

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

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

#69 – PARTIAL OBJECTIONS TO RULING

A pdf copy of this document is available at: http://www.liamsdad.org/court_case/

COMES NOW the Defendant, Wesley C. Smith, and makes the following objections to the ruling of May 23, 2006, this is only a partial list of objections due to Ms. Vardy refusing to provide the Defendant with a draft copy of the order to review. The Defendant objects as follows:

1. As Ms. Vardy refused the Defendant’s request for a copy of the order to review prior to entry, the Defendant must of necessity make this only a partial list of objections and reserves the right to add more objections after he is provided with a copy of the order.
2. The Court never obtained subject matter jurisdiction as jurisdiction for divorce is only via statute and the Plaintiff did not comply with the relevant statutes needed to give the court jurisdiction. The Defendant hereby incorporates by reference #58 - Motion To Dismiss Due To Lack Of Service.
3. The Court never obtained personal jurisdiction as the Plaintiff did not serve the Defendant with a copy of her Bill Of Complaint and VA code requires service according to statute and prohibits jurisdiction based on receiving a copy by means other than that proscribed by statute. The Defendant hereby incorporates by reference #58 - Motion To Dismiss Due To Lack Of Service.
4. The court abused its discretion by not recusing Judge Potter, who is both well known for his prejudice against fathers, his refusal to comply with the relevant state laws, and his demonstrated bias in this case, including refusing to vacate an obviously unconstitutional order. The Defendant hereby incorporates by reference #60 - Defendants Motion To Disqualify/Recuse Judge Potter, and #47 - Motion To Recognize Right Of Freedom Of Speech And To Vacate, Or Recognize As Void, All Orders That Deprive Defendant Of That Right

5. The court abused its discretion by not approving the motion for a change of venue when it was shown that Judges and/or their staff were engaged in improperly reviewing facts/evidence other than that presented in court by viewing the Defendants website. The Judge should have limited his knowledge of the case to that presented in court rather than doing “research” on his own. The Defendant hereby incorporates by reference #68 – Motion For Change Of Venue

6. The Defendant has not been provided Equal Protection under the law as required by the constitution. The Judges, and later security personnel, have refused to let the Defendant record hearings while at the same time allowing attorneys to bring and use recorders without restriction. Such action by the court puts the Defendant at a disadvantage representing himself compared to a Bar Association member representing the Plaintiff. This is more egregious given the Defendant has ADD and desired to record instead of relying on memory. Allowing the Defendant to record was a reasonable accommodation for his disability that should have been provided per federal law. The allowing of recording devices for attorneys but not pro se parties is made worse by the fact the Defendant is indigent and can't afford to have an court reporter at each hearing. It should be noted that the Judges stopped letting the Defendant record hearings when the Defendant offered to use a recording to show that Ms. Vardy had intentionally lied to the court. Rather than impose a sanction for her misconduct the court decided to help prevent the Defendant from having evidence of her lies in the future.

7. The Court abused its discretion by ruling on the Plaintiff's Motion For Sanctions that was not served on the Defendant until the very day (Sunday) before trial and did not allow the Defendant time to prepare to defend against it. The court should have also provided the Defendant with both a jury and an attorney before hearing a motion for making any ruling to hold the Defendant in contempt. The Defendant has repeatedly made motions for a jury and attorney. The Defendant hereby incorporates by reference #59 - Defendants Motion For A Jury Trial, #46 - Motion For Use Of Escrow Funds For An Attorney, #34 - Defendant's Motion For An Attorney, #42 - Defendants Demand For A Virginia Constitution Article 1, Section 11, Jury Trial In A Civil Case, and #31 - Defendant's Demand For A Jury Trial

8. The Court has shown bias by making rulings on the Plaintiff's motions while not ruling or delaying ruling on the Defendant's motions.

9. The Court violated the Defendants constitutional right to a jury trial as guaranteed by both the Federal and Virginia Constitutions. The Defendant hereby incorporates by reference #59 - Defendants Motion For A Jury Trial, #42 - Defendants Demand For A Virginia Constitution Article 1, Section 11, Jury Trial In A Civil Case, and #31 - Defendant's Demand For A Jury Trial

10. The Court violated the Due Process rights of the Defendant by not compelling the Plaintiff to comply with Discovery, not forcing the Plaintiff to comply with even the limited ruling to compel, and by improperly quashing subpoena's issued by the Defendant. The actions of the court have been to consistently deny the Defendant access to evidence with which to defend himself. Preventing the Defendant from having access to relevant documents, and even access to his son for over one year prior to trial significantly impaired the Defendant's ability to present a credible case. The Defendant hereby incorporates by reference #66 - Reply To Vardy Motion To Quash, #65 - Reply To Vanderhye Motion To Quash, #50 - Motion To Compel And Motion For Sanctions, #44 - Reply To Motion To Quash And Motion For Sanctions For Obstruction Of Discovery By Plaintiff, #43 - Motion For Sanctions For Obstruction Of Discovery By Mr. Fahy, #39 - Motion For CPS Records, #38 - Reply To Motion To Quash, and Defendant's Statement Of Facts For Saic Motion To Quash With Attached Audio CD

