

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY C. SMITH,

Defendant.

Chancery No. 53360

AMENDED ANSWER AND AMENDED 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") Amended Bill of Complaint and as his Amended Cross-Bill of Complaint, states as follows:

ANSWER

1. The allegations in paragraph 1 of the Amended Bill of Complaint are denied. By way of further response, the Wife has deserted the Husband and the marriage by moving out of the marital residence which has now been sold.
2. The allegations in paragraph 2 of the Amended Bill of Complaint are denied.
3. The allegations in paragraph 3 of the Amended Bill of Complaint are admitted.
4. The allegations in paragraph 4 of the Amended Bill of Complaint are admitted.
5. The allegations in paragraph 5 of the Amended Bill of Complaint are admitted in part and denied in part. By way of further response, the Husband denies the Wife is of sound mind as she suffers from one or more mental illnesses that have lead, in part, to the breakdown of the marriage, and severely impact her fitness as a parent for the parties' minor child, Liam R.

Smith ("the Child")

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

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

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

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

10. The allegations in paragraph 10 of the Amended Bill of Complaint are admitted. By way of further response, the Husband again notes his exception to the Court's ruling.

11. The allegations in paragraph 11 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof. By way of further response, the best interests of the Child require that sole legal and physical custody of the Child be awarded to the Husband.

12. The allegations in paragraph 12 of the Amended Bill of Complaint contain legal conclusions and therefore no response is required.

13. The Husband is without sufficient information to admit or deny the allegations in paragraph 13 of the Amended Bill of Complaint and therefore denies the same.

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

15. The allegations in paragraph 15 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof. By way of further response, the Wife has repeatedly acknowledged that the Husband is an excellent father, a supportive husband, and has acknowledged her abusive and cruel behavior towards the Husband and has apologized for the same.

16. The allegations in paragraph 16 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof. By way of further response, the Husband

has requested the Wife seek treatment and/or counseling for her behavior due to the mental illnesses of which she suffers.

17. The allegations in paragraph 17 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof. By way of further response, the Wife repeatedly acknowledged that the Husband has acted with restraint after being physically attacked by the Wife.

18. The allegations in paragraph 18 of the Amended Bill of Complaint are admitted. By way of further response, the Husband was forced to take the regrettable action described herein in an effort to stave off the Wife's abusive attacks on the Husband and used no more force than the Wife has used when striking the Child as a form of discipline.

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

20. The allegations in paragraph 20 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof. By way of further response, the Husband has requested the Wife seek treatment and/or counseling for her behavior due to the mental illnesses of which she suffers, and has sought the assistance of third parties in coping with the Wife's behavior.

21. The allegations in paragraph 21 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof. By way of further response, the Husband has requested the Wife seek treatment and/or counseling for her behavior due to the mental illnesses of which she suffers, has performed extensive research to locate a specific mental illness to identify with the Wife's behavior and has sought the assistance of third parties in coping with the Wife's behavior.

22. The allegations in paragraph 22 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof. By way of further response, the Husband has suggested the Wife seek treatment and/or counseling for her behavior due to the mental illnesses of which she suffers, has performed extensive research to locate a specific mental illness to identify with the Wife's behavior and has sought the assistance of third parties in coping with the Wife's behavior. By way of further response, the Husband has requested the Wife seek treatment and/or counseling for her behavior in an effort to protect the Child and preserve the marriage.

23. The allegations in paragraph 23 of the Amended Bill of Complaint are denied.

24. The allegations in paragraph 24 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof. By way of further response, the Wife has attempted to force the Husband from the marital residence.

25. The allegations in paragraph 24 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof. By way of further response, the Husband has cautioned the Wife that if she did not seek professional advice to address the Husband's concerns over how her mental illnesses affect the Child, that he could not agree to her suggestions for custody of the Child.

26. The allegations in paragraph 26 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof.

27. The allegations in paragraph 27 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof. By way of further response, the Wife moved into the guest bedroom due her belief that the Husband was engaging in adulterous

conduct with the Child's babysitter, a minor, and as part of her ongoing effort to alienate the Child from the Husband.

28. The allegations in paragraph 28 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof.

29. The allegations in paragraph 29 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof.

30. The allegations in paragraph 30 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof.

31. The allegations in paragraph 31 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof. By way of further response, the Wife moved into the home of neighbors who had barred the Husband from their property as part of her ongoing effort to alienate the Child from the Husband.

