

# VIRGINIA:

*In the Court of Appeals of Virginia on* Friday *the* 25th  
*day of* March, 2005.

Wesley C. Smith,

Appellant,

against

Record No. 2322-04-4  
Circuit Court No. CH53360

Cheri Smith,

Appellee.

From the Circuit Court of Prince William County

This appeal involves a discovery dispute that arose in a divorce proceeding between Wesley C. Smith and his wife, Cheri Smith. In the divorce action, Wesley C. Smith obtained a subpoena *duces tecum* from the circuit court for various documents from Science Applications International Corporation (SAIC). SAIC successfully sought to quash the subpoena *duces tecum*. Wesley C. Smith now appeals the order of the circuit court granting SAIC's motion to quash.

Code § 17.1-405, provides "[a]ny aggrieved party may appeal" to this Court from "any final judgment, order, or decree of a circuit court" involving divorce or other domestic relations matters. That statute further defines this Court's jurisdiction to include "[a]ny interlocutory decree or order . . . (i) granting, dissolving, or denying an injunction or (ii) adjudicating the principles of a cause." *Id.*

The circuit court order from which Wesley C. Smith appeals is not a final order. "A final decision is one 'which disposes of the whole subject, gives all the relief that is contemplated and leaves nothing to be done by the court.'" Hoyle v. Virginia Employment Commission, 24 Va. App. 533, 537, 484 S.E.2d 132, 133 (1997) (quoting Southwest Va. Hosps. v. Lipps, 193 Va. 191, 193, 68 S.E.2d 82, 83 (1951) (citation omitted)).

"Ordinarily, a trial court's discovery orders are not subject to review on direct appeal because they are not final within the contemplation of Code § [17.1-405]." America Online v. Anonymous

Publicly Traded Co., 261 Va. 350, 358, 542 S.E.2d 377, 381 (2001) (holding, however, that an order granting or refusing a protective order in a proceeding brought in this Commonwealth under the Uniform Foreign Deposition Act is a final order subject to appellate review). The “order in dispute neither adjudicates the underlying cause nor relates to an attendant injunction, but simply resolves an issue arising from discovery incidental to the claim, clearly an interlocutory determination over which this Court has no jurisdiction.” City of Richmond-Fire & Emergency v. Brandon, 32 Va. App. 787, 789, 531 S.E.2d 22, 23 (2000).

Accordingly, we dismiss the appeal.

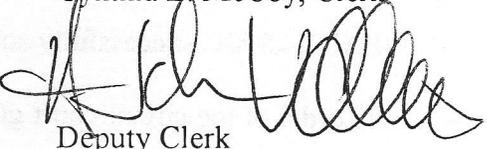
This order shall be certified to the trial court.

A Copy,

Teste:

By:

Cynthia L. McCoy, Clerk



Deputy Clerk