

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Commonwealth of Virginia)
)
v.)
)
Wesley Smith)

CASE NO: MI-2005-1559

DEFENDANT’S STATEMENT OF FACTS

COMES NOW the Defendant, Wesley C. Smith, who was unable to pay a court reporter, and whose request for a court reporter was denied by the court, requests that Judge Finch sign the following statement of facts.

1. The Defendant is the non-custodial parent of a 8 year old son with Down Syndrome
2. Per an order of the Circuit Court of Prince William County, dated 10/2/2003, the child’s mother was required to forward to Mr. Smith all copies of invitations to school events so that he might attend.
3. Due to the child’s Mother not following the provision and Mr. Smith missing out on several school events, the Court signed a rule to show cause and in an order dated 03/03/2004 and specifically ordered the child’s Mother to supply “notice of Special Events” at school to Mr. Smith so he could attend.
4. Per the order, the child’s Mother forwarded to Mr. Smith an invitation from the school that specifically invited parents to a school event on June 17th, 2005.
5. There is not, and was not on June 17, 2005, any court order in place barring Mr. Smith from participating in his son’s school activities.
6. Mr. Smith attended his son’s school event on June 17th and was subsequently arrested, charged with trespass under Va. Code Ann. § 18.2-119.
7. The Defendant was held in jail in solitary confinement for the entire Fathers-Day weekend and released the following Monday on a \$1,000 bond.
8. Mr. Smith could not afford an attorney so the District Court appointed Dawn Butorac of the Office of the Public Defender to represent him.

9. Mr. Smith requested both orally and in writing that Ms. Butorac defend him based on state law Va. Code Ann. § 22.1-4.3 which specifically requires schools to allow non-custodial parents such as Mr. Smith to attend their children's school events unless a court order specifically prohibits attendance, combined with established case law such as O'Banion v. Com., that a person with a claim of right can't be convicted of trespass.
10. Ms. Butorac refused to present either the state law or the relevant case references at the trial in District Court on Aug 8, 2005; as a result Mr. Smith was convicted and given a suspended sentence.
11. Mr. Smith having not obtained a ruling based on the state law and case rulings appealed the case to the Circuit Court.
12. On Sep 6th, 2005 while waiting for the scheduling hearing, Ms. Butorac again advised Mr. Smith that her office was unwilling to present the state law and case rulings in Circuit Court. Mr. Smith informed her that the whole point of the appeal was to get a ruling based on the law and that he intended to get a ruling based on the law, not just gender/custody politics.
13. Ms. Butorac informed the Defendant if her office was unwilling to represent him if he insisted on having the relevant state laws and case rulings presented.
14. Mr. Smith asked Ms. Butorac if her office would at least be willing to present legal assistance/advice to subpoena documents, witnesses etc, and was told they would not.
15. Mr. Smith brought the matter up with the Judge who informed Mr. Smith he had a choice between the Public Defender (Who was refusing to represent him) or representing himself. Mr. Smith clearly stated to the Judge that he did not want to represent himself but that the Public Defender was refusing to represent him and present the relevant state law and case rulings.
16. The Judge instructed Mr. Smith to sign a waiver if he was unwilling to have the Public Defender represent him given their refusal to represent him as clients instead of representing themselves.

17. Mr. Smith having already noted his objection to the Judge about the conduct of the Public “Defender” and also having clearly stated that he did not wish to represent himself did sign the waiver to avoid contempt of court.
18. On Sep 24, 2005 Mr. Smith filed a Request For Witness Subpoena for several school employees including Superintendent Dale.
19. On Sep 26, 2005 Mr. Smith filed a MOTION TO DISMISS on the grounds that Va. Code Ann. § 22.1-4.3 and Fairfax County School Board’s regulation number 2240.3 both of which state that a non-custodial parent is allowed to attend school events unless a court orders specifically states otherwise, constitutes a bona fide claim of right and that per Virginia case law, a person with a bona fide claim of right cannot be convicted of trespass.
20. On Sep 26, 2005 Mr. Smith filed a MOTION FOR ATTORNEY requesting the court to appoint an attorney for him.
21. On Oct 4th 2005, the day before the trial, the school district filed a motion to quash the witness subpoena of Superintendent Dale.
22. On Oct 5th 2005, The Circuit Court with Judge Finch held a trial on the trespassing charge.
23. Judge Finch denied the Defendant’s MOTION FOR ATTORNEY without any meaningful discussion and without giving any indication he had read the motion.
24. When the Defendant tried to explain to the Judge why an attorney was needed Judge Finch cut him off and stated the Defendant already had a ruling.
25. The Defendant tried to present the court with a written MOTION FOR COURT REPORTER.
26. Judge Finch refused to take the paper copy of the motion or to read the MOTION FOR COURT REPORTER.

