

Adultery bar

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,

Complainant,

v.

WESLEY C. SMITH,

Defendant.

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Chancery No. 53360

MOTION FOR PENDENTE LITE RELIEF

COMES NOW the Defendant, Wesley C. Smith ("the Husband"), pro se, and moves this Court pursuant to Va. Code Ann. § 20-103, for entry of an Order granting him *pendente lite* relief as requested below:

1. The Plaintiff has taken repeated actions to remove the Defendant from the child's life and to end or impair his relationship to him. These actions have included: (1) filing a protective order without just cause, depriving the child of contact with his father for 10 days; (2) taking the child and preventing access to him after the preliminary protective order was dismissed; (3) refusing to allow visitation between the child and father and insisting on supervised visitation; (4) removing the child from his fathers care and placing him in an unlicensed home daycare; (5) calling the police when the child chose to spend time with his father. (6) refusing the child's request to spend time with his father for such things as walking the dog even when the Plaintiff and Defendant were still living together.

2. In May of 2002, the same month Mr. Bakhir's divorce became final the Plaintiff stated that she would divorce the Defendant due to false allegations of adultery.

3. Both the Plaintiff and Mr. Bakhir have asserted their 5th amendment rights and have refused to answer questions not only about their sexual misconduct but also as to the contact between

Mr. Bakhir and the child and the effect it is having on him. They have used the 5th amendment as a way of preventing the Defendant from finding out information about the care of the Child that is relevant to the custody matter filed by the Plaintiff.

4. While at the same time denying the father access to the child, denying the child access to the father, and preventing or reducing their ability to participate in activities together the Child has stated the Plaintiff had him participate in activities with her paramour. It would appear she has been making an effort to replace the Defendant as the child father figure with Igor Bakhir.

5. The Plaintiff has not limited the child's involvement with Mr. Bakhir to activities outside the home but has allowed the child to be aware that the Plaintiff and Mr. Bakhir sleep together. The Plaintiff has had Mr. Bakhir overnight at her one bedroom apartment while she had visitation with the child.

6. The Plaintiff has stated and the child's history both indicate that he does sleep with her at times both when going to bed or by getting up and joining her in the middle of the night.

7. Unless the Plaintiff locks the child in his room so she can keep him from seeing, if not hearing, the act of adultery, it is likely that the child's knowledge of them sleeping together is from him personally finding the two of them in bed together and perhaps joining the two of them in bed.

8. The Plaintiff lives in a one bedroom apartment it is also probable that she has been engaging in sexual acts in the child's own bed.

9. The misconduct by the Plaintiff with Mr. Bakhir appears to be the main factor for the Plaintiff choosing to divorce the Defendant and disrupt the child's life and relationships. The result of Plaintiff's selfish actions has resulted in: (1) the child moving from a nice four bedroom single family home with large yard to a one bedroom apartment. (2) Leaving his playset and sand box behind; (3) leaving his own hot tub which he really enjoyed, with the temperature set appropriately for a child; (4)

lack of daily contact with his father whom the child enjoys playing with; (5) no longer able to do activities with both parents at the same time, or at least without it being very stressful; (6) increased stress for both parents as well as increased demands by the court case reducing his quality time with parents. (7) increased commuting time as he now has to shuffle back and forth between daycare, school, back to daycare, then between parents homes instead of the walk to the bus with his father and dog and the before and after school care his father provided in the marital residence.

10. The Plaintiffs continuing selfish behavior with Mr. Bakhir has been causing the child emotional distress. The Child has stated (1) that the divorce is his fault; (2) distress over not being able to spend more time with his father; (3) confusion over family roles including that of Mr. Bakhir; (4) sleeping on the couch so the Plaintiff and Mr. Bakhir could sleep in his bed.

11. The Plaintiffs continuing selfish behavior has also negatively impacted his relationship with his father in ways other than time and access. The child used to spontaneously recite all the activities he had been involved in to the Defendant when picked up for visitation. Once the Plaintiff learned the Defendant was investigating her acts of adultery the child started become much less spontaneous about discussing his life and sometimes will start a story and then just stop when it appears that the activity took place in the presence of Mr. Bakhir. It appears the Plaintiff is teaching the child not to mention Mr. Bakhir and thus adding more emotional stress to the child on top of the other disruptions she has inflicted on him.

