V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

WESLEY C. SMITH	)	
Plaintiff	)	
	)	
v.	)	**CASE NO: CL 2006-0007859**
	)	
ROGER D. VANDERHYE	)	
Defendant	)	

#6 – PROPOSED AMENDED COMPLAINT

A pdf copy of this document is available at: http://www.liamsdad.org/court_case/vanderhye

INTRODUCTION

The Plaintiff, Wesley C. Smith, hereby amends counts VII, Slander and Defamation of Character, and IX, Intentional Infliction of Emotional Distress, as follows:

PARTIES

1. The Plaintiff, Wesley C. Smith, is the father of Liam Smith, who was a student at Spring Hill Elementary School, Mclean, Virginia during all relevant times of this action. Mr. Smith resides at 5347 Landrum Rd APT 1, Dublin, VA 24084-5603

2. Defendant Roger D. Vanderhye was the principal of Spring Hill Elementary School, 8201 Lewinsville Road, Mclean, Virginia, 22102, 703-506-3400, during all relevant times of this action. The home address of Mr. Vanderhye is unknown to the Plaintiff. Mr. Vanderhye still works at Spring Hill and can be contacted there.

CASE SUMMARY

3. Prior to June 17th 2005, Spring Hill Elementary School planned a class-party/field day and sent the parents an announcement inviting them to attend.

4. On June 17th 2005, Mr. Smith, the non-custodial parent of an 8-year-old son with Down Syndrome, attended his son's class party. There was no court order prohibiting contact and in fact the custody order required the mother to provide timely notice of such events to Mr. Smith so that he could attend.

5. Mr. Smith went to the principals office, stated he was there for the party and the office staff directed him to sign in and take a visitor's sticker, which Mr. Smith did.

6. Mr. Smith behaved appropriately and was not disruptive, and his son was happy to see him.

7. Mr. Smith's wife did not attend (no reason for any conflict or stress).

8. Mr. Vanderhye, in violation of state law § 22.1-4.3, and in violation of School District Regulation 2240.3, both of which require the Mr. Vanderhye to allow Mr. Smith to attend his son's events unless a court order specifically prohibits attendance, called the police to prevent him from attending his son's school activity.

9. Cheri Smith, Mr. Smith's wife, had provided Mr. Vanderhye with copies of the custody orders, thus Mr. Vanderhye was aware the custody orders did not prohibit contact and in fact stated she must provide Mr. Smith with notices of school events so Mr. Smith could attend.

10. Mr. Vanderhye intentionally lied to the police and told him that there were court orders that prohibited the Plaintiff from having contact with his son and being on school property. Given that the Plaintiff did show up and have contact with his son, this statement by Mr. Vanderhye to the police (and others) amounts to falsely accusing Mr. Smith of committing a crime (violating the court order), thus the statements are actionable regardless of the exact words he uttered.

11. Mr. Vanderhye also lied when he told the police that Mr. Smith was trespassing. Mr. Smith had never been told not to come on school property, nor been told to leave the property. This is the second instance of Mr. Vanderhye falsely accusing Mr. Smith of the commission of a crime.

12. Mr. Vanderhye intentionally lied to Jack Dale and told him that there were court orders that prohibited the Plaintiff from having contact with his son. Again Mr. Vanderhye is falsely stating that Mr. Smith has committed a crime.

13. Words charging crime are actionable per se. Ideal Publishing Corp. v Creative Features, Inc (1977) 59 AD2d 862, 399 NYS2d 118. Mr. Vanderhye's comments are libel per se, obviating need to allege and prove special damages and are actionable without the pleading and proof of extrinsic facts.

14. As Mr. Vanerhye's comments are libel per se, the natural and proximate consequences it will necessarily cause injury to the person concerned. Damage is conclusively presumed to result and need not be pleaded. Smith v Mustain, 210 Ky 445, 276 SW 154, 44 ALR 386. Also see Altoona Clay Products v Dun & Bradstreet,. (CA3 Pa) 367 F2d 625.

15. The conduct of Mr. Vanderhye in having Mr. Smith removed from the event constitutes a violation of Va. Code Ann. § 22.1-4.3, such violation of state law is *prima facie* evidence of negligence. See *See, e.g., Powell v. Mitchell, 120 W.Va. 9, 196 S.E. 153 (1938); Porterfield v. Sudduth, 117 W.Va. 231, 185 S.E. 209 (1936)." Yourtee v. Hubbard, 196 W.Va. 683, 687, 474 S.E.2d 613, 617 (1996)*

16. Where the statutory violation is the proximate cause of the injury, the violation will support a recovery because the violation "is the failure to exercise that standard of case prescribed by a legislative body." (See Moore v. Virginia Transit Co., 188 Va. 493, 50 S.E.2d 268 (1948)) Although negligence per se is a common-law doctrine, the General Assembly of Virginia has codified it in Virginia Code Section 8.01-221.

