

VIRGINIA:

IN THE CIRCUIT COURT OF PULASKI COUNTY

WESLEY C. SMITH
Plaintiff

v.

ROGER D. VANDERHYE
Defendant

)
)
)
)
)
)
)

CASE NO: CL 06-267

#2 - REPLY TO MOTION TO TRANSFER VENUE

A pdf copy of this document is available at: http://www.liamsdad.org/court_case/vanderhye

1. The Defendant claims that I have asked the court to issue an injunction however what I have requested is more accurately defined as enforcement of state administrative regulations, as I am asking nothing more than for Mr. Vanderhye to be ordered to comply with School District Regulation 2240.3 and state law VA 22.1-4.3.
2. As such per § 8.01-261(1) given the Plaintiff is the “moving or aggrieved party”, the preferred venue is the county in which the Plaintiff resides. This preferred venue overrides all other arguments the Defendant makes about permissible venues.
3. The Defendant is wrong about Fairfax County as being the only permissible venue. Va. Code § 8.01-262(4) allows for venue “Wherein the cause of action, or any part thereof, arose”. Given that the school has sent letters to my Pulaski County address, such letters deny my access to my son’s events, part of the action has indeed occurred in Pulaski County. The Code of Virginia provides a plaintiff with a choice of forums in which an action can be brought and the Plaintiff has chosen Pulaski County.
4. Given that the home address of the Defendant is not known to the Plaintiff and the close location of SpringHill to the Maryland state line its quite possible that Mr. Vanderhye is not a resident of Virginia thus Va. Code § 8.01-262(10) sets venue at “Wherein any of the plaintiffs reside...”.
5. The party objecting to venue has the burden of establishing that the chosen venue is improper. Meyer, 256 Va. at 57, 500 S.E.2d at 809. The Defendant has not met this burden.
6. If the Court is going to transfer the case to another court the Plaintiff requests that such a transfer be done in compliance with § 8.01-265 which allows “(ii) transfer the action to any **fair** and convenient forum having jurisdiction within the Commonwealth.”. In this case no reasonable person would consider the Fairfax County Circuit Court to be a

fair forum to hear this case as it has committed its own actionable violations and a transfer to that court would likely result in Fairfax County Circuit Court being added as a Defendant with a motion for a change of venue which would have to be approved.

7. A court can't hear a case in which itself is a Defendant. It should be noted there is no judicial immunity for administrative acts such as case assignment. It would be in the best interests of both parties to avoid the extra costs and delay that a transfer to Fairfax would result in and retain the case in Pulaski or transfer to some court other than Fairfax.

8. The Defendant repeatedly states that the Plaintiff was convicted in Fairfax Circuit Court, while that statement is correct the Defendant fails to point out that the state had no legal grounds to convict him of trespass given he had a right to be on the school property and in fact was not on school property when arrested – See attached MOTION TO DISMISS

9. 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.

10. The only reason the Defendant was convicted was due to the biased and illegal actions of the Fairfax Circuit Court assigning the case to the only Judge who had any previous connection to the Plaintiff and that connection was Judge Finch issuing an illegal unconstitutional order attempting to restrain the free speech of the Plaintiff even though the Plaintiff was not a party to that case and the court had no authority over him.

11. Judge Finch having no means to force the Plaintiff to comply with his illegal order decided to get even with the Plaintiff by making sure he was convicted in spite of being innocent of the charges. Judge Finch improperly had the case assigned to him, refused to recuse himself, refused to let the Plaintiff enter relevant evidence including an audio recording of the incident and transcripts made from the recording.

12. Judge Finch intentionally ignored *O'Banion*, refused to rule on motions and intentionally ruled wrong on others. Judge Finch denied the Plaintiff an attorney.

13. Judge Finch also refused to allow proper questioning of witnesses, refused to allow the Plaintiff to impeach them using the audio recordings and transcripts, refused to answer the Jury's question that could have been answered by the recordings/transcripts, and refused to make the recordings/transcripts part of the record for appeal.

14. The conviction has been appealed to the Virginia Court Of Appeals and no final ruling has yet been made. It should be noted that a ruling by the Appeals court this month in Bland v. Virginia State University gives grounds to over-turn the conviction on the basis that the court did not include the recordings/transcripts in the record.

15. Fairfax is also not a fair and appropriate forum due to the fact that the school has decided to Defend Mr. Vanderhye at tax payer expense (and may itself be added as a defendant) thus a jury in Fairfax would be comprised of jurors who if they find for the Plaintiff would themselves be required to help pay damages out of their property taxes. This conflict of interest by the jury makes it inappropriate for the trial to be heard in Fairfax County.

16. The Defendant is asking for costs due to claimed inconvenience and attorney fees. However it should be noted that the Plaintiff offered to settle the case for no money but rather just an agreement that the school would comply with the state law and district regulations. (see attached letter) The Defendant refused this generous offer.

17. Given the Defendant refused the extremely generous offer by the Plaintiff, and could have avoided any and all costs for the lawsuit, any costs and inconvenience are the sole result of his desire to continue to violate the law and district regulations, not to mention to continue to emotionally abuse children by denying them the right to have parents attend their school events. As such it would be unreasonable to award costs to reward a desire to continue a court case rather than to agree to follow the law.

18. It should also be noted that the Plaintiff only earns about \$400/month and would be unlikely to pay any attorney fees.

WHEREFORE the Plaintiff requests this court either retain the case for trial or in the alternative transfer the case to a court other than Fairfax and deny the Defendant's requests for costs.

**Respectfully Submitted,
Wesley C. Smith**

Wesley C. Smith, Plaintiff
5347 Landrum Rd APT 1
Dublin, VA 24084-5603
liamsdad@liamsdad.org
no phone