

CIVIL WORKSHEET

DATE: 5/22/2006

CH53360

JUDGE: RBP

COURT REPORTER:
Andrea Blakley-MAR Reporting

ATTORNEY(S):

PLAINTIFF: **CHERI SMITH**
present

LORETTA VARDY
present

DEFENDANT: **WESLEY C SMITH**
present

pro se

RONALD FAHY, guardian ad litem
for child - present

Court in session: 10:00 am

Rule on witnesses

Parties are sworn and background in

CHERI SMITH:

Born 2/4/69, 37 years old, Master's Degree, employed at Science Application International, as Project Manager, Project Manager for 5 years, annual income \$75,900, monthly income \$6,325, no other income, good physical and mental health, takes orthotricyclene, birth control, health insurance through employer – Aetna, covers family self, child and husband, insurance for Liam \$35 bi-weekly, dental plan included, lives at 1533 Lincoln Circle, apt. #104, Mclean, VA, since July 2004, 2 bedroom apartment, lives with Liam, Liam has own bedroom, married on 11/23/88 in South Jordan, Utah, first marriage, no other children, Liam born 7/22/1997, 8 years old, attends Spring Hill Elementary, 2nd grade, below average student, Downs Syndrome, in special ed. has IEP, elementary school is in Fairfax County, is mainstreamed in school, goes to after-school program with Fairfax County, office is in Mclean, Spring Hill Elementary is also in Mclean, separated 9/17/02, she moved out, came back into home, parties alternated living days in the home, moved out into apartment on Manassas Mill Road, in June 2003, parties have lived separate and apart since June 2003, took Liam with her when she moved out, Liam on Merelax (maintenance laxative) and takes allergy medication during spring, sees physician on regular basis and sees a geneticist, had a regular visitation schedule with father until December 2004, father moved to Michigan, no established visitation plan was ever set, defendant moved to Dublin, VA, in spring of 2005, no schedule for visitation at this time, position of custody – sole legal physical custody, opposes joint custody, visitation – minimize contact of parties in front of child, wants to know where Liam is, PSA – none, owns no real estate, jointly owned marital residence at 11411 Huntsman Drive, Manassas, VA, single family home 4 bed, purchased in January 1997 for \$207,000, sold December 2003, proceeds from sale have not been distributed, \$50,000 was released to defendant to satisfy a debt to his mother, funds were deducted to pay GAL, \$130,053 is held in escrow, furnishings were distributed, auto – 2002 Mazda 626, lien, title in name alone, bears costs, no other vehicles, grounds – 1 year separation, ore tenus, spousal support, none, monthly child care costs \$256 per month for 9 month, 3 months in summer \$600, \$4,104 divide by 12 = \$342 per month, speech therapist and physical therapy not covered by insurance. No issues of real estate other than distribution of proceeds, household furnishing – none, personal property – seek to retain interest in own auto, none for him, retirement account – seeking none from def, life insurance – has one defendant is beneficiary, but will change to Liam, adult to serve as trustee, joint stock in defendant's former employer, 2000 shares, in name only, seeking sole interest in stocks, no IRAs, no CDs, tax deduction – files head of household since 2003, plaintiff seeking all proceeds held

in escrow, 2 stock accounts at time of separation, Datek and Ameritrade, possibly sold, seeking attorney fees \$40,000 affidavit to be submitted tomorrow

WESLEY CLAY SMITH:

Born 5/26/65, 40 years old, B.S. Degree in computer science, employer Quality Inn in Christiansburg, since mid January 2006, night clerk, monthly income \$400, part-time – 16 hours per week, \$7 per hour, 112 per week, \$481.60 per month, good physical health, ADD, does not take medications for ADD, diagnosed in 2003, gastro problems – takes over the counter medication, no health insurance for self or Liam, lives at 5347 Landrum Road, Apt 1, Dublin, VA 24084, 1 bedroom apartment in basement of brothers home, brother married, Thaniel, wife, Katherine, 2 children, ages 9 and 5, pays limited amount of rent, cooks dinner, mows grass, babysits children, moved into apartment in March 2005,

Defendant motions court – no jurisdiction

ARGUMENT:

Mr. Smith
Ms. Vardy

COURT:

