V I R G I N I A:

IN THE COURT OF APPEALS OF VIRGINIA

WESLEY SMITH,	)	
	)	
APPELLANT / Defendant, pro se	)	
	)	
v.	)	**Record No. 0916-05-4 (1-18-05 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_transcript_not_needed.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 of the hearing on January 18, 2005 because the Appellant cannot afford a court reporter – see Circuit Court order, 9/24/2004 to proceed without fees or costs.
2. The Court due to misrepresentation by counsel for the Appellee has refused to let the Appellant record hearings thus making it very difficult for the Appellant to make a detail statement of facts.
3. Both the court and the Appellee have refused the Appellant access to marital assets that would have allowed the Appellant to hire a court reporter. The Appellant should not be denied the ability to appeal, to equal protection and due process rights, just because the Appellee wishes to deprive the Appellant of a fair trial. There are many court rulings that the poor should not be deprived of the same right to appeal as those who are not poor.

4. In Carlton v. Paxton, Va. App. , 415 S.E. 2d 600, the Court allowed an appeal to proceed without a transcript or written statement under Rule 5A:6 and 7 because the trial judge did exactly what counted for nothing. That is the case here; the judge refused to hear evidence but just made the previous ruling by a different judge permanent.
5. § vscr-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.
6. 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.
7. 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, along with affidavits of witnesses supporting the claim that the judge threatened the Appellant with jail for attempting to present evidence that the claims in the Appellee's motion were false, combined with the legal and due process errors in this and the Jan 3rd 2005 hearing which the Jan 18th 2005 hearing was based on, are sufficient to show that neither hearing/order complied with constitutional, statute, and rule requirements, and thus should be vacated or declared null and void.
8. 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.

9. 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.
10. Before the hearing the Appellant did file specific objections with the court, and a **Proposed Statement Of Facts** including that the "facts" claimed in the motion by the Appellee were false, along with evidence to support that, and objections based on state laws, and the Appellant attempted to voice the same at the hearing. The Appellant also noted some written objections on the ruling itself, including being denied ability to present evidence, and lack of notice of hearing and other comments that indicate constitutional and due process violations.

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 hear evidence that the Appellee had lied in her motion requesting visitation suspended?
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 by holding a hearing without the GAL present, thus denying our son of any pretense of having representation at the hearing?
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 3h 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
Guardian Ad Litem:	Ronald Fahy	9236 Mosby St # A, Manassas VA 20110	(703) 369-7991

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Wesley C. Smith