

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY C. SMITH,


Defendant.

Chancery No. 53360

PRAECIPE

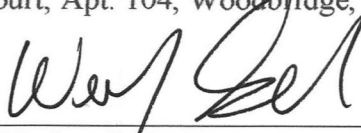
THE CLERK will kindly place the attached Motion on this Court's docket for Wednesday,

August 13, 2004 at 10:00 a.m. for hearing.

  
\_\_\_\_\_  
Wesley C. Smith  
3215 Ridge View Ct. Ap 104  
Woodbridge, VA 22192  
(703) 220-2637  
Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of August, 2004, a true and accurate copy of this pleading was served via facsimile and first-class mail, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112 and via first class mail and electronic mail to Wesley Smith, 3215 Ridgeview Court, Apt. 104, Woodbridge, Virginia 22192

  
\_\_\_\_\_  
Wesley C. Smith

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY C. SMITH,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Chancery No. 53360

MOTION FOR PENDENTE LITE RELIEF

COMES NOW the Defendant, Wesley C. Smith ("the Husband"), and moves this Court pursuant to Va. Code Ann. § 20-103, for entry of an Order granting him *pendente lite* relief as requested below:

1. The Defendant incorporates the statements from the previous motion filed for access to funds in the escrow account – see attached.
2. Starting in Sep 2002 the Complainant has refused to share her income with the Defendant, as they had agreed upon before she attended graduate school, forcing him to incur debt to cover living expenses. The Defendant was unable to obtain employment until he completed significant training and recertification, due to a market downturn and his career skills being out of date due to giving up his career to care for the child. The Defendant finally found a job in Oct 2003.
3. The Complainants refusal to share her income as agreed shows a distinct lack of gratitude for the years the Defendant shared his income with her during the times she: (1) Attended school to completed a BS degree, (2) was willfully unemployed or significantly underemployed, and (3) while she earned a MBA degree in order to avoid caring for our child.

4. The Complainant has forced the Defendant to spend enormous amounts of money fighting for his rights as a parent even though the Complainant had agreed the Defendant was the better parent before the child was conceived and had agreed the Defendant would stay home and raise him once the Complainant finished her MBA, and in spite of the fact that the Defendant had given up his career to stay home and care for the child and the Complainant had made verbal and written statements that he was doing an excellent job.

5. The Complainant went on to file for Divorce on grounds she knew to be false on or about June 11, 2003. She did this in spite of her affair with Igor Bakhir, a coworker, and in spite of having made verbal and written statements right up until the time she started the court battle that the Defendant had been a good husband, had been faithful, and had been patient putting up with her bad behavior, that she thought if she had been in his place she would have divorced herself.

6. The Complainants repeated filing court cases that she knew were unwarranted and that the Defendant was willing to settle via mediation, had the effect of forcing the Defendant further in debt to pay attorney fees.

7. The Complainant has continued to make false allegations and have her attorney consume time of the Defendants attorney discussing them, thus increasing the Defendants legal fees.

8. The Complainant has also refused to cooperate in concluding the matter in a timely and cost efficient manner. She has admitted to having problems with uncontrollable rage, depression, anxiety, and has expressed concern that she might hurt the child, but has went to great lengths to avoid any productive discussion of them either in or out of court, or taking the required actions to reduce those behavior problems for the benefit of the child.

9. On or about December 12, 2003 the Complainant responded to the Interrogatories but refused to answer many of the questions on 5<sup>th</sup> amendment grounds, even to questions that were not about her potentially criminal sexual misconduct or other criminal activity. The Defendant has since obtained evidence of Igor Bakhir spending the night at her one bedroom apartment on multiple occasions even when the Complainant had the child. The Complainant has even admitted to this under oath.

10. Given that the Complainant has committed adultery and has admitted to other bad behavior in the marriage that she herself considered that the Defendant would have been justified in divorcing her, and her statements that he has been a kind, loving, faithful husband, and given that the Defendant has provided most of the marital income during the marriage, it is inconceivable that any truly "equitable" distribution of the couples assets would not award the Defendant at least 50%.

