

**NO. 12-13-00060-CV**  
**IN THE COURT OF APPEALS**  
**TWELFTH COURT OF APPEALS DISTRICT**  
**TYLER, TEXAS**

<b>DANNY DALE WEISINGER, SR.,</b>	<b>§</b>	<b>APPEAL FROM THE 349TH</b>
<b>APPELLANT</b>		
<b>V.</b>	<b>§</b>	<b>JUDICIAL DISTRICT COURT</b>
<b>THE STATE OF TEXAS,</b>		
<b>APPELLEE</b>	<b>§</b>	<b>HOUSTON COUNTY, TEXAS</b>

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**MEMORANDUM OPINION**  
**PER CURIAM**

On February 22, 2013, Appellant Danny Dale Weisinger, Sr. filed a notice of appeal from the trial court's order denying his motion to vacate an order to withdraw funds from his inmate trust account. On the same date, this court advised Appellant that the materials furnished in this appeal do not include a final judgment or other appealable order. The notice further informed Appellant that the appeal would be dismissed unless, on or before March 25, 2013, he amended the materials filed in this appeal to show the jurisdiction of this court.

In response, Appellant provided a copy of the order he attempts to appeal—the order denying his motion to vacate. A motion to vacate a judgment is in the nature of a motion for new trial. *See In re Brookshire Grocery Co.*, 250 S.W.3d 66, 73 (Tex. 2008) (orig. proceeding) (holding that fundamental nature of new trial motion is request to vacate judgment). An order denying a motion for new trial is not independently appealable. *See, e.g., Fletcher v. Ahrabi*, No. 01-12-00794-CV, 2012 WL 6082915, at \*1 (Tex. App.—Houston [1st Dist.] Dec. 6, 2012, no pet.) (mem. op.) (per curiam); *Overka v. Bauri*, No. 14-06-00083-CV, 2006 WL 2074688, at \*1 (Tex. App.—Houston [14th Dist.] July 27, 2006, no pet.) (mem. op.) (per curiam). Because a motion to vacate is in the nature of a motion for new trial, it likewise is not independently appealable. *See Macklin v. Saia Motor Freight Lines, Inc.*, No. 06-12-00038-CV, 2012 WL

1155141, at \*1 (Tex. App.–Texarkana Apr. 6, 2012, no pet.) (mem. op.) (concluding that motion to set aside judgment is not independently appealable and implicitly characterizing as motion for new trial). Therefore, Appellant has not shown that this court has jurisdiction of this appeal.

Because Appellant has not shown the jurisdiction of this court, the appeal is *dismissed for want of jurisdiction*. See TEX. R. APP. P. 37.1, 42.3.

Opinion delivered March 20, 2013.

*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*

(PUBLISH)



**COURT OF APPEALS  
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS  
JUDGMENT**

**MARCH 20, 2013**

**NO. 12-13-00060-CV**

**DANNY DALE WEISINGER, SR.,**

Appellant

V.

**THE STATE OF TEXAS,**

Appellee

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Appeal from the 349th Judicial District Court  
of Houston County, Texas. (Tr.Ct.No. 03CR-035)

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THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.

*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*