

5. The Plaintiff behaved appropriately and was not disruptive, and the Plaintiff's son was happy to see him.
6. The Plaintiff's wife did not attend.
7. The Defendant, in violation of state law § 22.1-4.3, and in violation of School District Regulation 2240.3, both of which require the Defendant to allow the Plaintiff to attend his son's events unless a court order specifically prohibits attendance, called the police and had the Plaintiff falsely arrested and charged with trespass under Va. Code Ann. § 18.2-119.
8. The Plaintiff was held in solitary confinement for three days, the entire Father's Day weekend, in the Fairfax Adult Detention Facility without appropriate necessary medication being provided to him.

JURISDICTION

9. Jurisdiction of this court arises under § 17.1-513

FACTS

10. The Plaintiff is the non-custodial parent of a 8 year old son with Down Syndrome who attends Spring Hill Elementary
11. Spring Hill Elementary held a class party for the Plaintiff's son on June 17th 2005 and specifically invited parents to attend on a flyer announcing the event.
12. The Plaintiff had a legal right to attend, per Va. Code Ann. § 22.1-4.3 which specifies:

“Unless a court order has been issued to the contrary, the noncustodial parent of a student enrolled in a public school or day care center... **shall not be denied the opportunity to participate** in any of the student's school or day care activities in which such participation is supported or encouraged by the policies of the school or day care center.”
13. This affirmation of non-custodial parents' rights to participate in their children's school activities is mirrored by the Fairfax County School Board's regulation number 2240.3, which specifies:

“A non-custodial parent retains rights to participate in the special education process, to receive information about the child, and to participate in certain school activities unless a valid court order specifically removes or limits those rights,” ... “**This regulation, not custody orders** or settlement agreements, governs school decisions, **unless a valid court order specifically directs the school to take a particular action.**”

“Joint and noncustodial parents have **the same rights to attend events at the school** (e.g., lunches with children, classroom visits, school productions) as the enrolling parent. No parent, including the enrolling parent, may limit the other parent's attendance at such events, or access to the student at school, unless a court order specifically precludes that parent from attendance at school or access to the student at school.

Visitation schedules contained in custody orders do not constitute a specific limitation on a parent's access to schools."

14. The Spring Hill Elementary Student-Parent Handbook expressly urges that parents are expected to participate in school activities. Moreover, the school party that took place on June 17th was clearly an activity in which parental participation was "supported or encouraged by the policies of the school," given that the school had invited parents to the event.
15. 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.
16. On the contrary, per an order of the Circuit Court of Prince William County, dated 10/2/2003, the child's mother was required to forward to Plaintiff all copies of invitations to school events so that he might attend. Due to the child's Mother not following the provision and Plaintiff missing out on several school events, the court issued a Rule to Show Cause and in an Order dated 03/03/2004 specifically ordered the child's Mother to supply "notice of Special Events" at school to Plaintiff so he could attend.
17. Per the court order, the child's Mother forwarded to Plaintiff an invitation from the school that specifically invited parents to a school event on June 17th, 2005.
18. Case law in Virginia has uniformly construed the statutory offense of criminal trespass to require a willful trespass. "As such, one who enters or stays upon another's land under a bona fide claim of right cannot be convicted of trespass. A bona fide claim of right is a sincere, although perhaps mistaken, good faith belief that one has some legal right to be on the property." *O'Banion v. Com.*, 30 Va.App. 709, 717, 519 S.E.2d 817, 821 (1999), citations omitted.
19. Because (a) State law, local school board regulations, and individual school policy all permit the Plaintiff to attend school events like the one in question; and (b) there was no court order in place prohibiting him from participating in such events; and (c) his presence at the class party was in response to an invitation that he had received from the child's mother, Plaintiff clearly had a bona fide claim of right, as defined by *O'Banion*, to be present at his son's school on June 17, 2005 and to participate in his son's class party.
20. Plaintiff lives in Dublin VA and drove 250 miles (one way) in order to attend his son's class party on June 17th.
21. Plaintiff went to the school office, signed in and was provided with a visitor's sticker to wear.
22. As the Plaintiff was proceeding to his son's classroom, the Defendant stopped him and verbally harassed him.

