**V I R G I N I A:**

**IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY**

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

**#54 – MOTION TO RECONSIDER/REHEAR MOTIONS #40 THRU #53**

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 vacate its ruling of February 15th 2006 and to grant a rehearing on all related motions. In support of his MOTION the Defendant states as follows:

1. On February 15th this Court, held a "hearing" on pre-trial motions, including Defendants motions #40 thru #53. The "hearing" was in fact nothing more than a sham, otherwise known as a Kangaroo Court, in which Judge Potter, simply denied most motions without allowing the Defendant to argue the merits of his motions, without allowing him to present evidence or call witnesses, and without giving any legal justification or apparent thought for his rulings.

2. In almost every case Judge Potter from the bench, made no ruling and directed the entry of no order addressing the merits of the motion. The order itself contains no recitation suggesting a ruling on the merits of the motions presented, or any legal argument to support his ruling.

3. There were before the court motions covering significant problems concerning the failures of the Plaintiff and GAL to comply with the Discovery requests of the Defendant. Judge Potter completely failed to correct the problems either by imposing sanctions or compelling compliance with discovery. Thus the actions (or inaction) by Judge Potter left the case as unready for a fair trial as it was before.

4. Judge Potter had an opportunity to move this case forward and get it ready for trial, especially since the Defendant presented a credible legal case for sanctions against the Plaintiff that could move the case from arguing who did what to whom, and on to crafting a workable agreement as to how the two parents would work together to raise their son, but just as he did in September 2003, Judge Potter could

not be bothered to follow law, rules, or constitution and provide the Defendant with equal protection under the law.

5. Judge Potter botched this hearing just as badly as he did the September 2003 hearing when he decided to "save time" by awarding temp custody to the Plaintiff in a hearing that was not about custody and to a Plaintiff who had not filed a motion for temp custody, simply because he did not feel like taking the time to hold the hearing on custody that had been scheduled IN A DIFFERENT CASE (Chancery 53810).

6. The surprise hearing/ruling on temp custody by Judge Potter in September 2003 is readily apparent in the court record index of what was transmitted to Richmond for appeal. The index clearly shows no evidence whatsoever was admitted relating to custody (and only one offered). Both the attorney for the Plaintiff and the attorney for the Defendant would have to be completely incompetent to show up to a hearing on custody and not bring any evidence or witnesses. The clerk's notes of the hearings also reflect the lack of any other witnesses or evidence. Surely such a surprise hearing on such a fundamental right is a violation of Due Process that this court continues to refuse to correct.

7. Apparently Judge Potter is unfamiliar with Ben Franklin's advice that "A stitch in time saves nine". Instead of properly handling the custody appeal and wrapping up that case and the divorce case in a reasonable timeframe, he took a "short-cut" because in his own words he couldn't be bothered to hold the other hearing. His "short cut" leaves the parties no closer to a final ruling than we were 2 and ½ years ago. Judge Potter repeated his misguided short-cut approach by his complete failure to rule on the merits of pre-trial motions on Feb 15th 2006, leaving us no closer to being ready for a final trial then we were before his little episode of Kangaroo Court.

8. Judge Potter is well known for not providing Due Process or equal protection to fathers. Indeed attorney's consulted refer to Judge Potter in language such that even this vocal Defendant would not dare repeat the comments in court or on his website both for fear of being held in contempt but also for the statements being crude and vulgar (even if spot on accurate). The actions of the Plaintiff's counsel also clearly shows that she has no respect whatsoever for Judge Potter and trust that neither Judge Potter, or other Judges, will rule on the merits of the case. This is quite clear by looking at the state of her case. Her

client has documented problems with her mental health, admitted to having "uncontrollable rage", has provided the Defendant with a written admission of her committing acts of Domestic Violence, was working outside the home, and committing adultery with a co-worker, while the Defendant stayed home to care for our son, has stated in writing that the Defendant took good care of our son, stated in writing that the Defendant and our son would be better off without her. With the Defendant offering her joint custody (as long as she got help for her mental health problems) why in the world would an attorney would turn down that offer and instead file for divorce on grounds and fight the case in court? The answer is easy, because Loretta Vardy assumed, correctly, that Judge Potter and other "Justices" of the Prince William Circuit Court are corrupt, and biased towards women, and that they would on no account rule on the merits of the case but rather the gender of the parties. The fact that the Plaintiff took this issue to court rather than accept the Defendants generous offer is testimony to the low opinion she holds about the integrity and ethics of Judge Potter and others Judges in Prince William County.

