

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-01-00554-CV

Greg Daniels, Appellant

v.

E. W. Ross, Individually and d/b/a Cash Auto Sales, Appellee

**FROM THE COUNTY COURT AT LAW NO. 2 OF TRAVIS COUNTY
NO. 252,902, HONORABLE J. DAVID PHILLIPS, JUDGE PRESIDING**

Greg Daniels filed a notice of appeal in cause 252,902. The judgment from which he attempts to appeal, however, is not the final judgment in the cause, signed January 18, 2001. Rather, he attempts to appeal a post-judgment order of contempt.

Appellee has filed a motion to dismiss for lack of jurisdiction on the basis that contempt orders are not appealable but can be attacked only through a writ of habeas corpus. The validity of a contempt order cannot be attacked by direct appeal. *Ex parte Williams*, 690 S.W.2d 243, 243 n.1 (Tex. 1985); *Metzger v. Sebek*, 892 S.W.2d 20, 54 (Tex. App.—Houston [1st Dist.] 1994, no writ) (cannot appeal contempt order even along with appealable order; should dismiss contempt); *Mendez v. Attorney Gen. of Texas*, 761 S.W.2d 519, 521 (Tex. App.—Corpus Christi 1988, no writ) (no jurisdiction to review contempt order by appeal); *Smith v. Holder*, 756 S.W.2d 9, 10-11 (Tex. App.—El Paso 1988, no writ) (same). However, this contempt order imposed only a fine. Therefore, the requisite element of restraint required for a writ of habeas corpus is not present. *In re Long*, 984 S.W.2d 623, 625 (Tex. 1999). A fine-only contempt order is properly attacked by

petition for writ of mandamus, as there would otherwise be no remedy. *Id*; *Kidd v. Lance*, 794 S.W.2d 586, 587 n.1 (Tex. App.—Austin 1990, orig. proceeding). Accordingly we dismiss for want of jurisdiction Daniels’s attempted appeal from the contempt order in cause 252,902.¹ Tex. R. App. P. 42.3(a).

Bea Ann Smith, Justice

Before Chief Justice Aboussie, Justices B. A. Smith and Puryear

Dismissed for Want of Jurisdiction

Filed: December 13, 2001

Do Not Publish

¹ Our dismissal is not a comment on the merits of any potential mandamus action. We have also dismissed an appeal in cause 252,902 filed by the Dimitry Wanda Declaration Trust. *Dimitry Wanda Declaration Trust v. Ross*, No. 03-01-00417-CV (Tex. App.—Austin Dec. 13, 2001, no. pet. h.) (not designated for publication).