32. The allegations in paragraph 32 of the Amended Bill of Complaint are denied as phrased. By way of further response, the Wife obtained the *ex parte* Preliminary Protective Order as part of her ongoing effort to alienate the Child from the Husband, a few days subsequent to her stating in writing that the Husband cares for the Child better than the Wife and that "perhaps (the Husband) and Liam would be better off without (the Wife)." By way of further response, the Wife obtained said Protective Order during a period where the Husband was the primary caretaker for the Child due to the agreement of the parties that the Husband would stay home and raise the Child while the Wife supported the family, thereby severely disrupting the Child's life and routine. By way of further response, when questioned by the Court as to what specific incidents the Wife had to support her claims of abuse, the Wife was unable to recount

even a single incident, and, upon hearing the additional evidence the Wife put forth in support of the Protective Order, the Court summarily dismissed the Order stating that even if it assumed all the Wife's allegations were true, she was not entitled to a Protective Order.

33. The allegations in paragraph 33 of the Amended Bill of Complaint are admitted in part and denied in part. By way of further response, the Husband admits that the parties were not cohabitating on September 17, 2003 and will stipulate to September 17, 2003 as the date of separation. By way of further response, the Husband denies remaining allegations in paragraph 33 and demands strict proof thereof.

34. The allegations in paragraph 34 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof. By way of further response, the Wife stated that she intended the parties remain married in March 2003.

35. The allegations in paragraph 35 of the Amended Bill of Complaint are admitted.

36. The allegations in paragraph 36 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof.

37. The allegations in paragraph 37 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof.

38. The allegations in paragraph 38 of the Amended Bill of Complaint are admitted.

39. The allegations in paragraph 39 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof. By way of further response, the Husband did notify the Wife that he was going to Michigan to care for his ill mother through his counsel, and the Wife agreed to stipulate that this issue would not be used in any ongoing or future litigation between the parties. By way of further response, the Wife acknowledged she knew where the

Husband was going and stated "why the hell haven't (the Husband) left already."

40. The allegations in paragraph 40 of the Amended Bill of Complaint are denied as phrased and the Husband demands strict proof thereof.

41. The allegations in paragraph 41 of the Amended Bill of Complaint are admitted in part and denied in part. By way of further response, the Wife's allegations with respect to the relief granted the parties in the Agreed Order are admitted. By way of further response, the Husband denies the parties were living separate and apart without cohabitation at that time.

42. The allegations in paragraph 42 of the Amended Bill of Complaint are denied as phrased. By way of further response, the Husband's visitation was greatly increased by the May 13, 2003 Order to the point where the Husband had visitation with the Child everyday, and was the primary caretaker for the Child over the objection of the Wife.

43. The allegations in paragraph 43 of the Amended Bill of Complaint are denied as phrased. By way of further response, the Wife omits in her allegations that her vacating the martial residence and denying the Husband and the Child access to one another was in violation of previous Court Orders. By way of further response, see response to paragraph 33.

44. The allegations in paragraph 41 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof. By way of further response, the Husband incorporates by reference the allegations contained in his Petition for a rule to show cause filed herein with respect to the Wife's failure to provide him education materials for the Child. By way of further response, the Wife would have no knowledge of the Husband's communications with her as she refuses to communicate or cooperate with him in any way.

45. The allegations in paragraph 45 of the Amended Bill of Complaint are denied

46. The allegations in paragraph 41 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof. By way of further response, the Wife has stated previously that the date of separation is September 17, 2003.

47. The allegations in paragraph 47 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof.

48. The allegations in paragraph 48 of the Amended Bill of Complaint are denied as phrased.

49. The allegations in paragraph 49 of the Amended Bill of Complaint are admitted in part and denied in part. By way of further response, the Husband admits the parties did not take family vacations but were not living separate and apart without cohabitation.

50. The allegations in paragraph 50 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof.

51. The allegations in paragraph 51 of the Amended Bill of Complaint are denied and the Husband demands strict proof thereof.

52. The allegations in paragraph 53 are denied. By way of further response, see response to paragraph 43.

53. The allegations in paragraph 53 of the Amended Bill of Complaint are admitted.

54. Any allegations not expressly admitted herein are denied.

55. By way of affirmative defenses, the Husband asserts justification, condonation, recrimination, *res judicata*, collateral estoppel, equitable estoppel, laches and unclean hands.

