

**VIRGINIA:**

IN THE CIRCUIT COURT OF PULASKI COUNTY

WESLEY C. SMITH, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. CL 06-267  
 )  
 ROGER D. VANDERHYE )  
 )  
 Defendant. )

**DEFENDANT'S OBJECTION TO VENUE AND  
MOTION TO TRANSFER VENUE AND FOR COSTS**

Defendant Roger D. Vanderhye ("Mr. Vanderhye"), by counsel, and pursuant to Virginia Code §§ 8.01-264 and 8.01-266, hereby files the following Objection to Venue and Motion to Transfer Venue and for Costs ("Objection and Motion"). In support of his Objection and Motion, Mr. Vanderhye states as follows:

1. Plaintiff Wesley C. Smith ("Mr. Smith") is the non-custodial parent of a student at Spring Hill Elementary School, located at 8201 Lewinsville Road, McLean, Virginia. (Compl. ¶ 2.) The school is located in Fairfax County, Virginia, and is approximately 280 miles from the Circuit Court of Pulaski County.
2. The sole defendant in this case is Mr. Vanderhye, who is the Principal of Spring Hill Elementary School. (Compl. ¶ 2.)
3. This case arises out of Mr. Smith's arrest on a charge of criminal trespass on the grounds of Spring Hill Elementary School on June 17, 2005. (Compl. ¶ 7.) As a result of his arrest, Mr. Smith was confined in the Fairfax County Adult Detention Facility. (Compl. ¶¶ 8, 31.) He also was tried in Fairfax County, Virginia on that charge. (Compl. ¶ 37.)

4. Mr. Smith has alleged 10 claims against Mr. Vanderhye arising from the events of June 17, 2005, including a claim for violation of a Fairfax County School Board regulation. (Compl. ¶¶ 1, 13.)

5. Mr. Smith also seeks an injunction against Mr. Vanderhye requiring him to "cease any action that interferes in any way with the Plaintiff's access to his son at school" and "to educate his staff about [Va. Code §] 22.1-4.3 and School District Regulation 2240.3 and ensure that his staff complies with the law." (Compl. ¶¶ 42, 43.)

6. The Court should transfer this case to the Circuit Court of Fairfax County. Virginia Code § 8.01-260 provides that "the venue for any action shall be deemed proper only if laid in accordance with the provisions of §§ 8.01-261 and 8.01-262." Venue is not proper in Pulaski County under either § 8.01-261 or § 8.01-262. Rather, Fairfax County is the only proper venue under both §§ 8.01-261 and 8.01-262.

#### **Fairfax County Is The Preferred Venue**

7. Virginia Code § 8.01-261 designates the preferred venue for specified actions, including actions for injunctive relief. That statute further provides that "[v]enue laid in any other forum shall be subject to objection." Va. Code § 8.01-261.

8. Section 8.01-261(15)(c) provides that in proceedings to award an injunction, "venue shall be in the circuit court of the county or city in which the act is to be done, or being done, or is apprehended to be done. . . ." Va. Code §8.01-261(15)(c).

9. All of the injunctive relief that Mr. Smith in this case seeks is to be performed at Spring Hill Elementary School, in Fairfax County, Virginia.

10. No other subsection of § 8.01-261 applies to this action.

11. Accordingly, the preferred venue for this action is Fairfax County, and the Court, therefore, should transfer the case to the Circuit Court of Fairfax County.

**Fairfax County Is Also The Only Permissible Venue**

12. Virginia Code § 8.01-262 designates the permissible venues for actions not covered by § 8.01-261. Thus, even if § 8.01-261 did not designate Fairfax County as the proper venue in this case, transfer to the Circuit Court of Fairfax County would be proper because Fairfax County also is the *only* permissible venue for this action under § 8.01-262.

13. Section 8.01-262(1) provides that venue may be laid in the county of city "[w]herein the defendant resides or has his principal place of employment."

14. Mr. Vanderhye's principal place of employment is in Fairfax County. (Compl. ¶ 2.)

15. Section 8.01-262(4) provides that another permissible venue is the county or city "[w]herein the cause of action, or any part thereof, arose."

16. As set forth above, all of the events that Mr. Smith complains of occurred in Fairfax County.

17. The only relationship that Pulaski County has to this case is that it is Mr. Smith's county of residence. However, Mr. Smith's county of residence is not a permissible venue under § 8.01-262.

18. Under § 8.01-262(10), an action may be brought in a county or city where the plaintiff resides *only* if "(i) all of the defendants are unknown or are nonresidents of the Commonwealth or if (ii) there is no other forum available under any other provisions of § 8.01-261 or this section." Va. Code § 8.01-262(10).

19. That subsection does not apply here because Mr. Vanderhye is the only defendant, is a resident of Virginia, and another forum—Fairfax County—is available under both § 8.01-261 and other subsections of § 8.01-262.

20. The Court, therefore, should transfer venue to the Circuit Court of Fairfax County, Virginia.

**The Court Should Award Costs Pursuant To Va. Code § 8.01-266**

21. In addition, the Court should award Mr. Vanderhye his attorney's fees incurred in objecting to and obtaining transfer of venue.

22. Virginia Code § 8.01-266 provides:

In any action which is transferred . . . pursuant to this chapter, the court in which the action is initially brought may award an amount necessary to compensate a party for such inconvenience, expense, and delay as he may have been caused by the commencement of the suit in a forum to which an objection, pursuant to § 8.01-264, is sustained. . . . In addition, the court may award those attorney's fees deemed just and reasonable which are occasioned by such commencement of a suit . . . .

Va. Code § 8.01-266.

23. In an effort to minimize costs of litigation and because Mr. Smith is proceeding *pro se*, prior to filing this Objection and Motion, Mr. Vanderhye's counsel asked Mr. Smith to consent to transfer of venue to the Circuit Court of Fairfax County. (*See* Exhibit 1, Letter from S. Rewari to W. Smith.) Mr. Vanderhye's counsel enclosed with her letter to Mr. Smith copies of the relevant sections of the Virginia Code.

24. Mr. Vanderhye's counsel further advised Mr. Smith that, should he not consent to transfer, that Mr. Vanderhye would seek his attorney's fees in obtaining such transfer.

25. On May 30, 2006, Mr. Smith advised Mr. Vanderhye's counsel by both phone and email that he would not consent to transfer of venue to Fairfax County.

26. Mr. Smith's commencement of this action in an improper and inconvenient forum has caused Mr. Vanderhye inconvenience, expense, and delay, which have been further exacerbated by Mr. Smith's refusal to consent to transfer to an appropriate venue.

27. The Court, therefore, should award Mr. Vanderhye his attorney's fees in obtaining transfer of this action to the Circuit Court of Fairfax County.

WHEREFORE, for all of these reasons, Mr. Vanderhye requests the Court to sustain his Objection to Venue, to grant his Motion to Transfer this action to the Circuit Court of Fairfax County, Virginia, and to award him his attorney's fees in obtaining this relief.

Respectfully submitted,

ROGER D. VANDERHYE

By: \_\_\_\_\_  
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Counsel for Roger D. Vanderhye

**CERTIFICATE OF SERVICE**

I hereby certify that, on June 5, 2006, a true and correct copy of Defendant's Objection to Venue and Motion to Transfer and for Costs was sent by electronic mail and by first-class U.S. mail, postage prepaid to:

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Counsel