

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY C. SMITH,

Defendant.

Chancery No. 53360

ANSWER AND CROSS-BILL OF COMPLAINT

COMES NOW the Defendant/Cross-Complainant, Wesley C. Smith, ("the Husband") by counsel, and in response to Complainant, Cheri Smith's ("the Wife") Bill of Complaint and as his Cross-Bill of Complaint, states as follows:

ANSWER

1. The allegations contained in paragraph 1 of the Bill of Complaint are denied.
2. The allegations contained in paragraph 2 of the Bill of Complaint are admitted.
3. The allegations contained in paragraph 3 of the Bill of Complaint are admitted.
4. The allegations contained in paragraph 4 of the Bill of Complaint are admitted.
5. The allegations contained in paragraph 5 of the Bill of Complaint are admitted in part and denied in part. By way of further response, the Wife suffers from a mental illness which has greatly contributed to the breakdown of the marital relationship and affects the Wife's fitness as a parent for the parties' minor child.

6. The allegations contained in paragraph 6 of the Bill of Complaint are admitted.
7. The allegations contained in paragraph 7 of the Bill of Complaint are admitted.

8. The allegations contained in paragraph 8 of the Bill of Complaint are admitted.

9. The allegations contained in paragraph 9 of the Bill of Complaint are admitted

10. The allegations contained in paragraph 10 of the Bill of Complaint are denied. By way of further response, the Husband was forced to leave the shared bedroom of the marital residence after being subjected to acts of physical and mental cruelty from the Wife, and after being falsely accused of engaging in an extramarital affair.

11. The allegations contained in paragraph 11 of the Bill of Complaint are denied. By way of further response, the Husband's allegations that the Wife suffers from a mental illness are accurate based on the Wife's erratic and violent behavior.

12. The allegations contained in paragraph 12 of the Bill of Complaint are denied. By way of further response, the Husband has not acted aggressively towards the Wife and has only acted to defend himself. The Wife has also admitted in prior court proceedings that she has physically assaulted the Husband.

13. The allegations contained in paragraph 13 of the Bill of Complaint are denied as phrased. By way of further response, the Husband has not acted aggressively towards the Wife and has only acted to defend himself. The Wife has also admitted in prior court proceedings that she has physically assaulted the Husband.

14. The allegations contained in paragraph 14 of the Bill of Complaint are denied.

15. The allegations contained in paragraph 15 of the Bill of Complaint are denied as phrased. By way of further response, the Wife suffers from a mental illness which has greatly contributed to the breakdown of the marital relationship and affects the Wife's fitness as a parent for the parties' minor child. The Husband has only discussed his concerns regarding the Wife's

mental illness with the Wife and counselors.

16. The allegations contained in paragraph 16 of the Bill of Complaint are denied as phrased. By way of further response, the Wife suffers from a mental illness which has greatly contributed to the breakdown of the marital relationship and affects the Wife's fitness as a parent for the parties' minor child.

17. The allegations contained in paragraph 17 of the Bill of Complaint are denied. By way of further response, the Husband has requested the Wife receive treatment for her mental illness for the benefit of the family.

18. The allegations contained in paragraph 18 of the Bill of Complaint are denied.

19. The allegations contained in paragraph 19 of the Bill of Complaint are denied.

20. The allegations contained in paragraph 20 of the Bill of Complaint are denied. By way of further response, the Wife left the shared bedroom of the marital residence and the marital residence itself as part of her effort to alienate the child from the Husband.

21. The allegations contained in paragraph 21 of the Bill of Complaint are denied as phrased.

22. The allegations contained in paragraph 22 of the Bill of Complaint are denied.

23. The allegations contained in paragraph 23 of the Bill of Complaint are denied as phrased. By way of further response, the Husband only locked himself and the minor child in a bedroom when the Wife was endangering the child by her violent conduct.

24. The allegations contained in paragraph 24 of the Bill of Complaint are denied as phrased. By way of further response, the Wife removed the parties' minor child to the residence of a neighbor who had served the Husband with a Civil Trespass Notice as part of the Wife's

ongoing effort to alienate the child from the Husband.

25. The allegations contained in paragraph 25 of the Bill of Complaint are admitted. By way of further response, the Protective Order was dismissed as the Court found, based on the Wife's own admissions in court, that there was no evidence the Husband has committed acts of family abuse against the Wife or the parties' minor child.

26. The allegations contained in paragraph 26 of the Bill of Complaint are denied as phrased. By way of further response, the Husband asserts the doctrine of res judicata as a Court has already held that the parties were not living separate apart until on or about June 1, 2003.

