

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

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

#38 – REPLY TO MOTION TO QUASH

A pdf copy of this motion is available at: http://www.liamsdad.org/court_case/

COMES NOW the Defendant, Wesley C. Smith, and requests the Court deny the motion to quash filed by the Fairfax County School Board. In support of his MOTION the Defendant states as follows:

1. The School Board’s main argument in asking that the subpoena should be quashed is due to its claim that the documents requested are not relevant to this case. In spite of the claims of the School Board, the documents requested are clearly relevant to this case.
2. It is relevant to this case that the Fairfax School has been denying the Defendant access to our son at school in violation of state law 22.1-4.3. This court will consider the arrest and prosecution of the Defendant by the school for attending his son’s event on June 17th 2005. The Defendant was held in jail for the entire Fathers Day weekend for simply attending a school event that parents were invited to, and that the Plaintiff was required by this court to provide notice to him so that he could attend.
3. The Defendant should be able to collect and present evidence to show that the incident was one of a loving father attending with proper conduct and his son happy to see him, with the school acting illegally in order to support the Plaintiff’s custody case. That is a valid point to prove in a custody case.
4. The court has an obligation to assure our son contact with both parents and may conclude that our son would be better off in a school district that supports contact with both parents.
5. It should be noted by the court that the Defendant did not have any conflict with the previous two school districts about attending school events and that the schools not only allowed his attendance but encouraged it and even took him on field trips with his son. The

change to a District that denies our son the privilege of having his father at school events is significant and must be considered in this case.

6. The school refuses to produce correspondence between the Plaintiff and the school. State law § 20-124.3 which requires the court to consider in this case if the Plaintiff has unreasonably denied the Defendant access to our son. Certainly if she had been encouraging the school to deny access, or if she mislead the school to believe the court had ordered an end to the Defendants access at school events, either would be relevant and material to this case.
7. At the trespassing trial of the Defendant, Ms. Richards did in her testimony indicate the problem was not with the conduct of the Defendant, and that our son was happy to see the Defendant, but that the problem was she was told the Plaintiff had requested the school not let the Defendant have any contact with Liam without HER permission. Correspondence to support the testimony of Ms. Richards would be admissible and relevant to this case both to show her participation in denying access and also to show the Plaintiff putting her desires ahead of court orders to support contact at school events.
8. Any correspondence between the Plaintiff and the school may shed light on § 20-124.3(7) the willingness (or lack thereof) the Plaintiff to support a relationship between our son and his father.
9. The school also objects to the requests for documents relating to Igor Bakhir as a non-party. The Defendant has a right to request evidence to support his view that part of the reason for the Plaintiff interfering with his relationship with our son is that she wants the Defendant out of the way so she can pursue an immoral relationship with Igor Bakhir.
10. If the Plaintiff is encouraging the school to deny access to the Defendant while at the same having her lover, Igor Bakhir, attend school events, or even allowing the school to release our son into the care of Igor Bakhir that is clearly relevant both to her motives for a divorce and custody case as well as showing a lack of concern for our sons feelings and forcing him to miss out on having his father involved in his school events.
11. The school board agrees I'm entitled to my son's educational records but has failed to

provide them. It has provided some copies of IEP's but has not provided copies of IEP notices and forms that show how they contacted (or failed to) both parents. It is relevant to this case that the school is failing to comply with federal law and invite the Defendant to attend IEP meetings.

12. It should also be noted that the Plaintiff has brought school officials to testify on her behalf in Oct 2004. Certainly the Defendant is entitled to evidence to support a claim that the school is openly hostile to the father and is biased against him to the point of failing to comply with state and federal laws. Without all the requested materials be made available to him the Defendant will be denied a fair chance to discredit these witnesses at trial.
13. The school board also lamely argues attorney/client and burdensome. Yet the Defendant had specifically advised them in writing (in the subpoena) that "if you have questions about exactly which documents are needed or if the number of documents is large and you want to arrange to provide a subset of them". The Defendant was willing to work with them to both limit which documents were returned as well as the number of documents yet the school board did not make any attempt to do so. This shows they weren't interested in actually reducing the "broad" nature of the subpoena but rather preserving it for use as an excuse not to produce documents.
14. The School Board has not presented a log detailing which documents are considered privileged. The Virginia Rules explicitly require a privilege log. Va. S. Ct. Rule 4:1(b)(6). See Board of Dirs. of the Port Royal Condo. Unit Owners' Ass'n v. Crossland Savings F.S.B., 19 Va. Cir. 8, 9 (Alexandria 1989) (withholding a ruling on defendant's privilege assertions until the defendant filed a "Vaughan" index).
15. The school board also makes the lame argument of insufficient time. They claim to have been notified of the subpoena on Sep 26th 2005, which may have been when the court advised them of it, but the Defendant did provide the school directly with a copy of the subpoena on Sep 12th 2005, a full two weeks earlier – see exhibit A. The school could have started gathering the documents at that time or work with the Defendant to the scope/number of

