

VIRGINIA:

IN THE COURT OF APPEALS OF VIRGINIA

WESLEY SMITH,)
)
 APPELLANT / Defendant, pro se)
)
 v.) **Record No. 0272-05-4 (1-3-05 order)**
)
 CHERI SMITH,)
)
 APPELLEE / Plaintiff)

APPELLANT’S REPLY TO ODER OF APRIL 20th 2005
AND MOTION TO SUSPEND ENFORCEMENT

Note an electronic copy of this motion is available at:
http://www.liamsdad.org/court_case/suspend_visitation/2005.05.03_reply_due_process.pdf
Additional related documents, motions, orders are available at:
http://www.liamsdad.org/court_case/suspend_visitation/index.shtml

1. The Appellant is unable to provide a transcript or detailed statement of facts of the hearing on January 3, 2005 because the Appellant was living in Michigan at the time as was not given sufficient notice to be able to attend.
2. Appellant cannot afford a court reporter – see Circuit Court order, 9/24/2004 to proceed without fees or costs.
3. § vs-cr-5A:8 does discuss the lack of a transcript or statement of facts “**necessary to permit resolution of appellate issues**”, it does not discuss the lack of a official transcript or statement of facts that **are not necessary** to permit resolution of appellate issues.
4. The Appellant believes that a transcript of the hearing or signed statement of facts is not necessary to rule on the appeal, and the Appellant will provided the Court with all of the information needed to permit resolution of Appellant issues.
5. The motions and notices that were filed with the Circuit Court along with the evidence the Circuit Court refused to let the Appellant present at the Jan 18th hearing, including

photo's of the child, <http://www.liamsdad.org/liam/photos.shtml>, enjoying his Christmas visit to Michigan, the very thing the father is punished for, evidence that the claims in the Appellee's motion were false, combined with the legal and due process errors are sufficient to show that the hearing/order did not comply with constitutional, statute, and rule requirements, and thus should be vacated or declared null and void.

6. Certainly it is obvious that regardless of what happened at the hearings that with the Appellant being only accused of a minor technical violation of the court order, having made a good faith effort to comply with the order, with no showing of harm to the child, and having been deemed a **loving father** by Judge Becker, and **fit to care for the child instead of the daycare** the mother wanted, with the GAL writing that that “**the father is clearly capable of caring for Liam and Liam is attached to his father**”, the punishment imposed violates the 8th amendment by imposing a cruel and unusual punishment totally inappropriate for the situation, punishes our child for acts of a parent, and seems solely imposed due to gender bias thus violating the equal protection clause, and also violating both the Appellants and child's constitutional rights to a father/son relationship. The fact that the court chose this punishment, where greater violations by mothers are punished with warnings is a gross abuse of discretion that should not be tolerated.
7. The due process violation in not being allowed sufficient time to attend is grounds and fraud by the Appellant in her claim of when she sent notice is enough to void the order as well as hearing the order at all since the court refused to hear motions for the Appellant, thus violating equal protection.

8. Allowing the court to impose and enforce this order would be a great injustice. The very idea that a father should be deprived of spending time with a child, or a child of spending time with a loving father, thru no fault or breaking of law by himself but rather because the mother broke the law by committing adultery and finds it inconvenient to share the child with the father is a gross miscarriage of justice that cannot be tolerated by any court interested in justice.
9. Before the hearing the Appellant did send the judge a letter indicating that was not served in a legal manner, did not have sufficient time to attend the hearing, that although the motion was labeled “EMERGENCY” that no emergency was stated, that the court had previously ruled not to hear any more Pendente Lite motions and had refused to hear to the ones I had filed, that the relief requested would be harmful to the child, that the mother had previously written that it was harmful to the child to be away from me and that she did not want it to happen again, that I had made a good faith effort to comply with the court order, and requested that the court deny or reschedule the hearing.

QUESTIONS PRESENTED

1. Does a father, as opposed to a mother, qualify for any constitutional protections, including, due process, right to present evidence, parental rights, etc?
2. Does granting the equivalent of the death penalty in a custody case without a showing of a parent being unfit, or even harm to the child violate constitutional rights?
3. Does that fact the opposing party is a woman give the judge the ability to ignore the constitution, due process, and state laws, including § 20-124.3 which states the standards that should be applied, and § 20-124.2 “frequent and continuing contact with **both** parents”?

4. Did the judge abuse his discretion by refusing to continue the case to allow the Appellant to attend?
5. Did the judge abuse his discretion by refusing to consider “all the facts” as required by § 20-124.2, including the fact that the mother herself wrote that it was hard for our son to be away from his father and that she “I don't want to ever have to see him go through that again”?
6. Did the judge abuse his discretion, or constitutional rights by imposing a cruel and unusual punish for a minor technical violation when mothers get significantly less punishment, and even a father whose negligence resulted in the death of a child was given a lesser punishment by this judge (apparently due to the mother supports the father)?
7. Did the court abuse its discretion by punishing the Appellant for fighting for his constitutional rights by trying to prove adultery as grounds for divorce?
8. Did the court abuse its discretion by imposing a significant punishment that causes both the Appellant and the child irreparable harm?

WHEREFORE, the Appellant requests that this court hear the appeal and also that it suspend enforcement of the January 3rd and 18th orders, and take any other steps appropriate to help the Appellant maintain a relationship with his son pending the outcome.

**Respectfully submitted,
WESLEY C. SMITH**

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CERTIFICATE OF SERVICE

I hereby certify that on May 3^h 2005 a true copy of the foregoing was mailed via first-class mail to:
Attorney for Plaintiff: Loretta Vardy 12388 Silent Wolf Dr, Manassas VA 20112 (703) 919-1417
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Wesley C. Smith