

V I R G I N I A

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,  
Complainant,

v.

WESLEY SMITH,  
Defendant.

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Chancery No. 53360

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**ORDER**

**THIS MATTER** came before this Court on February 15, 2006 upon the several motions filed by the parties, a motion by the Guardian-ad-Litem, and motions by the Fairfax County School Board by its counsel; and

**IT APPEARING TO THE COURT** that the Complainant did appear, through counsel, the Defendant did appear, *pro se*; the Guardian-ad-Litem did appear, and Fairfax County appear, through counsel; that the Court proceeded to hear testimony , evidence and argument regarding the motions; and therefore, for the reasons set forth in court, it is hereby

**ADJUDGED, ORDERED, and DECREED** the following:

**A. AS TO THE MOTIONS CONTAINED IN THE DEFENDANT'S  
PRAECIPE OF FEBRUARY 6, 2006:**

1. The Defendant's Motion for *Pendente Lite* Relief filed on June 18, 2004 with respect to adultery is GRANTED IN PART, without making any finding as to the allegations of adultery which issues shall be reserved for trial, the Court admonishes both parties to comply with the laws of this Commonwealth and orders that the parties are not

to have sexual relations with any person in the presence of the child. The rest of the Motion is DENIED; and

2. The Defendant's Motion for *Pendente Lite* Relief filed on June 18, 2004 with respect to travel is GRANTED IN PART, the Court orders that neither party shall take the child outside of the United States without the prior approval of the Court. The Complainant shall take the necessary steps to see to it that the child shall be made available to appear at the trial of this matter in event that either party wishes to call the child as a witness. The rest of the Motion is DENIED; and

3. The Defendant's Motion for *Pendente Lite* Relief filed on August 13, 2004 with respect to the Complainant and her attorney's alleged harassment is GRANTED IN PART, the Court finds that there has been no harassment by the motions filed herein and orders that the parties shall proceed with additional Discovery as set forth in this Order only.

The Court notes that the original Bill of Complaint was filed on June 11, 2003 and that there has already been discovery in this matter and ample opportunity to complete the same. Therefore, this Court orders that the counsel for the Complainant shall finalize discovery in the following manner::

Counsel for the Complainant shall prepare the Equitable Distribution Worksheets using the forms provided by the Clerk of this Court, or any similar forms, and shall file the same with the Clerk of this Court and with the Defendant. These Worksheets shall include

1) a complete list of the Marital Property including title, value and proposed disposition

- 2) a list of the Separate Property of the Complainant,
- 3) a list of the Separate Property of the Defendant
- 4) a list of all Marital Debts, if any, to be addressed by the Court
- 5) a Monthly Income and Expense Statement for the Complainant,
- 6) a proposed Spousal Support Worksheet, if any is being sought, and
- 7) a proposed Child Support worksheet

The equitable distribution forms may be obtained from the Clerk of this Court.

The Complainant shall file her Worksheets with this Court on or before Friday, March 17, 2006.

The Defendant shall then utilize the Equitable Distribution Worksheets prepared by the Complainant, number 1,2,3 and 4 above, and file directly on the Complainants forms any additions, corrections or amendments he proposes in response.

The Defendant shall also file the following

- a) a monthly income and expense statement for the Defendant ,
- b) any spousal support calculation worksheet, if any he may seek and
- c) any child support calculation sheet he proposes.

The Defendant shall file his responsive Worksheets and other documents a,b and c on or before April 21, 2006 with the original to the Clerk of this Court and a copy to opposing counsel.until the final hearing.

There shall be no other discovery in this case except as ordered by this Court.

The parties are free to present relevant evidence at the time of trial of this case and to make the appropriate objections they wish at the time of trial. In the event the parties fail

to disclose the information on their worksheets and exhibits they will not be permitted to present that evidence at the time of trial.

The rest of this Motion shall be DENIED; and

4. The Complainant's Motion to Set Trial Date and Dispense with the Commissioner's Hearing filed on April 29, 2005 is GRANTED IN PART, any Order entered by this Court referring the matter to a Commissioner in Chancery is hereby vacated.

This Court has already entered an order setting this matter on this date for a hearing on all Motions filed by the parties and setting a non-jury trial date of May 22 and 23, 2006.