documents requested. Thus this argument shows their real intent is was to look for ways to avoid complying with a court issued subpoena rather than look for ways to comply.

16. The conditions for quashing or modifying a Subpoena Duces Tecum **issued by clerk of court** is dictated by §vsr-4:9(1) :

“...may (1) quash or modify the subpoena if it is unreasonable **and** oppressive, (2) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the documents and tangible things so designated and described or (3) direct that the documents and tangible things subpoenaed be returned only to the office of the clerk of the court...”

17. The condition required by rule for the court to quash or modifying the subpoena is: “if it is **unreasonable AND oppressive**”. The rule does not state any other condition allowing the court to quash a clerk issued subpoena. So as long as the subpoena is not considered both unreasonable **AND** oppressive it should not be quashed. If it is deemed either unreasonable **OR** oppressive the subpoena the court may not quash the subpoena.

18. Under Code § 8.01-271.1 every motion signed or made orally by an attorney constitutes a representation that “to the best of his knowledge, information, and belief, formed after reasonable inquiry,” the argument or legal position is “well grounded in fact,” and is well grounded in current law or is made in good faith application of law that should be extended, modified, or reversed. If this statute is violated, then **the trial court shall impose** upon the attorney and/or the represented party “an appropriate sanction.” (VINSON v VINSON 2003)

19.

WHEREFORE the Defendant asks that the Court:

1. Order the school board to immediately provide the Defendant with copies of all documents requested, excluding any covered by attorney/client privilege.
2. Issue any sanctions if appropriate against the school board for its intentional failure to comply with a court ordered subpoena.
3. Order the School Board to pay the Defendant for the time/effort expended on fighting their groundless motion to quash.


**Respectfully Submitted,
Wesley C. Smith**

Wesley C. Smith, Defendant
5347 Landrum Rd APT 1
Dublin, VA 24084-5603
liamsdad@liamsdad.org
no phone

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), and Thomas J. Cawley (school board counsel) via first-class mail, this 6th day of February 2006.

Wesley C. Smith

From: Liam's Dad <liamsdad@LiamsDad.org>
Subject: **Re: Roger Vanderhye - White Collar Child Abuser**
Date: September 12, 2005 11:37:48 AM EDT
To: schoolboardmembers@fcps.edu, jack.dale@fcps.edu, cluster1admin@fcps.edu, Liams Dad <liamsdad@liamsdad.org>
 1 Attachment, 68.6 KB



I have filed the following subpoena for documents with the court. You should be served by the sheriff soon but I thought I'd send you a copy electronically to give you more time. Let me know if you have questions about the particular documents requested or if a request results in many documents and you wish to work to limit the number of documents returned.

Also to help you with scheduling staff, I want to let you know that I will be having the following people subpoenaed for the Oct 5th Trespassing trial. I'm sorry that I need so many of your staff there but in his testimony Mr. Vanderhye (and the prosecutor) made claims that tied their views of my attending into his decision to have me arrested.

I'm willing to work with you to reduce the number of people needed if you are willing to stipulate such things as: that I was not disruptive, my son was happy to see me, that the classroom was not evacuated due to my behavior (I must tell you that claim makes me laugh every time I think about it -- I'm sure the jury will enjoy hearing it as well).

1. Roger Vanderhye
2. Liam's Teacher
3. Liam's Aid
4. Denny Dearden
5. Jack Dale
6. One of two of the office staff.



[2005_09_12...pdf \(68.6 KB\)](#)

Liam's Dad - Wesley Smith
<http://www.liamsdad.org>
liamsdad@liamsdad.org

It is dangerous to be right when the government is wrong.
- Voltaire

Exhibit A