

[Cite as *Spence v. Spence*, 2005-Ohio-4016.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 85578

MICHELLE SPENCE	:	
	:	
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
	:	OPINION
	:	
DUANE SPENCE	:	
	:	
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT  
OF DECISION:

August 4, 2005

CHARACTER OF PROCEEDING:

Civil appeal from  
Common Pleas Court  
Domestic Relations Division  
Case No. DR-193856

JUDGMENT:

DISMISSED

DATE OF JOURNALIZATION:

\_\_\_\_\_

APPEARANCES:

For Plaintiff-Appellant:

BRENT L. ENGLISH  
1500 West Third Street, #470  
Cleveland, Ohio 44113-1422

For Defendant-Appellee:

DAVID L. LASH  
23811 Chagrin Boulevard, #228  
Beachwood, Ohio 44122

COLLEEN CONWAY COONEY, J.:

{¶ 1} Plaintiff-appellant, Michelle Spence ("Spence"), appeals the trial court's decision denying her motions to show cause and for attorney fees. For the reasons discussed below, we dismiss for lack of a final appealable order.

{¶ 2} In October 2004, the trial court issued a judgment entry adopting the magistrate's decision which denied Spence's motions to show cause and for attorney fees. Spence filed a timely request for findings of fact and conclusions of law under Civ.R. 52. Prior to the trial court's ruling on the request, Spence filed her notice of appeal.

{¶ 3} When a party has timely filed a motion for findings of fact and conclusions of law and such motion has not been ruled upon by the trial court before a party files a notice of appeal, no final appealable order exists from which to appeal. *Rausch v. Rausch*, Cuyahoga App. No. 85600, 2005-Ohio-3730, citing *Walker v. Doup* (1988), 36 Ohio St.3d 229, 522 N.E.2d 1072. See, also, *In re adoption of Gibson* (1986), 23 Ohio St.3d 170, 173, 492 N.E.2d 146; *In re T.W.*, Cuyahoga App. No. 85559, 2005-Ohio-3128; *Messina v. Good Times Cafe* (May 23, 1991), Cuyahoga App. Nos. 58576, 58577, 58873.

{¶ 4} Therefore, because Spence's request for findings of fact and conclusions of law is still pending before the trial court, this court is without jurisdiction to consider Spence's appeal regarding the October judgment entry.

Case dismissed for lack of a final appealable order.

It is, therefore, considered that said appellant pay the costs herein.

It is ordered that a special mandate be sent to the Domestic Relations Division of the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, P.J. and

ANTHONY O. CALABRESE, JR., J. CONCUR

JUDGE  
COLLEEN CONWAY COONEY

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).