Motion denied – over objection

Plaintiff motions to amend grounds of divorce – defendant objects

Issues:

Spousal support – seeking percentage of plaintiff's income - 5% over \$100,000 earned

Child custody – seeking sole legal custody with visitation for mother

Visitation – to be based on when child wants to see mother

ED: No assets

Auto - jointly titled 1993 Saturn SL2, purchased in 1992, no other autos

Household furnishings – seeking piano - Yamaha upright worth \$4,000, purchased while married

Retirement – has none – seeking wife's portion, no future

Life insurance – none

Stock – Cardiopulmonary Association, Daytech, joint stock, liquidated in Sept. 2002, Ameritrade is same account,

Tax purposes – no tax return filed

REPORT OF GUARDIAN AD LITEM – defendant objects

Motion to quash appearance of witness

ARGUMENT:

Ms. Rewari
Ms. Vardy
Mr. Smith

COURT:

Motion granted – over objection

Court in recess: 12:15 pm – 12:30 pm

DEFENDANT WITNESSES:

- 1) Desiree Romeo – sworn – 12: 34 pm – 12:47 pm
Liam's current teacher
- 2) Christine Richards – sworn – 12:47 pm – 12:51 pm
Liam's teacher last year
- 3) Liam Smith – 12:53 pm – 12:55 pm

Court in lunch recess: 12:55 pm – 1:59 pm

PLAINTIFF WITNESSES:

- 1) Heidi Thorpe – sworn – 2:00 pm – 2:08 pm
Knows arties through children

DEFENDANT WITNESSES (continued):

4) Frank McNulty – sworn – 2:09 pm – 2:20 pm
Fairfax County Dept. of Social Serv.

PLAINTIFF WITNESSES (continued):

2) Cheri Smith – previously sworn – 2:21 pm – 3:20 pm

Court in recess: 3:21 pm – 3:36pm

Guardian ad litem submitted his fee schedule during the break.

PLAINTIFF WITNESSES (continued):

Cheri Smith (continued) – 3:38 pm – 4:56 pm

Court in recess until 5/23/06: 4:45 pm

DATE: 5/23/2006

CH53360

JUDGE: RBP

**COURT REPORTER:
Andrea Blakley-MAR Reporting**

ATTORNEY(S):

**PLAINTIFF: CHERI SMITH
present**

**LORETTA VARDY
present**

**DEFENDANT: WESLEY C SMITH
present**

pro se

Court in session: 10:00 am

PLAINTIFF WITNESSES (continued):

Cheri Smith (continued) – sworn – 10:01 am – 11:00 am

DEFENDANT WITNESSES (continued):

5) Wesley Smith – sworn – 11:00 am – 11:48 am

Court in recess: 11:48 am – 12:02 pm

DEFENDANT WITNESSES (continued):

Wesley Smith (continued) – 12:02 pm – 1:00 pm

Court in lunch recess: 1:01 pm – 2:01 pm

CLOSING:

Ms. Vardy 2:15 pm – 2:23 pm
Mr. Smith 2:23 pm – 2:31 pm

COURT:

1. Divorce:

Upon consideration of the totality of the circumstances and the law of Virginia, the Plaintiff is hereby granted a divorce from the Defendant on the grounds that the parties have lived separate and apart without cohabitation and without

interruption for a period of more than one year, since December 31, 2002, in accordance with Virginia Code Section 20-91(9)(a), as amended.

✓ **2. Spousal Support:**

In consideration of the evidence presented, the totality of the circumstances, and the law of this Commonwealth, including, but not limited to, Virginia Code Section 20-107.1, as amended, the Plaintiff does not seek spousal support so none shall be hereby decreed and Defendant's motion for spousal support is denied without reservation.

✓ **3. Child Custody:**

In consideration of the evidence presented to this Court, the totality of the circumstances and the law of this Commonwealth, including, but not limited to, the factors and considerations contained in Virginia Code Sections 20-107.2 and 20-124.3, et seq, and the report of the Guardian ad Litem, it is adjudged, ordered and decreed that the Plaintiff is granted sole custody of the child, and the Defendant is granted certain visitation rights as ordered by this court in this order.

