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	)	

#79 - OBJECTIONS

A pdf copy of this motion is available at: http://www.liamsdad.org/court/pw_circuit

COMES NOW the Defendant, Wesley C. Smith, and makes the following objections to the Order of April 20th 2007 that was based on the March 13th 2007 ruling:

Contrary To The Final Divorce Decree

1. The release of $104, 500.44 to the Plaintiff and $993.08 to the Defendant is contrary to the terms of the Final Divorce Decree which specified the marital debts were to be paid first then afterwards the funds were to be distributed equally between the two parties after a $25,000 adjustment. The Final Divorce Decree states:

> "The balance in the escrow account after the payment of marital debt and any other payments ordered by this Court shall be divided equally between the parties. Fifty percent (50%) of the net shall be paid to the Plaintiff and fifty percent (50%) of the net shall be paid to the Defendant." Page 14 item 5
>
> "The Court requires that after the martial debits are paid that the equity or the net proceeds left after settlement should equally be divided by the parties." Page 16 item 15.

2. The order distributes fund without paying the marital debts first as required in the Final Divorce Decree, it also grants the Plaintiff the funds that were to be used to pay the marital debts without requiring her to use them to pay marital debts, or sharing any excess 50/50 with the Defendant as required by the Final Divorce Decree.

3. The order grants the Defendant substantially less money than the Final Divorce Decree stated. The reason of the DCSE order is insufficient as it under appeal and shouldn't be enforced yet. Even if it was to be enforced the amount is incorrect as the DCSE attempts to withhold the entire amount claimed as an arrearage, which is contrary to the terms of the Final Divorce Decree that specifically states the Defendant shall pay the arrearage back at $50/month (page 10 item V). Per § 63.2-1916 an administrative order may not alter the terms of any court order for support.

§ 63.2-1916. Notice of administrative support order; contents; hearing; modification.
…
In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support.

4. Since the Final Divorce Decree was entered only payments of $9,504 in mother welfare (so called "child support") have become due, thus the withholding order may only withhold that much. Withholding $23,240.36 effectively changes the terms stated in this order, which is prohibited by § 63.2-1916.

5. Given that much more than 21 days has elapsed since the Final Divorce Decree was entered the court no longer has jurisdiction to modify the terms of the Final Divorce Decree.

Without Authority To Grant
Escrows Are Irrevocable, Require Strict Compliance

6. The Defendant incorporates by reference all statements in #78 - REPLY - ESCROW FUNDS. The funds were held in an escrow account, which were interplead in case CL 71003. The court may only enforce the escrow agreement with strict compliance with its terms. The post separation Escrow Agreement set out specific conditions for the release of the escrowed funds and made no reference to or provision for substantial compliance with those conditions. This order releases funds in a manner not in strict compliance with the Escrow Agreement.

Jury Trial

7. 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.

Lack Of Subject Matter Jurisdiction And Personal Jurisdiction Due To Failure To Serve Process

8. The Defendant incorporates by reference all statements in #58 – Motion To Dismiss Due To Lack Of Service that clearly pointed out that the Court did not have subject matter jurisdiction nor personal jurisdiction due to the Plaintiffs failure to serve the Defendant with process.

9. PROCESS is the **combination** of the Bill Of Complaint and the subpoena in chancery "**served as a single paper**". See Bendele v. Commonwealth, 29 Va. App. 395, 398, 512 S.E.2d 827, 829 (1999) and LIFESTAR v VEGOSEN, CAV Record No. 031376 (2004). The Plaintiff failed to serve the Defendant with

PROCESS.

10. Compliance with the Code sections at issue here, relating to procedures for instituting a divorce case, is mandatory and jurisdictional. The Plaintiff did not comply with them, therefore, **this court did not acquire jurisdiction of any kind, neither personal nor subject-matter jurisdiction.**

…if a statute provides for constructive service, **the terms of the statute authorizing it must be strictly followed or the service will be invalid**…" Khatchi v. Landmark Rest. Assoc., 237 Va. 139, 142, 375 S.E.2d 743, 745 (1989) (citations omitted).

"**A court acquires no jurisdiction over the person of a defendant until process is served in the manner provided by statute, and a judgment entered by a court which lacks jurisdiction over a defendant is void as against that defendant**." Slaughter v. Commonwealth, 222 Va. 787, 791, 284 S.E.2d 824, 826 (1981).

Lack of Jurisdiction - No Grounds For Divorce When Mother Filed For Divorce

11. The Court granted the divorce based on one-year separation and set the date of separation as Dec 2002, page 2 item 10, which was only 6 months prior to the June 2003 filing for divorce. Given that the parties were not separated for one year prior to filing for divorce, the court was without authority to grant divorce based on one-year separation. See #62 – Motion To Strike Count III Of Amended Bill Of Complaint

"The act relied upon for divorce must be alleged and **proved to have occurred prior to the bringing of the suit** . . . ." Beckner v. Beckner, 204 Va. 580, 583, 132 S.E.2d 715, 717-18 (1963). see also Johnson v. Johnson, 213 Va. 204, 210, 191 S.E.2d 206, 210 (1972).

