

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

LIAM RALEIGH SMITH	
WESLEY CLAY. SMITH	
Appellants/Plaintiffs/Defendants	
v.	Chancery No. 53360
CHERI SMITH,	
Appellee/Complainant	
LORETTA VARDY	
Defendant	

**PETITION FOR REHEARING ON RIGHTS OF FATHER - SON VISITATION
and MOTION FOR SANCTIONS UPON ATTORNEY PER VA. CODE 8.01-271.1
and MOTION FOR RULE TO SHOW CAUSE**

The U.S. Supreme Court long ago noted a parent’s right to “the companionship, care, custody, and management of his or her children” is an interest “**far more precious**” than any other property right.

-- May v. Anderson, 345 U.S. 528, 533, 97 L.Ed. 1221, 73 S. Ct. 840, 843 (1952)

In Troxel v. Granville, 527 U.S. 1069 (1999) Justice O’Connor, speaking for the Court stated:

“The Fourteenth Amendment provides that **no State shall ‘deprive** any person of life, liberty, or property, without due process of the law. We have long recognized that the Amendment’s Due Process Clause like its Fifth Amendment counterpart, ‘guarantees more than fair process’. The Clause includes a substantive component that “**provides heightened protection against governmental interference** with certain fundamental rights and liberty interest” and “the **liberty interests of parents in the care, custody, and control of their children** – is perhaps the oldest of the fundamental liberty interest recognized by this Court.”

COMES NOW the Appellants and Plaintiffs, Liam Raleigh Smith and Wesley Clay Smith, *pro se*, as Liam’s father and “next friend” in accordance with Virginia Code 8.01-8, and states the following in support of this MOTION FOR SANCTIONS UPON ATTORNEY PER VA. CODE 8.01-271.1 and this PETITION FOR REHEARING ON RIGHTS OF FATHER-SON VISITATION.

1. Appellants Liam and Wes Smith petition the Honorable Court for a hearing by Judge Rossie D. Alston, Jr. on the Facts as a proper completion of his Order dated 3 January 2005. On 18 January 2005, a cursory hearing was held by trial court Judge Leroy Francis Millette, Jr., but contrary to Judicial Canon 3. (d). 7, never were the Facts favorable to two parties in this case, Liam and Wes Smith, sought or considered by the trial court on the 18th. Judge Millette erred in saying that Judge Alston had already held a hearing on the facts, and so he would not hear any facts presented at the 18 January 2005 hearing.

2. On 31 December 2004, improper NOTICE was received from Defendant Vardy for a 3 January 2005 Emergency Hearing while Appellant was in Michigan for the Christmas Holidays with his elderly mother who is recovering from a colon surgery. The NOTICE was in violation of § 20-146.7 which requires “Notice must be given in a manner reasonably calculated to give actual notice and an opportunity to be heard“ Appellant Wesley Smith was not present at the 3 January 2005 hearing so had no opportunity to present the facts to Judge Alston. Apparently to err on the side of caution, Judge Alston ordered a temporary suspension and “set for hearing on January 18, 2005 at 10:00 A.M.” Appellant was not served with any notice for the January 18, 2005 and did not receive the order scheduling it until January 18, 2005

3. Never was there a true emergency, but an “emergency” of her own making, filed by Defendant Vardy for an *improper purpose*, so to “justify” the violation of Virginia Code 20-124.3, specifically Defendant Vardy’s *improper purpose* was -- and is -- to terminate the parental and Constitutional Rights of the Plaintiffs/Appellees Liam and Wesley Smith, son and father. The court paper titled OBJECTION TO EMERGENCY MOTION AND PROPOSED STATEMENT OF FACTS **must be**

considered in accordance with Judicial Canon 3. (d). 7 before any legitimate hearing is done, or a just Order signed.

4. Judge Rossie D. Alston, Jr., due to the improper Notice by Defendant Vardy to Plaintiff/Appellee Wesley Smith declined to impose a permanent termination of visitation.

