridge, VA 22192
(703) 220-2637
Defendant, pro se

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this pleading was served via first-class mail, this 7 day of JUNE, 2004, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112.



Wesley C. Smith.

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY C. SMITH,

Defendant.

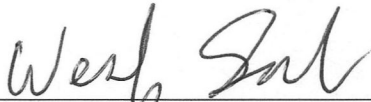
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Chancery No. 53360

PRAECIPE

THE CLERK will kindly place the attached Motion on this Court's docket for Friday,

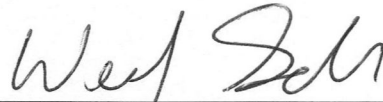
June 11, 2004 at 10:00 a.m. for hearing.



Wesley C. Smith
3215 Ridge View Ct. Ap 104
Woodbridge, VA 22192
(703) 220-2637
Defendant, pro se

CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of June, 2004, a true and accurate copy of this pleading was served via facsimile and first-class mail, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112 and via first class mail and electronic mail to Wesley Smith, 3215 Ridgeview Court, Apt. 104, Woodbridge, Virginia 22192



Wesley C. Smith