4. Child Visitation:

The Defendant is hereby awarded reasonable visitation to be defined as follows:

✓ **1) Weekend Visitation:**

The Defendant shall have visitation with the child on the first weekend of each month from 10:00 PM on Friday until 5:00 PM on the following Sunday, beginning on June 2, 2006.

✓ **2) Monday Holidays:**

In the event that a Federal holiday falls on the a Monday and the child's school is closed on that Monday, the weekend visitation referred to in paragraph one shall be extended to 5:00 PM on that Monday holiday.

✓ **3) Spring Break:**

The Defendant shall have alternating Spring Break or Easter vacations with the child. These visitations will run from 10:00 PM on the last day of school for the child before the vacation until 9:00 PM the day before school is to begin again. The Defendant shall have the Spring Break visitation for 2007 and the Plaintiff shall have the Spring Break visitation for 2008, and the parties shall have alternating visitations each year thereafter.

✓ **4) Summer Vacation:**

The Defendant shall have visitation with the child for two weeks during each summer school vacation period. This two-week period shall run from 1:00 PM on the second Saturday in July until 1:00 PM on the fourth Saturday in July two weeks later.

The Plaintiff shall have no visitation or custody with the child during the two-week period in order to provide the Defendant with some extended time with the child without interruption.

The parties are urged to cooperate in scheduling their personal work schedules to see to it that they are able to spend the full vacation time with the child.

✓ **5) Fall School Vacations:**

The Defendant shall have visitation with the child during the Fall or Thanksgiving school vacation which shall alternate on a yearly basis. These visitations shall run from 10:00 PM on the last day of school for the child to 9:00 PM on the day before school is to begin.

The Defendant shall have the visitation for the year 2006 and the Plaintiff shall have this vacation for the year 2007, and the parties will alternate each year thereafter.

✓ **6) Winter Break School Vacations:**

The Defendant shall have visitation with the child during the Winter or Christmas school vacation. This vacation period shall be divided into two parts. The first part shall begin at 3:00 PM on the Saturday after the child's last day of school and run until 3:00 PM on Christmas Day. While the second part shall run from 3:00 PM on Christmas Day until 3:00 PM on New Years Day. The parties will alternate these two time periods each year thereafter.

The Plaintiff will have visitation with the child for the first time period for the year 2006 and the Defendant shall have the second time period for that year. The parties will then alternate the two time periods each year thereafter.

✓ **7) The Child's Birthdays:**

As an exception to the regular visitation schedule, the Defendant shall have visitation with the child on the child's birthday. This birthday visitation shall run from 6:00 PM on the birthday until 9:00 PM, that same day. One purpose of this visitation is to allow the child to celebrate the birthday with both parents.

✓ **8) Telephonic Visitation:**

The child may telephone a parent at any time. The Plaintiff and Defendant must be careful not to abuse the use of the telephone. Except the weekend when the Defendant has weekend visitation, the Defendant may telephone the child only on Sunday evenings between the hours of 7:00 PM and 8:00 PM.

The Plaintiff will be responsible to make the child available to receive the telephone calls at the scheduled times and shall not listen-in on the conversations, record the conversations, or in any way interfere with the conversations.

Provided neither parent abuses the privilege, the Plaintiff and Defendant may call the other party at home, during reasonable hours of the day. Neither party is to call the other party at their place of work for any reason, except in an emergency situation.

9) **Transportation for Visitation:**

Unless otherwise agreed to by the parties in advance of the visitation, the Plaintiff shall be responsible for the drop-off of the child to the home of the Defendant to begin the visitations. The Defendant shall be responsible for returning the child at the end of the visitation period at the home of the Plaintiff.

The exchanges of the child must take place promptly and peacefully. The child is to be ready to go at the allotted times.

Unless otherwise agreed to by the parties in advance of the visitation, if the Defendant is not available within one hour of the allotted time for the drop-off of the child at the Defendant's home, the visitation shall be automatically terminated and there will be no make-up visitation for this lost visit.

10) **When visitation cannot be accomplished:**

In an effort to provide for as little disruption in the plans of the child as possible, in the event the Defendant is unable for any reason to effect the visitation with the child, then the Defendant should notify the Plaintiff as soon as possible and no later than 48 hours before the scheduled visitation.

