V I R G I N I A:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

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

#73 – PARTIAL STATEMENT OF FACTS

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

COMES NOW the Defendant, Wesley C. Smith, and requests that a Judge sign the following partial statement of facts (note a transcript was ordered of the final two day hearing):

1. The Plaintiff filed a Bill Of Complaint with the court on 06/11/03.
2. The Plaintiff served the Bill Of Complaint on J. Whitbeck, Jr. on 07/01/03.
3. Mr. Whitbeck is an attorney who at the time was handling the JD&R custody case for Mr. Smith.
4. The Plaintiff never served the Defendant with a copy of the Bill Of Complaint.
5. On Aug 8, 2003 the Defendant filed a Notice Of Appeal in the JD&R custody case to appeal the case to the Circuit Court and a hearing date set for September 11th, 2003.
6. The appealed custody case was designated as Chancery 53810
7. On Sept 2, 2003 the clerk sent a notice of hearing to the Plaintiff for a hearing on Sep 11, 2003
8. On Sept 10, 2003, a CMS FLYSHEET for Chancery 53810 shows the trial date as Sep 11th.
9. The First hearing in Chancery 53360 was held on Sept 10, 2003 the day before the scheduled hearing in Chancery 53810.
10. Both parties thought the Sept 10th hearing was only about the Motion For Pendente Lite Relief filed on Sept 2, 2003 which requested the house to be sold and did not ask for temporary custody.
11. Neither party expected to address custody at the Sept 10th hearing in Chancery 53360 but expected to address it the next day in Chancery 53810.
12. On Sept 10th, 2003 Judge Potter declared he didn't want to hold the custody hearing the next day and that he would save time by simply awarding custody at this hearing and merging the cases.

13. The Defendant Objected to the surprise custody ruling, and case merging.

14. Neither party presented any witnesses (other than the parties) at the Sep 10th hearing.

15. Neither party presented any significant evidence relating to custody. The Plaintiff presenting only a Monthly Expenses statement, Statement Of Joint Expenses, and Psychological Eval that was not admitted. The Defendant entered no written evidence. Thus the clerk record shows no admitted evidence relating to custody.

16. Given the contested nature of this case both Mr. Whitbeck and Ms. Vardy would have to be completely incompetent and guilty of malpractice to show up at a custody hearing without witnesses/evidence relating to custody.

17. Judge Potter has a wide reputation for prejudice against fathers and for refusing to grant them custody even if they are the better parent.

18. Judge Potter indicated his prejudice against fathers by making such statements as "if you don't shape up you won't get any visitation" (the JD&R rule the Defendant was an excellent father and would have joint custody except we can't work together) and "I gave you more visitation that I give most fathers".

19. The ruling on custody on Sep 10th by Judge Potter was a significant change from the ruling by the JD&R court, with a significant reduction in visitation by the Defendant.

20. On Aug 17th 2004, the Court held a hearing during the Defendant's two-week visitation period, while he and his son were in Michigan visiting family in spite of the Defendant requesting a continuance.

21. At the Aug 17th 2004 the Court again demonstrated bias against the Defendant by not only holding the ex parte hearing but in issuing an illegal unconstitutional order claiming to take away the Defendants First Amendment right to free speech.

22. The Defendant has made repeated motions for the court to vacate or recognize as void the illegal order of Aug 17th 2004. The Court has denied all such requests.

23. The Defendant has not complied with the order of Aug 17th 2004, due to it being null and void, and has continued to engage in the "prohibited" exercise of his First Amendment Right to free speech and has added the responsible judges to my website pointing out their misconduct and treason.

24. The Plaintiff has made repeated motions for the court to enforce the order of Aug 17th 2004. The court has denied all such requests and eventually told her to stop asking as trying to enforce the order would be "unproductive" – a tacit admission the order is null and void due to being unconstitutional.

25. The Court not being able to enforce its illegal order of Aug 17th 2004 looked for other ways to punish the Defendant for his not giving up his First Amendment Rights.

26. On Dec 28, 2004 the Plaintiff filed Emergency Motion To Amend Visitation And Issue A Rule To Show Cause and scheduled it to be heard on Jan 3rd 2005.

27. Neither the Plaintiff nor the Court contacted the Defendant to schedule the hearing

28. Neither the Plaintiff nor the Court called the Defendant to let him know the hearing was scheduled. The Defendant has a cell phone with him and both the Plaintiff and Court were aware of the phone number.