11. The Defendant has already expended over \$50,000 in attorney fees, not including other significant case related expenses.

12. The Defendant has had to borrow funds order to retain counsel and has the additional expense of paying interest on the money borrowed to pay attorney fees. Due to the effects of the Complainants legal actions the Defendant could not borrow enough money on his own and had his mother put down her inheritance from her father as collateral for loans. His mother agreed assuming that it would only be a month or two until the Defendant was able to get access to funds from the sale of his home and pay her back.

13. The Defendants mother having put up all of her liquid assets as collateral for the Defendants loans and having no significant income needs to have the loans paid off so she can have access to her funds to pay for her living expenses.

14. Given the current debt and credit rating of the Defendant, he is now unable to



borrow enough additional funds to cover expenses for the remainder of the case.

15. The Complainant has refused the Defendants request to release a portion of the funds from the escrow account. Some of his debt is on credit cards at a rate of 27% interest while the escrow funds earn virtually no interest, thus the Complainant is forcing the Defendant to waste money to pay interest when there is no good reason for it.

16. The Complainants attorney also wrote an order that the Defendant pay for the Guardian ad litem instead of writing the order to represent the verbal ruling of the judge which did not specify who would pay.

17. By continuing a needless court battle, filing frivolous motions, denying him access to his money the Complainant has forced the Defendant to be away from work frequently and as a result his work hours there have been reduced 20% with a corresponding reduction in pay.

18. The Complainants attorney has implied in court that I should be able to pay for attorney because of my income. This is a good example of the Complainants attorney wasting the courts time and causing more financial strain on the Defendant. The Defendant has responded to discovery requests so she is aware that the Defendant had over \$70,000 in debt and has no assets to sell. She is also aware that before the cut in hours the Defendants take home pay minus expenses was about \$1000. She is also aware that rates for attorneys run from about \$175/hour up. Thus she should be aware that best case the Defendant could afford about 5 hours of attorney time a month if no other expenses comes up. She is also aware that she forces the Defendant to spend attorney time on such things as false claims of verbal abuse during exchanges, repeated hearings just to be able to spend time with the child on Fathers Day when the order already states that, or proving he can't afford an attorney when she already knows that he can't, and so on, leaving no money at all to pay for an attorney to deal with the real issues like her refusal to answer discovery requests, discuss her

clients problem with rage and its impact on the child etc.

19. Mrs. Vardy has also taken the additional step of advising potential witnesses, who live out of state, not to talk to the Defendant or his attorney about the case, nor to provide access to the relevant documents the Complainant is withholding without requiring the Defendant to go thru the process of having the court issue a subpoena to them. This action will either deny the Defendant a fair hearing or significantly increase the cost of completing discovery.

20. Mrs. Vardy has also increased legal expenses for the Defendant by bringing up topics in court that she knows are unsupported by evidence and in fact knows that the Defendant has evidence to prove her wrong but counts on the gender bias of the court to rule in her favor without giving the Defendant a chance to prove her wrong (such as allegations of a "tirade" during exchanges, knowing it did not occur and that the Defendant has audio recordings to prove it).

21. Mrs. Vardy has also increased the legal expenses of the Defendant by making frivolous discovery requests and by not making effort to comply with the Defendants discovery requests. Her efforts have been an attempt to harass the Defendant rather than seeking relevant information, such asking questions that imply sexual misconduct by the Defendant with various females, including minors, and the Complainants sister, when Mrs. Vardy should be aware that the Defendant has been a faithful, loving husband and that the Complainant made verbal and written statements that he has been a faithful, loving husband and that he has not been within thousands of miles of her sister since she made those statements. Certainly if their had been any misconduct Mrs. Vardy and the Complainant could easily obtain the information from her sister making the only purpose of the questions to embarrass or harass the Defendant. Another example would be refusing to extend the time period for the Defendant to respond when requested yet not bothering to pick up the Defendants response until about a month after it was ready.

