

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY SMITH,

Respondent.

IN CHANCERY NO. 53360

ROGER VANDERHYE'S
MOTION TO QUASH WITNESS SUBPOENA

Non-party Roger Vanderhye ("Mr. Vanderhye"), by counsel, hereby requests the Court quash the witness subpoena served upon him by Respondent Wesley Smith ("Mr. Smith"). The reasons for this Motion to Quash are as follows:

1. This is apparently a divorce and custody proceeding between Mr. Smith and Complainant Cheri Smith ("Mrs. Smith").
2. Mr. Vanderhye is not a party to the case, nor can he properly be considered a witness relating to any issues in this case.
3. Mr. Vanderhye is the principal of Spring Hill Elementary School, in McLean, Virginia. Spring Hill Elementary is attended by approximately 850 students. As the principal of that school, Mr. Vanderhye is responsible for those students, and is charged with the supervision of a staff of 86 employees.
4. On the afternoon of May 16, 2006, Mr. Smith caused a subpoena to be served on Mr. Vanderhye, commanding his presence at the trial of this case on May 22, 2006. A copy of the subpoena is attached as Exhibit "A."

5. The Court should quash the subpoena because it is overly burdensome, oppressive, unnecessary, and designed to harass.

6. Mr. Vanderhye can provide no testimony pertaining to any of the issues in this case. While Mr. Vanderhye is the principal of the school attended by the Smiths' son, he does not know their son personally. Though Mr. Vanderhye provided testimony (under subpoena from Mr. Smith) at Mr. Smith's criminal trespass trial, Mr. Smith already has been convicted on that charge, and thus, it is not at issue in this case. Mr. Vanderhye can provide no information relevant to this marital dispute.

7. Requiring Mr. Vanderhye's presence at the trial will interfere with his important duties with respect to the administration and operation of Spring Hill Elementary School, and will be highly disruptive to the operation of that school.

8. For these very reasons, this Court already has quashed one subpoena served upon Mr. Vanderhye at Mr. Smith's behest. On February 15, 2006, this Court quashed a subpoena to Mr. Vanderhye commanding his presence at a pretrial hearing in this case. (See Court's Order of February 15, 2006 ¶ 36 (attached as Exhibit "B").)

9. Mr. Vanderhye has learned no new facts or information pertaining to any of the issues in this case since the Court's Order of February 15, 2006.

10. Rather, the only new development since February 15, 2006, is that Mr. Smith has filed suit against Mr. Vanderhye personally, in the Circuit Court of Pulaski County, asserting false arrest, assault, battery, wrongful imprisonment, interference with parental rights, slander, defamation of character, negligent infliction of emotional distress, intentional infliction of emotional distress, negligent infliction of physical pain, and violations of Va. Code § 22.1-4.3 and Fairfax County School Board Regulation 2240.3, all arising out of the events leading to his

arrest and conviction for criminal trespass. A copy of Mr. Smith's Complaint against Mr. Vanderhye is attached as Exhibit "C."

11. Inasmuch as Mr. Vanderhye possesses no knowledge relevant to the issues in this case, the subpoena to Mr. Vanderhye is, at best, oppressive and overly burdensome, and, at worst, an attempt to advance Mr. Smith's own claims against Mr. Vanderhye.

12. The Court should not permit its subpoena power to be abused in this manner.

WHEREFORE, Mr. Vanderhye requests the Court to quash the witness subpoena issued to him by Mr. Smith.

Respectfully submitted,

ROGER VANDERHYE

By: 
Counsel

Thomas J. Cawley (VSB No. 04612)
Sona Rewari (VSB No. 47327)
HUNTON & WILLIAMS
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
(703) 714-7400 (telephone)
(703) 714-7410 (fax)

*Counsel to Fairfax County School Board
and Roger Vanderhye*

CERTIFICATE OF SERVICE

I hereby certify that, on May 18, 2006, a true and exact copy of the foregoing Motion to Quash Witness Subpoena was served by electronic mail and overnight mail upon:

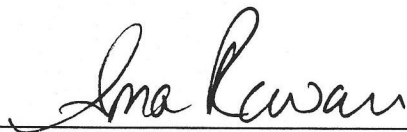
Wesley Clay Smith
5347 Landrum Road, Apartment 1
Dublin, Virginia 24084-5603

Respondent, pro se

and by facsimile and U.S. mail upon:

Loretta Vardy, Esq.
12388 Silent Wolf Drive
Manassas, Virginia 22112

Counsel for Complainant Cheri Smith

A handwritten signature in cursive script, reading "Ina Rawari", is written over a horizontal line.

Counsel