

**VIRGINIA:**

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

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

**#69 – REQUEST FOR JUDICIAL NOTICE OF UTAH LAW**

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**COMES NOW** the Defendant, Wesley C. Smith, and makes a motion for judicial notice of the laws of Utah the state where the marriage contract between the parties was created. The Defendant states as follows:

1. The parties were married in a religious ceremony, in the state of Utah, according to the laws of Utah on November 23, 1988.
2. The parties at that time neither planned, expected nor considered ever living in Virginia or having their marriage controlled by the laws of Virginia.
3. The marriage contract that the parties entered into is significantly different than the marriage contract that Virginia provides. Per the full faith and credit act Virginia should recognize the rights and obligations the parties agreed to via marriage in where it was a meaningful union, where adultery and desertion were discouraged, instead of the Virginia style where morals are irrelevant and women ‘win’ based on gender..
4. The Plaintiff left the parties home in June 2003 and took our son with her. Utah law 30-2-10 not only prohibits removal of children without the consent of the other parent but also provides a presumption that the abandoned spouse (i.e. the Defendant) will have custody of the children.
5. Under Utah law custody of children is based on different standards then that used in Virginia. The first criteria listed for the Utah version of Best Interests Of the Child is “the past conduct and demonstrated moral standards of each of the parties”. The marriage contract we entered into gave much greater weight to considerations such as adultery, and moral standards are assumed to impact the children.

6. Utah law also specifies default parenting plans and specifies a higher minimum parenting time for the non-custodial parent and less judicial discretion in deviating from that.

**WHEREFORE** the Defendant asks the Court to apply Utah law this case.

**Respectfully Submitted,  
Wesley C. Smith**

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Wesley C. Smith, Defendant  
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**30-3-10. Custody of children in case of separation or divorce -- Custody consideration.**

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

(a) In determining any form of custody, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

- (i) the past conduct and demonstrated moral standards of each of the parties;
- (ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent; and
- (iii) those factors outlined in Section [30-3-10.2](#).

(b) The court shall, in every case, consider joint custody but may award any form of custody which is determined to be in the best interest of the child.

(c) The children may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the children be heard and there is no other reasonable method to present their testimony.

(d) The court may inquire of the children and take into consideration the children's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the children's custody or parent-time otherwise. The desires of a child 16 years of age or older shall be given added weight, but is not the single controlling factor.

(e) If interviews with the children are conducted by the court pursuant to Subsection (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with the children is the only method to ascertain the child's desires regarding custody.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a disability, as defined in Section [57-21-2](#), in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:

- (i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or
- (ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78, Chapter 30, Adoption.

(5) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.