

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Humphreys and Senior Judge Overton

JOHN THOMAS PULTZ

v. Record No. 0858-02-3

ROBBIE GAYLE PULTZ

MEMORANDUM OPINION*

PER CURIAM

DECEMBER 3, 2002

FROM THE CIRCUIT COURT OF PULASKI COUNTY

Robert M. D. Turk, Judge

(John T. Pultz, pro se, on brief).

No brief for appellee.

John T. Pultz appeals from a final decree of divorce. He contends the decree should be reversed because the parties have decided they want to remain married. Upon reviewing the record and opening brief, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. Rule 5A:27.

"An appellate court must dispose of the case upon the record and cannot base its decision upon appellant's petition or brief, or statements of counsel in open court. We may act only upon facts contained in the record." Smith v. Commonwealth, 16 Va. App. 630, 635, 432 S.E.2d 2, 6 (1993). "The burden is upon the appellant to provide us with a record which substantiates

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

the claim of error. In the absence thereof, we will not consider the point." Jenkins v. Winchester Dep't of Soc. Servs., 12 Va. App. 1178, 1185, 409 S.E.2d 16, 20 (1991).

The record on appeal fails to show that appellant presented to the trial court the argument he raises on appeal. The final decree of divorce is endorsed by appellant: "I ask for this." Moreover, the record contains no transcripts or written statement of facts.

"The Court of Appeals will not consider an argument on appeal which was not presented to the trial court." Ohree v. Commonwealth, 26 Va. App. 299, 308, 494 S.E.2d 484, 488 (1998). Rule 5A:18 bars our consideration of this question on appeal. Moreover, the record does not reflect any reason to invoke the good cause or ends of justice exceptions to Rule 5A:18.

Therefore, the decision of the trial court is summarily affirmed.

Affirmed.