Dismissed and Opinion filed June 22, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-01380-CV

A-ROCKET MOVING & STORAGE, Appellant

V.

DONALD GARDNER, Appellee

On Appeal from the County Civil Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 719,403

O P I N I O N

On February 26, 1998, A-Rocket Moving & Storage, appellant, filed suit against Donald Gardner, appellee, in the Small Claims Court of Precinct 7, Place 2 of Harris County. In its petition, A-Rocket alleged Gardner owed the company $3,115.00 in unpaid moving expenses. Following a trial, the small claims court entered judgment for A-Rocket. Dissatisfied with the judgment, Gardner filed a *de novo* appeal with the County Civil Court at Law No. 1.

On November 9, 1999, the county court entered a partial summary judgment in favor of Gardner. The court ultimately entered a final judgment in favor of Gardner on November 15, 1999. In that judgment, the county court awarded damages, attorney's fees, interest, and costs to Gardner.

On December 8, 1999, A-Rocket filed a notice of appeal in this court. On January 13, 2000, this court ordered the parties to mediation. The parties have mediated, but the mediator has informed this court that mediation was unsuccessful. On May 24, 2000, Gardner filed a motion to dismiss the appeal for want of jurisdiction. In his motion, Gardner contends this court lacks jurisdiction to review this appeal because under section 28.053(d) of the Texas Government Code, a judgment of a county civil court at law on the appeal from a small claims court is final and not reviewable by the court of appeals. In addition to requesting that we dismiss the appeal, Gardner asks that we sanction A-Rocket for filing a frivolous appeal pursuant to rule 45 of the Texas Rules of Appellate Procedure. A-Rocket did not file a response to this motion.

An appeal from a small claims court judgment is to a county court in a *de novo* proceeding. *See* TEX. GOV'T CODE ANN. § 28.053(b) (Vernon 1988). "Judgment of the county court or county court at law on the appeal is final." *Id*. at § 28.053(d). Before 1998, the law was uniform that a judgment from a county court in a *de novo* appeal from the small claims court could be appealed to the court of appeals. *See Gaskill v. Sneaky Enter., Inc.*, 997 S.W.2d 296, 297 (Tex. App.–Fort Worth 1999, pet. denied) (citing *Galil Moving & Storage, Inc. v. McGregor*, 928 S.W.2d 172, 173 (Tex. App.–San Antonio 1996, no writ); 31 JEREMY C. WICKER, TEXAS PRACTICE: CIVIL TRIAL & APPELLATE PROCEDURE § 401 (1985)). But in 1998, the First Court of Appeals held that there is no appeal to the court of appeals from a judgment of the county court after a trial *de novo* appeal from the small claims court. *See Davis v. Covert*, 983 S.W.2d 301, 302 (Tex. App.–Houston [1st Dist.] 1998, pet. dism'd w.o.j.) (en banc). The court reasoned that "final" means there is no further appeal. *See id*. Although the court recognized that section 51.012 of the Civil Practice and Remedies Code gives a court of appeals jurisdiction over cases in which the amount in controversy exceeds $100, the court held that the specific provisions of section 28.053 control over this more general statute.[1] *See id*. at 303.

The approach taken by the First Court of Appeals has been followed by the Second and Tenth Courts of Appeals. *See Lederman v. Rowe*, 3 S.W.3d 254, 255 (Tex. App.–Waco 1999, no pet.);

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[1] "In a civil case in which the judgment or amount in controversy exceeds $100, exclusive of interest and costs, a person may take an appeal or writ of error to the court of appeals from a final judgment of the district or county court." TEX. CIV. PRAC. & REM. CODE ANN. § 51.012 (Vernon 1997).

Gaskill, 997 S.W.2d at 297. We agree with these courts and hold that there can be no further appeal from a county court judgment after an appeal through a trial *de novo* of a small claims court judgment. The legislature could not have been more clear when it stated that such an appeal in the county court is "final." *See Gaskill*, 997 S.W.2d at 297. Accordingly, we grant appellee's motion to dismiss for want of jurisdiction.

Appellee has requested that we impose sanctions against appellant under rule 45. We recognize that several courts have previously determined that courts of appeals have no jurisdiction in this type of appeal; however, this court had not previously made this determination and there does exist an apparent conflict between section 28.053(d) of the Government Code and section 51.012 of the Civil Practice and Remedies Code. Therefore, though we agree with appellee that this court is without jurisdiction to review the appeal, we decline to grant appellee's request for sanctions under rule 45.

Accordingly, we order the appeal dismissed for want of jurisdiction.

PER CURIAM

Judgment rendered and Opinion filed June 22, 2000.
Panel consists of Justices Amidei, Anderson, and Frost.
Publish — TEX. R. APP. P. 47.3(b).