9. Order Paragraph 1 & 20 (Motion #40 and motion filed June 18, 2004) Judge Potter orders the Plaintiff not to commit adultery in the presence of our son but refuses to order her to stop breaking the law by committing adultery at any time, while the same time refusing to rule that adultery is not covered by the 5th amendment in Virginia and allowing her to use it as a shield. In other words Judge Potter feels adultery is not serious enough to order her to stop doing it at any time, yet is serious enough to allow her to hide behind it as a way to avoid complying with discovery, in spite of Supreme Court rulings previously cited that make it clear that the 5th amendment is not applicable to adultery in Virginia.

10. Judge Potter also refuses to order her to be supportive of the Defendant's role as the child's father. Judge Potter in this ruling effectively rules that a woman has a right to commit adultery and deprive a child of his father, clearly this is at odds with the statutory intent of the law making adultery a crime and the law requiring the judge to consider the wiliness of a parent to support the child's relationship with the other parent. Judge Potter should be ashamed at showing more respect for the Plaintiff's "right" to commit adultery than our son's right to a father or the Defendant's right to be a father. Clearly the rights he violated are more protected by the Constitution then the "right" of adultery he does respect.

11. Order Paragraph 1, Judge Potter ruled that neither party could take our son out of the United States but denied the portions of the motion that would actually prevent that from happening. As such his ruling is meaningless. Unless the Court actually takes her passport, or at least our son's passport, away from the Plaintiff the court has done nothing at all to prevent the Plaintiff from running off to Russia with her Russian boyfriend.

12. It should also be noted that in his initial ruling Judge Potter limited travel to the DC area which was not requested and did interfere with the Plaintiff's appropriate travel plans with our son, and this was enlarged to the United States at the request of the Defendant. It should be also noted that the Defendant's request to limit the Plaintiff's access to her passport was copied from rulings upheld by the Court of Appeals noting that a simple ruling like that made here was of no effect in other cases to prevent abduction and if violated the court would be without power to remedy.

13. Order Paragraph 3, Judge Potter rules there has been "no harassment" and he did so in his typical "short-cut" method without any argument, without allowing the Defendant to present evidence or to call witnesses, and without giving any indication he has even read and listened to the evidence submitted with the motion. This is clearly a Due Process violation by failing to give the Defendant a fair hearing on the merits.

14. In effect his ruling is nothing more than a statement that the Plaintiff can make whatever false claims she wants in court and that the court will not even consider holding her accountable. Such thinking is exactly why this case has drug on for years (and will go on for years to come). The Plaintiff makes some false claim, the Defendant comes up with evidence to prove her claims false and malicious and the Court refuses to hold her accountable for her false malicious claim so she files another one, which the Defendant disproves, which the court doesn't hold her accountable for so she tries again, and again and again.

15. Yes, the Defendant has gotten the message that he is just a father, unworthy of equal protection, that the court will never enforce the rules or laws against the Plaintiff and that she can do whatever she wants outside of court and claim whatever she wants in court and the Court will approve of her conduct no matter what. However the Court is failing to get the message that the Defendant will NEVER accept

such a gross abuse of power by the Court and will NEVER give up fighting for his right to be a father for his son. The ONLY way for the Court to end this court case, given that its Due Process violations makes its orders void, is to stop ignoring the laws and rules and actually enforce them against the Plaintiff, vacate all it's BS rulings and start making some legal, constitutionally valid rulings.