22. The Defendants take home pay for July was \$3,230 (expecting less in August, due to time off to work on court issues) with expenses of rent (\$1,285), debt payments (\$808), child support (\$823), water, electricity, phone, gas, and insurance totaling that amount leaving no money at all for food, clothes, medicine, court expenses, or any other expense such as entertainment for the child during visitation. In fact legal fees and debt payments to cover legal fees total all but \$4,000 of the Defendants year to date take home pay. Given the current situation the Defendant is unlikely to be able to pay child support without access to funds in escrow or the Complainant stopping her unwarranted legal actions.

23. The Defendants job requires that he maintain a security clearance and has been informed by his employer that bankruptcy and financial troubles may be grounds to revoke his security clearance and thus termination from his job.

24. The financial difficulties of the Defendant, which were caused by the Complainant, will prevent him from having an equal chance to adequately prepare for the final hearing in this case. The Defendant has already had to appear in court without an attorney.

25. The Complainants refusal to release funds impairs the Defendants ability to: (1) prepare for the final hearing, (2) keep his job, (3) support his child.

26. The Defendant is a responsible loving Father who will never under any circumstances give up on fighting for custody in order to protect his son, so long as the Complainant refuses to admit, and examine, her problems with rage and psychotic episodes, and its impact on the child, and take credible steps to reduce its negative impact on our son.

27. Clearly the best interest of our son would be better served by the Complainant cooperating in evaluating her behavior problems and taking steps to control them in order to be a better mother, than by continuing the tactic of trying to bankrupt the Defendant in order to avoid

addressing serious issues that affect our child.

**WHEREFORE** the Husband requests the following relief *pendente lite*:

1. An order requiring the holder of the escrow account to release up to \$65,000 to the Defendant to be used to repay the loans secured by his mother.
2. An order requiring the holder of the escrow account to release sufficient funds to the Defendant to cover the attorney fees, expert witnesses, and other court costs that the Complainant is requiring the Defendant to incur instead of working cooperatively to settle the matter. The amount of funds needed will be determined by the Complainants actions such as refusing to hand over all discovery materials, taking the 5<sup>th</sup>, false accusations, and all other actions that increase costs. The amount of funds allowable shall be the entire remainder of the escrow account if the Complainant decides she wishes the court case to be that expensive.
3. An order requiring the holder of the escrow account to release sufficient funds to the Defendant to pay off all credit card debt that has a rate above 10%.
4. That the Complainant shall not receive any funds from the escrow account and will be required to make payments into the escrow account should her desire to spend money on a needless court battle be greater than the amount of funds in the account.
5. That any funds paid to the GAL will paid for from the Escrow Account and not the Defendant.
6. In the alternative, due to the Defendants legal expenses only being necessary because of the Complainants decision to use expensive litigation instead of mediation, that the court enter an order requiring the Complainant to pay off the loans secured by the Defendants mother and pay attorney fees for the Defendant for the remainder of the case, and that child

support will be stayed until the case is concluded.

7. That Child Support payments be modified to reflect the Plaintiffs increased earnings, and the Defendants decreased earnings and financial difficulties.

8. An order such further relief as the nature of the case or the goals of equity require.

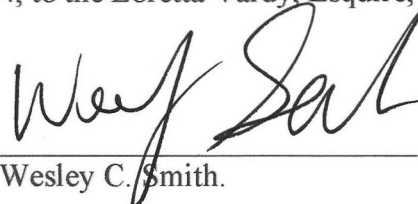
**Respectfully submitted,  
WESLEY C. SMITH  
Defendant**



\_\_\_\_\_  
Wesley C. Smith  
3215 Ridge View Ct. Ap 104  
Woodbridge, VA 22192  
(703) 220-2637  
Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of this pleading was served via first-class mail, this 6 day of August, 2004, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112.

  
\_\_\_\_\_  
Wesley C. Smith.