27. The Defendant pointed out he would appeal if found guilty and wanted the ability to have a transcript for the appeal.
28. Judge Finch responded that the Defendant shouldn't be so pessimistic and that perhaps he might win the case.
29. Judge Finch denied the Ruled against the MOTION FOR COURT REPORTER and said not approve a court reporter for a misdemeanor.
30. There was a court reporter present and ready and Judge Finch instructed her not to record the hearing.
31. When Judge Finch observed the court reporter manipulating her equipment he questioned her to ensure she was not recording the hearing.
32. The Defendant requested to be able to tape record the hearing and informed the court he had brought a tape recorder for that purpose.
33. Judge Finch denied the Defendants request to tape record the hearing.
34. The Defendant requested that Judge Finch hear his MOTION TO DISMISS before hearing the motion to quash or holding the trial and pointed out that it might eliminate the need for a trial.
35. Judge Finch refused to rule on the motion to dismiss.
36. Instead of hearing the MOTION TO DISMISS Judge Finch head the Schools MOTION TO QUASH WITNESS.
37. The Defendant objected to hearing the motion, as it wasn't filed until the day before the trial and he didn't receive a copy of it until the night before the trial, denying him adequate time to prepare a response.
38. The Defendant tried to present the Judge with a written DEFENDANT'S REPLY TO MOTION TO QUASH.

39. Judge Finch refused to take the paper copy of the motion or to read the DEFENDANT'S REPLY TO MOTION TO QUASH.
40. The Defendant presented e-mail from the superintendent in which the superintendent made statements about the case, including one where superintendent Jack Dale stated, "The father in question has several court orders prohibiting contact and presence on school property. The principal was following police and court directives."
41. Judge Finch had previously personally met with Jack Dale and did not make that fact known to the Defendant.
42. In spite of the superintendent having made specific statements about why the Defendant was charged with trespassing, Judge Finch ruled to quash the subpoena for the superintendent.
43. There was a break while the Judge dealt with other cases.
44. The prosecutor via a Public Defender offered the Defendant a plea with a penalty of a Peace Bond.
45. When the case resumed the prosecutor stated he was not seeking jail time.
46. The Defendant attempted to present the court with a written DEFENDANT'S MOTION FOR CLARIFICATION OF CHARGES, and stated by clarifying the charges the trial could be shorter and more focused.
47. Again Judge Finch refused to take the paper copy of the motion or to read the DEFENDANT'S MOTION FOR CLARIFICATION OF CHARGES.
48. The Defendant requested again that Judge Finch rule on his MOTION TO DISMISS.
49. Judge Finch again refused to rule on the MOTION TO DISMISS and said the Jury was waiting and that he wasn't going to keep them waiting any longer.
50. The Defendant pointed out that a ruling on the MOTION TO DISMISS might eliminate the need for the Jury.

51. The Jury was brought in and several jurors were removed.
52. The prosecution gave its opening statement.
53. The Defendant gave his opening statement, including holding up a CD recording of the incident in question and told them he would play it for them so they could judge for themselves instead of having to rely on witnesses unreliable recollections of the incident. The Defendant also said that state law and school district policy both give him the right to attend his son's school events and that according to case rulings the prosecutor would have to show he had a criminal intent and did not think he had a right to attend the event at school.
54. The prosecution called principal Roger Dick Vanderhye as its first witness.
55. The prosecution entered as evidence the "no trespass" letter that the school issued the Defendant after the police arrived at the school.
56. Mr. Vanderhye testified that the Defendant did sign in at the principal's office.
57. Mr. Vanderhye testified that most parents could just sign in and got to the event but that he had instituted a "Red Flag" policy for custody cases.
58. Mr. Vanderhye stated that non-custodial parents must see him first before attending school events.
59. Mr. Vanderhye stated that the Defendant knew he had to talk to him first.
60. Mr. Vanderhye testified that his "Red Flag" policy was not written, and that the school board did not approve it.
61. Mr. Vanderhye stated that when the Defendant went to his son's class room that the teacher Ms. Richards was shocked.
62. Under cross examination Mr. Vanderhye went on an on with claims the Defendant wore t-shirts Mr. Vanderhye didn't approve of and that the Defendant had a website with comments about the custody case that Mr. Vanderhye didn't approve of, including evidence of the Defendant's wife's adultery.