16. Order Paragraph 3, Correctly states that there has been ample time to complete discovery but then instead of forcing the Plaintiff to comply with discovery or sanction her for not having complied given the ample time, Judge Potter goes on to absolve her of any responsibility to comply with the outstanding discovery requests made by the Defendant. This is a HUGE Due Process violation, preventing the Defendant from collecting relevant evidence to present at trial.

17. Judge Potter seems to try and cover up his misdeed by ordering the Plaintiff to instead supply discovery relating only to money. It should be clear by now the Defendant cares about his son and does not give a damn about fighting over the money. The discovery ordered by the Judge is completely useless and unrelated to the custody portion of the case. Judge Potter again seems to be taking one of his looong "short-cuts" as his ruling here clearly violates Due Process rights of the Defendant and thus voids the jurisdiction of this court (if it ever actually had jurisdiction) to hold a final hearing and enter a final order, thus instead of speeding up the case, slowing it down over arguments of jurisdiction or in fact forcing the case to be heard elsewhere.

18. Order Paragraph 7 & 8 & 24 (Motion #44); Judge Potter here granted the Complainant's Motion to Quash and deny the Defendant's related motion to deny and for sanctions in spite of the clearly legally unfounded claims made by the Plaintiff and the well documented legal arguments made in the Defendant's motion including the statutory requirement that the court **shall** impose sanctions – its not optional for Judge Potter. Judge Potter clearly did not make his ruling based on the merits and again failed to state any legal reason for his ruling. Since he did not find that the subpoena met the legal grounds to be quashed it should have been upheld. Is Judge Potter really that afraid that if the Defendant gets his evidence that even with a corrupt Judge like Potter controlling the hearing that he won't be able to prevent the Defendant from winning his case?

19. Order Paragraph 9 & 10 & 23 (Motion #30 & #43); see paragraph 18 above, exact same baseless

Due Process violation except it is the GAL the court is allowing to refuse to provide evidence to the Defendant. And again Judge Potter was refusing to follow the statutory requirement to impose sanctions.

20. Order Paragraph 11; Again Judge Potter is denying the Defendant his Due Process right to collect evidence, except this time he cites a reason… hallelujah finally a reason for his absurd rulings, a stupid, non-legal reason, but its nice to have a reason :-) Here Judge Potter claims that "any issues concerning a pending trespass action is not relevant to the issues that will be before this Court at the trial of this matter." Clearly Judge Potter is mistaken here. Certainly Judge Davis who ruled on the issue didn't think so and advised the Defendant not to go back to the school until this court issued a new visitation order. The fact that the school system the Plaintiff has placed our son in is not allowing the Defendant to attend his son's school events is relevant to the case at hand. The school is preventing our son from having both parents at his school events something which is not optimal for our son and would be a factor in deciding he would be better off in a different school system. That alone would be enough to make it relevant, but as stated in court (one of the few times the Judge let the Defendant say anything) the Defendant pointed out the school claimed **they based their actions on the request of the Plaintiff** and as such it is relevant according to § 20-124.3:

> "§ 20-124.3 Best interests of the child; visitation… 6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child; 7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child,…

21. Order Paragraph 12 & 22 (Motion #42); Judge Potter denied the Defendant's motion for a Jury Trial without giving any reason. Given that the Right to a Jury Trial is guaranteed by both the U.S. and Virginia Constitutions this is clearly in error. The Virginia Constitution specifically grants jury trials **in civil cases** and the U.S. Constitution does too for a monetary value well below what is in question here. Judge Potter didn't cite any law/rule to support his position not that it matters as no legislation, however salutary its purpose, can be so construed as to deprive a citizen of his Constitutional rights. It doesn't matter that Judge Potter (or others) are in the habit of ignoring this Right, it is there in the Constitution and the court **has no authority to take any action in conflict with the Constitution**.

