

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

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

DEFENDANTS RESPONSE TO DISPENSE WITH COMISSIONERS HEARING AND MOTION FOR SANCTIONS

COMES NOW the Defendant, Wesley C. Smith, and states that the Complainant’s Attorney Loretta Vardy motion of April 29, 2005, contains false statements and is frivolous and respectfully demands that the court impose sanctions on Loretta Vardy. In support of his MOTION the Defendant states as follows:

1. Statement #1 of her motion is clearly false. The case is nowhere near ready for trial.
 - A. The Plaintiff has still refused to comply with discovery requests **even after 1.5 YEARS.**
 - B. The Court ruled on a motion to compel on Nov 3rd 2004, directing the Plaintiff to provide some of the materials that she had been refusing for over one year.
 - C. The Plaintiff’s attorney Loretta Vardy was directed by the court to prepare and enter the order but she has **still has not 6 MONTHS later.** The appears to be nothing more than an attempt on her part to both withhold evidence and prevent the Defendant from filing a motion for contempt against her for her refusal to comply with the courts ruling.
 - D. The Plaintiff and has continued to refuse to provide discovery materials even

those the court ruled on Nov 3rd 2004.

- E. There are many outstanding issues that need to be resolved before the case is ready for trial, issues that cannot be properly addressed until the Plaintiff complies with discovery. The Defendant will need time to review the materials and subpoena records, as the judge stated in the Nov 3rd ruling that the Plaintiff must provide contact info to the Defendant to allow him to issue subpoenas.
 - F. Holding a trial without requiring the Plaintiff to provide the requested evidence would be a clear and willful violation of the Defendants Constitutional rights, including but not limited to Due Process rights, making any ruling by the court null and void.
2. Statement #2 of her motion about a commissioners hearing is clearly false. (As are many of her “facts” she claims in other motions).
- A. No ruling was made about a Commissioners hearing on August 17th 2004.
 - B. There has been a ruling on a Commissioners hearing which has been put into a written order entered by this court, thus request to have a similar order entered is frivolous.
3. The Defendant incorporates all other previous motions asking for sanctions against Loretta Vardy into this motion. She has a pattern of making false statements, frivolous motions, and refusing to comply with the rules of the court and her actions are needlessly delaying the case and causing harm to the Defendant and the couples child.
4. Rule 4:12 states in relevant part: "(2) Sanctions by Court in Which Action Is Pending. If a party ... fails to obey an order to provide or permit discovery, ..., the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: " ... "(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;" (C) An order **striking out pleadings** or parts thereof, or staying

further proceedings until the order is obeyed, or **dismissing the action** or proceeding or any part thereof, or **rendering a judgment by default** against the disobedient party;..." "The failure to act described in this subdivision **may not be excused** on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 4:1(c)." (Emphasis added).

5. While the court may wish to make a judgment based on a two day hearing (and may in fact have already written the final order without a hearing, based solely on the gender of the two parties), any meaningful hearing on the matters at hand will take more than two days time. There are many issues that need to be resolved including procedural issues, grounds for divorce, custody, visitation, equitable distribution, mental health, and constitutional issues that need to be heard. At the pace the court has preceded in the past, two days is a completely inadequate time period to hear the case. The Plaintiff's boyfriend's case took 4 days of trial and did not even cover custody/visitation nor mental health or constitutional issues. The time period requested is even more absurd if the court thinks that the GAL, Ronald Fahy, will present any meaningful case. Certainly the Defendant and his minor son is entitled to at least as much "justice" as the Plaintiff's non-citizen, and immoral boyfriend.

WHEREFORE the Defendant requests the following:

1. Dismiss the Plaintiffs motion to set a trial date.
2. Monetary sanctions for refusing to comply with discovery and filing this frivolous motion, including costs for bringing this motion and the motion to compel, the amount to be determined by the court, with an amount of the number of hours spent by Loretta Vardy multiplied by her billing rate as a starting point in calculating the dollar figure.
3. Order that a trial will not take place until at least two months after the Plaintiff has provided all requested discovery materials.

4. Order that the Plaintiff is prohibited from submitting any other motions until after she has complied fully with all discovery requests.

5. That the court impose any or all of the sanctions per rule 4:12:

- a. Order striking out the Plaintiffs claims of grounds for divorce, and
- b. Order that the Plaintiff be prohibited from opposing the Defendants grounds for divorce, and
- c. Order striking out the Plaintiffs claims of custody, and
- d. Order that the Plaintiff be prohibited from opposing the Defendants claims about custody and
- e. Order Pendente Lite custody of Liam Smith be awarded to the Defendant.
- f. Enter a Default judgment awarding custody of Liam Smith to his loving father.
- g. Any other sanctions the court feels appropriate.

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

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Defendant/Victim

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 2 day of May 2005.

Wesley C. Smith