**From:** mother8x@yahoo.com  
**Subject:** Re: Honorable Judge  
**Date:** July 23, 2004 4:14:20 PM EDT  
**To:** [smith\\_wesley@mac.com](mailto:smith_wesley@mac.com)

Honorable Judge,

3 December 2002 I had to have part of my lung removed in Ann Arbor, MI due to lung cancer. (I've never smoked in my life)

My son, Wesley came from VA for a family Thanksgiving dinner. Seven of my eight children were present as they were worried it could be Mom's last Thanksgiving.

Since Wesley was unemployed due to fulfilling a request from his wife, Cheri, to quit work to care for their son, Liam, so she could return to University of Maryland to get her MBA degree as she wanted to work outside the home as it made her feel more fulfilled, thus, Wesley was free to stay with me after Thanksgiving to be with me at the hospital and for my recovery period at home. I was, and am, so grateful to him as he helped me get back to walking again after the surgery, which is so necessary for a lung surgery patient.

When we returned to my home in Midland, MI, Wesley was there to give me my meds, take my temperature, cook for me and drive me to the mall daily to walk as the weather was zero and snowy and I couldn't walk outside. Nor could I drive for a month.

18 December, I got very ill and again very happy Wesley was there to take my temperature (102) and drive me to the ER. They were fearful I had an infection or pneumonia, which either would have been deadly for me. Turned out it was just the flu.

Also while Wesley was here, he did not sit around and watch TV. He cleaned my kitchen cabinets and disposed of extra items, and relined all my shelves.

In the living room he rearranged furniture so it would be better for me to get around.

Wesley had to return to Virginia and get their beautiful home ready to go on the market. Not that he wanted to do so, as he was in hopes of keeping it for him and Liam so that as few changes as possible would take place in Liam's life.

Wesley was in need of money, due to the high lawyer bills and other expenses and the job market was depressed, so it was not easy to find employment at this time. Therefore, Wesley applied for loans but had difficulty. I discovered if I

would put my CD's up for collateral, the interest, as well as the payment, would be much lower for Wesley. And I supposed once the home sold, Wesley would get his portion of the money and then pay off the loan. It's been a lengthy time since the sale of the house and yet Wesley has not gotten his money so he could pay off the loan.

My only income is a social security check of \$980 and my late husbands small pension of \$218. (my husband was killed in an automobile accident 23 May 1983) And as I have continuing and unexpected Doctor and Hospital bills, I usually need more money to pay my monthly bills, plus unexpected expenses. For instance, Memorial Day I had to call 911 as I felt I was having a stroke. Now bills are coming in on that. And lately my 1994 automobile is overheating due to needing a head gasket replaced. (repairs estimated to be \$800-\$1000.)

So I am asking you, to please give Wesley his portion of the money (if it is at all within your power to do so). Then he can pay off his loan and that will free up my money. That in turn will relieve me of much stress (which is not good for a cancer survivor to have).)

I sincerely hope you understand my plight. I only acted as a mother who wanted to help her son who was in distress himself. Plus I thought it would be only for a short term.

Thank you for your time and understanding.

Sincerely,

Carole Smith

## Category Summary Report

1/1/04 through 7/31/04

Category	1/1/04- 7/31/04
<b>Income/Expenses</b>	
Income	
Salary (Take home)	34,606.22
Total Income	34,606.22
Expenses	
Auto:	
Fuel	687.64
Service	3,855.30
Total Auto	4,542.94
Bank Charge	63.98
Cash	660.00
Child Support	4,938.00
Debt	30,384.29
Divorce:	
Attorney	15,340.11
GAL	1,598.00
Total <del>Attorney</del> Attorney	16,938.11
Groceries	1,806.53
Household	1,061.46
Housing	8,995.00
Medical:	
Medicine	287.37
Medical - Other	130.00
Total Medical	417.37
Misc	468.71
Tax:	
Fed	-1,085.00
State	-443.00
Total Tax	-1,528.00
Utilities:	
Cable TV	95.29
Gas & Electric	917.34
Telephone	804.58
Total Utilities	1,817.21
Total Expenses	70,565.60
Total Income/Expenses	-35,959.38

