

**VIRGINIA:**

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

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

**#59 - DEFENDANTS MOTION FOR A JURY TRIAL**

A pdf copy of this document is available at: [http://www.liamsdad.org/court\\_case/](http://www.liamsdad.org/court_case/)

**COMES NOW** the Defendant, Wesley C. Smith, and states that the that the case will be rendered doubtful by conflicting evidence, and request the conflicting issues to be tried by a jury. In support of his MOTION the Defendant states as follows:

1. The Plaintiff and Defendant will present conflicting evidence on just about every issue from the date of separation, ground of divorce, and the factors to consider for custody.
2. Questions such as:
  - a. Does the Plaintiff have a problem with anger?
  - b. Did the Plaintiff have “uncontrollable rage”?
  - c. Did the Plaintiff’s anger and rage negatively affect the marriage?
  - d. Did the Plaintiff commit adultery?
  - e. Has the Plaintiff exposed our son to her adultery and/or lover?
  - f. Did the Plaintiff filing a PPO indicate support or lack of support of the Defendants relationship with our son?
  - g. Did the Plaintiff calling the police when our son wanted to spend time with his father show support or lack of support for the relationship?
  - h. Did the Plaintiff requesting cutting off visitation show support or lack of support for the relationship?
  - i. Did the Plaintiff make fraudulent claims to support interfering with the father/son relationship.
  - j. Does the Plaintiff have any mental health problems?

k. Has our son's behavior and school performance suffered from the Plaintiff having visitation cut off?

l. Would the Defendant be more supportive than the Plaintiff has been.

m. Would the Defendant be able to provide a more emotionally supportive environment for our son?

n. Would our son be better off having access to both parents working together, or to continue the adversarial cock-fight style currently in use that profits attorneys?

3. It should be noted that the Defendant has previously filed two other motions for jury trial and has not waived his right to a jury trial and that without a jury trial any order of the court is void and unenforceable.

4. It should also be noted that the Prince William Circuit Court has a reputation of ignoring the facts of custody cases, of ignoring what is best for children, and instead awards custody based on its own personal bias and political and financial interests. In fact Judge Potter is well know for awarding custody solely based on gender.

5. It is precisely to combat this type of bias by judges that both the U.S. and Virginia constitutions grant a right to a jury trial.

6. The Virginia Constitution of 1971, ARTICLE I, Bill of Rights, Section 11 states:

**Jury Trial in civil cases**

That in controversies respecting property, and in suits between man and man, **trial by jury is preferable to any other, and ought to be held sacred.** The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

7. The Court has no jurisdiction to hear the case on terms contrary to that of the Virginia Constitution as the only authority the court has comes from the Virginia Constitution.

8. It should be noted that both § 8.01-336(E) and § 18.2-336(E) allow the court to have the case heard by a jury.

9. Given the Defendant has exercised his right to demand a Jury Trial per the Virginia Constitution, any final order issued without a Jury Trial would be null & void.

10. It should also be noted that the Judges have expressed concern over the length of this case and want to wrap it up. However the sole reason this case has drug on and on is due to the Judges not

following the law, not following the rules, and not ruling in a gender-neutral manner. Its time for the Judges to stop this misconduct, follow the rules and laws and allow this case to be concluded.

**WHEREFORE** the Defendant demands that the Court honor the Constitution Of Virginia and have this case heard by a Jury.

**Respectfully Submitted,  
Wesley C. Smith**

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Wesley C. Smith, Defendant  
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**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 U.S. mail, this 16th day of May 2006.

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Wesley C. Smith