27. The allegations contained in paragraph 27 of the Bill of Complaint are admitted.

28. The allegations contained in paragraph 28 of the Bill of Complaint are denied as phrased. By way of further response, the Husband would at times extricate himself from the house to avoid further confrontation with the Wife.

29. The allegations contained in paragraph 29 of the Bill of Complaint are denied as phrased.

30. The allegations contained in paragraph 30 of the Bill of Complaint are admitted.

31. The allegations contained in paragraph 31 of the Bill of Complaint are denied as phrased. By way of further response, the Husband did notify the Wife he was traveling to see family in Michigan. Said trip was further discussed by counsel for the Wife and the Husband's previous counsel. The Wife further evidenced her awareness of the Husband's travel plans prior to his leaving by following the Husband around the house repeatedly screaming "why the hell haven't you left yet" and "I thought you were going to Michigan."

32. The allegations contained in paragraph 32 of the Bill of Complaint are denied as

phrased.

33. The allegations contained in paragraph 33 of the Bill of Complaint are admitted.

34. The allegations contained in paragraph 34 of the Bill of Complaint are denied as phrased. By way of further response, the Court did not grant primary physical custody to the Wife, rather the Court made no finding on that issue and instead awarded the Husband the majority of the visitation time with the parties' minor child.

35. The allegations contained in paragraph 35 of the Bill of Complaint are denied as phrased. By way of further response, the Wife abandoned and deserted the Husband on or about May 31, 2003 and removed the parties' minor child from the marital residence as part of her ongoing effort to alienate the child from the Husband. The Wife's abandonment was without the requisite thirty (30) days notice as required by previous Court order.

36. The allegations contained in paragraph 36 of the Bill of Complaint are denied.

37. The allegations contained in paragraph 37 of the Bill of Complaint are admitted.

38. The allegations contained in paragraph 38 of the Bill of Complaint are denied as phrased. By way of further response, the Husband would consider working towards reconciling if the Wife would agree to seek treatment for her mental illness.

39. The allegations contained in paragraph 39 of the Bill of Complaint are denied.

40. The allegations contained in paragraph 40 of the Bill of Complaint are admitted.

41. The Husband is without sufficient information to admit or deny the allegations contained in paragraph 41 of the Bill of Complaint and therefore denies the same.

42. Any allegations not expressly admitted herein are denied.

43. By way of affirmative defenses, the Husband asserts justification, condonation,

recrimination, res judicata, collateral estoppel, equitable estoppel, laches and unclean hands.

44. The Husband further reserves the right to raise any and all defenses to which he may be entitled based on the evidence put forth by the parties at trial of this matter.

WHEREFORE, the Husband requests this Honorable Court dismiss the Bill of Complaint filed in this matter and award the Husband attorneys' fees and costs expended herein.

CROSS-BILL

1. Wesley C. Smith ("the Husband"), and Cheri Smith ("the Wife"), were lawfully married on November 23, 1988 in South Jordan, Utah.
2. There is one minor child born of this marriage, namely: Liam R. Smith, born July 22, 1997.
3. At least one party is domiciled in, and has been a *bona fide* resident of the Commonwealth of Virginia for at least six (6) months preceding the commencement of this suit.
4. The Parties are over the age of eighteen (18), the Husband is competent, and the Wife suffers from a mental illness that may or may not affect her competency.
5. The Parties are not members of the Armed Forces of the United States and have not been so for at least six months preceding the commencement of this action.
6. The Parties last cohabitated as Husband and Wife at 11411 Huntsman Drive, Manassas, Virginia 20112.
7. The Husband currently resides at marital residence.
8. The Wife currently resides at 10238N Manassas Mill Road, Manassas, VA 20110.
9. The parties have been living separate and apart without cohabitation since on or about June 1, 2003.

10. At least one of the Parties intends this separation to be permanent.
11. There exists no possibility of reconciliation at this time, however the Husband would consider working towards reconciling if the Wife would agree to seek treatment for her mental illness.
12. During the time the parties' resided together, the Husband was a primary caretaker for the child.
13. The Husband has provided, and can continue to provide, a stable environment for the child.
14. The Husband has been a primary caretaker for the child his entire life.
15. At all times relevant hereto, the child has resided in the same home as the Husband.
16. The child thrives under the Husband's care.
17. Pursuant to Virginia Code § 20-124.3, it is in the best interests of the child that this Court grant custody, both legal and physical, to the Husband as:
 - A. the Husband loves the child;
 - B. the Husband and his family provide the child a stable home environment;
 - C. the Husband has no mental health or substance abuse issues;
 - D. the Husband is willing to foster a relationship between the child and the Wife;
 - E. the Husband is willing to adhere to a structured visitation schedule and can respect the non-custodial Wife's right to visit the child; and
 - F. the Husband and his family are committed to providing the child with a stable; and home environment to ensure the child's success at school and in life.
18. In addition, the Wife has:
 - A. by her actions and statements, demonstrated an intentional desire not to cooperate with the Husband regarding issues involving the raising of the child and the necessary and normal function of the family;