5. The STATEMENT OF FACTS submitted to this Honorable Court on Tuesday, 18 January 2005 is included by reference, herein. That Statement of Facts provides factual substantiation for Sanctions, however rare such warranted sanctions are imposed by judges on fellow members of the Bar, but full well justified based upon Defendant Vardy's actions in violation of Virginia Code 8.01-271.1, virtually equivalent in wording to the Federal Rules of Civil Procedure Rule 11. The correlation of this state law and the Federal Rule of Civil Procedure was learned when then Office of the Attorney General of Virginia was contacted and the attorney cited this Virginia law. Defendant Vardy's actions also violate the spirit of Va. Code 20-124.3 by her acting for the other parent, "The propensity of each parent to actively support the child's contact and relationship with the other parent." Defendant's Vardy's **false representation** to the Honorable Court of a fictional "EMERGENCY" so to manipulate the court to terminate father and son visitation.

6. This is not the first time Defendant Vardy and the Mother have presented false "facts" and claims to the court, exhibit #1. She has repeatedly made false statements in court and motions and has previously manufactured abuse / emergency claims to interfere with the Constitutional Rights of the Father and Son to have a relationship. This includes but is not limited to filing for a protective order that was so unfounded that it was not only dismissed and expunged but Court ordered the child placed in the Fathers

care for daycare. Another example is Defendant Vardy's June 11, 2003 filing asking for a change in the Pendente Lite order due to claims of badgering by the Father and trying to paint the Father as committing child abuse and claimed that her client found his actions "especially distressing", Ms. Vardy dropped the motion when she found out that the Father had audio recordings to prove false all her claims and in fact show that the Mother laughed and enjoyed the joke the Father and Son played on her, and that the Mother had played similar jokes with the child in the past.

7. The conduct of Mrs. Smith and Mrs. Vardy is disrupting Liam's life and doing irreparable emotional harm to him and his Father. As acknowledged by ALL parties including Mrs. Smith, Mrs. Vardy, Mr. Fahy, Liam loves his father and desires to spend time with him. As a result of the abuse of Due Process by attorney Vardy and his mother, Liam has been denied access to his father, has become "clingy", and has recently begun to question if his mother will throw him (Liam) in jail. Why? Because Liam loves his Father and associates quite closely with his Father, and Mrs. Cheri Smith, the mother of Liam, not respecting his relationship with his father, uses the police and threat of jail to keep father and son apart. Other times, when it suits the Mother's convenience, she "dumps" Liam on his Father. The Father is more than glad to cancel or rearrange his plans for his first priority to care for his son, but the extremes in his Mother's handling of Liam causes the child much distress.

8. The court should be following VA 20-124.3 and apply the proper "**Best interests of the CHILD**" standard and not the illegal "**Best interests of the MOTHER**" standard that is seen in all too common use in this and other cases of fathers being denied access to their children. All the parties in this case acknowledge the Liam's interest in wanting to be with his Father, that he has a good time with his Father. Mrs. Smith even

has acknowledged IN WRITING our son's interest in spending time with his cousins. So from our son's point of view, or his BEST INTERESTS, he got to spend time with his father, got to play with his cousins, got to visit uncles and grandma, got to go sledding... all of which he enjoyed and then was picked up by his mother. The only negatives from the Child's point of view are those imposed by Ms Vardy, Mrs. Smith, in not letting him repeat the visit more often, and of now preventing any visitation with his father. Even Mrs. Smith, Exhibit 2, **Date:** Fri, 11 Jul 2003 12:29:12 -0400, herself has stated "**It was really hard for him while you were gone – I don't want to ever have to see him go through that again.**" Thus the court is being asked to take action that **WILL HARM THE CHILD** as a remedy for actions that the child enjoyed. How pray tell is this decision in the BEST INTERESTS OF THE CHILD? Without any evidence to indicate that visitation is causing harm to the child, the Court stopping visitation is at odds with his best interests. The request by attorney Vardy for Mrs. Smith shows a lack of good judgment in the welfare of the minor child Liam, and as such the court **IS REQUIRED** to consider that poor judgment per items 3, 4, 6, 7 of § 20-124.3

9. A sad question for the Court to consider to clarify the situation here is this: "If Liam's mother Cheri Smith were to die from an automobile road rage accident coming home from work, or by contracting a communicable disease from a co-worker, would the Father be granted Custody of his son Liam?" If the Court's answer is yes, as well it should be given all the facts before it, and given the law it is duty bound to uphold and apply in an impartial manner, then it is wholly an "*improper purpose*" for the mother's attorney to file in this Court an Emergency Motion to Terminate Visitation. Defendant Vardy has violated both the letter and the spirit of Virginia Code 20-124.3 and 8.01-271.1, and should be sanctioned.