17. Mr. Vanderhye made the following incorrect statement at the trial in District Court which do not match the recording of the incident:

"I said to Mr. Smith, Mr. Smith could you please come to my office and speak with me and he said no he could not, that he wasn't talking to me, that he didn't want have anything to do with me and he was going to see his child. I said Mr. Smith you may not go down to see your child until you come and speak to me "

"I went into the classroom the teacher looked at me and she was absolutely paralyzed …"

"He said he was going to leave and then he was walking towards the parking lot and then he darted onto the playground trying to find his son and that's when the police had him arrested"

18. Mr. Smith was arrested in front of his son and held in solitary confinement for three days, the entire Father's Day weekend, in the Fairfax Adult Detention Facility as a direct result of the false statements made by Mr. Vanderhye to the police claiming Mr. Smith committed a crime.

> Where a private citizen conveyed false information to an officer on which the officer based the arrest of a person allegedly ... committing a trespass, or where the private citizen specifically requested that the officer make an arrest, the courts have held that a cause of action for false arrest was established against the private citizen. Karow v. Student Inns, 43Ill App 3d 878, 2Ill Dec 515, 357 NE2d 682, 98 ALR3d 531
>
> Incarcerated on false information provided by and at the request of defendants, fact that arrest was made by police officers did not render them immune Ramsden V Western Union (2d Dis) 71 Cal App 3d 873, 138 Cal Rptr 426.
>
> the authority of the officer does not protect the citizen and the liability of the latter is determined as though he had made the arrest himself. Porter V Granich 136 Cal App 523, 29 P2d 220;

19. In preventing the Mr. Smith from attending his son's class party, in having Mr. Smith arrested, and in lying to the police, lying in court, Mr. Vanderhye acted intentionally to cause Mr. Smith Emotional Distress. Mr. Vanderhye would have known that preventing Mr. Smith from attending his son's even would cause him (and his son) emotional distress and that having him arrested in front of his son would make it worse.

20. The conduct of Mr. Vanderhye was so outrageous and intolerable that many people from across the country have written to the school to complain about his outrageous conduct.

21. The court may not consider the conviction because Mr. Smith contends the 'conviction' order is null and void and without any legal effect due to the blatant Due Process violations by Judge Finch for his own personal non-judicial reasons.

It is clear and well established law that a **void order can be challenged in any court.** Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907) ("jurisdiction of any court exercising authority over a subject `may be inquired into in every other court when the **proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings,'** and the rule prevails whether `the decree or judgment has been given, in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of states.'"); In re Marriage of Macino, 236 Ill.App.3d 886 (2nd Dist. 1992)

22. Even if the order was deemed to be valid, case law does not allow a suit to be dismissed due to conviction but rather requires the Plaintiff be provided the opportunity at trial to show he did not commit the crime he was convicted of. It is not necessary to show that the criminal charge was judicially resolved in the plaintiff's favor. See Larson V Feeney. A convicted plaintiff is "not estopped from maintaining an action for false imprisonment **and from proving therein that he was not guilty of the offense charged**". palmer v main C. R. Co 92 Me 399, 42 A 800.

23. The Plaintiff in this case, can and will show that he was not guilty of the offense he was charged and convicted of and court rulings require that he be provided the opportunity in this case to do so. Rather than preventing a cause of action, the fact that the Plaintiff was convicted only serves to increase the injury to the Plaintiff and thus increase the liability of Mr. Vanderhye.

24. It should be noted that Judge Finch refused to rule on Mr. Smith's motion to dismiss, which should have had substantial merit as it was written with the assistance of a law clerk for a Virginia Circuit Court Judge. The motion showed there was no legal basis to charge Mr. Smith with the crime of trespass, as even if the prosecutions facts were accepted, Mr. Smith's actions did not constitute criminal trespass. The charges should have been dropped, instead a kangaroo court convicted Mr. Smith by a variety of Due Process violations, not the least of which was refusing the let Mr. Smith present audio recordings of the incident to impeach the Prosecutions witnesses.

25. Case law is clear that a conviction does not destroy a cause of action, any more than an acquittal creates a cause of action. The issue must be reserved for the jury at trial.

26. The court also should have consider that Mr. Smith is pro se and not a professional attorney. Based on case law:

The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires. S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999)

Pro Se pleadings are to be considered without technicality; pro se litigants pleadings are not to be held to the same high standards of perfection as lawyers. HAINES V. KERNER, 92 S.Ct. 594; JENKINS V. MCKEITHEN, 395 US 411, 421 (1969); PICKING V. PENNA. RWY. CO. 151 F.2d 240; PUCKETT V. COX, 456 F.2d 233.

