

**VIRGINIA:**

**IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY**

<b>CHERI SMITH,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
v.	)	<b>Chancery No. 53360</b>
	)	
<b>WESLEY C. SMITH,</b>	)	
	)	
<b>Defendant.</b>	)	

**MOTION TO COMPEL**

**COMES NOW** the Defendant, Wesley C. Smith, pro se, and moves this Court for an order compelling the Plaintiff, Cheri Smith, to provide full and complete discovery, and for the reasons states as follows:

1. On or about Nov 12 2003 the Defendant first Interrogatories and first request for production of documents were served on the Plaintiff.

2. The Plaintiff has intentionally withheld many of the requested items in an attempt to gain an unfair advantage in the case.

3. The Plaintiff and her attorney have instructed others with copies of documents not to provide them to the Defendant.

4. The Plaintiff has failed to provide adequate responses to the following Interrogatory questions:

#1 - list of individuals with knowledge of the case and contact information for them is incomplete and fails to provide the necessary contact information for all people. Statements of knowledge of each person is not detailed or specific. The response is insufficient to allow the Defendant to contact all people with relevant knowledge about the case.

#5 – response does not include information about a car loan for a Honda CRV purchased by the Plaintiff, and does not list all credit cards used by the Plaintiff.

#6 – incomplete including - no mention of her work schedule only total hours per week, does not indicate accrued vacation and sick leave.

#7 – Failed to use the provided form, some values deemed to be incorrect as they do not match the answer in #9 and pay stubs, \$25/month is very low for divorce expenses, and there is no indication of car payments in spite of recent purchase of new vehicle.

#8 – Incomplete, fails to list child support funds, or any other funds which would allow her to purchase a new car and pay for an attorney.

#10 - Incomplete response. Missing providers, incomplete and/or inaccurate dates and reasons, fails to indicate the location for all providers, and costs, and any anticipated including actual changes since the response was made.

#11 – Incomplete and vague response. Response needs to include specifics, witnesses to each incident if any, specific dates of occurrence. The response includes statements that can't be true of other statements made by the Plaintiff are true. Item 5 is too vague and does not state specific therapists, specific reports, or any specific statements by the therapists, and in fact is contradicted by a recording of one of our joint sessions.

#14 – Fails to provide specific dates and locations, fails to provide specific areas of disagreement or when the disagreement started and does not cite any specific involvement with professionals and parents. The response fails to indicate how a protective order supports the child's relationship with his father, fails to provide specific claims/dates for the father instructing the child to disobey and fails to provide specific examples in part 6.

#15 – fails to mention specific facts, actions, dates, witnesses and related communications.

Item B is not specific as to which evaluations or which report/section support her claim

#16 – no response unless the Plaintiff does intend the Pendente Lite Order to be permanent, unlikely since she has gone back to court several times to have it modified.

#17 – fails to provide state time spent in daycare, who provided daycare at ARC and does not state the persons requested who supervise the child at times other than work such as when on a date.

#18 – Needs more specific dates/witnesses – fails to list date the Plaintiff attacked the Defendant even though it is known to the Plaintiff. Fails to list the Plaintiffs acts of abuse against the child including but not limited to threatening to kill him (or his father), inadequate supervision with hot grease and at bus stop, emotional abuse by restricting his access to his father, bruising him, refusing to let him hug his father. List of abuse committed against the Defendant is incomplete.

#19 – Response is incomplete and inaccurate. Dates are missing or inaccurate, list and names of providers is incomplete, purpose is vague or inaccurate, conclusions missing or vague, substance of statements is missing or unspecific or a lie. There is not mention of the Plaintiff getting help for depression or “uncontrolled rage” or anxiety in spite of being treated with drugs for some and advised she needed help with others. Says to see report but not all reports were provided.

#20 - Incomplete and not specific. In particular the Plaintiff certainly was aware if she was on birth control pills or not at the time of the response. Accurate information could have been easily obtained from the pharmacy by filling out a form. The Defendant did so for his response to the Plaintiff.

#21 – Not enough information, dates, specifics as to who recommended what. Not specific as

to who took Liam to therapy.

