

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Plaintiff,

v.

WESLEY C. SMITH,

Defendant.

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Chancery No. 53360

DEFENDANT MOTION TO DISMISS PLAINTIFF'S MOTION

COMES NOW the Defendant, Wesley C. Smith ("the Husband"), and requests that this court dismiss the Motion filed by the Plaintiff on October 5th and in support of this request represents the following facts:

1. The Plaintiff did not provide the Defendant with reasonable notice as required by § vscr-4:15 (b) "...reasonable notice shall be in writing and served at least seven days before the hearing." The Plaintiff did not serve the Defendant with motion until October 6th (after business hours on the 5th) for a hearing on the 8th, considerably less than one week notice.

2. Most of the facts stated by the Plaintiff are disputed and/or incorrect, including all references to a Commissioners hearing or agreements about it. Per the Plaintiffs request was prohibited from recording the hearing so no record exists of what was said other than the notes the court made which indicate that Mr. Boge withdrew before a date was set and does not mention of a Commissioners hearing.

3. The order entered does not mention a commissioners hearing (see attached).

4. The actions of the Plaintiff have delayed the case moving forward. These include waiting about 9 months from the time of filing for a preliminary protective order until filing for

divorce, waiting about 7 months from the date of filing for divorce until making interrogatory and document requests of the Defendant, as well as refusing to fully answer the Defendants interrogatories and document requests after 10 months. Her responses have been so inadequate as to omit potential witnesses and provide incorrect contact information for many of the ones she did name. By her actions she is obviously not interested in the case being completed quickly unless it can be done in a manner to keep the Defendant and our son from having a fair hearing on the facts.

5. A new issue has come up that will require court action to compel evidence that did not exist prior to September 14, 2004 and was not made known to the Defendant until September 29, 2004. The Plaintiff has caused a complaint of physical abuse to be filed with Child Protective Services. The defendant will need more time and a court order compelling CPS to provide documents in order find out if the complaint was filed maliciously by the Plaintiff or one of her friends, or if the complaint was due to her physical abuse of the child, or her emotional abuse of the child. It would be impossible to make an accurate determination of the best needs of the child without first finding out exactly why the complaint was filed and its effect on the child.

6. The Defendant is appealing the ruling to quash a subpoena that would have provided material evidence in the case. It does not make sense to hold a final trial until the appeal is completed or the Plaintiff provides the evidence to make completing the appeal unnecessary.

WHEREFORE, for all the above stated reasons, Defendant requests the following:

1. An order dismissing the Plaintiffs motion to set a trial date.
2. An order that prohibits the Plaintiff from filing any more motions until the Plaintiff complies fully with discovery
3. An order requiring the Plaintiff to comply fully discovery requests.

4. An order or subpoena for Child Protective Services to provide the Defendant with a copy of all records regarding Liam Smith, including who filed the complaint.

5. Order 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 the foregoing motion was served to Loretta Vardy and Ronald Fahy (GAL) via first-class mail and/or hand delivered, this ____ day of _____, 2004.

Wesley C. Smith.

re VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY C. SMITH,

Defendant.

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Chancery No. 53360

PRAECIPE

1. **THE CLERK** will kindly place the attached motion on this Court's docket for
Friday, October 8, 2004 at 10:00 a.m. for hearing or as soon thereafter as this matter may be
heard.

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

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing motion was served to Loretta Vardy and Ronald Fahy (GAL) via first-class mail and/or hand delivered, this 7 day of October, 2004.

Wesley C. Smith