

IN THE SUPERIOR COURT OF LOWNDES COUNTY  
STATE OF GEORGIA

GEORGIA LOWNDES COUNTY  
Filed in office this

TELVIN SMITH, § CIVIL ACTION FILE  
Plaintiff, § NO. 2018CVD0765  
vs. §  
DACCHEI SIMMS, §  
Defendant. §

JUN 11 2018 12:30 PM

*Beth C. Greene*  
Clerk Superior Court/State Court/  
Juvenile Court

DEFENSES OF LAW, ANSWER AND COUNTERCLAIM

COMES NOW the Defendant DACCHEI SIMMS by and through her undersigned attorney and files this her Answer and Counterclaim in response to Plaintiff's above captioned Petition For Legitimation Of Telvin Trishaun Smith, II, and Petition For Establishment Of Custody, Parenting Time, and Child Support For Telvin Treishaun Smith, II and Nailah Elyse Smith as follows:

**DEFENSES OF LAW**

*FIRST DEFENSE*

Plaintiff's Complaint generally fails to state a claim upon which relief can be granted.

*SECOND DEFENSE*

Plaintiff's Complaint fails to comply with the requirements of Uniform Superior Court Rule 24.2 as to attaching a Domestic Relations Financial Affidavit.

*THIRD DEFENSE*

The Court lacks jurisdiction over the issue of child support.

*FOURTH DEFENSE*

The Court lacks jurisdiction over the issue of paternity.

*FIFTH DEFENSE*

The issues of child support and paternity are res judicata.

**RESPONSIVE ANSWER**

1.

Defendant admits the allegation contained in paragraph one of Plaintiff's Petition.

2.

Defendant admits the allegations contained in paragraph two of Plaintiff's Petition.

3.

Defendant admits in part and denies in part the allegations contained in paragraph three of Plaintiff's Petition. Defendant admits the parties are the legal and biological parents of NAILAH ELYSE SMITH. However, the Defendant denies that no support order has been entered as to NAILAH ELYSE SMITH. A support order has been issued by the Florida Department of Revenue as to NAILAH ELYSE SMITH (State of Florida Department of Revenue Child Support Program and Dacchei E. Simms v. Telvin Trishaun Smith, Sr., C.S. Case No. 2001173716, Deposition No. 162018001567FM).

4.

Paragraph four of Plaintiff's Petition does not require an admission or denial on the part of the Defendant.

5.

Paragraph five of Plaintiff's Petition does not require an admission or denial on the part of the Defendant. Defendant further shows that paternity of Telvin Trishaun Smith, II, "Rocky", has already been established by DNA testing previously performed as set up by an attorney on behalf of the Plaintiff and as further established in State of Florida Department of Revenue Child Support Program and Dacchei E. Simms v. Telvin Trishaun Smith, Sr., C.S. Case No. 2001173716, Deposition No. 162018001567FM.

6.

Defendant admits the allegations stated in paragraph six of Plaintiff's Petition that "Rocky" is the biological child of both parties. The Defendant further shows that the parties have previously submitted themselves to DNA testing as arranged through an attorney for the Plaintiff. The DNA results reflected that the Plaintiff was the biological father of "Rocky". Paternity has further been established as to this child in State of Florida Department of Revenue Child Support Program and Dacchei E. Simms v. Telvin Trishaun Smith, Sr., C.S. Case No. 2001173716, Deposition No. 162018001567FM and that no further testing should be required and that issue is res judicata.

7.

Defendant admits the allegation stated in paragraph seven of Plaintiff's Petition that the Plaintiff should be declared the legitimate child of the Plaintiff and further shows that DNA testing has already been performed and that the issue is res judicata as stated in paragraph six herein above.

8.

Paragraph eight of Plaintiff's Petition does not require an admission or denial on the part of the Defendant.

9.

Defendant denies the allegations contained in paragraph nine of Plaintiff's Petition.

10.

Defendant denies the allegations contained in paragraph ten of Plaintiff's Petition insofar as a support order has already been entered in the case of State of Florida Department of Revenue Child Support Program and Dacchei E. Simms vs. Telvin Trishaun Smith, Sr., C.S. Case No. 2001173716, Depository No. 162018001567FM. Defendant is aware that a Notice of Appeal has been filed by Telvin Trishaun Smith, Sr. in that case and is pending. This Court lacks jurisdiction over the issue of child support.