29. On Friday, December 31, 2004 at 2:40 p.m the Defendant received a copy of the Plaintiff's Emergency Motion To Amend Visitation And Issue A Rule To Show Cause which was scheduled for the following Monday. (See OBJECTION TO EMERGENCY MOTION AND PROPOSED STATEMENT OF FACTS exhibit #6)

30. The Defendant wrote and faxed a letter to Judge Alston explaining that he was in Michigan and could not attend, and requested a continuance. The Defendant also provided copies of statements made by the Plaintiff of how much our son looked forward to spending time with his father and how cutting off visitation in the past had been hard for him.

31. On Jan 3, 2005, Judge Alston held the ex parte hearing and suspended visitation until a hearing set for the Jan 18th.

32. The Jan 3rd 2005 order suspending visitation did not make any finding of harm or risk to our son.

33. Judge Alston set the Jan 18th hearing date knowing that the GAL Ronald Fahy would not attend (see clerk notes).

34. On Jan 18th 2005, Ronald Fahy handed the Defendant a "report" before the hearing.

35. On Jan 18th 2005, Ronald Fahy did not attend the hearing.

36. At the Jan 18th 2005 hearing, the Defendant attempted to present evidence that the Plaintiff had

lied in her motion, had even lied about notifying the Defendant of the Jan 3rd hearing, and to present evidence that visitation was best for our son.

37. Judge Millette threatened the Defendant with jail for his attempts to show that the Plaintiff had intentionally misled the court.

38. Judge Millette stated Judge Alston had already made a ruling on the Plaintiff's claims.

39. On Jan 18th 2005, Judge Milette issued an order continuing to suspend visitation, again with no finding of harm or risk to our son.

40. The Defendant continued to have phone contact with our son per court order.

41. Our son would regularly ask the Defendant to come pick him up, or to come visit him during the 17 months visitation was suspended.

42. The Defendant did notify both the Court and the Plaintiff of his pending eviction. (see Motion For Use of Escrow Funds To Avoid Eviction).

43. Liam loves his father and desires to spend time with him.

44. As a result of having been denied access to his father in the past Liam has become "clingy".

45. Court employees have, from the courthouse, been browsing the Defendant's website, in particular the hall of shame pages about Judges of the Prince William Circuit Court.

46. The browsing of the Defendant's website from the courthouse has shown a pattern where activity picks up when the case file is sent from the clerks office to the Judge's chambers.

47. The Defendant has been ruled indigent and can't afford a court reporter at every hearing.

48. The Defendant has made repeated request to record hearings, many of which have been denied.

49. The Court has refused to impose sanctions on Loretta Vardy for her violations of Court Rules and VA law.

50. The Court did not provide a Jury Trial.

51. The Defendant had requested a Jury Trial multiple times in writing.

52. The Court did not force the Plaintiff to comply with Discovery

53. The Court went out of its way to prevent the Defendant from using Discovery to obtain proof of adultery by the Plaintiff.

54. At the final Trial the Plaintiff did admit to committing adultery with Igor Bakhir, starting in about Sept 2003.

55. At the final trial on May 22, 23 2006, Judge Potter refused to let the Defendant make a Proffer for the Appeals court when he attempted to do so.

56. At the final trial on May 22, 23 2006, Judge Potter refused cut off questioning of the GAL, and suggested the GAL not stay for the remainder of the trial.

57. At the final trial on May 22, 23 2006, the GAL Ronald Fahy, did not present any witnesses, did not cross examine any witnesses, did not present any evidence (other than his own writings), and left early the first day and did not attend the second day of the trial.

58. At the final trial on May 22, 23 2006, the GAL Ronald Fahy did not present any credentials to show him an expert in any field relating to child custody, child care, parenting, etc.

59. At the final trial on May 22, 23 2006, the GAL Ronald Fahy, did not present any witnesses.

60. At the final trial on May 22, 23 2006, the GAL Ronald Fahy, did not cross examine any witnesses

61. At the final trial on May 22, 23 2006, the GAL Ronald Fahy, did not present any evidence (other than his own writings.

62. At the final trial on May 22, 23 2006, the GAL Ronald Fahy, left early the first day and did not attend the second day of the trial.

