

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF PRINCE WILLIAM

CHERI SMITH
Plaintiff

v.

WESLEY C. SMITH
Defendant

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Chancery No. 53360-00

ORDER

THIS MATTER came for hearing on November 3, 2004 upon the Complainant's Motion to Quash a Witness Subpoena issued for Complainant's Counsel; Complainant's Motion to release escrowed marital funds in the amount of fifty thousand dollars for the benefit of the Defendant's mother, Mrs. Smith; and upon the Motion of the Guardian *Ad Litem* to release monies from the escrowed marital account in order to pay the Guardian *Ad Litem*; as well as the Defendant's Petition for a Rule to Show Cause against Igor Bakhir; Petition for a Rule to Show Cause against the Complainant; Motion to Compel Answers to Discovery ; Motion to appoint a new Guardian *Ad Litem* ; Motion to Vacate the *Pendente Lite* Order entered by this Court on September 23, 2004; Motion for Sanctions against Counsel for the Complainant; Motion to Order Child Protective Services to provide copies of all documents related to the minor child, Liam Smith; Motion to prohibit the Complainant from filing any further motions until she complies with discovery; four Motions for *Pendente Lite* Relief which was originally set for June 11, 2004 (Clarification of Visitation), June 23, 2004 (Travel and Adultery) and August 17, 2004.

Upon consideration of the evidence presented and the arguments of counsel, it is hereby

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Complainant's Motion to quash the witness subpoena issued for the Complainant's Counsel is granted.

2. Complainant's Motion to release fifty thousand dollars from the marital funds in escrow for the benefit of the Defendant's mother is granted with the stipulation that Mr. Smith not be allowed to borrow money from his mother to pursue matters relating to the pending case.
3. Mr. Fahy's Motion to release funds from the escrow account in order that he may be paid is granted.
4. Defendant's Petition for a Rule to Show Cause against Mr. Igor Bakhir is granted with respect to Mr. Bakhir's telephone records for his home telephone and cell phone and e-mail records related to the Complainant and/or her son, Liam Smith; records of credit card statements, bank statement or gift certificates which reflect money or gifts given to the Complainant and/or her son, Liam Smith and all photos of the Complainant or her son, Liam Smith; and all letters to or from the Complainant or her son, Liam Smith.
5. Defendant's Petition for a Rule to Show Cause against the Complainant is denied; however, Complainant is reminded that she must send, whether by mail or other means, within 48 hours of receipt, all documents required to be sent by her to the Defendant within 48 hours.
6. Defendant's Motion to Compel Discovery with respect to the Defendant's Interrogatories, is granted in part and denied in part:
 - A. With respect to Interrogatory # 1, the Motion is denied;
 - B. With respect to Interrogatory #5, the Motion is denied;
 - C. With respect to Interrogatory #6, the Motion is granted to the extent that the Complainant is ordered to update her response to the Defendant and within 30 days of the final hearing to provide the Defendant with a copy of her actual work schedule-days worked as well as hours worked for the past three months;
 - D. With respect to Interrogatory #7, the Complainant is ordered to update her income and expense statements for the preceding three months thirty days prior to the final trial date;

- E. With respect to Interrogatory #8, the Defendant's Motion is denied;
 - F. With respect to Interrogatory #9, the Complainant is ordered to update the information requested;
 - G. With respect to Interrogatory #10, the Complainant is ordered to update the information about daycare providers;
 - H. With respect to Interrogatory #11, the Complainant is ordered to provide updated information about therapists;
 - I. With respect to Interrogatory # 14, Defendant's Motion is denied;
 - J. With respect to Interrogatory # 15, the Complainant is ordered to update this information if necessary;
 - K. With respect to Interrogatory # 16, the Complainant is ordered to update this information with the present provider.
 - L. With respect to Interrogatory # 17, the Complainant is ordered to update this information
 - M. With respect to Interrogatory # 18, Defendant's Motion is denied;
 - N. With respect to Interrogatory # 19, Defendant's Motion is denied;
 - O. With respect to Interrogatory # 20, the Complainant is ordered to update the list of prescription drugs with printouts for the past 3 years from all provider pharmacies used by her;
 - P. With respect to Interrogatories # 21, #22, #23, #24, #25, Defendant's Motion is denied;
 - Q. With respect to Interrogatory # 26, #27, #28, #29, #30, Defendant's Motion is denied;
7. Defendant's Motion to Compel Discovery with respect to the Defendant's Request for the Production of Documents, is granted in part and denied in part:
- A. With respect to Request # 1, Complainant is ordered to provide the Defendant with copies of her 2003 income tax returns and provide the Defendant with updated Quicken Reports for the period from August 2003 through the present;

