

237 A.D.2d 237
Supreme Court, Appellate Division,
Second Department, New York.

Stephen BALESTRA, Jr., Appellant,
v.
Rita DONOHUE, etc., Respondent.

March 3, 1997.

Attorneys and Law Firms

Raoul Lionel Felder, P.C., New York City (Myrna Felder,
of counsel), for appellant.

[Nadel & Ciarlo, P. C.](#), ([Lorraine Nadel](#), of counsel), for
respondent.

Opinion

*237 In an action for a divorce and ancillary relief, the
plaintiff husband appeals, as limited by his brief, from so
much of an order of the Supreme Court, Kings County
(Schneier, J.), dated August 30, 1995, as denied his cross
motion to vacate an award of interim counsel fees to the

deceased wife, and for summary judgment dismissing
the counterclaims of the deceased wife.

ORDERED that the appeal is dismissed, without costs or
disbursements.

The appellant's wife died before he made his
cross motion and before the issuance of the order
denying that cross motion. There was no effective
substitution prior to the issuance of that order as
required by CPLR 1015. Thus, the provision of the
order appealed from is a nullity, and this court has no
jurisdiction to entertain the appeal (*see*, *238 *Wilson*
v. Rosen, 166 A.D.2d 441, 561 N.Y.S.2d 144;
Cooper v. Volk, 157 A.D.2d 766, 551 N.Y.S.2d
771).

**386 COPERTINO, J.P., and
SULLIVAN, FRIEDMANN and GOLDSTEIN, JJ.,
concur.

All Citations

237 A.D.2d 237, 655 N.Y.S.2d 385 (Mem), 1997
N.Y. Slip Op. 01925