

Dismissed and Opinion filed April 5, 2001.



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**

OPINION

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.

Following entry of summary judgment by the County Civil Court at Law, A-Rocket filed a notice of appeal in this court. Gardner subsequently 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. 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. *Davis v. Covert*, 983 S.W.2d 301, 302 (Tex. App.—Houston [1st Dist.] 1998, pet. dismiss'd w.o.j.) (en banc). The court reasoned that “final” means there is no further appeal. *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. *Id.*

at 303.¹

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.); *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.” *Gaskill*, 997 S.W.2d at 297. Accordingly, we grant appellee's motion to dismiss for want of jurisdiction.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed April 5, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).

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).