"When any court violates the clean and unambiguous language of the Constitution, a

> fraud is perpetrated and **no one is bound to obey it**." STATE V. SUTTON, 63 Minn. 147 65 NW 262 30 ALR 660. Also see (Watson v. Memphis, 375 US 526; 10 L Ed 529; 83 S.Ct. 1314)
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> ""Where rights secured by the Constitution are involved, **there can be no rule making or legislation which would abrogate them.**" Miranda v. Arizona, 384 US 436 at 491.
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> **Any state judge that acts contrary to the United States Constitution violates the Supremacy Clause and acts in treason**. The U.S. Supreme Court has stated "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

22. Order Paragraph 15; Judge Potter denied the Defendant's motion asking for the court to appoint an attorney or allow him to use the marital funds in escrow to hire an attorney without giving any reason and without commenting on the Defendant's legal argument that the state does allow appointment of attorney for termination of parental rights as clearly this case has terminated any meaningful parental rights of the Defendant.

23. Order Paragraph 16 & 21 (Motion #41); Judge Potter refused to rule on the Defendant's motion to change custody/visitation and stated it would be heard at the final trial, since the final trial could/would change custody/visitation this is the same as saying he was refusing to ever hear it. It is also ironic since at the Feb 3rd 2006 hearing Judge Potter specifically stated he would be willing to hear a motion to change custody/visitation on Feb 15th. Did Judge Potter have an unexpected golf game that he deemed was more important than fulfilling his statutory obligation to provide our son with frequent and continuing conatc with **BOTH PARENTS**?

24. The Defendant (and our son) has been waiting since December 2005 for the court to hear this motion. Our son asks on an almost weekly bais for the Defendant to come pick him up or let him come visit the Defendant. What kind of Judge shirks his legal obligation, and disappoints a handicapped child for his own personal interest?

25. It should be noted that the court heard a motion by the Plaintiff to change visitation in Jan 2006 and was in such a hurry to bend over backwards to please the Plaintiff that it held **ex parte communications** to schedule the hearing within a week and without giving the Defendant the legally required notice, nor sufficient notice to allow him to attend. This is just another example of the gender bias and **unequal protection** provided by the court. The Court seems to feel that refusing to hear the

Defendant's motions until the final hearing is a way to coerce him to go along with holding a final trial without the Plaintiff completing discovery first. Instead the Defendant takes these gross abuses of power and illegal immoral rulings as a sample of what to expect at a final trial and thus has every reason to fight holding the final trial until the court shows some sign that it will be fair in the final trial.

26. Order Paragraph 19; Judge Potter refused to order CPS to turn over records. His verbal (but not written) statement was due to CPS not being before the court, yet Judge Potter was informed that the Defendant has properly served CPS with a copy of his motion and CPS choose not to attend. Clearly it's an error to pretend to hold a trial about the "best interests of the child" without the court having access to records of claims of physical child abuse. Of course as the records could only harm the Plaintiff's case the court is not interested in these records being presented at trial. If the GAL had been at all doing his job it wouldn't be an issue, as he would have already have obtained the records and provided them to the court and the parties. It also should be noted that the Court did issue summary judgment against the Defendant when he was unable to attend due to being out of state on Court ordered vacation visitation. To be fair the Court should have issued a summary judgment against CPS for not attending (the court previously refused to rule at all when the Plaintiff skipped a hearing).

27. Order Paragraph 25 (Motion #45); Judge Potter denied the Defendant's motion to use escrow funds to pay for a court report on the impressive logic that "the Defendant has provided a Court reporter". In other words an indigent Defendant in jeopardy of being denied one of his most basic Constitutional rights (to be a parent) is denied access to marital funds to pay for a court reporter at further hearings because he somehow managed to put together enough money for today's hearing… with the implication of "we don't want him to do that again at the final hearing". Judge Potter also completely ignored the part of the motion that asked for funds to pay for transcripts to be made from the hearings that were recorded, something the Defendant can certainly not afford.