23. The Plaintiff avoided any argument with the Defendant and proceeded to his son's class where his son was happy to see him and they shared lunch together and his son introduced him to his classmates. The Plaintiff behaved appropriately and was not in any way disruptive.
24. The Plaintiff removed a gift for his son and a camera from his bag and he and his son took photos of each other.
25. The Defendant rather than let a handicapped child and his father enjoy their time together called the police and subsequently had the Plaintiff falsely arrested and charged with trespass under Va. Code Ann. § 18.2-119.
26. The Defendant purports to justify his refusal to allow Plaintiff to participate in this school event with the statement that he personally had "red flagged" the parties' file because it involved a court custody dispute.
27. However, cases involving custody cases are precisely the sorts of cases that Va. Code Ann. § 22.1-4.3 was enacted to address. Under this statute, school officials—whether acting on their own initiative or at the behest of the custodial parent—are prohibited from acting unilaterally to deny, on the basis of non-custodial status, a non-custodial parent's right to participate in their child's school activities.
28. The Defendant had no legal right to prevent Plaintiff from participating in his son's school activity on June 17, 2005.
29. The Defendant never took any legal action to bar the Plaintiff from the school.
30. In the absence of any legal bar from the school, both by law and school policy Plaintiff had every right to be present at his son's school on June 17, 2005 and to participate in his son's class party.
31. As a result of the Defendant's unlawful action, the Plaintiff was held in jail in solitary confinement for the entire Fathers-Day weekend and released the following Monday on a \$1,000 bond.
32. During the three days in jail Plaintiff was denied his necessary medication causing him significant discomfort and pain.
33. Defendant made and/or published one or more false statements, which were intended to impeach Plaintiff's honesty, integrity, virtue, or reputation. The statements imputed to the Plaintiff the commission of a crime.
34. The Plaintiff is not a public figure.
35. The defamatory statements resulted in liability to the Plaintiff.

36. School Superintendent Jack Dale made written statements that justified the arrest of the Plaintiff by falsely stating, "The father in question has several court orders prohibiting contact and presence on school property. The principal was following police and court directives."

37. The unlawful actions of the Defendant have caused the Plaintiff to make several 500-mile trips to Fairfax in connection with the trespassing trial at great cost and expense.

38. The Plaintiff has been required to spend numerous hours and great financial cost to defend himself in court due to the unlawful actions and false charges made by the Defendant.

39. The arrest has damaged the Plaintiff's reputation and will interfere with the Plaintiff getting his security clearance renewed thus significantly reducing his earning potential for the rest of his career.

DECLARATORY RELIEF

40. Plaintiff asks the court to rule that the conduct of the Defendant violated VA 22.1-4.3

41. Plaintiff asks the court to rule that the conduct of the Defendant constitutes professional misconduct

INJUNCTIVE RELIEF

42. Plaintiff asks the court to make an order requiring the Defendant to comply with VA 22.1-4.3 and to cease any action that interferes in any way with the Plaintiff's access to his son at school.

43. Plaintiff asks the court to make an order requiring the Defendant to educate his staff about VA 22.1-4.3 and School District Regulation 2240.3 and ensure that his staff complies with the law.

COMPENSATORY DAMAGES

44. Plaintiff seeks to recover actual damages, the amount of which is still accruing, but which is currently estimated to be approximately \$1,000. Defendant's above described conduct has effected Plaintiff to the extent that:

45. Plaintiff seeks compensatory damages of \$500,000 because Defendant's unlawful actions have injured Plaintiff physically and emotionally, causing him mental pain and suffering, loss of sleep, anxiety, worry, humiliation, indignity, embarrassment, and damage to Plaintiff's reputation and career.

46. All costs, including court costs and legal fees, now or in the future, to bring this action.

47. Any other compensation that the court in its wisdom may direct.

PUNITIVE DAMAGES

48. Defendant's conduct as described above is willful, intentional, and malicious resulting from insult and is associated with aggravating circumstances, such as willfulness, wantonness, malice, oppression, outrageous conduct, insult, fraud, and illegal conduct, callously indifferent to protected rights, thus warranting Plaintiff's recovery of punitive damages, to be determined by the Jury, but requested to be \$100,000.

JURY DEMAND

49. Plaintiff hereby demands a trial by jury on all counts.

**Respectfully Submitted,
Wesley C. Smith**

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