We hold that the court erred by entering the final divorce decree because the grounds for divorce alleged in the bill of complaint **did not exist when the bill was filed and, thus, the court lacked jurisdiction to entertain the suit at the time it was filed**. JONES v JONES, MAY 30, 2000, Record No. 2580-99-3

Code 20-91(A)(9)(a) provides that a "no-fault" divorce may be granted only after an application has been filed properly alleging that the parties have lived separate and apart for the requisite time. See Moore v. Moore, 218 Va. 790, 796, 240 S.E.2d 535, 538 (1978) **The ground for divorce alleged is a statutory element and jurisdictional prerequisite to filing the suit for divorce** under Code 20-91(A)(9)(a). The grounds must be properly alleged and proven.

Failure To Recuse

12. Judge Potter made the ruling after failing to recuse himself after he was informed that the Defendant had filed a Federal lawsuit against him and made a motion for him to recuse himself.

13. 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

Judicial Misconduct - Refused To Let Defendant Make Proffers

14. In the hearing on March 13, 2007 the Defendant repeatedly attempted to make a proffer for the appeals court. Judge Potter refused to let the Defendant make a proffer and threatened to send him to jail if the Defendant didn't stop attempting to make a proffer. This is similar to the misconduct in the divorce trial in May 2006 when again Judge Potter again refused to let the Defendant make proffers.

"THE COURT: No, sir. There will be no proffer." - 5/22/06 transcript page 77 line 18

"THE COURT: I'm not going to let you make a proffer." 5/22/06 transcript page 79 line 5

15. In all courts, whether in courts of general jurisdiction or in courts of limited jurisdiction, the judge deprives the court of jurisdiction if the judge does not comply with the law. The actions of Judge Potter (and others) have deprived the Court of jurisdiction by their misconduct.

The Supreme Court of Virginia has held "it is essential to the validity of a judgment or decree, that the court rendering it shall have jurisdiction of both the subject matter and parties. But this is not all, for both of these essentials may exist and still the judgment or decree may be void, **because the character of the judgment was not such as the court had the power to render, or because the mode of procedure employed by the court was such as it might not lawfully adopt**. "Evans v. Smyth-Wythe Airport Commission, 255 Va. 69, 73, 495 S.E.2d 825, 828 (1998)

Null And Void Orders - void and unenforceable prior to reversal

16. A void order may be challenged in any court, at any time, and even by third parties. A void order has no legal force or effect. As one court stated, **a void order is equivalent to a blank piece of paper.**

This principle of law was stated by the U.S. Supreme Court as:
"Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply **VOID, AND THIS IS EVEN PRIOR TO REVERSAL**." [Emphasis added]. Vallely v. Northern Fire and Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920). See also Old Wayne Mut. I. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Williamson v. Berry, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); Rose v. Himely, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

It is clear and well established law that **a void order can be challenged in any court. Old** Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907) ("jurisdiction of any court exercising authority over a subject `may be inquired into in every other court **when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings,**' ...'"); In re Marriage of Macino, 236 Ill.App.3d 886 (2nd Dist. 1992) ("if the order is void, it may be attacked at any time in any proceeding, "); Evans v. Corporate Services, 207 Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990) ("a void judgment, order or decree may be attacked at any time or in any court, either directly or collaterally"); Oak Park Nat. Bank v. Peoples Gas Light & Coke Co., 46 Ill.App.2d 385, 197 N.E.2d 73, 77 (1st Dist. 1964) ("that judgment is void and may be attacked at any time in the same or any other court, by the parties or by any other

person who is affected thereby."). [Emphasis added].

a void order is an order issued without jurisdiction by a judge and is void ab initio and does not have to be declared void by a judge to be void. Only an inspection of the record of the case showing that the judge was without jurisdiction or **violated a person's due process rights**, or where fraud was involved in the attempted procurement of jurisdiction, is sufficient for an order to be void. Potenz Corp. v. Petrozzini, 170 Ill. App. 3d 617, 525 N.E. 2d 173, 175 (1988). In instances herein, the law has stated that the **orders are void ab initio and not voidable because they are already void.**

There is a misconception by some attorneys and judges that only a judge may declare an order void, but this is not the law: (1) there is no statute nor case law that supports this position, and (2) should there be any case law that allegedly supported this argument, that case would be directly contrary to the law established by the U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920) as well as other state courts, e.g. by the Illinois Supreme Court in People v. Miller. Supra. A party may have **a court vacate a void order, but the void order is still void ab initio**, whether vacated or not; a piece of paper does not determine whether an order is void, it just memorializes it, makes it legally binding and voids out all previous orders returning the case to the date prior to action leading to void ab initio.

In 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. …[Would be an] unlawful action by the appellate court itself." Freytag v. Commissioner, 501 U.S. 868 (1991); Miller, supra. Following the same principle, **it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void ab initio**.

Respectfully Submitted,
Wesley C. Smith

/s/_____

Wesley C. Smith, Defendant
5347 Landrum Rd APT 1, Dublin, VA 24084-5603
liamsdad@liamsdad.org
703-348-7766