- B. With respect to Request # 2, the Complainant is ordered to provide the Defendant with Quicken report updates of her checking account activity for the period from August 2003 through the present;
 - C. With respect to Request # 3, the Complainant is ordered to provide copies of the Cardio-pulmonary stock certificates;
 - D. With respect to Request # 6, Defendant's Motion is denied as these matters have already been addressed in the Interrogatories;
 - E. With respect to Request # 11, Defendant's Motion is denied with respect to Complainant's Separate property, however, the Complainant is ordered to update information concerning the Wachovia credit card account information;
 - F. With respect to Request # 20 , Defendant's Motion is denied;
 - G. With respect to Request # 22, Defendant's Motion is denied;
 - H. With respect to Request #23, Defendant's Motion is denied;
 - I. With respect to Request # 26, Defendant's Motion is denied. The Plaintiff will not be allowed to enter any such record at the final hearing;
 - J. With respect to Request # 28, Defendant's Motion is denied.;
 - K. With respect to Request # 32, the Plaintiff is ordered to provide all copies except those which are on the SAIC computers
 - L. With respect to Request #33, the Complainant is ordered to verify that all information was provided and to update if any other documents are in her possession;
 - M. With respect to Request # 35, the Complainant is hereby ordered to update these e-mails with copies of e-mails sent by the School;
 - N. With respect to Request # 40, the Complainant is ordered to update the record by submitting her copies of her lease and rental application for her present;
 - O. With respect to Request # 42, Defendant's Motion is Denied;
 - P. With respect to Request # 43, Defendant's Motion is denied ;
 - Q. With respect to Request # 44, Defendant's Motion is denied;
8. Defendant's Motion to Compel the Fairfax County Child Protective Services to disclose information concerning an allegation of possible child abuse is denied. The Defendant did not

give notice to Fairfax County Child Protective Services and thus, they were not represented at this hearing;

9. Defendant's four Motions for *Pendente Lite* Relief will not be heard as the parties have already had their *Pendente Lite* Hearing. This matter is now ready for a final hearing; however, any relief requested within these Motions will relate back to the date of filing;
10. Defendant's Motion to appoint a new Guardian *Ad Litem* is denied. If the Defendant brings this motion again, sanctions may be considered;
11. Defendant's Motion for Sanctions against Complainant's Counsel is denied;
12. The issue of Attorney Fees is reserved for the final hearing; and

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that neither party is allowed to put any information concerning issues in this case on a website.

ENTERED THIS ____ DAY OF January, 2005.

Judge Lon E. Farris, Circuit Court

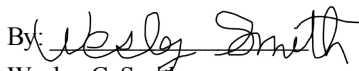
SEEN & AGREED:

SEEN & _____

By _____
Loretta Vardy, Esquire
Counsel for the Complainant
12388 Silent Wolf Drive
Manassas, VA 2
703-791-6078
VSB# 26225

By _____
Ronald Fahy, Esquire
Guardian *Ad Litem*
9236 Mosby Street
Manassas, VA 20110
703-369-7991
VSB# _____

SEEN AND OBJECTED

By: 
Wesley C. Smith
Defendant
1605 Putnam Dr.
Midland, MI 48640
703-220-2637

The Defendant has the following objections to this order (continued on pages 6 & 7):

