

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

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

**#63 – MOTION TO STRIKE PREVIOUSLY LITIGATED CLAIMS
FROM THE BILL OF COMPLAINT AND AMENDED BILL OF COMPLAINT**

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COMES NOW the Defendant, Wesley C. Smith, and makes a motion to strike the previously litigated claims from the Bill Of Complaint and Amended Bill Of Complaint. In support of his MOTION the Defendant states as follows:

1. Several of the claims in the Bill Of Complaint and Amended Bill Of Complaint have been previously litigated and the court has ruled against the Plaintiff, as such res judicata and collateral estoppel prevent the Plaintiff from being allowed to re-litigate those issues.

"A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a `right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the parties.'" Slagle v. Slagle, 11 Va. App. 341, 344, 398 S.E.2d 346, 348 (1990) (citations omitted).

As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. Allen v. McCurry, 449 U.S. at 94

2. The Defendant incorporates by reference his motions #61 – MOTION TO STRIKE AMENDED BILL OF COMPLAINT and #62 – MOTION TO STRIKE COUNT III OF AMENDED BILL OF COMPLAINT.

3. On September 18, 2002 the Plaintiff filed an AFFIDAVIT FOR PRELIMINARY PROTECTIVE ORDER in which she accused the Defendant of physical abuse, verbal abuse, and threatening to flee the state with our son, anger and aggression, etc.

4. On September 19, 2002 a Preliminary Protective Order – Family Abuse was issued on the basis

of her affidavit and sworn testimony and a trial set for October 1, 2002.

5. On October 1, 2002 the Plaintiff took the stand and repeated the false accusations she made in her affidavit. However under cross examination she was presented with, and she authenticated, conflicting statements she had made in writing that indicated the Defendant was a good husband and father, and that her claims were false.

6. The Plaintiff admitted she had requested the Defendant take our son out of state just days before filing the affidavit and that she had no fear that they would not return.

7. When the Plaintiff went on in vague and scripted statements about abuse the Judge stopped her and asked her to describe in detail any single incident of claimed abuse, even stating that the incident did not need to be during the statutory period required for a protective order. As no such abuse had occurred the Plaintiff just sat there without being able to describe any specific incident of alleged abuse.

8. Not only was the Plaintiff unable to provide any details to support her claims of abuse, the Plaintiff admitted to writing a statement where she confessed to committing acts of domestic violence, and attempting to inflict “bodily harm” on the Defendant - “I’m sorry I hit you (and engaged in various other bodily harm) last Sunday. It was inexcusable ...“

9. The statement authenticated by the Plaintiff also admitted that even with the Plaintiff attempting to physically harm him, the Defendant did not respond in kind and behaved appropriately - “I thought you did handle it quite well after I hit you”. This demonstrated that not even a physical attack could provoke the Defendant to violence.

10. As a result of the Plaintiff being unable to provide any details of claimed abuse and instead having admitted to having abused the Defendant without cause, the Judge dismissed the protective order.

11. It is a well-known fact that Judges in Prince William County routinely rubber stamp approval of protective orders against men rather than ruling on the merits. In fact the Defendant was advised by attorneys that fighting it at a preliminary hearing was pretty much futile, as the Judicial Bias is such that if Jesus Christ himself was innocent target of a Preliminary Protective Order that the Judge would still uphold it.

12. The fact that the Defendant was able to get the preliminary protective order dismissed

demonstrates that the claims were completely and totally baseless and the Defendant was innocent.

13. The Plaintiff did not file an appeal of the ruling dismissing the protective order. That is the Plaintiff accepted the court's ruling that her claims were false.

14. On November 11, and again on November 25, 2003 this court issued orders to expunge the preliminary protective order without any written objection by the Plaintiff.

15. The Plaintiff should not be able to re-litigate any of the issues she litigated in the protective order case, and the court having ruled against her claims, these claims should be struck from the Plaintiffs complaints. Specifically Paragraphs 10 thru 20, and 22 thru 25 should be struck from the original Bill Of Complaint and paragraphs 15 thru 22 (Count I) and 23 thru 32, from the Amended Bill Of Complaint.

16. The Plaintiff should be prevented from re-litigating the claims she made in the preliminary protective order case and restricted in presenting any similar type claims to events that she claims between Oct 1, 2002, the date ppo was dismissed, and June 9, 2003 the date she signed the Bill Of Complaint.

WHEREFORE the Defendant moves that to strike the previously litigated claims from the Bill Of Complaint and Amended Bill Of Complaint and that the Plaintiff be prevented from re-litigating the claims she made in the preliminary protective order case, and restricted in presenting any similar type claims to events that she claims between Oct 1, 2002 and June 9, 2003.

**Respectfully Submitted,
Wesley C. Smith**

Wesley C. Smith, Defendant
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