

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 Tuesday, August 17, 2004 at 10:00 a.m. for hearing or as soon thereafter as this matter may be heard.



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 13 day of August, 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

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, 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.

In support of his MOTION the Defendant states as follows:

1. Starting in Sep 2002 the Complainant has pursued costly litigation instead of entering into mediation to settle the issues as requested repeatedly by the Defendant.
2. That the Complainant’s Attorney Loretta Vardy has knowingly made false statements of fact in violation of § vs-cr-6:2-3.3(a)(1) and § vs-cr-6:2-3.4(f). She has repeatedly filed motions that she knew were groundless, in violation of § vs-cr-6:2-3.4(i), thus directing the Defendants, time, energy, and money away from the core issues of the case.
3. The malicious filings include a *pendent elite* filed April 8 2004, where she claims the Defendant has “badgered” Complaint when picking his son up for visitation. She also made claims implying child abuse over a joke the couples son played on his mother. At the initial hearing Ms Vary described the Defendants behavior as a “tirade”. Yet both she and the Complainant are aware the Defendant records the exchanges, rarely says anything at all, goes out of his way to make exchanges prompt and pleasant for their child, and usually avoids all verbal

and visual contact when the Complainant picks up their son. In fact Ms Vardy when questioned by the Defendant admitted to knowing that her client laughed at the joke and even quoted her clients response saying it was funny. Yet in spite of the incident being something that the child requested, was not unusual for him, that Complainant enjoyed, and that the Defendant helped the child in his relationship with her, both the Complainant and Ms. Vardy continued to attempt to use this as a tactic in court to make the Defendant look bad – a fact expected by the Defendant but who put his child’s interests above that concern.

4. Upon failing to get the judge to approve her motion without hearing the evidence Ms. Vardy refused to go ahead with a hearing because she did not want the judge to hear the recordings that prove she and her client were lying. Its hard to claim child abuse when the Defendant has a recording of the Complainant laughing and also photos she put on her website of their child in a microwave oven (the child was used to hiding in unusual places for a joke and the Complainant encouraging it – I’m not implying any inappropriate conduct with the Complainants photo).

5. Another instance Loretta Vardy has knowingly made false statements of fact in violation of § vs-cr-6:2-3.3(a)(1) and § vs-cr-6:2-3.4(f) was when she told the judge that her client had followed the Feb 4th order when not only had her client not done so but Ms. Vardy had been an eyewitness to the fact that her client called the police at the couples house to prevent their son from spending time with the father. This violates item E “Respondent shall not deny Petitioner access to the Child during the days in which visitation is not scheduled and shall not prevent the child from spending time with Petitioner if the child so desires”. I have the recording of Ms. Vardy’s false statement in court (which is why she is against further recording), photos of Ms Vardy and the police at the couple’s home, as well as recordings of the incident. Given that our

son left the Defendants room went to his mother and she snapped at him and allowed/encouraged him to return to his father to await the police, rather than keep physical control of the child when the father remained in his room, and that the child and father continued to play both during and after the police visit, is a clear indication the intent was to harass the Defendant, in violation of the order and at the expense of her son's feelings.

5. In the first hearing about escrow funds Ms Vardy again behaved unethically by suggesting to the court that the Complainant had to call the police due to actions by the Defendant. Not only was the statement not relevant to the hearing but it would appear to be either false or reflect badly on the Complainant since the contact between the two was limited to the defendant driving by the Complainant's car, in a place he is expected to drive frequently, while she was in her car, and just stopping for 24 seconds to take video to prove his wife was sitting in front of his apt in the middle of the night, before driving away. There was no communication or other contact. This is a clear attempt to by Ms. Vardy to attempt to make the Defendant look bad without any justification. There was no evidence provided that the Complainant actually called the police, and if she did so just because the Defendant drove to his own apartment then that does not imply good things about her judgement.