1. The Defendant disputes several items as not being what Judge Farris ruled in court

- a. Item 10 Ms. Vardy added “If the Defendant brings this motion again, sanctions may be considered;” which the judge did not state in his ruling.
 - b. Item 6 (C) and (D) Wording does not match ruling, it should be change to provide last 3 months and update again 30 days before final hearing.
 - c. Item 7 (F) should state “denied in present form”
 - d. Item 7 (H) should state “provide cancelled checks”
 - e. Item 9, strike mention of “ready for final hearing”, that is not what the judge ruled, and given the Plaintiff has yet to comply with discovery is clearly false – at least its not ready for a hearing in any court other than a Kangaroo Court.
2. The ruling by Judge Farris is in error
- a. Item #1 - Quashing the witness subpoena is a violation of Constitutional right to present witnesses. Ms Vardy should not have chosen to become an eyewitness to incidents of the case if she did not wish to become a witness in the case. Attorney/Client privilege applies only to specific communication between client and attorney for a particular purpose; it does not grant protection for knowledge gained from any source other than the client. Ms. Vardy is the one who chose to create the conflict between being a witness and counsel at the same time and the Defendant should not be punished for her actions.
 - b. Item #4 - The court should have included the perjury, as defined in § 18.2-434, by Igor Bakhir and his refusal to answer questions in a deposition, in the rule to show cause. If the court is going to knowingly condone perjury when the Defendant can clearly prove it occurred, the court is effectively telling any witness that they can lie and thus obstruct justice, or perhaps it is the courts intention that perjury is only be allowed if the witness would have given testimony damaging to the mother and thus violate the equal protection clause., or perhaps the court is trying to protect either Ms. Vardy or the Plaintiff for Inducing another to give false testimony in violation of § 18.2-436.
 - c. Item #5 – The court abused its discretion by refusing to issue the rule. The court has repeatedly refused to enforce its orders when its violated by the Plaintiff, even going to great lengths to do so, such as claiming that while the order was violated the order was not what the judge had intended and that a violation planned one month in advance was “not willful”. It should be noted the Plaintiff had already been warned by the court due to violating the 48 hour notice provision, and is still violating it. Is it to be assumed that the court would show such a lack of interest in enforcement if the Defendant violated the order in a similar fashion? If so then what is the point of the court issuing orders at all? If not then this is a clear example of gender bias by the court and failure to provide equal protection.
 - d. Items #6 and #7, The court seems totally uninterested in helping the Defendant have an equal chance to collect and present evidence related to the case. It appears to be an intentional attempt of the court to avoid hearing the case on its merits instead of just ruling based on the courts personal bias. Discovery of relevant evidence should not be denied, and sanctions should have been considered per vscr Rules 4:1, 4:9 and 4:12, especially for items the Plaintiff did not make a legal objection to providing, had the Defendant provide similar materials as part of her discovery request, yet still failed to provide the materials herself. The court appears to be rewarding non-compliance with discovery requests. With this type of ruling why would anyone comply with initial discovery requests? When the court doesn’t take any action about her failure to provide contact info for persons having knowledge of any discoverable matter, rule 4:1, it is violating due process, equal protection. Rule 3.4 (e), specifically requires a lawyer to make a reasonably diligent effort to comply with a legally proper discovery request from an opposing party.
 - e. Item #9 Refusal to hear Pendente Lite motion for a Male is at odds with the court continuing to hear and grant those for a female, thus an instance of equal protection and due process violations. The court appears to have a pattern of hearing motions for the female Plaintiff while refusing to hear motions file by the male Defendant.
 - f. Item #10 The court erred by not hearing the motion on its merits. The court did not hold any discussion of if the GAL had actually complied with the state “STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN” or vscr-8:6 but rather the interesting standard that Mr. Fahy feels he is doing his job. If Mr. Fahy’s opinion is the standard to be used, it doesn’t take a court to know that Mr. Fahy would be unlikely to admit to his negligent performance.

- g. Item #11 Violations of § 8.01-271.1 are not optional for the court to punish or not based on its personal bias, § 8.01-271.1 states that the court “shall impose...an appropriate sanction...” Note the word “SHALL” not “if the court feels it wouldn’t hurt the party it prefers to rule in favor of”. The two main purposes of sanctions awards under the statute are punishment and deterrence, the court took no steps to achieve these objectives but rather took steps that would tend to reward and encourage future violations.
- h. The ruling with reference to website is in error because it is a remedy apparently not requested by any motion before the court, and because it is an unconstitutional prior restraint of free speech, forbidden by the First Amendment and acknowledged by Judge Farris as being unconstitutional when he threatened to put the Defendant in jail if he did not follow the unconstitutional order.
- i. The various rulings in this order combined with the previous rulings and the courts reputation for significant gender bias in custody cases, is a violation of vscr-6:3-2 (A) “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” The combined effect is to deny the Defendant and our son of our constitutional rights to due process, equal protection, and the liberty interests of a father in the care, custody, and control of his children.