

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

CA 12-1051

DIONE W. DAVID

VERSUS

RICHARD G. DAVID

**APPEAL FROM THE
SIXTEENTH JUDICIAL DISTRICT COURT
PARISH OF IBERIA, NO. 113919
HONORABLE CHARLES LEE PORTER, DISTRICT JUDGE**

SHANNON J. GREMILLION

JUDGE

Court composed of Elizabeth A. Pickett, James T. Genovese, and Shannon J. Gremillion, Judges.

MOTION DENIED.

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Dione W. David

GREMILLION, Judge.

The defendant-appellant, Richard G. David, filed a pleading in this court entitled Motion to Dismiss and to Cancel Trial Court Hearing Set for October 23, 2012, as Outside the Court's Jurisdiction Given the Instant Appeal of Richard G. David Defendant/Appellant. For the reasons assigned, we deny the motion.

The instant domestic litigation resulted in a judgment dividing the community formerly existing between the parties. The defendant filed a motion to appeal the judgment dividing the community. However, according to the allegations made in the motion *sub judice*, the plaintiff-appellee, Dione W. David, filed pleadings in the trial court entitled Cancellation of Notice of Pendency (June 7, 2012), Motion and Order for Contempt, Money Judgment, and Reimbursement for Rent (June 29, 2012). The defendant has failed to provide this court with copies of these latter pleadings. However, the defendant has filed the instant motion claiming that the trial court has set these matters for contradictory hearing. The defendant avers that, since these matters relate directly to the issues pending in the instant appeal, the trial court has been divested of jurisdiction to hear and decide them.

As indicated above, this court has not been provided copies of the actual pleadings which have prompted the alleged upcoming hearing in the trial court. Regardless, we note that the instant appeal is devolutive, not suspensive. Therefore, we find that we cannot grant the relief requested by the defendant on the showing made.

MOTION DENIED.

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3 Uniform Rules, Court of Appeal.