#22 – non-responsive, mostly a copy of response to #21 and fails to provide the specifics requested.

#23 – Fails to mention the wife locking the child in his room or hiding all his books and withholding time with his father as a form of discipline.

#24 – Fails to mention punishment or that the Defendant was the one to start toilet training him. Fails to respond to how the child reacts to her approach.

#25 – Fails to state specific dates for her claims or provide any documents that support her claims.

#26-30 – No response at all. The Plaintiff has asserted the 5<sup>th</sup> amendment as a means of avoiding these questions, but that is inappropriate since the Supreme Court has ruled that to assert the 5<sup>th</sup> there must be a reasonable belief of the possibility of prosecution in the ordinary course of the law, yet in Virginia it would certainly be an extraordinary and headline grabbing event should the state prosecute the Plaintiff for Adultery.

A claim of Fifth Amendment privilege must establish "reasonable ground to apprehend danger to the witness from his being compelled to answer ... . [T]he danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law in the ordinary course of things,-- not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct." *Id.*, at 599-600 (quoting *Queen v. Boyes*, 1 Best & S. 311, 321 (1861) (Cockburn, C.J.)).

It is also inappropriate for her to assert the 5<sup>th</sup> because she was the one who filed in court and asked the court to take away the Constitutional rights of both the Defendant and the Child in order to grant her custody. Had the Plaintiff not wanted to discuss her sexual misconduct in court she should not have filed for divorce on grounds and should have attempted to reconcile or gain a divorce via one-year separation. The Plaintiff has used the 5<sup>th</sup> as a means of avoiding

questions about the care, environment, and effect of her actions on the child, in essence hiding facts about the very issue she has asked the court to decide. There is no way the court can make an informed decision about the welfare of the child without her providing that information.

5. The Plaintiff has failed to provide the following documents requested:

#1 - Missing 2003 Tax Returns.

#2 – Did not provide checking page 2 for Sept 2002, or August 2003-Dec 2003.

#3 – Did not provide copy of Cardiopulmonary Stock

#6 – Did not provide loan information for a Honda CRV. Did not provide any financial statements/net worth if exist.

#11 – Missing Wachovia 9196 July 2003-Sep 2003, Did not provide student loan documents, Missing Bank One 1933 July/Aug 2003, Nov/Dec 2003, Missing Capitol One 5387 July/Aug 2003, Oct/Nov 2003, Nov/Dec 2003. Missing Target Jan-June 2003, Aug 2003, Dec 2003

#19 – Did not provide Form 1098 for 2003

#20 – Nonresponsive. The Plaintiffs response was “The documents requested in Request Number 20 do not apply”. Its hard to imagine that documents where the Plaintiff makes statements about the case as not applying to the case.

#22 – Response is incomplete, did not include documents that describe day-care arrangements, It would be hard be believe she didn’t mention it to anyone but the Defendant. Did not provide complete documentation about payment for daycare to the various providers. Certainly canceled checks and bills exists if nothing else.

#23 – Did not provide canceled checks, but also did not object to providing them. Missing parenting class certificate.

#26 – The Plaintiff claims that she has no records of the times/days that each party had the child since January 1 2002. That seems unlikely given her fixation on the time each of them spent with him.

#28 – nonresponsive. Appear to be incomplete documents provided for Ruth Welch, person seen after Dr Plaxco, Beryl Dandridge, Toby Berhmann, Mr. Hudson, Jennifer Shail and any other professionals the Plaintiff might have seen.

#32, #44 – Not provided. Plaintiff objected on grounds of privacy and professional details. I don't believe privacy is a valid legal objection. The Plaintiff has requested and received from the Defendant his correspondence with family and friends about the case and female friends. It should also be noted that the main co-worker of interest also requested copies of e-mail from an employer when he filed for divorce on grounds of adultery, surely he should not have expected privacy when doing the same act himself. The Plaintiff has had no qualms about sharing her employer's information with him before. The documents are essential for the Defendants case, as the Plaintiff is believed to have made statements that directly contradict her testimony and pleadings.

#33 - Missing transcripts and diploma and class schedule. Possibly missing communication with school.

