

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Plaintiff

v.

WESLEY C. SMITH,

Defendant

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Chancery No. 53360

DEFENDANT’S MOTION FOR USE OF ESCROW FUNDS TO AVOID EVICTION

COMES NOW the Defendant, Wesley C. Smith (“the Husband”), and moves this Court for entry of an Order granting him relief as requested below:

1. The Defendant incorporates the statements from the previous two motions filed for access to funds in the escrow account. It should be noted the first motion was denied due to demonstrated financial need and the second one “because the first judge did” without considering the presented evidence of financial need.

2. As a result of the Plaintiffs actions the couples home was sold in Dec 2002 and approximately \$182,000 was placed in an escrow account not earning any interest.

3. Since that time the Plaintiff has refused to work out any reasonable division of the funds both temporarily and for equitable distribution. While at the same time the Plaintiff and her attorney have engaged in an apparent attempt to ruin the Defendant financially in attempt to force him to give up fighting for custody and visitation with our son.

4. The efforts of the Plaintiff have been successful in ending the Defendants employment and leaving him unable to pay bills, resulting in the Defendant being taken to court to be evicted.

5. Clearly the best interest of our son would be better served by allowing the Defendant to use some of the escrow funds in order to stay close to the child to make visitation easier than for the Defendant to be forced to move out of state.

WHEREFORE the Husband requests the following relief:

1. An order requiring the holder of the escrow account to release funds to stop the Defendant from being evicted.
2. That Child Support payments be modified to reflect the Plaintiffs increased earnings, and the Defendants decreased earnings and financial difficulties.
3. 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. Apt 104
Woodbridge, VA 22192
(703) 220-2637
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing motion was served to Loretta Vardy and Ronald Fahy (GAL) via first-class mail and/or hand delivered, this ____ day of _____, 2004.

Wesley C. Smith.