11.

Defendant admits the allegations contained in paragraph eleven of Plaintiff's Petition. Defendant further shows that a final support order was entered and the Plaintiff defaulted after being properly served. Defendant further shows that Telvin Trishaun Smith, Sr. has filed a Notice of Appeal in the Florida case and the appeal is pending.

12.

Defendant admits in part and denies in part the allegations contained in paragraph twelve of Plaintiff's Petition. The Defendant admits the allegation contained in subpart (a). The Defendant denies the allegations contained in subpart (b) and further shows that the Plaintiff previously filed a petition for custody and visitation in this Court (Telvin Smith v. Dacchei Sims, Lowndes County Superior Court Case No. 2015CV1052) and after an Order as to Paternity of Nailah Elyse Smith was entered, that the Plaintiff voluntarily dismissed his case without prejudice. The Defendant denies the allegations contained in subpart (c) and shows that the Plaintiff filed a prior custody action as set out in herein. The Defendant admits the allegations contained in subpart (d). The Defendant admits the allegations contained in subpart (e).

13.

Defendant denies the allegations contained in paragraph thirteen of Plaintiff's Petition.

### **COUNTERCLAIM**

14.

The Defendant shows that she is the fit and proper person to be declared the primary physical custodial parent of the parties' minor children.

15.

The Defendant requests that a reasonable visitation schedule be established for the Plaintiff to visit with the parties' minor children.

The Defendant shows that she is entitled to her reasonable attorney's fees and costs for the defense of this action pursuant to O.C.G.A. §§ 19-9-3, 19-7-50 and 19-7-54. The Defendant has attempted on numerous occasions to reach an amicable agreement with the Plaintiff regarding the issues of custody, and visitation. The Plaintiff has consistently failed to abide by prior agreements for visitation; and has failed to provide any regular support or health insurance to the Defendant on behalf of the minor children.

WHEREFORE, the Defendant prays:

- a) that Plaintiff's claim for paternity be dismissed;
- b) that Plaintiff's claim for the establishment of child support be dismissed;
- c) that Plaintiff's request for additional paternity testing be denied;
- d) that Plaintiff's claim for physical custody be denied;
- e) that Defendant be declared the primary physical custodial parent of both children;
- f) that a reasonable visitation schedule for the Plaintiff to visit with the parties' minor children be established;
- g) that the Defendant be awarded her reasonable temporary and permanent attorney's fees under O.C.G.A. §§ 19-9-3, 19-7-50 and 19-7-54;
- h) that the Plaintiff's claim for attorney's fees be denied; and
- i) for such other and further relief as the Court deems just and proper.

This 11<sup>th</sup> day of June, 2018.

SMITH, HANNAN & PARKER, P.C.

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By: B. Miles Hannan  
B. Miles Hannan  
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that he has this date mailed a true and correct copy of the foregoing DEFENSES OF LAW, ANSWER AND COUNTERCLAIM to Elizabeth Green Lindsey and Matthew J. Johnson, Attorneys for Plaintiff, at Davis, Matthews & Quigley, P.C., 3400 Peachtree Road, N.E., Suite 1400, Atlanta, GA 30326, in an envelope properly addressed with sufficient postage affixed thereon to insure delivery.

This 11<sup>th</sup> day of June, 2018.

SMITH, HANNAN & PARKER, P.C.

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By: B. Miles Hannan  
B. Miles Hannan  
Attorney for Defendant

STATE OF GEORGIA

COUNTY OF LOWNDES

VERIFICATION

Before me the undersigned officer duly authorized by law to administer oaths, personally appeared DACCHEI SIMMS, who on oath states that the facts set forth in the foregoing **DEFENSES OF LAW, ANSWER AND COUNTERCLAIM** are true and correct to the best of her knowledge and belief.

This 11 day of June, 2018.

D.E. Gummy (SEAL)  
DACCHEI SIMMS

Sworn to and subscribed before me  
this 11 day of June

Michelle D. Adams  
Notary Public

