

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF PRINCE WILLIAM

CHERI SMITH	)	
Complainant	)	
	)	
v.	)	Chancery No. 53360-00
	)	
WESLEY C. SMITH	)	
Defendant	)	

**NOTICE AND MOTION**

**PLEASE TAKE NOTICE** that on MONDAY January 3, 2005 at 10:00 a.m., or as soon thereafter as this matter may be heard, the Plaintiff by Counsel will move this Court to hear following EMERGENCY MOTION TO AMEND VISITATION.

**EMERGENCY MOTION TO AMEND VISITATION AND ISSUE A RULE TO SHOW CAUSE**

**COMES NOW** the Complainant, Ms. Smith, by counsel, and moves this Court pursuant to Va. Code Ann § 20-103, for entry of an Order Amending the Visitation portion of the Pendente Lite Order of granting her *pendente lite* relief as requested below. In support of her MOTION the Complainant states as follows:

1. That a *Pendente Lite* Order was entered by this Court on October 2, 2003;
2. That the above-mentioned *Pendente Lite* Order addressed the issues of Custody and Visitation of the parties' minor child.
3. That a *Pendente Lite* Order was entered by this Court on October 2, 2003, specified that  
"The Parties are to provide one another with their current address and phone numbers. The Parties shall give the court and each other thirty (30) days written notice whenever they relocate or change address or telephone number. The notification should be sent by postage paid mail".
4. That when the above-mentioned *Pendente Lite* Order was both parties were residents of Prince William County in Virginia;

5. That the above-mentioned *Pendente Lite* Order granted sole legal and physical custody of the minor child, Liam R. Smith to the Complainant, Cheri Smith and the Defendant, Wesley C. Smith visitation with the minor child;
6. That the above-mentioned *Pendente Lite* Order specified that the Defendant would pick up the child at the start of visitation and that the Complainant would pick up the child at the end of visitation;
7. That according to the visitation provisions contained in the above mentioned *Pendente Lite* Order the Defendant had Christmas Visitation with the minor child starting from the last day of school prior to the beginning of the Christmas vacation until 1:00 p.m. on Christmas day.
8. That Defendant violated the above mentioned *Pendente Lite* Order in that he failed to give the Complainant the proper notice that he was changing his residence from 3215 Ridge View St. #104, Woodbridge, Virginia, 22192, to 1605 Putnam Drive, Midland, Michigan, 48640 which is the Defendant's mother's home. Sometime between December 23, 2004 and December 24, 2004, the Defendant moved out of his Virginia residence and traveled to Michigan. The Defendant took Liam with him. The Defendant notified the Complainant that he had changed his residence to the above Michigan address via e-mail December 24, 2004 @ 11:22 AM. Further in an e-mail dated December 24, 2004 @ 11:23:44 AM, the Defendant asked whether the Complainant needed directions to his mother's house to pick up Liam on Christmas. This notification does not follow the Court's order as to timeliness or method.
9. That the Complainant has not checked her e-mails on either the 24<sup>th</sup> or the 25<sup>th</sup> of December so she went to the Defendant's Virginia residence to pick up Liam at 1:00 PM on December 25, 2004; When the Complainant arrived at the Defendant's apartment neither the Defendant nor Liam was there. The apartment appeared to have been emptied of furnishings. When she found that no one was at the apartment, the Complainant called the Defendant on his cell phone

which he refused to answer. The Complainant called her counsel and then a friend whom she asked to check her e-mail. It is at this time that she learned that the Defendant had taken Liam to Michigan and was maintaining that in order for the Complainant to have her son returned to her she must travel to Michigan to pick him up.

10. That the Complainant and her counsel contacted the Prince William County police and the police for Midland in Michigan to determine whether Liam was in Michigan and was fine;
11. That throughout the afternoon of December 25<sup>th</sup>, the Complainant called the Defendant on his cell phone and at his mother's home. The Defendant answered neither phone; however he did send text messages to the Complainant asking when she would arrive to pick up Liam. At one point the Defendant did allow Liam to call the Complainant. When the Complainant spoke to Liam on the telephone, he asked her why she was not there to get him. He repeated several times that he wanted her to come to get him.
12. While adhering to the letter of the exchange portion of the *Pendente Lite* Order and the Defendant deprived the Complainant of her holiday with Liam and forced her to travel almost two thousand miles round trip to pick up her son; incur hotel and meal costs and attorney fees. It also placed Liam in the position of believing that his mother was late in picking him up. It is an example of the Defendant using his son to hurt or inconvenience the Complainant rather than considering what is in the child's best interest or what effect his actions have upon the child.

In addition, the mis-use of the Order in this way along with the somewhat taunting text messages about being late for the pick up of Liam and that the lateness indicated that the Complainant might not want to pick up her son, shows a lack of respect for the Court.

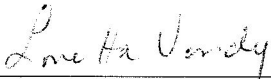
**WHEREFORE** the Complainant requests that the Court enter an Order granting her the following relief:

1. Amend the visitation portion of the *Pendente Lite* Order to terminate all in person visitation between the Defendant and the minor child until such time as the Complainant can bring the child to counseling to help him understand what is occurring. Or, in the alternative to require that visitation between the Defendant and the minor child take place in Virginia.
2. Issue a Rule to Show Cause against the Defendant for violation of the letter and the intention of the *Pendente Lite* Order.
3. Award to the Complainant the costs of her trip to Michigan including mileage, hotel and meal costs and any other incidental costs necessitated by this unplanned trip;
4. Award the Complainant her attorney fees in connection with this incident which includes eight hours of time on Christmas Day;
5. Any other sanctions against the Defendant which the Court deems appropriate;
6. Any such further relief as the nature of the case or the goals of equity require

Respectfully submitted,

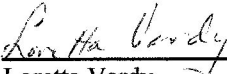
Cheri Smith

By Counsel

  
Loretta Vardy, Esquire  
Virginia State Bar No. 26225  
12388 Silent Wolf Drive  
Manassas, Virginia 20112  
(703) 791-6078  
Counsel for Ms. Smith

CERTIFICATION OF NOTICE

This is to certify that on the 28<sup>th</sup> Day of December, 2004, a true copy of the foregoing Motion and MOTION was mailed by overnight express mail postage pre-paid to the Defendant, Wesley C. Smith, 1605 Putnam Drive, Midland, Michigan, 48640 and hand-delivered to the Ronald Fahy, Esquire, *Guardian Ad Litem*, 9236 A Mosby Street, Manassas, VA 20110

  
\_\_\_\_\_  
Loretta Vardy

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Complainant

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Chancery No.: 53360

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Defendant,

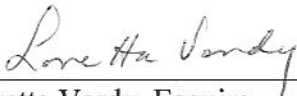
**PRAECIPE**

Will the Clerk please place this on Judge Alston's docket for Monday January 3, 2005 @ 10:00 A.M. Judge Alston has given his permission for this Motion to be placed upon this docket as long as his schedule allows.

Respectfully submitted,

**Cheri Smith**

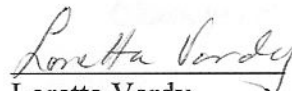
By Counsel



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