11. The court abused its discretion by not striking the GAL report which was grossly deficient, leaving out such significant items as child abuse complaint with CPS, our son's diagnosed depression, behavioral problems at school, the mother's problem with rage, etc. It's obvious that the GAL 'report' was totally inadequate on which to base any judgment. The Defendant hereby incorporates by reference #64 - Motion To Strike GAL Report

12. The court abused its discretion by refusing to remove Ronald Fahy as GAL when it became obvious that Ronald Fahy was not making a good faith effort to represent our son and that he was making no attempt to follow the state guidelines for GAL's. Even such gross misconduct as not attending a hearing on suspending visitation, or attending the final hearing on custody was condoned by the court. The Defendant hereby incorporates by reference: #64 - Motion To Strike GAL Report, #48 - Motion To Remove Ronald Fahy As Guardian Ad Litem, #30 - Motion For Sanctions Against Mr. Fahy, Motion To Reconsider Denial Of Motion To Appoint A New Guardian Ad Litem, Motion To Appoint New Guardian

Ad Litem

13. The Court has violated the Defendant's constitutional rights as a parent without indicating any compelling state interest to justify interfering with his constitutional rights as a parent. The Court's rulings are in violation of Supreme Court precedents recognizing constitutional rights of parents.

14. The Court's rulings are in violation of Virginia state law that prohibits use of gender as a factor for deciding custody. It's widely accepted that gender is the main (or only) criteria the Prince William County Circuit Court uses in making custody determinations.

15. The Court abused its discretion by not striking claims from the Bill Of Complaint that were previously litigated and that res judicata and collateral estoppel should have prevent the Plaintiff from being allowed to re-litigate those issues. The Defendant hereby incorporates by reference: #63 - Motion To Strike Previously Litigated Claims From The Bill Of Complaint And Amended Bill Of Complaint

16. The Virginia state laws regarding custody, including but not limited to § 20-124.3, § 20-124.2, are unconstitutional as they claim to give the judge the ability to violate the constitutional rights of parents without a showing that the parents are unfit. They are also unconstitutional as applied as they are not applied in a gender-neutral manner but instead are applied in a manner as to favor mothers.

17. The Court erred in granting divorce based on one year separation when the parties had not been separated for one year at the time the Bill Of Complaint was filed. The Defendant hereby incorporates by reference: #62 - Motion to strike count III of amended bill of complaint

18. The Court erred by granting the Plaintiff a divorce when no grounds for divorce at the time of filing were proven, without which the Court had no jurisdiction.

19. The court also erred in ruling December 2002, as the date of separation when the parities continued to cohabitate (using the Virginia Court of Appeals definition of cohabitate) with each other until June 2003.

20. The Court has violated the First amendment freedom of speech rights of the Defendant and Judge Potter in refusing to vacate/void the illegal order has refused to honor his judicial oath of office and by refusing to follow his oath and uphold the constitution the court has lost jurisdiction (if it ever had jurisdiction). The Defendant hereby incorporates by reference: #47 - Motion To Recognize Right Of

Freedom Of Speech And To Vacate, Or Recognize As Void, All Orders That Deprive Defendant Of That Right, #54 - Motion To Reconsider/Rehear Motions #40 Thru #53

21. The court erred by allowing testimony of a witness who was not previously disclosed to the Defendant.

22. The Court has engaged in improper conduct during the entire history of this case starting with issuing a surprise custody ruling in Sep 2003, continuing with illegal Ex Parte hearing to suspend visitation, to refusing to enforce discovery, refusing to issue sanctions against the Plaintiff for violations and fraud, for respecting the Plaintiff's "right" to commit adultery even though prohibited by law, allowing her to claim the 5th when clearly it does not apply, yet at the same time not recognizing the free speech or parental rights of the Defendant.

23. The Court has erred by not making a ruling in the best interest of our son. Our son clearly desires and needs to be allowed to spend more than one weekend a month with his father. The result of previous deprivations of visitation has resulted in him performing poorly in school and being diagnosed with depression. If the court had even any pretense at following "best interests of the child" it would have made a ruling that granted him frequent time with his father.

24. The court erred by allowing use of amended financial statements that were not provided in time for the Defendant to review them prior to trial and after it had been shown the previous versions were intentionally fraudulent. The Defendant hereby incorporates by reference: #56 - Notice Of Fraud By Loretta Vardy

WHEREFORE the Defendant objects to the entry of this order and reserves the right to file more objections after having time to review the order.

**Respectfully Submitted,
Wesley C. Smith**

Wesley C. Smith, Defendant
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