63. The Defendant objected to Mr. Vanderhye going on about these claims instead of answering the question asked of him.
64. The Judge refused to order Mr. Vanderhye to answer the question and allowed him to continue his tirade against the Defendant.
65. The Defendant was confused why a Judge would allow such comments that were not related to the case, but after Mr. Vanderhye went on about being called a “White Collar Child Abuser” on the website it became clear that Judge Finch was allowing the commentary due to Judge Finch having been upset with the content website in connection with an unrelated case.
66. Judge Finch handled the custody case of Ron Jagannathan and ordered Ron Jagannathan to have pages referring to Janine Saxe and Mr. Robert Machen as “White Collar Child Abuser” s removed from the Defendant’s web site. http://www.liamsdad.org/others/sveta_lisa.shtml
67. Since the Defendant was not a party to the Jagannathan case Judge Finch had no ability to order the Defendant directly to remove the information from his website and tried to coerce Mr. Jagannathan into getting it removed.
68. The attempt by Judge Finch to have information removed from the Defendant’s website is a gross abuse of his First Amendment Rights that Judge Finch had no legal authority to attempt. His actions were privately motivated and not as a result of his honoring his office or judicial responsibilities.
69. On April 29, 2005 The Defendant via e-mail notified Mr. Jagannathan to cease his court ordered harassment of the Defendant stating “Should Judge Finch have any problem with tolerating my free speech about the case then perhaps he deserves to be added to my hall of shame so that others will know that not respect first amendment rights any better than he respects parental rights. Please stop asking me to remove the information, if you do so again I'll add judge finch to my hall of shame for fist amendment violations.”

70. Once the Defendant realized that Judge Finch was the same Judge who was previously upset with his website and that Judge Finch appeared to be abusing his discretion as a result, the Defendant made an oral motion for the Judge to recuse himself.
71. Judge Finch refused to recuse himself.
72. Judge Finch added a blatant lie that he had never heard the phrase “White Collar Child Abuser” before.
73. Cross-examination of Mr. Vanderhye continued.
74. The Defendant presented Mr. Vanderhye with a copy of District Regulation 2240.3 and asked him to read the section about noncustodial parents have the same rights to attend events as custodial parents unless a court order specifically states otherwise and that visitation schedules do not constitute a specific limitation.
75. The Defendant presented Mr. Vanderhye with a copy of state law 22.1-4.3 and asked why Mr. Vanderhye applied his own “Red Flag” policy instead of state law 22.1-4.3 or the District Regulation 2240.3 that applies to participation by parents in custody cases, Mr. Vanderhye stated he must protect children.
76. The Defendant repeatedly tried to question Mr. Vanderhye about the custody orders he and the superintendent claim are related to the case and which he may have told the superintendent about and each time Judge Finch would interrupt and say he would not allow the Defendant to ask questions about the custody orders.
77. Mr. Vanderhye stated that he perceived the Defendant as a danger due to his bulging fanny pack.
78. Mr. Vanderhye did not make any comment about his fears subsiding after he observed the Defendant take a camera out of his fanny pack to take pictures of his son.
79. The Defendant asked Mr. Vanderhye how many times the Defendant had been to the school. Mr. Vanderhye stated he was only aware of 3 or 4 visits by the Defendant to the school.