On the trial date the parties may offer any relevant and admissible evidence they wish to present with regards to the relevant issues in this matter including:

- 1) grounds of divorce
- 2) spousal support
- 3) child custody
- 4) child visitation
- 5) child support
- 6) equitable distribution.
- 7) motions for sanctions sought by the parties for violation of prior pendent elite court orders and
- 8) any other relevant matters

The Complainant may proceed to present evidence of divorce on the grounds of constructive desertion, cruelty and/or one year separation as forth in the Amended Bill of

Complaint and the Defendant may proceed pursuant to the Amended Cross Bill on the grounds of adultery, desertion, constructive desertion and/or one year separation. The rest of the Motion is DENIED;and

5. The Defendant's Motion for Sanctions filed on May 6, 2005 in response to Complainant's Motion to Set Trial Date and Dispense with the Commissioner's Hearing filed on April 29, 2005 is DENIED; and

6. The Defendant's Motion to Disqualify Judge Rossie D. Alston, Jr. (Defendant's Motion #28) filed on August 22, 2005 is DENIED; and

7. (This is number 9 on Defendant's Praecipe) The Defendant's Motion to deny the Complainant's Motion to Quash the Subpoena *Duces Tecum* upon the Complainant's Counsel filed on May 27, 2005 is DENIED and the Court hereby GRANTS the Complainant's Motion to Quash the said Subpoena *Duces Tecum* filed on counsel for the Complainant personally and directs the parties to proceed with the Discovery as set forth in this Order; and

8. (This is number 10 on Defendant's Praecipe) The Defendant's Motion for Sanctions Against the Complainant (Defendant's Motion #29) filed on August 23, 2005 in response to Complainant's Motion to Quash the Subpoena *Duces Tecum* upon the Complainant's Counsel filed on May 5, 2005 is DENIED, the Subpoena *Duces Tecum* having been Quashed as set forth in paragraph 7 above; and

9. (This is number 7 on Defendant's Praecipe) The Guardian-ad-Litem's Motion to Quash the Subpoena *Duces Tecum* filed on May 17, 2005 is GRANTED, however, the Court does ORDER that the Guardian ad Litem is directed to provide to the Court and to the parties copies of the following:

- 1) any written reports he has prepared for the Court or either counsel and
- 2) a copy of his affidavit of guardian ad litem fees for any fees he shall make a claim as GAL. These documents shall be provided to the Court and the parties on or before May 1, 2006. .

10. (This is number 8 on Defendant's Preacipe) The Defendant's Motion for Sanctions Against the Guardian-ad-Litem (Defendant's Motion #30) filed on August 23, 2005 in response to the Guardian-ad-Litem's Motion to Quash the Subpoena *Duces Tecum* filed on May 17, 2005 is DENIED, the Court having addressed the obligations of the GAL in paragraph 9 above; and

11. The Fairfax County School Board's Motion to Quash the Subpoena *Duces Tecum* filed on October 4, 2005 is GRANTED, the Court finds that any issues concerning a pending trespass action is not relevant to the issues that will be before this Court at the trial of this matter.

However, by way of additional discovery, the Court does hereby ORDER that the Complainant shall obtain and file copies with this Court and the Defendant of the all of the child's school report cards and school emergency contact cards from the date of the separation of the parties. These copies shall be filed with the Court and sent to the Defendant on or before May 1, 2006; and

12. The Defendant's Motion for a Jury Trial (Defendant's Motion #31) filed December 5, 2005 is DENIED; and

13. The Defendant's Motion for Trial Date and Sanctions (Defendant's Motion #32) filed December 5, 2005 is DENIED for the reasons stated above; and

14. (This particular Motion was not listed on the Defendant's Praecipe but was hereby addressed by this Court.) The Defendant's Motion for Travel Expenses to attend Term Day on December 2, 2005 (Defendant's Motion #33) filed on December 5, 2005 is DENIED; and

15. (This is number fourteen on Complainant's Praecipe.) The Defendant's Motion for Appointment of an Attorney (Defendant's Motion #34) filed on December 5, 2005 is DENIED; and

16. (This is number fifteen on Defendant's Praecipe.) The Defendant's Emergency Motion to Change Custody/Visitation (Defendant's Motion #35) filed on December 13, 2005 is RESERVED TO BOTH PARTIES to be addressed by the Court on the date of trial as part of the child custody and visitation issues; and

17. (This Motion was part of the Defendant's Praecipe but not numbered.) The Defendant's Motion for Travel Expenses to attend Motions Day on February 2, 2006 (Defendant's Motion #36) filed on February 6, 2006 is DENIED; and

18. (This Motion was also part of Defendant's Praecipe but not numbered.) The Defendant's Motion for Trial Date and Sanctions (Defendant's Motion #37) filed on February 6, 2006 is DENIED as proved above; and

