

# **VIRGINIA:**

*In the Court of Appeals of Virginia on* Wednesday *the* 20th  
*day of* April, 2005.

Wesley C. Smith,

Appellant,

against

Record No. 0272-05-4 (January 3, 2005 order)  
Circuit Court No. CH53360

Cheri Smith,

Appellee.

From the Circuit Court of Prince William County

On preliminary examination, the Court concludes that neither a transcript nor statement of facts was timely filed in this case, see Rule 5A:8, and that no extension of time in which to file a transcript or statement of facts is now possible, *Jordan v. Price*, 3 Va. App. 672, 353 S.E.2d 168 (1987). While the absence of the transcript or statement of facts does not always deprive this Court of jurisdiction, the Court will consider only those issues which may be decided without reference to a transcript or statement of facts. When a transcript is indispensable to the determination of an issue, the absence thereof in the record is a jurisdictional defect and requires dismissal of the claim. See *Goodpasture v. Goodpasture*, 7 Va. App. 55, 57, 371 S.E.2d 845, 846 (1988) (family law case saved from dismissal by judge's letter opinion, other documents). **9**, *Anderson v. Commonwealth*, 13 Va. App. 506, 413 S.E.2d 75 (1992) (statement of facts in criminal case); *Turner v. Commonwealth*, 2 Va. App. 96, 341 S.E.2d 400 (1986) (transcript in criminal case); *Barrett v. Barrett*, 1 Va. App. 378, 380, 339 S.E.2d 208, 210 (1986) (neither filed).

Accordingly, it is ordered that appellant shall show cause, by a reply to this order on or before May 5, 2005, why this appeal should not be dismissed. In any response to this order, appellant shall state clearly any questions properly presented by this appeal, see Rules 5A:12(c) and 5A:20(c), and preserved for appellate review, see Rule 5A:18, which can be considered without resort to the transcript

or statement of facts. Appellant shall further explain why the questions can be decided without reference to the transcript or statement of facts.

The period for filing pleadings shall not be enlarged by this order.

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:

  
Deputy Clerk