

CIVIL WORKSHEET

DATE: 02-15-2006 **CH53360**

JUDGE: RBP **COURT REPORTER:**
Andrea Blakley

ATTORNEY(S):

PLAINTIFF: **CHERI SMITH**
present **LORETTA VARDY**
present

DEFENDANT: **WESLEY C SMITH**
present **pro se**

RONALD FAHY
present **Guardian ad litem**

Court in session 10:00 am

Parties are sworn and background information taken.

CHERI (nmn) SMITH:

(NMN), born 2/4/69, 37 years old, Master's Degree, employed with Science Application International Inc. as Associate Program Manager for 5 years, sole source of income, no other employment or income, health insurance with Aetna through employer, covers family – self, son, and husband, cost is \$50 bi-weekly, good physical and mental health, takes no medications, married 11/23/1988, first marriage, son born of marriage, Liam Raleigh, born 7/22/1997, 8 years old, 2nd grade in Springhill Elementary School, below average student – down's syndrome, child in special education programs, good physical condition except low muscle tone and small for age, good mental health, no learning disabilities other than downs syndrome, takes medication - maintenance laxative, mother is capable of taking care of son without assistance, son receives occupational therapy, both private and school, in after-school care program with Fairfax County, no other children, son has regular pediatrician and geneticists, receives no physical therapy, receives speech and occupational therapy only, takes therapeutic horse riding in Fauquier at The Phoenix Rising Equestrian Center, there is no PSA, separated 9/22/2002, wife moved out in June 2003, had temporary protective order through J&DR and they ordered boundaries among the marital home, wife then moved out of marital home on June 6, 2003, marital address was 1411 Huntsman Drive, Manassas, VA 20112, marital home purchased in January 1997 for \$214,000, when wife moved from marital home, lived with friends for a short period of time then moved to apartment for 1 year, eventually moving to current residence at 1533 Lincoln Circle, apt. 104, Mclean, VA, 2 bedroom apartment, lives with self and son since June 2004, employer located in Mclean, Liam first attended Bennett Elementary, the Round Elementary when wife moved from marital home, owns no real estate, house was sold, settled in December of 2003, proceeds escrowed \$180,000, \$55,000 drawn down for debt of defendant to mother, also drawn down were payments for Mr. Fahy, GAL, approximately \$125,000 is being held by Mr. Smith's former attorney, auto – 2002 Mazda 626, title in own name, not paid, no other vehicles, name may be on Saturn, which husband has possession of, did not take any furniture from marital home when sold, owns stocks in SAIC (employer), believes she has joint stock with husband with his former employer, employee stock not retirement, retirement with employer (401k), no CDs, bonds, mutual funds, has checking and savings account, son has no separate accounts (saving or trust), life insurance through employer Signet, \$350,000, beneficiary is defendant. Has no family in area, closest relative is a brother in Ohio, which Liam has a relationship with and visits, parents live in Salt Lake City, UT, visitation with Liam is limited.

Issues:

1. Divorce – constructive desertion and cruelty, one-year separation-to be determined at trial

2. Spousal Support – seeking none
3. Child Custody – to be determined at trial
4. Visitation – to be determined at trial
5. Child Support – defendant currently ordered to pay \$823, there is arrearage
6. Equitable Distribution:
 - 1 Real estate – sold, none jointly owned, distribution of remaining assets to be decided
 - 2 auto – not seeking interest in defendant's auto
 - 3 furniture – not seeking any interest in any
 - 4 personal property – seeking home movies - compile list of items wanted returned
 - 5 retirement accounts – seeking none
 - 6 life insurance policy – court's position to maintain policy with child as beneficiary, another adult to act as trustee
 - 7 marital debts – compile listing of any debts
7. attorney's fees
8. court costs

WESLEY CLAY SMITH:

Born 5/26/75, 40 years old, BS Degree in computer science, currently employed with Quality Inn in Christianburg, VA, as night desk clerk for 3-4 weeks, family lives in Dublin, VA, has no other source of income, former employer – Computer Science Inc., left in October 2004 – forced to resign because of numerous court appearances, worked for 1 year as web programmer for Army, also was a contractor with the Dept. of Labor for 3-4 years – left in January 2002, after leaving Computer Science Inc., was unemployed and received no unemployment compensation, has no retirement, good physical health but suffers from heartburn – takes prilosec, has A.D.D. but takes medication because can't afford, if he could the medication would be adderall, good mental health, first marriage, no other children, lives at 5347 Landam Road, Apt. 1, Dublin, VA, moved in March 2005, one-bedroom apartment in downstairs of brother's house, brother married with wife and 2 children, stayed in marital residence until it was sold, then moved to apartment in Lake Ridge, lived there 1 year until evicted in 2004, then visited with mother in Michigan, then moved in with brother when he was transferred to VA, owns no real estate, auto – 1993 Saturn SI2, paid for, stocks with former employer (not sure of value), no bonds, mutual funds, or CDs, account with credit union, no retirement account, no IRA's, no life insurance.