12. The Plaintiff allowing the child to be aware of her acts of adultery and actions to hide it is not teaching the child good moral values or relationship skills. Having such a poor role model to emulate may have an adverse effect on his relationships later in life.

13. The Defendant has been advised that the courts are reluctant to order divorcing couples to follow the laws forbidding adultery. The Defendant is at a loss to understand how the

court can order him to stop behavior, such as taking the child to see his cousins in MD, when such an action is legal, normal, customary, appropriate, and in the child's best interests, then turn around and not be able to order the Plaintiff to cease conduct that is illegal, immoral, inappropriate and having serious negative consequences for the child. In fact it would appear the court has an obligation to do so. In Brown v. Brown, 218 Va. 196, 237 S.E.2d 89 (1977), the Supreme Court of Virginia stated that [t]he moral climate in which children are to be raised is an important consideration for the court in determining custody, and adultery is a reflection of a mother's moral values. An illicit relationship to which minor children are exposed cannot be condoned. Such a relationship must necessarily be given the most careful consideration in a custody proceeding.

14. Clearly the Plaintiff has not been raising the child in a good moral climate.

15. The Defendant has not committed any acts of adultery, nor has he dated and will wait until the divorce is final before doing so and even then follow the state guidance about going slow and not upsetting the children.

16. The Defendant feels that if the act of adultery is a crime warranting 5th amendment protection then certainly the court should be able to take action to put an end to it. If the court feels it isn't significant enough for it to take action then the Defendant feels it isn't significant to apply the 5th and that the court should impose sanctions on the Plaintiff and Mr. Bakhir for their efforts to obstruct the discovery process.

17. The job the Plaintiff holds requires a security clearance. Security clearances especially Secret or higher require the holder to avoid certain types of actions and behaviors such as illegal activities, inappropriate sexual activities especially with a non-US citizen, or any action the person feels necessary to conceal. The misconduct by the Plaintiff may be putting her

clearance and thus job at risk and limit the jobs available to her in the future. Thus her relationship to Mr. Bakhir can have an adverse economic impact on the child in addition to that caused by the Plaintiff choosing court over mediation.

WHEREFORE the Husband requests the following relief *pendente lite*:

1. An order requiring the Plaintiff to be supportive of his role as the child's father and to take no action that diminishes that role or the child recognition of it. That the Plaintiff should politely correct the child should he refer to any of her male friends as father or family instead of encouraging the idea.

2. An order requiring the Plaintiff is not to have any guests, other than relatives, in her residence after the child's 9pm, nor to allow him to sleep over at any of her friends residence.

3. An order requiring the Plaintiff to prevent any contact between the Child and Mr. Igor Bakhir and any other lovers she might have at the present.


4. An order requiring the Plaintiff to cease her adulterous affair with Igor Bakhir and all contact with him, including requiring her to notify her employer not to assign the Plaintiff and Mr. Bakhir to work together.

5. An order requiring to the Plaintiff to cease all dating until after the divorce is final and then to follow the guidelines recommended by the state in the parenting class to take it slow in order to not cause the child emotional distress.

6. In addition to the above, or in the alternative, an order changing temporary custody to the Defendant.

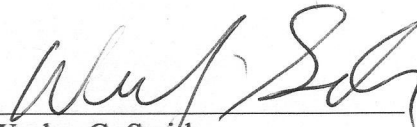
7. An order such further relief as the nature of the case or the goals of equity require.

Respectfully submitted,
WESLEY C. SMITH
Defendant


Wesley C. Smith
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Defendant, pro se

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this pleading was served via first-class mail, this 18 day of JUNE, 2004, to the Loretta Vardy, Esquire, 12388 Silent Wolf Drive, Manassas, Virginia 20112.


Wesley C. Smith.