28. Order Paragraph 26 (Motion #46); Judge Potter denied my Motion for Use of Escrow Funds for an Attorney without any reason. He apparently does not share the Supreme Court's views on the seriousness of custody cases and the strict scrutiny required before depriving parents/children of their right to a parent/child relationship. He has also completely ignored my condition of ADD that impairs my

ability to present a coherent case and that Federal law r**equires him to make a reasonable accommodation** to compensate for my condition. Certainly allowing me to use some of my share of the marital assets to hire an attorney to help present my case is not an unreasonable request. Failure to make reasonable accommodations will render any "final order" null and void.

29. Order Paragraph 27 (Motion #47); Judge Potter ruled that I do have a right to free speech but then denied my request to vacate or declare as void those court orders that deny me my right to free speech. In fact he went farther and threatened me with contempt or other sanction if I didn't follow those unconstitutional orders. Clearly one of the reason of the adverse rulings of the court is the fact that the Defendant is not intimidated by corrupt Judges and continues to exercise his first amendment rights. Either Judge Potter is completely ignorant of the basics of court orders or he is intentionally attempting to force the Defendant to surrender his rights in deference to null and void court orders. In either case its clear that **Judge Potter is clearly unfit to be a Judge in any capacity** as he is either unable or unwilling to follow the constitution of the United States and the Constitution of Virginia the sources of all power the Judiciary may legally claim to have (even if in practice it's source of power is really based too closely on the same sources of power as the Mafia).

30. On the off chance that Judge Potter is really that ignorant of the law rather than **willingly committing acts of treason**, I'll provide a little primer for him to brush up on so he doesn't commit such future acts of treason in ignorance:

> Code 8.01-223.1 states: "In any civil action the exercise by a party of any constitutional protection shall not be used against him."
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> "The claim and exercise of a Constitutional right cannot be converted into a crime." MILLER V. UNITED STATES, 230 F. 486 at 489
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> "But proceedings **outside the authority of the court**, or in violation or contravention of statutory prohibitions, are, whether the court have jurisdiction of the parties and subject-matter of the action or proceedings, or not, **utterly void**." Sache v. Wallace, 101 Minn. 169, 112 N.W. 386 (1907)
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> A void order may be challenged in any court, at any time, and even by third parties. A void order **has no legal force or effect**. As one court stated, a void order is equivalent to a blank piece of paper.
>
> "Although a court may have jurisdiction over the parties and the subject matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void." U.S. v. Walker, 109 US 258, 3 S Ct 277, 27 L Ed 927

(1883)

If a judge does not fully Comply with the Constitution, then his orders are void, in re Sawyer, 124 U.S. 200 (1888), he/she is Without jurisdiction, & he/she has engaged in an act or acts **TREASON**.

Due Process is a requirement of the U.S. Constitution. Violation of the United States Constitution by a judge **deprives that person from acting as a judge under the law**. He/She is acting as a private person, and not in the capacity of being a judge (and, therefore, has no jurisdiction). **[Judge Potter you may want to note this voids judicial immunity as well]**

The Supreme Court of Virginia has held "it is essential to the validity of a judgment or decree, that the court rendering it shall have jurisdiction of both the subject matter and parties. But this is not all, for both of these essentials may exist and still the judgment or decree may be void, because **the character of the judgment was not such as the court had the power to render, or because the mode of procedure employed by the court was such as it might not lawfully adopt**." Evans v. Smyth-Wythe Airport Commission, 255 Va. 69, 73, 495 S.E.2d 825, 828 (1998)

The Court in Yates Vs. Village of Hoffman Estates, Illinois, 209 F.Supp. 757 (N.D. Ill. 1962) held that, "Not every action by any judge is in exercise of his judicial function**. It is not a judicial function for a Judge to commit an intentional tort even though the tort occurs in the Courthouse.** When a judge acts as a Trespasser of the Law, when a judge does not follow the law, the judge loses subject matter jurisdiction and The Judge's orders are void, of no legal force or effect"!

