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	)	

OBJECTION TO EMERGENCY MOTION AND PROPOSED STATEMENT OF FACTS

COMES NOW the Defendant, Wesley C. Smith, and states the following in response to the Plaintiff's EMERGENCY MOTION TO AMEND VISITATION AND ISSUE A RULE TO SHOW CAUSE:

1. There is now, and never was an EMERGENCY, contrary to claim of Complainant. This motion is *interposed* by Counsel for Complainant Mrs. Loretta Vardy, for an *improper purpose such as to harass*, or to attempt to influence the court or *create a needless cost in litigation* both contrary to Va. Code 8.01-271.1 (ii). Contrary to the law it is not "*well grounded in fact*". This document provides a true Statement of Facts for the Court, and thereby serves also as Objection to Complainant Counsel's Motion.

2. The date of Counsel Vardy's papers were placed in the United States Mail, exhibit 6, on Tuesday, December 28, 2004, it was received on Friday, December 31, 2004 at 2:40 p.m. The alleged incident involved the father and son right to parenting time together from the previous weekend Friday to Sunday. The son was returned to the Complainant at 6:15 pm on

Sunday, normally the child would be picked up at 7:00 p.m. on Sunday per *Pendente Lite Order* dated 2 October 2003, paragraph 1 where it states: "Starting on Friday, September 19, 2003 the Defendant, Wesley C. Smith shall have visitation on alternate weekends starting after school on Friday and ending at 7:00 p.m. on Sunday."

3. In November 2003, Complainant removed the Defendant's son Liam from the state to Utah for Thanksgiving, 27 November, as provided in the *Pendente Lite Order* in 2003, but continued beyond the remaining days of November and into the second day and most of the night of December 2, a violation of paragraph 2.A -Weekday Visitation, "Defendant is to have visitation with the child on Tuesday evening beginning at 7:00 p.m. and ending Wednesday morning when he shall return the child to school." and could be interpreted also as a violation of paragraph 1 – Weekend Visitation where the alternate weekend would have been Friday, 28 November to 30 November 2003. The Complainant brought son Liam to the Father, Defendant Wes Smith, after Midnight on Wednesday, 3 December 2003 in violation of the Order and adverse to the best interests of the Child. Complainant's action was contrary to Complainant Counsel paragraph 6 where she writes: "That the above-mentioned *Pendente Lite* Order specified that the Defendant would pick up the child at the start of visitation and the Complainant would pick up the child at the end of visitation;". The visitation properly began at 7:00 p.m., not after midnight.

4. Vardy's notice was received on a Friday afternoon, Friday, December 31, 2004 at 2:40 p.m, at the Midland, Michigan home of the Mother of Defendant Wes Smith. A hearing on

Vardy's Motion was scheduled at 10:00 a.m. on Monday, 3 January 2005. Vardy advised that the court terminated all visitation rights of the Father. No court document has been served at the Mother's address in the two weeks since that hearing though two times a sheriff deputy has come to the house. Counsel Vardy sent an e-mail on 3 January, exhibit 1, to Defendant Smith saying, "…You should be very happy. A hearing date to hear the merits of the Motion has been set for January 18, 2005 at 10 a.m. Until that time, your in-person visitation with Liam has been suspended. Do you intend to be present at the hearing on the 18th? Will you be in Virginia before the 18th?" (Underline added) The answer to both questions is "Yes", Defendant Wes Smith is in the Court on Tuesday, 18 January 2005, and had to travel on or before the 18th to be in Virginia to arrive in time at the Court.

5. The suspension engineered by Counsel Vardy is a demonstration of a Violation of Virginia Law in Code 20-124.3 "The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;" (Underline added)

6. The suspension is currently a temporary demonstration of a Violation of Virginia Law in Code 20-124.2 "…primary consideration to the best interests of the child. The court shall assure minor children of frequent and continuing contact with both parents,…" and "As between the parents, there shall be no presumption or inference of law in favor of either."

7. Objection to Plaintiff Counsel paragraph 7 in that Counsel fails to tell the court that Defendant did have son Liam "ready to go" per Order paragraph 10, and available for "…the Plaintiff pick up the child at the end of the visit." The Order does not state where the visit begins or ends. In 2003, Plaintiff took the son to Utah to be with her parents. In 2004, Defendant Father took the son to be with the sons' Grandmother Smith and cousins Garrett, Meredith, Samantha, Aubrey, Travis, Heather, and Ashley Smith in Michigan. Like Liam Smith, Ashley Smith is a special needs child. Defendant files his objection to Plaintiff Counsel's frivolous or malicious Rule to Show Cause.