WHEREFORE the Appellants request that the Court enter an Order granting the two of them the following relief:

1. In compliance with Virginia Code 20-124.3 due to this wrongful and malicious EMERGENCY MOTION serving as evidence of the illegal intent of attorney and mother to terminate the rights of fathers and son in sharing time together, Appellants request the Court Order a transfer of Sole Legal and Physical Custody to the Father within two weeks of the Order, and at the same time of the transfer of child custody Order being signed, order the financial provisions of paragraphs 4 and 5 below, so to allow the Father the finances to re-establish his home near the school in Woodbridge for Special Needs children where he lived until 22 December 2004, and where for a year after the sale of the marital home the Father lived and where he cared for his son Liam. For over a year, the proceeds of the marital home sale have been held by the Court away from the Father.

2. As an alternative to paragraph 1, above, an order at least to Amend the father and son rights to time together (visitation) of the *Pendente Lite* Order of 3 October 2003, and the herein Appealed to vacate the Amended PENDENTE LITE ORDER signed on 18 January 2005. The proposed Amended PENDENTE LITE ORDER is simply for father and son visitation to 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 is again in this paper.] Further, the proposed new amended Order, will include the financial provisions of paragraph 4 and 5 below, so to recognize and enable

the self-employed status of Wesley Smith in a fledgling 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.

3. Issue a Rule to Show Cause against the Appellee/Complainant Cheri Smith for repeated violations 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...”

4. Release to the Appellant Wes Smith \$40,000 from his clearly equitable portion of the sale of the marital home. The amount cleared from the sale of the \$340,000 home was \$180,000, held since December 2003 in escrow. For improper purpose to drive Appellant to insolvency or bankruptcy so she and her client can have a tactical advantage, Defendant Vardy objected to the \$63,000 requested on 1 November, and the \$50,000 that Complainant Counsel Loretta Vadry wrote to former attorney for the Defendant, John Whitbeck who controlled the escrow account asking be released. Receiving his half portion of the house sale, or \$90,000 even though Wes Smith paid far, far more into the house due to his prior Federal Government employment. The Court may wish to reduce to \$40,000 from the \$90,000 due to Appellant Smith in that \$50,000 was released to his mother on 3 December. These funds equitably due him will allow him to reestablish a home near the special needs school where his son Liam attends and to be in a position to provide the day care as Judge Becker ruled on 5 May 2003.

5. 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 on 5 May 2003. If Appellee/Complainant is willing to pay that amount to a third party, then if she is not guided by vindictiveness toward her husband as this current Emergency Motion suggests she or her attorney Defendant Vardy is so destructively guided, she as a truly loving mother , would be happy to pay an equal amount to the Father, Wesley 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.

6. Award the Appellants Liam and Wesley Smith an amount equal to the billings of Counsel Vardy because of the father’s indigent status, in large part caused by the vexatious litigation of attorney Vardy in violation of Virginia Code 8.01-271.1, he has been unable to hire an attorney and so has been forced to proceed *Pro Se*, or as “for self attorney”. As such, in the interests of true fairness, and justice in the courts, rather than the courts being a playground for the profit of attorneys, then an amount equal to the billings of attorney Vardy, which she has refused to provide to the Father, should be awarded to the *Pro Se* party, as a modicum of the Courts showing an even-handed, level playing field for litigants who are both represented by members of the Bar and those litigants who proceed *Pro Se*.

7. Issue a Court Sanction against Counsel Loretta Vardy for violation of the letter and the intention of Virginia Code 8.01-271.1 and 20-124.3.

8. 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*

Wesley C. Smith
c/o Mrs. Carole Smith (mother)
1605 Putnam Dr
Midland, MI 48640
(703) 220-2637 (cell)
Appellant/Plaintiff/Defendant

Formerly of:
3215 Ridge View Court, Apt. 104
Woodbridge, VA 22192