

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

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

#46 – MOTION FOR USE OF ESCROW FUNDS FOR AN ATTORNEY

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

COMES NOW the Defendant, Wesley C. Smith, and moves this Court pursuant to Va. Code Ann. §20-103, for entry of an Order to release funds from the parties escrow account to pay for the services of an attorney. In support of his MOTION the Defendant states as follows:

1. The Defendant incorporates the statements from 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. In December 2002, as a result of order of this court the parties’ home was sold and the proceeds placed in an escrow account.
3. Since that time the Plaintiff has refused to work out any reasonable division of the funds, 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. The efforts of the Plaintiff have been successful in ending the Defendants employment and ruining him financially.
4. This Court has recognized the financial status of the Defendant with an order to proceed without fees or costs entered 9/24/2004.
5. The Defendant cannot afford to hire an attorney.
6. The Court has issued orders that effectively terminate the Defendants parental rights. The Defendant has been prevented from seeing his son, being involved in his schooling, attending his school events, having any input in decisions made about his son, etc. Under VA law a non-parent can petition

and receive greater contact with our son than the Defendant has now.

7. VA law allows/requires the court to appoint an attorney for adults who may be subjected to loss of parental rights by court order - § 16.1-266 through 16.1-268 and 19.2-157 through 19.2-163 of the Code of Virginia.

8. Clearly the Defendant may be subjected to loss of parental rights by court order – especially as this has already been done on a “temporary” basis.

9. The Defendant has been diagnosed with ADD and this condition will interfere with his presenting his court case. The court has a Federal legal obligation to make some reasonable accommodations due to the Defendants condition.

10. In order to ensure that all the information needed by the Court to make an informed ruling is presented the Defendant will need assistance in presenting his case. The Defendant will need assistance in ensuring that the appropriate questions are asked and appropriate objections made.

11. The parties have an escrow account containing about \$130,000 from the sale of their home that could be used to hire an attorney.

WHEREFORE the Defendant requests an order requiring the holder of the escrow account to release funds to the Defendant so that he may hire an attorney to help prepare his case for trial.

**Respectfully Submitted,
Wesley C. Smith**

Wesley C. Smith, Defendant
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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) via e-mail and/or fax and/or website, this 13th day of February 2006.

Wesley C. Smith