8. Defendant objects to Plaintiff Counsel paragraph 8 in that Counsel falsely states that "…he failed to give the Complainant the proper notice that he was changing his residence from 3215 Ridge View St. #104, Woodbridge, Virginia 22192, to…". By 26 September 2004 @ 2:32 P.M. EDT email, exhibit 2, Defendant Wes Smith notified Complainant and Counsel, not "December 24, 2004 @ 11:22AM." as falsely stated by Counsel Vardy. In that e-mail to Plaintiff/Complainant Mrs. Cheri Smith and Counsel Vardy where he states: "Consider this my 30 days notice of moving." Defendant was more than timely. Counsel Vardy used email to Notice Defendant on 3 January of 18 January 2005 hearing.

9. Defendant objects to Plaintiff Counsel paragraph 9 where Counsel writes "…she went to the Defendant's Virginia residence to pick up Liam at 1:00 PM on December 25, 2004; When the Complainant arrived at the Defendant's apartment neither the Defendant nor Liam was there. The apartment

appeared to have been emptied of furnishings." On December 14, 2004 @7:01:48 AM EST, Complainant sent an email, exhibit 3, to Defendant Wes Smith which says: "I wouldn't have room for the ferns, mattresses and the wagon. I can store his bookshelves." So the Mother has no room for a wagon for fun, for ferns or for furniture of mattresses for the boy, took one of two bookshelves. Without permission of the Father, the Mother took an emptied toy chest on 15 December on a Wednesday before school. In addition, Mother and Counsel knew that the Father sought release of $63,000 to his mother, Carole Smith, for money she was owed for money to pay child support and pay for an apartment so to sell the marital home. Only $50,000 was released by the Court on 3 November both Complainant and Counsel were adamant about no money going to the Father as Counsel Vardy wrote: "that he may not use any of these released funds for any purpose;…" On 3 December, a Court Order evicted Defendant Smith and he had 10 days to comply. The apartment management allowed a grace period beyond that 10 day period because Mr. Smith had always been a cooperative tenant, and the lady landlord even gave Defendant Wes Smith a hug and said she wished the wife would have released the funds so the father could have stayed in the apartment directly across the street from the school for special needs children such as his son Liam. On the same day, Counsel Loretta Vardy, gave permission to release $50,000 which was a stipulation stated in Court for the Father to return to live with his mother, so necessary stipulations were completed by Complainant to provide the move to his Michigan home that had first been noticed in September. Clearly, Complainant Smith knew the Father was "closing down his apartment" on 14 December by email and by personal visit on 15 December. It is contrary to logic for the Complainant mother to assume that the Father and Son Liam would be at the apartment ten or eleven days later.

10. Defendant objects to Complainant and Counsel's statements that both contacted the Prince William County police without stating the date and time. Defendant objects to the Complaint and Counsel's statement (s) for Midland in Michigan without stating the date and time. Without such date and time, and a contact in each of the two to four telephone calls the statement is hearsay. Was the call to police made that day or the day before? Electronic phone records, exhibit 4, show that Defendant retrieved a message from Complainant at 1:47 pm on 25 December, and again a voice mail retrieval at 7:09 p. m. asking for Liam to call the Complainant. At 7:11 p.m., Father called the Mother and put his son Liam on the phone. At approximately 8:10 p.m. on 25 December, Midland County Sheriff Lt. Tracy Thomas arrived at Grandmother Smith's home and asked Father Wes Smith to call the Prince William County Police in Manassas at 703-792-6545 (see Exhibit 5), which was promptly done at 8:15 p.m. for about 3 minutes to verify the Father had the child, the child was safe, the child was ready for being picked up, and the mother had been notified. The police seemed satisfied. No email from Complainant is shown. What is shown by electronic phone records is that AFTER the Complainant KNEW FULL WELL that son Liam was WELL, that son Liam was SAFE, and the Complainant knew LOCATION of son Liam, THEN SHE, or COUNSEL, DECEPTIVELY CONTACTED PRINCE WILLIAM COUNTY POLICE. Defendant objects to such illegal behavior.