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

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

AMENDED CROSS-BILL

1. The Husband and 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 ("the marital residence").
7. The Husband currently resides at 3215 Ridgeview Court, Apt. 104, Woodbridge, Virginia 22192.
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.
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 Child loves the Husband and has been adversely affected by the current custody arrangement;
 - C. the Husband and his family provide the Child a stable home environment;
 - D. the Husband has no mental health or substance abuse issues as acknowledged by the Wife;
 - E. the Husband has demonstrated a willingness to foster a relationship between the Child and the Wife despite her violations of Court Orders and her ongoing effort to alienate the Child from the Husband;
 - F. 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
 - G. the Husband and his family are committed to providing the Child with a stable home environment to ensure the Child's success at school and in life.
18. In addition, the Wife has:
 - A. acknowledged the Husband's superiority as a parent;
 - B. has refused all efforts by the Husband to mediate a reasonable resolution to this matter in the best interests of the Child;

- C. 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;
- D. has exhibited an unstructured and unhealthy lifestyle to the detriment of the Child;
- E. has repeatedly demonstrated an inability to provide a stable environment within which to raise the Child;
- F. has repeatedly attempted to alienate the Child from the Husband;
- G. has exhibited signs of mental illness;
- H. has exposed the Child to her adulterous relationship with her current paramour; and
- I. disregarded the mental health and physical needs (including safety) of the Child, including placing her career, her adulterous relationship and her own personal wishes before the best interests of the Child, even with the knowledge of the Child's discomfort with the Wife's decisions.

COUNT I

Adultery

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

20. Upon information and belief, the Wife has committed acts of adultery with one Igor Bakhir ("the paramour"), a co-worker, and the Wife and the paramour have had relations and interactions which are inconsistent with any other presumption except that the Wife and the paramour have been guilty of acts of adultery, on such dates and locations as set forth below:

- A. January 24 2004 at the Wife's one-bedroom apartment of 10238N Manassas Mill Road, Manassas, VA 20110 ("the Wife's residence");
- B. January 16, 2004 at the Wife's residence in the presence of the Child;
- C. January 9, 2004, location unknown, however the Wife dropped the paramour off at his residence subsequent to engaging in adulterous conduct;
- D. December 28, 2003 – January 1, 2004 at a rented vacation lodging at Snowshoe Ski Resort in West Virginia;
- E. October 18, 2003 at the residence of the paramour, 1548 Cameron Crescent Dr Apt. 21-B, Reston, VA 20190-3623 ("the paramour's residence");
- F. October 16, 2003 at the paramour's residence;
- G. March 22, 2003 at Great Falls Park, Great Falls, Virginia;
- H. December 18, 2002 at the marital residence;

- I. December 17, 2002 at the marital residence;
- J. November 7, 2002 at the Matsutaki restaurant.

21. Upon information and belief, the Wife's adulterous relationship with the paramour commenced in 2001 and is ongoing at present.

22. The Wife's adulterous actions have not been condoned by the Husband, nor has the Husband voluntarily cohabitated with the Wife at any time after obtaining knowledge of the adulterous act.

23. The Wife's actions have directly and proximately contributed to the breakdown of the parties' marriage.

COUNT II

Desertion

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

25. 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.

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

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

28. The Wife's actions contributed directly and proximately to the breakdown of the parties' marriage.

COUNT III

Constructive Desertion

29. The Husband incorporates each of the aforesaid allegations contained in paragraphs 1 through 28 above.

30. Throughout the course of the last five 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.

31. 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.

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

33. The Wife's actions contributed directly and proximately to the breakdown of the parties' marriage.

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

1. That he be granted a divorce *a vinculo matrimonii* on the grounds of adultery;
2. That, in the alternative, 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;
3. 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;
4. That he be awarded spousal support and child support, both *pendente lite* and

permanently;

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

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

7. 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;

8. 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;

9. That he be awarded a division of the Wife's retirement/pension benefits;

10. 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;

11. That he be granted a monetary award based upon the equities, rights and interests of each Party in the property comprising the marital estate;

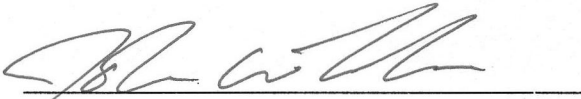
12. That the Wife be restrained and enjoined from selling, giving or otherwise disposing of or encumbering any assets, whether held jointly, individually or otherwise;

13. That the Wife be ordered to seek continuing, professional mental health services to obtain a diagnosis to explain her behavior, and comply with all treatment recommendations appurtenant thereto to protect the best interest of the Child, and such continuing mental health

services be a condition of any visitation between the Child and the Wife;

14. That the Court grant such further relief as the nature of the case or the goals of equity require.

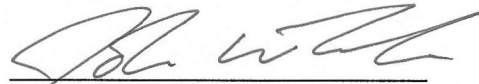
**Respectfully submitted,
WESLEY C. SMITH
by Counsel**



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this pleading was sent via facsimile and first-class mail, this 17 day of March, 2004, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112, Counsel for Complainant/Cross-Defendant.


John C. Whitbeck, Jr.