63. At the final trial on May 22, 23 2006, the GAL Ronald Fahy, was not present for the testimony of our son.

64. At the final trial on May 22, 23 2006, the Plaintiff presented little to no evidence/testimony relating to custody but focused her case on financial matters.

65. At the final trial on May 22, 23 2006, the Defendant presented little to no evidence/testimony relating to financial matters but focused on custody.

66. The Final Divorce Decree does not state that any of the grounds for divorce in the original Bill Of Complaint were proven but grants the divorce on grounds other than that filed in the original BOC.

67. Neither the Court nor the Plaintiff presented any compelling state interest to justify interfering with the Defendant's Constitutional Rights as a parent.

68. The Court routinely awards sole custody to women much more often than men. Favoring women more than 85% of the time.

FACTS RELATING TO SAIC MOTION TO QUASH

69. On February 13, 2004, the Defendant, via counsel, issued a subpoena for SAIC, the Plaintiff's and Mr. Bakhir's employer, to produce documents relating to the divorce and custody case.

70. On February 25, 2004, the Plaintiff filed an unsigned motion to quash on the claim that it "sought to prove facts not pled in the Defendant's Cross-Bill of complaint".

71. The original Cross-Bill filed by the Defendant did not allege adultery by the Plaintiff.

72. On February 27, 2004 counsel for SAIC wrote a letter to the Defendant's attorney stating that SAIC was compiling the records and indicating a willingness to provide most of the documents and to work with the Defendant in resolving issues or narrowing a few requests

73. On March 3, 2004 Judge Potter ruled to approve the motion to quash except for employment and leave information. As part of the same order Judge Potter also ruled, over the objection of the Plaintiff, to allow the Defendant to amend his Cross-Bill to include a claim of adultery against the Plaintiff.

74. On March 17, 2004 the Defendant filed an amended Cross-Bill with a claim of adultery and specifically mentioning Igor Bakhir a co-worker of the Plaintiff at SAIC and including dates and places that adultery is believed to have occurred.

75. Neither SAIC or the Plaintiff asked for or received a protective order to prevent the records from being provided to the Defendant.

76. On September 13, 2004, the Defendant, now pro se, noting that the reason stated in the Plaintiff's motion to quash no longer applied, issued a new subpoena dues tecum on SAIC, that was similar to the first one but also requested additional items.

77. On September 23, 2004 the Defendant received a motion by SAIC counsel filed a motion to quash to be heard the very next day on September 24. The motion SAIC claimed did not understand what parts of the subpoena meant, that parts were overly broad and burdensome, and admits to not having tried to resolve these issues with the Defendant.

78. At the September 24 2004 hearing, counsel for SAIC asked to have the subpoena quashed on the

grounds that it was similar to the prior subpoena quashed by Judge Potter, he did not state any additional reasons or cite any laws or court rules, nor did he dispute the Defendants statement that SAIC had previously agreed to provide many of the requested documents. Mr. Sparks also stated that the current subpoena asked for documents not requested in the first subpoena

79. At the September 24 2004 hearing, the Defendant requested the motion to quash be dismissed due to not having been provided to the Defendant in sufficient time to prepare for the hearing. The Defendant also pointed out the change in the cross-bill, its affect on the reasoning of the previous ruling, and that he was prepared to explain why each item requested is relevant and that he was willing to work with SAIC to limit the number of documents produced and would agree to sign a confidential agreement with SAIC relating to business information or agree that SAIC could redact business information not related to the case. The Defendant also disputed some of SAIC's claims relating to when the subpoena was served and SAIC's compliance with the first subpoena. The Defendant also pointed out that some of the documents requested might contain admissions by the Plaintiff about significant points of the case thus eliminating the need to further litigate them, such as if the Plaintiff had informed SAIC of her adultery with Mr. Igor Bakhir.

80. September 24, 2004, Judge Alston ruled to quash the subpoena entirely, stating that he did not want to do something different than Judge Potter and that he did not know the what Judge Potter's intentions were. Judge Alston did not cite any law, rule or precedence to support his ruling.

81. The Defendant did object to the ruling, citing rule 4:9 and 4:1 in his comments.

WHEREFORE the Defendant requests the court certify this statement of facts.

Respectfully Submitted,
Wesley C. Smith

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Wesley C. Smith, Defendant
5347 Landrum Rd APT 1, Dublin, VA 24084-5603
liamsdad@liamsdad.org - no phone

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Circuit Court Judge