80. The Defendant asked Mr. Vanderhye if he was aware of the Defendant bringing his son to school on a weekly basis and entering the school each time to drop him off. Mr. Vanderhye indicated he was unaware of that taking place or that being a provision of the custody order.
81. Mr. Vanderhye stated he needed to find out why the Defendant was there at the school.
82. The Defendant presented Mr. Vanderhye with the notice the school sent that specifically invited parents to the event along with the envelope the child's mother sent it in to the Defendant, per the custody order.
83. Mr. Vanderhye admitted to knowing the school was holding a first grade Field Day and that the school had invited the parents to attend.
84. Mr. Vanderhye also justified his actions by stating the Defendant had taken his son to Michigan.
85. The Defendant asked Mr. Vanderhye if he was aware of the previous trips that he had taken to Michigan with his son. If he was aware the custody order allowed the trips, and if he had seen the photos from his various trips on his website.
86. The Defendant asked Mr. Vanderhye if he had anything against the Defendant's son being allowed to spend Christmas with his grandmother and other relatives in Michigan as allowed by the custody order.
87. Mr. Vanderhye stated that when the Defendant went to his son's class room that the Defendant's son was in the classroom.
88. When asked what the Defendant was doing when Mr. Vanderhye entered the classroom, he stated the Defendant was sitting with his son, Liam, eating Chick Fillet as were the other children and parents.
89. Mr. Vanderhye testified there were no signs or fence present to support his claim that the school owned the soccer fields next to the school where the Defendant was arrested.
90. The Defendant attempted to present photos of the soccer fields on both sides of the street, including a sign indicating the field next to the school as a "McLean Youth Soccer Field" and across the street as a park with soccer fields.

91. Judge Finch admitted one or two of the photos close to the school itself but refused to admit most of the photos thus preventing the Defendant from showing that a reasonable person would not believe the property belonged to the school but was rather part of the remaining soccer fields.
92. The Defendant attempted to ask questions about the property boundaries, how Mr. Vanderhye arrived at his knowledge of the boundaries, the look of the supposed soccer field compared to the others and Judge Finch repeatedly cut off questioning preventing the Defendant from finding out exactly how Mr. Vanderhye learned of the boundaries, where he thought they were, and how anyone was supposed to know where the boundary is.
93. Mr. Vanderhye testified there were no previous no-trespass notices barring the Defendant from school property.
94. The Defendant asked Mr. Vanderhye to look at a photo of the Defendant at the event, taken by his son, and asked Mr. Vanderhye if there was any offensive or obscene material on the Defendant's shirt.
95. The photo showed the Defendant wearing a red t-shirt with blue trim and no words or photos other than a white sticker with the letter 'V' on it.
96. Mr. Vanderhye admitted the only item on the shirt was the sticker that was issued by the school to the Defendant to indicate he had signed in at the office as a visitor.
97. When Mr. Vanderhye was asked if he had joked about calling the Marines, etc in the District Court Trial, Mr. Vanderhye had stated it was Judge Davis who made the joke not him.
98. At several points during the cross-examination the Defendant held up copies of the recordings and transcripts of the incident and District Court trial and attempted to use them to impeach the testimony of Mr. Vanderhye as his testimony differed in material details from that which was recorded during the incident as well as that which he testified to at the District Court Trial.

99. Judge Finch repeatedly refused to let the Defendant use the transcripts and recordings to impeach Mr. Vanderhye and to show that his testimony differed from his previous testimony and differed from what actually occurred during the incident.
100. The Defendant was repeatedly quite insistent on using the transcripts even going so far as to continue reading from them after the Judge interrupted him to say he wasn't going to allow use of the transcripts or recordings.
101. The next witness called by the prosecution was police officer Beyer.
102. Officer Beyer testified that the Defendant claimed he could do anything he wanted, that she had to pry his son away from the Defendant and that she told the Defendant not to go to the Soccer fields.
103. Officer Beyer testified that when the Defendant left the officers he went down the side walk to the end of the parking lot and then veered left onto the soccer fields where he was arrested.
104. Upon cross-examination of Officer Beyer the Defendant questioned her if she was sure she told the Defendant that he couldn't go to the soccer fields rather than that he couldn't see his son. She repeated she had told the Defendant he couldn't go on the soccer field.
105. The Defendant attempted to read her exact words from the transcript but again the Judge interrupted him and prevented Officer Beyer and the Jury from hearing the actual words she uttered.
106. The prosecution didn't present any evidence about the exact property boundaries of the school.
107. At the end of the prosecutions case the Defendant made a MOTION TO STRIKE pointing out that the prosecution had not presented evidence to show that he did not have a claim of right to attend, that he had any criminal intent, that he had any reason to believe the soccer field was owned by the school, and in fact that no evidence had been presented to show that the school owned the soccer field, and that no evidence had been presented to show that Mr. Vanderhye had authority to instruct someone to leave the property in contradiction to school district policy.