#35 - Incomplete.

#37 – Did not provide notebook from attending Bennett Elementary and possibly others [Failed to provide one or mention it but the school gave it to me]

#38 –Incomplete, especially in reference to Interrogatory #19

#39 – Did not provide time sheets. The Plaintiff's supervisor testified that time sheets are filled out with what time of day was worked.

#40 – Has not provided any documents on any residence other than the one on Manassas Mill Rd where she no longer resides.

#42 – Only application for clearance provided. No documentation provided as to conditions of clearance, reporting requirements or any reports made in compliance with those guidelines. The Plaintiff may very well have been required to notify the security officer of her relationship to Igor Bahkir and others, her having done so or having neglected to do so is an important fact for the case.

#43 – Documents not provided. Plaintiff objections do not appear to be valid and/or legal objections. How the Plaintiff handled her mothers mental illness is clearly relevant to her claims of abuse by the Defendant as his actions have been more moderate and understanding that the Plaintiffs approach in dealing with a mentally ill family member. It is also widely recognized that various mental illnesses are genetically related and while it does not prove the Plaintiff has the same condition it can be a useful indicator that more testing is needed or what type of condition should be considered. The information is required by the standards of the American Psychiatric Association in order to diagnose specific conditions.

#44 – No documents provided. Objections are both irrelevant and if item #2 is correct it likely amounts to an admission of a crime by the Plaintiff, requiring immediate reporting and corrective action to be taken by her employer and the government – a lie by the Ms. Vardy is more likely. Classified material is not to be sent to people without a clearance and need to know and a Russian national is unlikely to have a clearance and has testified under oath he had no reason to work with Ms Smith. Ms Smith also frequently worked from home a condition that would prohibit her from sending/receiving classified materials via e-mail. An entirely separate computer on a separate network is required. In any event the Defendant holds a clearance

believed to be equal or higher to that of the Plaintiff and as such access to classified material, in accordance with procedure is not a valid concern. This is just an unethical attempt by Ms. Vardy to help her client avoid honest disclosure of relevant facts. Again the 5<sup>th</sup> amendment is not appropriate since it requires a valid possibility of prosecution, which does not exist, and the injury to the Defendants and child's constitutional rights by withholding the evidence is much greater than the small fine in the unbelievable event the Plaintiff is prosecuted and convicted.

6. Rule 4:12(a)(3) states that "For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer."

7. Several of the objections the Plaintiff claims are not valid under Virginia law, are not a good faith extension of the law, and thus a blatant violation of Va. Code § 8.01-271.1, which states that the court shall sanctions: "If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee."

**WHEREFORE**, for all the above stated reasons, Defendant requests the following:

1. An order compelling Plaintiff to provide full and complete responses to Defendant's discovery requests, both interrogatory and document requests.
2. Monetary sanctions for refusing to comply with discovery, including costs for bringing this motion, the amount to be determined by the court.
3. An order staying further motions or proceedings by the Plaintiff until after complying with discovery requests.



4. Such further relief as the nature of the case or the goals of equity require.

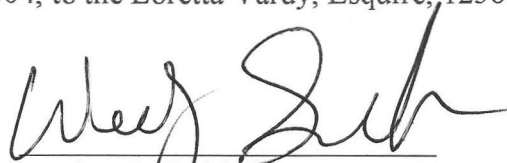
Respectfully submitted,  
**WESLEY C. SMITH**  
Defendant



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 10 day of Sept, 2004, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112.

  
Wesley C. Smith.

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Chancery No. 53360

PRAECIPE

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

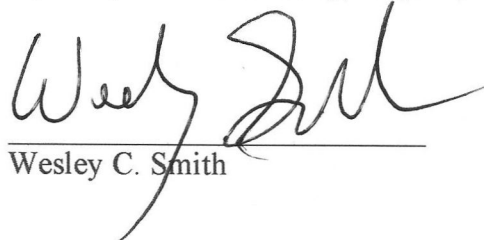
Sept 17, 2004 at 10:00 a.m. for hearing or as soon thereafter as this matter may be heard.



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