- B. has exhibited an unstructured and unhealthy lifestyle to the detriment of the child;
- C. has repeatedly demonstrated an inability to provide a stable environment within which to raise the child;
- D. has repeatedly attempted to alienate the child from the Husband;
- E. has exhibited signs of mental illness; and
- F. disregarded the mental health and physical needs (including safety) of the child.

COUNT I

Desertion

19. The Husband incorporates each of the aforesaid allegations contained in paragraphs 1 through 18 above.

20. On or about June 1, 2003, the Wife, without consent, justification or excuse, and in violation of a previous Court order, willfully deserted and abandoned the Husband and marital home, with intent to terminate the marriage relationship permanently.

21. The Parties have lived separate and apart continuously without cohabitation and without interruption since on or about June 1, 2003.

22. The Wife's actions and statements evidence her desire not to remain married.

COUNT II

Constructive Desertion

23. The Husband incorporates each of the aforesaid allegations contained in paragraphs 1 through 22 above.

24. Throughout the course of the last two years, the Wife has committed acts of mental

cruelty and physical cruelty toward the Husband, with said acts being successive, cumulative and increasing in intensity during said time period.

25. The Wife's conduct has resulted in the practical destruction of the Parties' home life and has rendered the marriage intolerable and impossible for the Husband to endure to a level constituting the constructive desertion of the marital relationship.

26. The Wife's actions and statements evidence her desire not to remain married.

WHEREFORE, being without remedy save in a Court of Equity, the Husband requests:

1. That he be granted a divorce *a mensa et thoro* on the grounds of willful desertion and abandonment, with leave to merge the same into a divorce *a vinculo matrimonii* after one full year has elapsed since the Wife's desertion;

2. That, in the alternative, he be granted a divorce *a mensa et thoro* on the grounds of constructive desertion and abandonment, with leave to merge the same into a divorce *a vinculo matrimonii* after one full year has elapsed since the Wife's desertion;

3. That he be awarded spousal support and child support, both *pendente lite* and permanently;

4. That he be awarded sole legal and physical custody of the Child, both *pendente lite* and permanently;

5. That he be awarded his costs and attorneys' fees, both *pendente lite* and permanently;

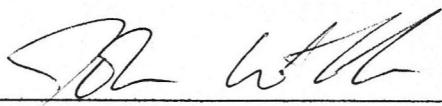
6. That the Court determine legal title to, ownership and value of, all real and personal property of the parties, ascertaining which is separate property and which is marital;

7. That the real and personal property included in the marital estate be apportioned in

kind between the Parties as their legal and equitable rights may require, or, in the alternative such property be partitioned and sold, with the property partitioned and sold, with the proceeds to be divided as the Parties' legal and equitable rights require;

8. That he be awarded a division of the Wife's retirement/pension benefits;
9. That the marital debt be ascertained and apportioned between the Parties as their legal and equitable interests may dictate and/or the payment of such debt be ordered pursuant to § 20-107.3 of the Virginia Code;
10. That he be granted a monetary award based upon the equities, rights and interests of each Party in the property comprising the marital estate;
11. That the Wife be restrained and enjoined from selling, giving or otherwise disposing of or encumbering any assets, whether held jointly, individually or otherwise;
12. That he be granted exclusive possession of the martial residence;
13. That the Wife be ordered to submit to a mental health evaluation, and comply with all treatment recommendations appurtenant thereto;
14. That the Court grant such further relief as the nature of the case or the goals of equity require.

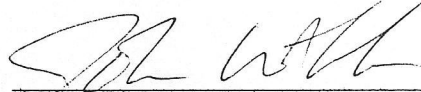
Respectfully submitted,
WESLEY C. SMITH
by Counsel



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this pleading was sent via hand facsimile and first-class mail, this 8 day of September, 2003, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112, Counsel for Complainant/Cross-Defendant.

A handwritten signature in black ink, appearing to read "J. C. Whitbeck, Jr.", written over a horizontal line.

John C. Whitbeck, Jr.