(other divorce cost not  
included)



## Category Detail Report

1/1/04 through 7/31/04

Date	Payee	Category	Amount
<u>Salary</u>			
1/5/04	Vistarms Inc.	Salary	2,097.88
1/20/04	Vistarms Inc.	Salary	2,097.88
2/5/04	Vistarms Inc.	Salary	2,131.30
2/9/04	Cobblestone	Salary	1,273.75
2/12/04	Defense Group	Salary	0.00
2/20/04	Vistarms Inc.	Salary	1,243.33
2/20/04	Ntis	Salary	2,293.52
3/5/04	Ntis	Salary	2,293.52
3/19/04	Ntis	Salary	2,293.53
4/2/04	Ntis	Salary	2,293.52
4/16/04	Ntis	Salary	2,293.53
4/30/04	Ntis	Salary	2,293.51
5/14/04	Ntis	Salary	2,293.53
5/28/04	Ntis	Salary	2,293.52
6/11/04	Ntis	Salary	2,293.52
6/25/04	Ntis	Salary	1,889.70
7/9/04	Ntis	Salary	1,463.25
7/23/04	Ntis	Salary	1,767.43
Total Salary			34,606.22

## Category Detail Report

1/1/04 through 7/31/04

Date	Payee	Category	Amount
<u>Divorce:</u>			
<u>Attorney</u>			
3/4/04	Knight & Stough LLP Ma	Divorce:Attorney	-75.00
3/17/04	Law Offices of Beth Bi Fa	Divorce:Attorney	-351.50
3/23/04	Nichols, Bergere, Zauz La	Divorce:Attorney	-150.00
3/29/04	Feldesman Tucker Leife WA	Divorce:Attorney	-325.00
3/30/04	Knight & Stough LLP Ma	Divorce:Attorney	-75.00
3/31/04	Szabo Zelnick/Ericksn Wo	Divorce:Attorney	-200.00
3/31/04	John Wihitbeck Jr.	Divorce:Attorney	-7,821.48
4/1/04	Stephens Boatwright Ho Ma	Divorce:Attorney	-200.00
4/12/04	Demetrios -- law	Divorce:Attorney	-150.00
4/29/04	John Wihitbeck Jr.	Divorce:Attorney	-4,907.13
5/13/04	John Wihitbeck Jr.	Divorce:Attorney	-85.00
5/17/04	Bill Boge	Divorce:Attorney	-1,000.00
Total Attorney			-15,340.11
<u>GAL</u>			
4/26/04	Ronald Fahy	Divorce:GAL	-598.00
6/12/04	Ronald Fahy	Divorce:GAL	-1,000.00
Total GAL			-1,598.00

**Attorney Fees**  
8/1/02 through 8/20/04

Date	Num	Payee	Amount
<u>Attorney</u>			
9/16/02	120	Hill	-50.00
9/19/02	121	Craig & Osborne	-100.00
9/26/02	122	William A Boge	-1,500.00
12/26/02	125	John Wihitbeck Jr.	-3,000.00
2/21/03	129	John Wihitbeck Jr.	-3,000.00
3/13/03	1462	John Wihitbeck Jr.	-6,000.00
6/19/03	133	John Wihitbeck Jr.	-5,000.00
8/18/03	136	John Wihitbeck Jr.	-2,000.00
9/23/03	139	John Wihitbeck Jr.	-1,337.24
11/6/03	144	John Wihitbeck Jr.	-15,000.00
3/4/04		Knight & Stough Llp Ma	-75.00
3/17/04		Law Offices of Beth Bi Fa	-351.50
3/23/04		Nichols, Bergere, Zauz La	-150.00
3/29/04		Feldesman Tucker Leife WA	-325.00
3/30/04		Knight & Stough Llp Ma	-75.00
3/31/04		Szabo Zelnick/Ericksn Wo	-200.00
3/31/04	158	John Wihitbeck Jr.	-7,821.48
4/1/04		Stephens Boatwright Ho Ma	-200.00
4/12/04	161	Demetrios -- law	-150.00
4/29/04	163	John Wihitbeck Jr.	-4,907.13
5/13/04	167	John Wihitbeck Jr.	-85.00
5/17/04	171	Bill Boge	-1,000.00
Total Attorney			-52,327.35
<u>GAL</u>			
4/26/04	164	Ronald Fahy	-598.00
6/12/04	173	Ronald Fahy	-1,000.00
Total GAL			-1,598.00