108. Judge Finch ruled against the Defendants MOTION TO STRIKE.
109. The Defendant called Ms. Richards, his son's teacher, as a witness.
110. The Defendant asked Ms. Richards about his behavior at the class party.
111. Ms. Richards stated that the Defendant was not disruptive, that he behaved appropriately.
112. Ms. Richards stated that his son was happy to see the Defendant.
113. Ms. Richards said that the testimony of Mr. Vanderhye was incorrect and that the Defendant's son was not in the classroom when the Defendant entered and that the Defendant was correct that his son was brought to him in the class room after a few minutes wait.
114. Ms. Richards went on to make excuses for why Mr. Vanderhye was unaware that the Defendants son was not in the classroom and why he didn't take any steps to keep the Defendant away from his son.
115. Mr. Richards indicated that the problem wasn't with the conduct of the Defendant but rather that Mr. Vanderhye had told her that according to the mother the Defendant was not to have any contact with their son without her permission.
116. The Defendant called Officer Colwell as a witness.
117. The Defendant asked Officer Colwell about his conduct during the incident.
118. Officer Colwell indicated the Defendant did not resist arrest, did not yell at the police, did not show anger at the police for arresting him.
119. The Defendant asked if he was refusing to leave or still moving away from the school when arrested.
120. Officer Colwell stated the Defendant was still moving and was heading away from the school when arrested.
121. The Defendant asked if the school gave the Officer a copy of a previous "no trespass" letter.

122. Officer Colwell stated the school did not, that he had the Defendant wait while the school wrote up a “no trespass” letter.
123. Officer Colwell stated he told the Defendant he needed to leave now.
124. The Defendant asked if it wasn’t the case that instead it was the Defendant who asked to leave instead of being told to leave.
125. The Defendant again tried to refer to the transcript and again Judge Finch interrupted and refused to let the Defendant use the transcript to correct the statement of the officer.
126. At the end of his case the Defendant again made a MOTION TO STRIKE
127. Judge Finch denied the MOTION TO STRIKE
128. The prosecution made closing statements.
129. Closing statements were made by the Defendant, during which Judge Finch interrupted and objected to the Defendant reading a portion from state law 22.1-4.3 and added his own comments on the law.
130. The Defendant also pointed out that the testimony given differed from the actual facts and the previous testimony and that the Jury had been prevented from knowing the truth by the Judge by excluding the recordings and transcripts.
131. Three instructions were given by the Judge to the Jury and the Jury began deliberations
132. During the entire trial the demeanor of Judge Finch toward the Defendant was dismissive.
133. About 15 minutes after starting deliberations the Jury asked a question which the Judge read. The Jury had requested to know if Mr. Vanderhye had told the Defendant to leave before or after the police were called.
134. Judge Finch said his response to the Jury was that they would have to rely on the testimony of the witnesses.

135. The Defendant pointed out he had recordings and transcripts that would show the truth that Mr. Vanderhye never instructed him to leave either before or after the police arrived and suggested the evidence be provided to the Jury
136. Judge Finch refused to provide the Jury with the recordings or transcripts that would have answered their question.
137. The Jury deliberated for about another hour and 15 minutes before returning a guilty verdict.
138. The prosecution made a statement about sentencing.
139. The Defendant declined to make a statement about sentencing.
140. The Jury returned a sentence of a \$100 fine.
141. Judge Finch made a ruling of guilty and a \$100 fine and indicated he would give the Defendant time to pay the fine. The Judge did not make any mention of court costs in his ruling.

WHEREFORE the Defendant requests the court certify this statement of facts.

**Respectfully submitted,
Wesley C. Smith
Defendant**

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Circuit Court Judge Finch

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing was mailed first-class, postage pre-paid, to Fairfax County Commonwealth's Attorney's Office, 4110 Chain Bridge Rd., Room 123, Fairfax, VA 22030 on Nov 23, 2005.

Wesley Smith