

VIRGINIA:

IN THE CIRCUIT COURT THE COUNTY OF PRINCE WILLIAM

Cheri Smith

Complainant

v.

Wesley Smith

Defendant

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Chancery No. 53360

NOTICE

PLEASE TAKE NOTICE that on Friday August 18, 2006, at 10:00 A.M. in the above captioned court I will make an appearance and make the following Objections to the Defendant's Statement of Facts and Motion to Reject the Defendant's Statement of Facts:

OBJECTIONS AND MOTION

Comes now the Complainant, Cheri Smith, who by counsel objects to the Statement of Facts submitted by the Defendant on August 3, 2006, and moves this Court to reject the Statement of Facts submitted to the Court by the Defendant

In support of this Motion, Complainant states her objections as follows:

- 1.
2. **Defendant's Fact #12:** The Defendant misstates the statement of Judge Potter during the September 10, 2003, *Pendente Lite* Hearing for Chancery case 53360. To paraphrase Judge Potter's statements, he said that he saw that the Appeal on the Child Custody Case, Chancery 53810, was set for September 11, 2003. Since the *Pendente Lite* hearing was taking place the day before, he suggested that we merge the hearing on the appealed case with the Final Divorce Hearing. Neither attorney raised any objections to this merger.
3. **Defendant's Fact 17:** This is an opinion not fact.
4. **Defendant's Fact # 19:** The *Pendente Lite* Order entered by Judge Smith was not a significant change from the Final Order entered by the Juvenile and

Domestic Relations Court. The Circuit Court *Pendente Lite* Order continued the custody exactly as it had been ordered by the lower court, Sole Legal and Primary Physical Custody of the child. Liam Smith, was again awarded to the Complainant, Cheri Smith. The *Pendente Lite* Order did reduce the Defendant's visitation.

5. **Defendant's Fact#20:** This is a misstatement. The Defendant himself had set a Motion to be heard on the date, August 17, 2004. The Defendant did not attend the court hearing; therefore, since he had been given proper notice the motions brought by the Plaintiff were heard and the Defendant's Motion was dismissed.
6. **Defendant's Facts #21 through #25:** The issues presented in these statements contain the Defendant's opinions, arguments and conclusions.
7. **Defendant's Facts # 27 and 28:** These statements are irrelevant.
8. **Defendant's Fact #30** This contains irrelevant statements about providing the Court with copies of the Plaintiff's earlier statements.
9. **Defendant's Fact #33:** This is a misstatement. Mr. Fahy informed the Court that he could not attend the hearing on January 18, 2005.
10. **Defendant's Facts #36 and 37:** Defendant's statements include opinions and conclusions, not statements of facts.
11. **Defendant's Fact # 41:** These purported out of court statements by the child Liam are hear say and are not a proper part of the case record. This is an attempt to get hearsay into the record.
12. **Defendant's Fact # 42:** This statement is irrelevant to the case record.
13. **Defendant's Fact #44:** This is an opinion and conclusion drawn by the Defendant.
14. **Defendant's Fact #45 and 46:** This statement, if true, is irrelevant. The Defendant's website is in the public domain and accessible by anyone.
15. **Defendant's Fact #49:** This statement contains allegations, opinions and Defendant's conclusions, not a statement of fact.
16. **Defendant's Fact #52:** This is a misstatement. The Court set forth in its order what the Plaintiff must do to comply with the Defendant's discovery requests.

The Plaintiff complied with the Court's order.

17. **Defendant's Fact #53:** This is an opinion.
18. **Defendant's Fact #54, through 66.** There is a transcript for the two day hearing.
19. **Defendant's Facts #80:** This is an incomplete description of Judge Alston's ruling. Judge Alston did rule that he did not find the change in the Defendant's Cross-Bill of Complaint sufficient to support a change from Judge Potter's ruling on the earlier Motion to Quash the Subpoena.

WHEREFORE, the Complainant respectfully requests that the Defendant's Statement of Facts be denied certification by this Court.

By: Loretta Vardy

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Respectfully submitted,

Cheri Smith
By Counsel

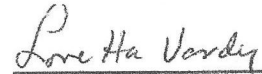
CERTIFICATE OF SERVICE

This is to certify that on the 11th day of August 2006, a true copy of the foregoing Objections to the Defendant's Statement of Facts was mailed postage prepaid to:

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