

**NOT DESIGNATED FOR PUBLICATION**

GINA DUPAQUIER JOHNSTON

NO. 02-CA-841

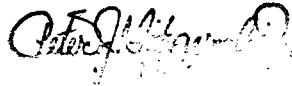
VERSUS

**COURT OF APPEAL,  
FIFTH CIRCUIT**

FIFTH CIRCUIT

MICHAEL P. JOHNSTON **FILED DEC 11 2002**

COURT OF APPEAL



STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 566-140, DIVISION "P"  
HONORABLE MELVIN C. ZENO, JUDGE PRESIDING

DECEMBER 11, 2002

**WALTER J. ROTHSCHILD  
JUDGE**

Panel composed of Judges Edward A. Dufresne, Sol Gothard  
And Walter J. Rothschild

PAT M. FRANZ

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Metairie, Louisiana 70006

COUNSEL FOR GINA DUPAQUIER JOHNSTON,  
PLAINTIFF/APPELLEE

LESLIE A. BONIN

700 Camp Street

New Orleans, Louisiana 70130

COUNSEL FOR MICHAEL P. JOHNSTON,  
DEFENDANT/APPELLANT

**APPEAL DISMISSED.**

WJR  
GJR  
SJR

The parties were married on August 16, 1986. On April 17, 2001, Gina Dupaquier Johnston filed a Petition for Divorce, which included rules for child support and interim spousal support. The parties appeared before the Domestic Hearing Officer on May 7, 2001, and he recommended that Michael Johnston pay \$1,708.00 per month for the support of the parties' two minor children. He also recommended that Michael Johnston pay \$1234.00 per month to Gina Johnston for interim spousal support, effective April 17, 2001. On this same date, the Domestic Commissioner adopted the recommendations of the Hearing Officer as an interim order.

Michael Johnston filed an Objection to the Ruling of the Domestic Commissioner on May 10, 2001, in which he requested that the issues of child support and interim spousal support be set for hearing before the trial court. At a hearing on December 4, 2001, the trial court granted the parties additional time to submit memoranda on the issues of child support and interim spousal support. On January 31, 2002, the trial judge rendered a judgment in which he found that the amount of child support and interim spousal support calculated by the Domestic Hearing Officer and adopted by the Domestic Commissioner in his interim order

was proper. On February 19, 2002, the trial court rendered an Amended Judgment in order to correct a numerical error in the January 31, 2002 judgment.

## **DISCUSSION**

On appeal, Michael Johnston contests the amount of interim spousal support awarded to Gina Johnston, specifically arguing that the formula used by the hearing officer and adopted by the trial court does not always yield a fair and equitable result. Mr. Johnston also argues that he is entitled to credit toward his support obligations, because he continued to live in the family home and support the family from April 19, 2001 through May 31, 2001.

Ms. Johnston asserts that the judgment from which Mr. Johnston appeals is not appealable and, therefore, his appeal should be dismissed. She contends that the judgment is a partial final judgment which cannot be appealed unless it has been designated as a final judgment pursuant to LSA-C.C.P. art. 1915(B)(1).

LSA-C.C.P. art. 1915 provides that a final judgment may be rendered in certain circumstances, although it may not grant all of the relief sought or adjudicate all of the issues. Goldman v. Offshore Navigation, Inc., 95-208 (La. App. 5 Cir. 9/20/95), 662 So. 2d 31. This article further provides that when a court renders a partial judgment as to less than all of the claims, demands, or issues, the judgment shall not constitute a final judgment unless it is so designated after an express determination that there is no just reason for delay. In the absence of an express determination of no just reason for delay and designation as a final judgment by the trial court, a jurisdictional defect exists. Woodward v. Cutrer, 01-378 (La. App. 3 Cir. 10/3/01), 796 So. 2d 900, 902.

The judgment at issue sets child support and interim spousal support. However, it does not decide all of the issues remaining in this case and is, therefore, a partial judgment. Furthermore, the trial court did not designate this

judgment as a final judgment for purposes of appeal. Therefore, this matter is not properly before us on appeal.

An interlocutory judgment may only be reviewed on appeal if it may cause irreparable injury. LSA-C.C.P. art. 2083; Whitney National Bank v. Cambridge Realty Corp., 96-956 (La. App. 5 Cir. 2/25/97), 690 So. 2d 213, 216. There has been no showing of irreparable injury in this case. Further, we cannot consider this judgment under our supervisory jurisdiction as an application for writs due to this Court's *en banc* order issued December 9, 1994 which provides in part:

IT IS HEREBY ORDERED that, as of January 1, 1995, all nonappealable matters filed as an appeal will be dismissed. Accordingly, all parties will be required to follow and adhere to the procedural rules schemes set forth in our Louisiana Code of Civil and Criminal Procedure.

Id. at 216.

Accordingly, for the reason set forth above, we find that the judgment in this case is not appealable, and this appeal is therefore dismissed.

**APPEAL DISMISSED.**



EDWARD A. DUFRESNE, JR.  
CHIEF JUDGE

SOL GOTHARD  
JAMES L. CANNELLA  
THOMAS F. DALEY  
MARION F. EDWARDS  
SUSAN M. CHEHARDY  
CLARENCE E. MCMANUS  
WALTER J. ROTHSCHILD

JUDGES

# Court of Appeal

FIFTH CIRCUIT  
STATE OF LOUISIANA  
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GLYN RAE WAGUESPACK  
FIRST DEPUTY CLERK

JERROLD B. PETERSON  
DIRECTOR OF CENTRAL STAFF

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## CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY DECEMBER 11, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

  
PETER J. FITZGERALD, JR.  
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