This principle of law was stated by the U.S. Supreme Court as "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply **VOID, AND THIS IS EVEN PRIOR TO REVERSAL**." [Emphasis added]. Vallely v. Northern Fire and Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920). See also Old Wayne Mut. I. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Williamson v. Berry, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); Rose v. Himely, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

There is a misconception by some attorneys and judges that only a judge may declare an order void, but this is not the law: (1) there is no statute nor case law that supports this position, and (2) should there be any case law that allegedly supported this argument, that case would be directly contrary to the law established by the U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920) as well as other state courts, e.g. by the Illinois Supreme Court in People v. Miller. Supra. A party may have **a court vacate a void order, but the void order is still void ab initio**, whether vacated or not; a piece of paper does not determine whether an order is void, it just memorializes it, makes it legally binding and voids out all previous orders returning the case to the date prior to action leading to void ab initio.

Pursuant to the Vallely court decision, a void order does not have to be reversed by any court to be a void order. Courts have also held that, since a void order is not a final order, but is in effect no order at all, it cannot even be appealed. Courts have held that a void decision is not in essence a decision at all, and never becomes final. Consistent with this holding, in 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. …[Would be an] unlawful action

by the appellate court itself." Freytag v. Commissioner, 501 U.S. 868 (1991); Miller, supra. Following the same principle, it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void ab initio.

31. Just in case Judge Potter can't understand the legalize above I'll summarize:

A. This Court, in equity cases, does not have the authority to grant an injunction against the use of free speech.

B. The Court "orders" supposedly prohibiting my free speech that you insist I follow are null and void and always have been, they are not valid court orders and **are not enforceable**.

C. This Court has no legal authority to enforce the void orders, your attempts to do so range somewhere between that of a vigilante and a Mafia boss, closer to that of a Mafia boss as a vigilante is attempting to enforce the law without authority and you are breaking the law.

D. The Court "orders" do not legally prevent me from asserting my first amendment rights but rather simply **document either the incompetence or treason by the Judge that issued them** and the Judges that refuse to recognize them as null and void.

E. You are not God, you may think you are, but unfortunately for you I don't believe in God, but **I do believe in the rule of law**. Yes I know this court isn't used to following the law but I am one of the few people that **will demand this court do so** no matter what it's common practice is (and no matter what you do to me). Its up to you to decide if I only need to make my demands for rule of law via motions that point out your errors and abuses or if you need me to take it up with legislators, flyers to bar association members, your neighbors, television, newspaper, etc. You just let me know the level of effort you need me to put in to convince you to fulfill your legal obligations faithfully for the benefit of my son and I'll do my damnedest to make sure one way or another you are finally compelled to act honestly or be removed from the bench in disgrace. Trust me, unless I have time with my son I have absolutely nothing better to do with my life.

F. You are a public servant sworn to uphold the Constitutions of the United States and Virginia. You are nothing more or less than a public servant, and from your conduct in this case and your reputation you are a pretty poor one at that. If you were unaware that the "orders" were void I'd suggest you take a sabbatical and study law, if you knew but just felt like playing Mafia

Boss then you really should resign your office as **your actions sully the law and the court**.

G. Article I, Section 12 of the Constitution of Virginia states: That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by **despotic** governments; Clearly the authors of the Constitution was right on target and **the conduct of the Prince William Circuit Court is clearly despotic**.

H. The attempt to harass me, to deny me access to my son because I asserted my first amendment rights is illegal and actionable. Perhaps knowing that failing to follow the constitution deprives you of judicial immunity may help your resolve to correct the problems and do a better job as a public servant in the future. I'm sure we would both be happier with less rather than more legal action.