Issues:

1. Divorce – Cross Bill (will accept one-year separation).
2. Spousal Support – not seeking
3. Custody – to be decided at trial
4. Visitation – to be decided at trial
5. Child Support – arrearage to be determined
6. Equitable Distribution
 - 1 real estate – escrow to be decided at trial
 - 2 auto – not seeking interest in wife's vehicle
 - 3 furnishings – none
 - 4 retirement – none
 - 5 life insurance – none
 - 6 marital debts – to be determined at trial

Order entered from February 3, 2006, hearing.

MOTIONS FILED ON FEBRUARY 6, 2006:

1. Defendant's motion with respect to adultery – granted in part, without making any finding, reserve for trial, admonishes both parties to comply with laws of Commonwealth and orders that the parties are not to have sexual relations with any person in the presence of the child. The rest of the motion is denied.
2. Defendant's motion with respect to travel – granted in part, neither party shall take child outside of the United States without prior approval of the Court. Complainant shall take necessary steps to see that child be made available to appear at trial. The rest of the motion is denied.
3. Defendant's motion with respect to complainant and her attorney's harassment – granted in part, the parties shall proceed with additional discovery. Complainant shall prepare ED worksheets and submit to Court and defendant by March 17, 2006, then defendant shall prepare ED worksheets and file with Court and complainant by April 21, 2006. The rest of the motion is denied.

4. Defendant's motion regarding Commissioner in Chancery - granted in part, any order of this Court referring the matter to a Commissioner in Chancery is vacated. Court already set dates for motions and trial date. Issues regarding grounds, spousal support, child custody, child visitation, child support, equitable distribution, motions for sanctions on prior pendente lite orders, and any other relevant matters will be heard. Parties may also present evidence on grounds of divorce. The rest of the motion is denied.
5. Defendant's motion for sanctions – denied.
6. Defendant's motion to disqualify Judge Alston – denied.
7. Defendant's motion to deny complainant's motion to quash subpoena duces tecum upon complainant's counsel – denied. Complainant's motion to quash said subpoena duces tecum – granted, parties to proceed with discovery.
8. Defendant's motion for sanctions – denied.
9. Guardian ad litem's motion to quash subpoena duces tecum – granted, GAL is directed to provide to court and parties all written reports, copy of affidavit of GAL fees. To be filed before May 1, 2006.
10. Defendant's motion for sanctions against Mr. Fahy – denied.
11. Fairfax County School Board's motion to quash subpoena duces tecum – granted. The court does order that the complainant shall obtain and file copies to the court and defendant all the child's school report cards and school emergency contact cards from the date of separation on or before May 1, 2006.
12. Defendant's motion for a jury trial – the Court will hear argument.
13. Defendant's motion for trial date and sanctions – denied.
14. Defendant's motion for travel expenses – denied.
15. Defendant's motion for appointment of attorney – denied.
16. Defendant's emergency motion to change custody/visitation – reserved to both parties, to be addressed at trial.
17. Defendant's motion for travel expenses – denied.
18. Defendant's motion for trial date and sanctions – denied.

MOTIONS FILED ON FEBRUARY 13, 2006:

19. Defendant's motion for CPS records – denied.
20. Defendant's motion to order complainant to stop committing adultery – granted in part (same as #1). The rest of the motion is denied.
21. Defendant's motion to change custody/visitation – same as #16 above, reserved to both parties.
22. Defendant's motion for jury trial – (same as #12) will hear argument/
23. Defendant's motion for sanctions for obstruction of discovery against Mr. Fahy – (same as #10) denied.
24. Defendant's motion for sanctions for obstruction of discovery against complainant – (same as #8 above) denied.
25. Defendant's motion to use escrow funds for court reporter – denied.
26. Defendant's motion to use escrow funds for attorney – denied.
27. Defendant's motion to recognize right of freedom of speech – granted in part, Court recognizes defendant's constitutional right, but admonishes defendant to follow the orders of this court. The rest of the motion is denied.
28. Defendant's motion to remove Mr. Fahy as GAL – will hear argument.
29. Defendant's motion for Rule to Show Cause against Igor Bakhir – denied.
30. Defendant's motion to compel and sanctions against complainant – denied, but parties are admonished to comply with discovery order.
31. Defendant's motion for mental health evaluation of complainant – denied.
32. Defendant's motion for sanctions due to fraud – denied.

COMPLAINANT MOTIONS:

33. Complainant's motion to require written permission for either party to file additional pleadings prior to trial – denied.
34. Complainant's motion to use VDOT money – reserved - will address on date of trial.
35. Complainant's motion to find defendant in contempt for failure to comply to court order – reserved - will address on date of trial.
36. Fairfax County School Board motion to quash witness subpoena for principal, Roger Vanderhye, Springhill Elementary School, to appear this date – granted.

Defendant's motion to remove Mr. Fahy as GAL (Item #28)

Argument:

Mr. Smith
Ms. Vardy
Mr. Fahy

Court:

Motion is denied

Defendant's motion to have jury trial (Item #12 and #22)

Argument:

Mr. Smith
Ms. Vardy – no response
Mr. Fahy – no response

Court:

Motion is denied.

The Court clarifies it's decision to defendant's motion for CPS records (Item #19)

Complainant motions for amendment to

Defendant motions the Court to reconsider motion for sanctions due to fraud (Item #32)

Argument:

Mr. Smith
Ms. Vardy – no response

Court:

Court's original ruling stands

ORDER ENTERED

Court in recess 11:45