11. Defendant objects to statement of Complainant Counsel Vardy as hearsay and false. The electronic phone records prove FALSE the Counsel Vardy's statement "That throughout the afternoon of December 25th, the Complainant called the Defendant on his cell phone…" Given the many other examples of false statements by Counsel Vardy, the portion of the statement "…and his mother's home.", the Defendant demands that Complainant or her Counsel present phone records that prove such assertion as

containing any truth. Two calls by Complainant, one in early afternoon, and one in early evening are a huge stretch of the truth, or alternatively, an intentional lie by Counsel Vardy in signing a court paper saying "throughout the afternoon". This is a violation of Va. Code 8.01-271.1.

12. Defendant objects to Counsel Vardy's false assertion of facts. The distance from Manassas to Midland is 647 miles, the distance from McLean to Midland is 629 miles. However, both Father, Mother and Son had spent vacations with the nearest relatives of Complainant, her brother Darrel Jones at 4334 Janwood Drive in Akron, Ohio 44321 which is 352 miles from McLean and 297 miles from Midland. Doubling the 297 miles is 594 miles; even doubling 629 miles to get 1258 miles is 742 miles less than the false statement of Counsel Vardy's claim "almost two thousand miles". The Counsel Vardy statement that "placed Liam in the position of believing that his mother was late in picking him up…" is an unfounded speculation designed with improper purpose designed to damage the Father by asserting an adverse intent. Likewise, that is proven by the next statement where Counsel Vardy assumes she has the ability to travel inside the mind of Defendant Wes Smith to know better than he or even the Court what the loving Father of Liam intended to do. No evidence has been presented to the Court by Counsel Vardy in support of her improper purpose, not good faith arguments in this Rule to Show Cause, or prior court motions, again in violation of Virginia Code 8.01-271.1

WHEREFORE the Defendant requests that the Court enter an Order granting him the following relief:

1. Amend the father and son rights to time together (visitation) of the *Pendente Lite* Order of 3 October 2003 be restored to the Judge Becker rule of 5 May 2003 that said "ADJUDGED, ORDERED, and DECREED that on Monday through Friday, during such times as the Respondent is at work, and continuing for the duration of the Petitioner's unemployment, the Child shall not attend daycare and shall instead be under the care of the Petitioner…"[Note: Complainant Cheri Smith was the Respondent in that ruling.] And further amend the Order to recognize the self-employed status of Wes Smith in his new home business of designing Web pages whenever he is not providing day care for his son Liam. One such web site Complainant Cheri Smith has downloaded copies of the web site from her place of work SAIC during work hours, in violation of the False Claims Act of 1863, also known as the Lincoln Law, or *Qui Tam* Act.

2. Issue a Rule to Show Cause against the Complainant for violation of the letter and the intention of the *Pendente Lite* Order and the letter and intention of Virginia Code 20-124.3 "propensity of each parent to actively support the child's contact and relationship with the other parent..."

3. Award to the Defendant the $13,000 differential requested between the $63,000 requested on 1 November, and the $50,000 that Complainant Counsel Loretta Vardy wrote to former attorney for the Defendant, John Whitbeck who controlled the escrow account. With this differential, the Father can reestablish his apartment and be in position to again provide the day care as Judge Becker ruled.

4. Add up the total amounts for day care paid for son Liam between October 2003 and January 2005, inclusive, divide by the number of months (16), and pay that amount to the Father as a monthly amount for "Dad Care is the best Day Care" consistent with his providing day care as was the ruling by Judge Becker in May 2003. If Complainant Cheri Smith is willing to pay that to a third party, then if she truly cares for the child, she should be happy to pay an equal amount to the Father, Wes Smith, who cares for Liam dearly and devotedly, and who has hundreds of photographs to show how Liam enjoys learning about living from his loving Father.

5. Award the Defendant an amount equal to the billings of Counsel Vardy.

6. Issue a Court Sanction against Counsel Loretta Vardy for violation of the letter and the intention of Virginia Code 8.01-271.1.

7. Any such further relief as the nature of the case of the goals of equity and fairness to fathers and children's rights to time together require.

Respectfully submitted,

Wesley Smith, *pro se*

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served to Loretta Vardy and Ronald Fahy (GAL) via first-class mail and/or hand delivered, this 18 day of January 2005.

_____

Wesley C. Smith,
Defendant