32. Order Paragraph 28 (Motion #48); Judge Potter ruled to deny my Motion to Remove Ronald Fahy as Guardian-ad-Litem without reason in spite of my clearly having documented his lack of compliance with the states published STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN, http://www.courts.state.va.us/gal/gal_standards_children_080403.html

33. In denying my motion Judge Potter allowed Mr. Fahy to go on about supposed "bad acts" unrelated to the case, which in itself is an error, and in effect been permitting counsel to testify against the Defendant without becoming a witness, without allowing the Defendant to cross-examine him, nor allowing the Defendant to provide his own version of the incident Mr. Fahy described. The court has repeatedly allowed counsel to "testify" without presenting any evidence whatsoever to back up their stories and without allowing the Defendant to cross-examine them or testify in his defense. Such actions are an error.

34. For the record the Defendant objects to the statements made by Mr. Fahy and instead states that Mr. Fahy and the Defendant were discussing Mr. Behrmann's reports and that Defendant requested Mr. Fahy read portions of the reports that were favorable to the Defendant including:

A. "…the MMPI-2 suggest a modulated, non-physical response to interpersonal pressure; **Mr. Smith is not an angry individual, and in fact tends toward a much more gentle non-physical approach to life**."
B. "Regarding emotional abuse to his spouse, there is not any patter discernable to support this by either testing or clinical history or clinical interview."
C. "**there is no concern about emotional abuse/neglect by Mr. Smith towards his child**"

D. "**the child seeks Mr. Smith out repeatedly and voluntarily and feels supported/enhanced by his father**"
E. "**Wesley Smith has a wealth of emotional warmth, richness, playfulness and empathy**…"
F. "**He thus can tune into Liam's world and join in playfully or instructively, emotionally and intellectually. … he is an excellent father**."
G. "**Wesley Smith has more emotional depth of resources with Liam** …"

35. Mr. Fahy however was adamant that he would not read any of the positive things in the report about the Defendant but just insisted on quoting any possible negative comments.

36. Mr. Fahy also refused to read any of the following negative comments about the Plaintiff:

A. "**Cheri can flip flop in her interventions with Liam**, being say, strict or achievement oriented, and then shifting to lenient and easy going about the same area, which causes some confusion in Liam."
B. "Ms. Smith can then fairly abruptly let go with loud verbal emotion, throw small objects,… **This can be yelling at Mr. Smith, or perhaps at Liam**."
C. "**Ms. Smith can have a difficult time just playing with Liam**;"
D. "This push can be in **discipline that is a bit too drawn out for Liam to grasp**, verses more immediate, right now consequence; it can be in **setting educational goals too high** for Liam given his abilities and the school system's capacities."

37. Mr. Fahy refused to look at the above quotations, refused to engage in any productive, intelligent discussion of the reports, but instead proceeded to berate the Defendant and call him names. The Defendant did then inform him that he was being a jerk at which point Mr. Fahy really did go ballistic, stood up yelling on and on, while the Defendant remained seated totally amazed that someone who purported to judge him had such poor self-control and such a problem with anger. The Defendant sat amazed by Mr. Fahy's display of rage and thought to himself that Mr. Fahy's getting angry over being called a jerk, that he certainly would not hold up well if subjected to the kind of humiliation and belittling that goes with being a father in a custody battle.

38. Order Paragraph 29 (Motion #49); Judge Potter denied the Motion to issue a rule against Igor Bakhir on the grounds Mr. Bakhir didn't have notice of the motion. While it is true Mr. Bakhir didn't have notice of the motion that day, he did have notice when the motion was originally filed and the court ruled to issue a rule but just hadn't picked a date and sign the rule. It's not clear that notice was needed under these circumstances.

39. Order Paragraph 30 (Motion #50); Here Judge Potter ruled to let the Plaintiff get away with not complying with the Defendant's discovery, both Interrogatories, and Request For Production of

Documents. He did this without allowing argument or evidence and in spite of the clear blatant violations of rules and also violations of the Court ruling to compel of Nov 3, 2004. Instead of taking the proper action of ordering sanctions and/or ordering the Plaintiff to comply with Discovery, Judge Potter substituted the meaningful discovery requested by the Defendant with his own version of meaningless strictly financial discovery, thus preventing any meaningful discovery as relating to grounds for divorce, adultery, or custody.