**B. AS TO THOSE MOTIONS FILED ON FEBRUARY 13, 2006:**

19. The Defendant's Motion for CPS Records (Defendant's Motion #39) filed on February 9, 2006 is DENIED; and

20. (This Motion is like the Motion in paragraph 1 above.) The Defendant's Motion to Order Complainant to Stop Committing Adultery (Defendant's Motion #40)

filed on February 13, 2006 is GRANTED IN PART as set forth in paragraph 1 above, and the rest of the Motion is DENIED; and

21. (The same Motion as paragraph 16 above.) The Defendant's Motion to Change Custody/Visitation (Defendant's Motion #41) filed on February 13, 2006 is RESERVED BY BOTH PARTIES for the trial of this matter; and

22. (This is the same Motion as paragraph 12 above.) The Defendant's Motion to Demand a Virginia Constitution Article 1, Section 11 Jury Trial in a Civil Case (Defendant's Motion #42) filed on February 13, 2006 is DENIED; and

23. (This is the same as paragraph 10 above.) The Defendant's Motion for Sanctions for Obstruction of Discovery by Mr. Fahy (Defendant's Motion #43) filed on February 13, 2006 is DENIED; and

24. (This is the same as paragraph 8 above.) The Defendant's Motion for Sanctions for Obstruction of Discovery by the Complainant's counsel (Defendant's Motion #44) filed on February 13, 2006 is DENIED; and

25. The Defendant's Motion to Use of the Escrowed Funds for a Court Reporter (Defendant's Motion #45) filed on February 13, 2006 is DENIED, the Court notes that the Defendant has provided a Court reporter for this hearing; and

26. The Defendant's Motion for Use of Escrow Funds for an Attorney (Defendant's Motion #46) filed on February 13, 2006 is DENIED; and

27. The Defendant's Motion to Recognize Right of Freedom of Speech and to Vacate, or Recognize as Void, all Orders that Deprive Defendant of that Right (Defendant's Motion #47) filed on February 13, 2006 is GRANTED IN PART, the Court does recognize the Defendant's right of free speech as guaranteed by the Constitution of



the United States and the Commonwealth of Virginia but the Defendant is also admonished to follow the orders of this Court. The rest of the Motion is DENIED; and

28. The Defendant's Motion to Remove Ronald Fahy as Guardian-ad-Litem (Defendant's Motion #48) filed on February 13, 2006 is DENIED; and

29. The Defendant's Motion for Rule to Show Cause Against Igor Bakhir (Defendant's Motion #49) filed on February 13, 2006 is DENIED, there being no notice to Mr. Bakhir of this Motion; and

30. The Defendant's Motion to Compel and Motion for Sanctions (Defendant's Motion #50) filed on February 13, 2006 is DENIED, however, the parties are admonished to comply with the Discovery ordered by this Court; and

31. The Defendant's Motion for Mental Health Evaluation of Complainant (Defendant's Motion #51) filed on February 13, 2006 is DENIED; and

32. The Defendant's Motion for Sanctions Due to Fraud Upon the Court (Defendant's Motion #52) filed on February 13, 2006 is DENIED; and

**C. AS TO THE MOTIONS FILED BY THE COMPLAINANT:**

33. The Complainant's Motion to Require the Court's Written Permission for Either Party to File any Additional Pleadings Prior to the Trial Date filed on February 13, 2006 is DENIED; and


34. The Complainant's Motion to Pay Child Support Arrearages filed on February 13, 2006 is RESERVED, the issue of child support shall be addressed again on the date of the trial; and

35. The Complainant's Motion to Find Defendant in Contempt for His Failure to Obey the Court's Order of October 2, 2003 filed on February 13, 2006 is RESERVED, the issue of child support shall be addressed on the date of the trial of this case; and

36. The Motion was made this day by the counsel for the Fairfax County School Board to quash the subpoena issued for the principal of Springhill Elementary School for this hearing and based upon the Court's ruling above, the Motion shall be GRANTED and the subpoena to appear shall be quashed.

A copy of this Order has been hand delivered to both parties this date by the Clerk of this Court.

Entered the 15<sup>th</sup> of February, 2006.

  
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Judge Richard B. Potter  
Prince William County Circuit Court

Seen:

Ronetta Vandy

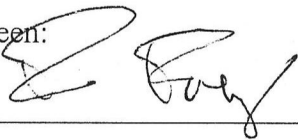
Counsel for Complainant

Seen:

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Defendant

Seen:



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Guardian ad Litem