6. On Aug 6th 2004 Ms Vardy is again filing a motion making negative claims about the Defendants behavior, and scheduled it without consulting him or his attorney (according to Mr Boge). The Defendant has spend considerable time getting ready to prove her previous allegations as false and does not think its appropriate for Ms Vardy to force him to interrupt his court ordered vacation period with the child to prepare and attend another needless hearing. To do so would certainly put the Complainants ability to harass the Defendant above the needs of the child who wishes to enjoy his time with his father and relatives.

7. The Aug 6th motion is another attempt at court supported harassment. In it she attempts to paint the Defendant as not cooperating with the visitation/custody/vacation provisions in the *pendent elite* order. However the order is both vague and has conflicting statements that require interpretation/resolution. The Complainant has refused to discuss these issues directly with the Defendant and has instead filed a motion to have a judge clarify them as well as to send the Defendant a calendar showing how she interpreted the order and expecting him to follow it.

8. The Complainant refused to agree to let the Defendant have visitation with the child for Fathers Day weekend as specified in the order unless he agreed to give up other visitation. Judge Potter ruled that the Defendant was allowed to spend Fathers Day with his son and left all other conflicts to the next hearing.

9. At the next hearing the Complainant did not attend thus preventing the Defendant from having his motions heard concerning travel and the moral environment to which she was exposing their son. At the hearing Ms. Vardy told the judge that she did not need him to rule on the remaining ambiguities in the order and that she could easily work them out with us, yet as soon as she got outside the courtroom door she refused any meaningful discussion – again that is why I need to record, she like my wife will say what a judge wants to hear when the judge is listening but do the opposite when the judge is not present.

10. That left the Defendant without a resolution to the conflicting dates in the order, and the Complainant refusing to discuss it with him. He did what he thought was correct and what he hoped the court would approve of, and attempted to follow the Complainants interpretation of the order as documented by her calendar.

11. The Complainants response was to show up unexpected at the Defendants apartment and via phone insist she now had the right to demand that he end his visitation right then. The

Defendant did not feel it was appropriate for her to treat him in that manner but did agree to do that if she would put in writing a resolution for the dates so he would not have to loose visitation time or fight about it later.

12. The Complainants response to this offer was to call the police on Friday night and to send the police to the Defendants apartment on both Friday and Saturday, both times disrupting his visitation with their son.

13. The police verified the conflict in the court order and that the Defendant was following the Complainants proposed solution and let the child remain with him.

14. The court order stated that the Complainants vacation would start on a Friday and given that it did not start that Friday the Defendant believed he should be entitled to his regular visitation on Tuesday night and that her vacation would start on the following Friday. He asked the Complainant if she would agree to that or not and if he should come pickup their son or not and she refused to answer either way.

15. The Defendant did show up at the Complainants apartment at the specified time and the Complainant was not there. He called her and she told him she would not be allowing visitation that night.

16. The Defendant thinks it is wrong for the Complainant and Ms. Vardy to harass him and try to make him look like he is not following the order when in the past he has been very prompt in having the child ready within seconds of her arriving at the correct time to pick their son up, and when he was following the Complainants recommendation for that time period.

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

1. An order requiring the Complainant proves her previous accusations about “badger” and “tirade” during exchanges, and necessity of calling the police when spying on the Defendant,

and to dismissing the August 6th filing and prohibiting similar motions if unable to do so.

2. An order requiring the Complainant to not file any more motions based on the Defendants conduct real or imagined and that she focus on resolving the real issues in the case and bringing it to a conclusion.

3. An order stating that the Defendants filed and unheard motions are to be heard before any more motions by the Complainant.

4. An order requiring that the Complainant comply with all outstanding discovery requests before filing any more motions.

5. An order that the Complainant pay for attorney costs, lost wages, and any other appropriate costs or penalty for having filed unwarranted motions.

6. An order requiring the complainant to cooperate with the Defendant in trying to resolve the mental health issue in a manner that does not involve the court or attorneys, with the hope that if the parties could resolve that issue then further litigation would be significantly reduced or eliminated altogether. Cooperation is to include documenting areas of agreement, consultation with experts and if unable to reach an agreement, to at least documenting both differing views so the court can make a more informed decision.

7. 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 ____ day of _____, 2004, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112.

Wesley C. Smith.