40. Order Paragraph 31 (Motion #51); Judge Potter denied the Motion for a Mental Health Evaluation of the Plaintiff without allowing a proper evidentiary hearing on the merits. His order shows no reason for his denial although his verbal ruling indicated that **he wouldn't authorize it because the Defendant could not show she had been diagnosed with a serious mental illness**. That's a wonderful bit of **Catch-22** reasoning there. If the Plaintiff had already been properly diagnosed the Defendant certainly would not be asking the court to order an evaluation so that a diagnoses could be made. The Plaintiff herself brought her mental health into question by basing her Bill of Complaint in part on claims that the Defendant abused her by making false claims that she had a mental illness. Without a mental health evaluation the Defendant is unable to properly disprove these claims. Given the Plaintiff has a family history of mental illness, sufficient in her own opinion to significantly impact custody, has herself suffered from mental health problems enough to warrant visiting a professional and treatment with psychotropic drugs, and her observed behavioral problems, especially uncontrollable rage, and herself admitting she has a problem there is ample reason to warrant a in-depth mental health evaluation. Its doubtful this court would refuse to order an evaluation for any father who had similar mental health problems.

41. Virginia Code §20-124.3 (2) requires the court to consider the mental condition of the Plaintiff in determining custody and until a examination is ordered and completed, the court is without both the information needed to make an informed ruling **or the legal authority to make a ruling**.

42. Order Paragraph 32 (Motion #52); Judge Potter again missed a change at any attempt at justice or to run his court as anything other than a Kangaroo Court by denying without reason the Defendant's Motion for Sanctions Due to Fraud Upon the Court. Judge Potter, as with Judge Alton, shows no interest at all that the Plaintiff and her counsel have been intentionally lying to the court both orally and in

motions in an attempt to get the court to rule on fantasy rather than fact. The Defendant has been able repeatedly to show that many of the claims made in motions are false and should be sanction but the court has shown no interest in enforcing § 8.01-271 or § vscr-6:2-3.4 against the Plaintiff, thus rewarding her misconduct and encouraging her misconduct to continue.

43. The effect of the court consistently refusing to hold the Plaintiff accountable for her false claims to the court has not only been to delay this case and drag it out years but to run this court not only as a Kangaroo Court but also as one after the fashion of the Salem Witch Trials, so far this case is nothing more than a witch hunt with the Judges, Plaintiff, and GAL all looking for ways to make the Defendant look bad while overlooking the misconduct of the Plaintiff and totally ignoring the emotional abuse they are inflicting on our poor son. All of you should be ashamed of your conduct.

44. The various rulings of this court have prevented me from collecting evidence to prove adultery, how the Plaintiff cares for our son, the Plaintiff's interference in my relationship with our son and prevents me from gathering evidence as to her motive for filing this case. Instead I've been left with no parental rights endlessly trying to disprove the Plaintiff's claims false to a court that wants to be able to rule the Plaintiff's claims true no matter what the real facts are.

**WHEREFORE** as the court made no effort to rule on the merits of the motions presented, and still persisted in trying to coerce the Defendant follow illegal void orders, the Defendant requests this Court vacate its ruling of February 15th 2006 and all other prior orders and to grant a rehearing on all covered motions, to allow the Defendant to present argument on all motions, to present evidence and to call witnesses, and that the Court will actually consider the legal arguments made instead of simply ruling on the Courts well proven bias against fathers. That any final trial in this case will be postponed until the defects and abuses by the Plaintiff and Judges can be rectified and the case prepared for a trial on its merits not the gender of the parties. The Defendant further requests the court make a statement as to how its illegal acts and Due Process violations have left it any ability whatsoever to issue a valid binding final order and if failing to provide a sufficient answer, to dismiss the case in its entirety.

**Respectfully Submitted,**
**Wesley C. Smith**

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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 first class mail, this 7th day of March 2006.

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Wesley C. Smith