Pro se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite

proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements. Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999).

A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively, Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim. Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).

Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)).

JURISDICTION

27. Jurisdiction of this court arises under § 17.1-513

FACTS

28. The Mr. Smith is the non-custodial parent of a 8 year old son with Down Syndrome who attends Spring Hill Elementary

29. Spring Hill Elementary held a class party for the Mr. Smith's son on June 17th 2005 and specifically invited parents to attend on a flyer announcing the event.

30. Mr. Smith had a legal right to attend, per Va. Code Ann. § 22.1-4.3 which specifies:

> "Unless a court order has been issued to the contrary, the noncustodial parent of a student enrolled in a public school or day care center… **shall not be denied the opportunity to participate** in any of the student's school or day care activities in which such participation is supported or encouraged by the policies of the school or day care center."

31. This affirmation of non-custodial parents' rights to participate in their children's school activities is mirrored by the Fairfax County School Board's regulation number 2240.3, which specifies:

> "A non-custodial parent retains rights to participate in the special education process, to receive information about the child, and to participate in certain school activities unless a valid court order specifically removes or limits those rights," … "**This regulation, not custody orders** or settlement agreements, governs school decisions, **unless a valid court order specifically directs the school to take a particular action**."
>
> "Joint and noncustodial parents have **the same rights to attend events at the school** (e.g., lunches with children, classroom visits, school productions) as the enrolling parent. No parent, including the enrolling parent, may limit the other parent's attendance at such events, or access to the student at school, unless a court order specifically precludes that parent from attendance at school or access to the student at school. Visitation schedules contained in custody orders do not constitute a specific limitation on a parent's access to schools."

32. The Spring Hill Elementary Student-Parent Handbook expressly urges that parents are expected to participate in school activities. Moreover, the school party that took place on June 17th was clearly an activity in which parental participation was "supported or encouraged by the policies of the school," given that the school had invited parents to the event.

33. There is not, and was not on June 17, 2005, any court order in place barring Mr. Smith from participating in his son's school activities, or from having contact with him.

34. On the contrary, per an order of the Circuit Court of Prince William County, dated 10/2/2003, the child's mother was required to forward to Mr. Smith all copies of invitations to school events so that he might attend. Mr. Vanderhye had been provided with a copy of this court order.

35. Due to the child's Mother not following the provision and Mr. Smith missing out on several school events, the court issued a Rule to Show Cause against the mother and in an Order dated 03/03/2004 specifically ordered the child's Mother to supply "notice of Specia1 Events" at school to Mr. Smith so he could attend.

36. Per the court order, the child's Mother forwarded to Mr. Smith the invitation from the school that specifically invited parents to a school event on June 17th, 2005.

37. Mr. Smith had not been advised verbally or in writing that he was not allowed on school property prior to June 17th 2005.

38. Mr. Smith did leave the school property on June 17th 2005 after receiving the letter of no trespass and was in the process of walking further away from the school when arrested.

39. Case law in Virginia has uniformly construed the statutory offense of criminal trespass to require a willful trespass. "As such, one who enters or stays upon another's land under a bona fide claim of right cannot be convicted of trespass. A bona fide claim of right is a sincere, although perhaps mistaken, good faith belief that one has some legal right to be on the property." *O'Banion v. Com*., 30 Va.App. 709, 717, 519 S.E.2d 817, 821 (1999), citations omitted.

40. Because (a) State law, local school board regulations, and individual school policy all permit Mr. Smith to attend school events like the one in question; and (b) there was no court order in place prohibiting him from participating in such events; and (c) his presence at the class party was in response to an invitation that he had received from the child's mother, Mr. Smith clearly had a bona fide claim of right, as defined by *O'Banion*, to be present at his son's school on June 17, 2005 and to participate in his son's class party.

41. Mr. Smith lives in Dublin VA and drove 250 miles (one way) in order to attend his son's class party on June 17th.

42. Mr. Smith went to the school office, signed in and was provided with a visitor's sticker to wear.

43. As Mr. Smith was proceeding to his son's classroom, Mr. Vanderhye stopped him and verbally harassed him.

44. Mr. Smith proceeded to his son's class where his son was brought to him (wasn't in classroom when Mr. Smith arrived) and his son was happy to see him and they shared lunch together and his son introduced him to his classmates.

45. Mr. Smith behaved appropriately and was not in any way disruptive. The teacher testified that Mr. Smith did not do anything to attract attention.

46. Mr. Smith removed a gift for his son and a camera from his bag and he and his son took photos of each other.

47. Mr. Vanderhye rather than let a handicapped child and his father enjoy their time together called the police, lied to the police about the custody orders, and subsequently had Mr. Smith falsely arrested and charged with trespass under Va. Code Ann. § 18.2-119.