If any scheduled visitation is missed, the visiting party will not be entitled to any alternative visitation date or make-up date, unless the other parties agrees to a make-up time in advance.

11) **Visitation at other times agreed to by the parties:**

The Plaintiff and Defendant may agree to visitation at any other times as additional visitations to this schedule, provided, it is understood that the Plaintiff, as primary physical custodian, shall ultimately decide whether or not any additional visitation will be allowed.

12) **General Provisions of Visitation:**

A. **Continued cooperation:**

The Court admonishes the parties that it is important to the welfare of the child that the parties continue to cooperate amicably with one another regarding all the visitations in order to ensure that the educational, medical, financial, and social needs of each child are met. The parties are to keep the best interest of the child in mind at all times.

B. **The exchange of information:**

The Court admonishes the parties that they must continue to communicate with one another concerning the visitation schedule to facilitate a good relationship between each parent and the child. The Plaintiff shall provide the Defendant with copies of all school report cards and school newsletters within seventy-two (72) hours of receiving them. The party that obtains the health insurance for the child must provide other party with a copy of the health insurance cards and policy information so that both parties may utilize the health insurance when necessary.

The Plaintiff must provide the Defendant with any and all of the medicines that the child may need for the duration of any visitation period. No school, hospital or health records shall be denied to either parent.

The parents must provide each other with their current home address and telephone number at all times. In the event that either parent intends to change their address, they must provide notice of the new address and telephone number to this Court and to the other parent thirty days prior to the move taking place. This notice should be sent by mail, postage prepaid, to both the Court and the other party.

C. **Efforts to limit the effects of separation and divorce on the child:**

The parties are to keep the peace and not to harass or interfere in the private life of the other party in any way whatsoever. The parties are not to discuss the issues of custody, child support or visitation in the presence of any child. The parties are not to say or do anything that will demean the other party in the eyes of a child or in anyway diminish the respect a child has for any parent.

D. **Other special requirements for visitation:**

In the event either party takes the child out of the Commonwealth of Virginia or West Virginia, they shall notify the other party in advance of the address and telephone number where the child can be reached.

5. **Child Support:**

1. **Child Support Payments:**

In consideration of the evidence presented by the parties, the totality of the circumstances and the law of this Commonwealth, including but not limited to Virginia Code Section 20-107.2, 20-108.1 and 20-108.2 et seq., it is the order of this Court:

That the Defendant shall pay to the Plaintiff child support in the amount of \$864.00 per month beginning on June 1, 2006. Payments for child support may be made at the rate of \$432.00 on the first day of each month and \$432.00 on the fifteenth of each month thereafter.

The calculation of child support is based on the following findings of this Court:

	<u>ACTUAL</u>	<u>IMPUTED</u>
The Father's gross monthly income is	\$ 480	\$ 7,083
The Mother's gross monthly income is	\$6,325	\$ 6,325
The Total Gross monthly income is	\$6,805	\$13,408
The Percentage for the Father is	7%	53%
The Percentage for the Mother is	93%	47%
The Statutory Amount for 1 child is	\$ 834	\$ 1,119
The health insurance paid by Plaintiff is	\$ 75	\$ 75
The monthly child care expenses are	\$ 342	\$ 342
The Total is	\$ 1,251	\$ 1,251
The Father's amount is	\$ 87.57	\$ 814

2. Child Support Arrearages:

In consideration of the evidence presented by the parties, the totality of the circumstances and the law of this Commonwealth, it is the finding of this Court that the arrearages in child support as of May 1, 2006, is \$18, 929. The Court finds the defendant in contempt of court and orders the defendant to pay an additional \$50.00 a month to the ordered child support effective 6/1/06.

3. Termination of Child Support:

The payment of child support shall continue until further order of this Court and shall terminate in accordance with Virginia Code Section 20-124.2, as amended, that is to say, child support shall continue for any child over 18 years of age who is

- (i) a full-time high school student
- (ii) not self-supporting and
- (iii) living in the home of the parent seeking or receiving child support until the child reaches the age of 19 years or graduates from high school, whichever occurs first.
- (iv) any child over the age of 18 who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support

C. Health Care Insurance and "Uncovered" Expenses:

The Plaintiff is hereby ordered to provide health care insurance for the child, as such insurance is defined in Virginia Code Section 63.1-250.