## Category Detail Report

1/1/04 through 7/31/04

Date	Payee	Category	Amount
<u>Child Support</u>			
1/30/04	Cheri Smith	Child Support	-823.00
3/1/04	Cheri Smith	Child Support	-823.00
4/1/04	Cheri Smith	Child Support	-823.00
4/30/04	Cheri Smith	Child Support	-823.00
6/1/04	Cheri Smith	Child Support	-823.00
7/1/04	Cheri Smith	Child Support	-823.00
Total Child Support			-4,938.00

## Category Detail Report

1/1/04 through 7/31/04

Date	Payee	Category	Amount
<u>Debt</u>			
1/2/04	Dow Chem Empl Credit Union	Debt	-158.21
1/7/04	Bank One {5136}	Debt	-105.00
1/8/04	Cash Advance - Balance TR	Debt	-2,500.00
1/9/04	Cash Advances Fees	Debt	-40.00
1/29/04	Bank One {3655}	Debt	-185.00
1/30/04	Trnsfr 5490998308550277	Debt	-5,000.01
2/2/04	Trnsfr 5490998308550277	Debt	-5,000.02
2/9/04	Trnsfr 5490998308550277	Debt	-5,580.78
2/11/04	Dow Chem Empl Credit Union	Debt	-158.21
2/12/04	Bank One {5136}	Debt	-125.00
2/20/04	Dow Chem Empl Credit Union	Debt	-130.34
2/20/04	Dow Chem Empl Credit Union	Debt	-125.21
2/23/04	Trnsfr 5490998308550277	Debt	-1,528.91
2/27/04	Bank One {3655}	Debt	-184.00
3/22/04	Trnsfr 5490998308550277	Debt	-1,350.01
3/24/04	Dow Chem Empl Credit Union	Debt	-130.34
3/24/04	Dow Chem Empl Credit Union	Debt	-125.21
3/25/04	Bank One {3655}	Debt	-180.00
3/25/04	Bank One {5136}	Debt	-175.00
4/9/04	Dow Chem Empl Credit Union	Debt	-158.21
4/12/04	Bank One {5136}	Debt	-170.00
4/20/04	Dow Chem Empl Credit Union	Debt	-125.21
4/20/04	Dow Chem Empl Credit Union	Debt	-130.34
4/28/04	Bank One {3655}	Debt	-178.00
4/29/04	Bank One {5136}	Debt	-3,920.00
5/11/04	Dow Chem Empl Credit Union	Debt	-158.21
5/13/04	Trnsfr 5490998308550277	Debt	-500.00
5/19/04	Bank One {3655}	Debt	-185.00
5/20/04	Dow Chem Empl Credit Union	Debt	-130.34
5/20/04	Dow Chem Empl Credit Union	Debt	-125.21
6/11/04	Dow Chem Empl Credit Union	Debt	-158.21
6/16/04	Bankcard Services	Debt	-168.00
6/18/04	Dow Chem Empl Credit Union	Debt	-125.21
6/18/04	Dow Chem Empl Credit Union	Debt	-130.34
6/25/04	Bank One {3655}	Debt	-173.00
7/9/04	Dow Chem Empl Credit Union	Debt	-158.21
7/15/04	Bankcard Services {Wachovia CC}	Debt	-220.00
7/20/04	Dow Chem Empl Credit Union	Debt	-125.21
7/20/04	Dow Chem Empl Credit Union	Debt	-130.34
7/30/04	Bank One {3655}	Debt	-174.00
Total Debt			-30,124.29