48. Mr. Vanderhye purports to justify his refusal to allow Mr. Smith to participate in this school event with the statement that he personally had "red flagged" the parties' file because it involved a court custody dispute.

49. Mr. Vanderhye has stated he took the action due to Mr. Smith's non-custodial status and would have allowed him to attend if Mr. Smith had been the custodial parent.

50. However, cases involving custody cases are precisely the sorts of cases that Va. Code Ann. § 22.1-4.3 was enacted to address. Under this statute, school officials—whether acting on their own initiative or at the behest of the custodial parent—are prohibited from acting unilaterally to deny, on the basis of non-custodial status, a non-custodial parent's right to participate in their child's school activities.

51. Mr. Vanderhye had no legal right to prevent Mr. Smith from participating in his son's school activity on June 17, 2005.

52. Mr. Vanderhye never took any legal action to bar the Mr. Smith from the school prior to June 17th 2005, and then only did so in writing AFTER the police arrived. At no time was Mr. Smith verbally told to leave the property.

53. In the absence of any legal bar from the school, both by law and school policy Mr. Smith had every right to be present at his son's school on June 17, 2005 and to participate in his son's class party.

54. As a result of Mr. Vanderhye's unlawful action, Mr. Smith was held in jail in solitary confinement for the entire Fathers-Day weekend and released the following Monday on a $1,000 bond.

55. During the three days in jail Mr. Smith was denied his necessary medication causing him significant discomfort and pain.

56. Mr. Vanderhye made and/or published one or more false statements, which were intended to impeach Mr. Smith's honesty, integrity, virtue, or reputation. The statements imputed to Mr. Smith the commission of a crime.

57. Mr. Smith is not a public figure.

58. The defamatory statements resulted in liability to the Mr. Smith.

59. School Superintendent Jack Dale made written statements that justified the arrest of Mr. Smith by falsely stating, "The father in question has several court orders prohibiting contact and presence on school property. The principal was following police and court directives."

60. The unlawful actions of Mr. Vanderhye have caused Mr. Smith to make several 500-mile trips to Fairfax in connection with the trespassing trial at great cost and expense.

61. Mr. Smith has been required to spend numerous hours and great financial cost to defend himself in court due to the unlawful actions and false charges made by Mr. Vanderhye.

62. The arrest has damaged the Mr. Smith's reputation and will interfere with Mr. Smith getting his security clearance renewed thus significantly reducing his earning potential for the rest of his career.

DECLARATORY RELIEF

63. Mr. Smith asks the court to rule that the conduct of Mr. Vanderhye violated VA 22.1-4.3

64. Mr. Smith asks the court to rule that the conduct of Mr. Vanderhye constitutes professional misconduct

INJUNCTIVE RELIEF

65. Mr. Smith asks the court to make an order requiring Mr. Vanderhye to comply with VA 22.1-4.3 and to cease any action that interferes in any way with the Mr. Smith's access to his son at school.

66. Mr. Smith asks the court to make an order requiring Mr. Vanderhye to educate his staff about VA 22.1-4.3 and School District Regulation 2240.3 and ensure that his staff complies with the law.

COMPENSATORY DAMAGES

67. Mr. Smith seeks to recover actual damages, the amount of which is still accruing, but which is currently estimated to be approximately $1,000. Mr. Vanderhye's above described conduct has effected Mr. Smith to the extent that:

68. Mr. Smith seeks compensatory damages of $500,000 because Mr. Vanderhye's unlawful actions have injured Mr. Smith physically and emotionally, causing him mental pain and suffering, loss of sleep, anxiety, worry, humiliation, indignity, embarrassment, and damage to Mr. Smith's reputation and career.

69. All costs, including court costs and legal fees, now or in the future, to bring this action.

70. Any other compensation that the court in its wisdom may direct.

PUNITIVE DAMAGES

71. Mr. Vanderhye's conduct as described above is willful, intentional, and malicious resulting from insult and is associated with aggravating circumstances, such as willfulness, wantonness, malice, oppression, outrageous conduct, insult, fraud, and illegal conduct, callously indifferent to protected rights, thus warranting Mr. Smith's recovery of punitive damages, to be determined by the Jury, but requested to be $100,000.

JURY DEMAND

72. Plaintiff hereby demands a trial by jury on all counts.

Respectfully Submitted,
Wesley C. Smith

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Wesley C. Smith, Plaintiff
5347 Landrum Rd APT 1
Dublin, VA 24084-5603
liamsdad@liamsdad.org
no phone

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing amended complaint was served to Hutton & Williams counsel for Mr. Vanderhye, this 15th day of Jan 2007.

_____
Wesley C. Smith