In the event any necessary medical or dental treatment is not covered by insurance, then each party shall be responsible for the payment of the health expenses in accordance with their percentage of their gross income as set forth in paragraph 5A above.

The custodial parent, however, will be liable for all co-payments, per visit, costs or other medical expenses including prescriptions less than \$100.00.

6. Equitable Distribution:

In consideration of the evidence presented by the parties, the totality of the circumstances, and the law of the Commonwealth, including but not limited to Virginia Code Section 20-107.3 and the factors found in subsection E, this Court having made certain findings as to the legal title between the parties to their property and the ownership and value of all such property, whether real, personal, tangible or intangible, and having determined which property is separate and which is marital and which is part separate and part marital and the value of all relevant property as of the date of this hearing unless otherwise provided herein, this Court orders equitable distribution as follows:

Plaintiff's Exhibit #2

- 1. Marital Residence – marital property – sold – proceeds held in escrow

- ✓ 2. Proceeds from sale of marital home held in escrow – marital debt to be paid first, remainder of proceeds to be split 50/50.
- ✓ 3. Furniture and Household Goods – marital property already divided – each party to retain and be responsible for their own.
- ✓ 4. 1993 Saturn SL2 – marital property – value \$1,180 – distributed to husband
- ✓ 5. 1998 Saturn SW2 – marital property – nothing to distribute
- ✓ 6. CPC Stocks – in possession of Plaintiff – distributed to wife
- ✓ 7. Datek and Ameritrate stock – same stock – marital property – distributed to husband
- ✓ 8. same as #7.
- ✓ 9. 401k plan – jointly owned – no value – no division – to be retained by wife
- ✓ 10. 2002 Fed Tax overpayment – marital property – distributed to husband
- ✓ 11. 2002 VA tax refund – marital property – distributed to husband
- ✓ 12. 2002 child tax credit – marital property – retained by wife

DEBTS:

- ✓ 1. Post mtg payments – plaintiff reimbursed ½ after marital debts paid from proceeds
- ✓ 2. Post mtg. payments – plaintiff reimbursed ½ after marital debts paid from proceeds
- ✓ 3. Electric Bill – to be paid by plaintiff
- ✓ 4. Comcast bill – to be paid by plaintiff
- ✓ 5. Local Telephone – to be paid by plaintiff
- ✓ 6. Long Distance Telephone – to be paid by plaintiff
- ✓ 7. Waste disposal – to be paid by plaintiff
- ✓ 8. Credit Card Interest – to be distributed to plaintiff from proceeds
- ✓ 9. Car insurance – marital debt – no distribution
- ✓ 10. First USA/Bank One - \$6,234 – to be paid by plaintiff
- ✓ 11. Dow Chemical CU – marital - to be paid by defendant
- ✓ 12. Wachovia - \$4,156 – to be paid by plaintiff
- ✓ 13. First Union - \$1,030 – to be paid by defendant
- ✓ 14. Capital One - \$1,206 – to be paid by plaintiff
- ✓ 15. Citibank One – deduct from proceeds – plaintiff to pay

SEPARATE DEBTS:

- ✓ 16. 2004 Honda CRV – separate – distributed to plaintiff
- ✓ 17. 2002 Mazda 626 – separate – distributed to plaintiff
- ✓ 18. Credit Card debt. – separate – distributed to plaintiff
- ✓ 19. Dow Credit Union Loan – separate – distributed to defendant

SEPARATE PROPERTY (wife):

- ✓ 1. Personal property – household furnishings – each party is to retain and be responsible for their own property
- ✓ 2. 2002 Mazda – wife's property

SEPARATE PROPERTY (husband):

- ✓ 1. Personal property – household furnishings – each party is to retain and be responsible for their own property

OTHER:

- ✓ 1. \$50,000 advanced to Defendant for payment of loan – split 50/50
- ✓ 2. GAL fees are to be deducted from proceeds of sale

7. Attorney Fees:

- ✓ The Court orders that both parties are to be responsible for their own attorney fees.

Ms. Vardy to prepare order, copy to defendant, copy to GAL

June 9, 2006 @ 10 am for entry of order

Court adjourns: 3:40 pm

D. Messier, Deputy Clerk