

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00023-CR

Marianne Geraci, Appellant

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW NO. 4 OF TRAVIS COUNTY
NO. C-1-CR-16-100023, THE HONORABLE MIKE DENTON, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Marianne Geraci was charged by complaint with the traffic offense of speeding. *See* Tex. Transp. Code § 545.351. After a jury trial in the municipal court of record, the jury found appellant guilty and assessed her punishment at a \$200 fine. Appellant filed a motion for new trial, which was denied by the municipal court. *See* Tex. Gov't Code § 30.00014(c). Appellant then appealed the municipal court's judgment to the county court at law. *See id.* §§ 30.00014(a), 30.00731; *see also* Tex. Code Crim. Proc. arts. 4.08, 45.042(a). The county court at law issued a written opinion and judgment affirming the judgment of the municipal court. *See* Tex. Gov't Code § 30.00024(a), (c); *see also id.* § 30.00014(b); Tex. Crim. Proc. Code art. 45.042(b). Appellant then filed a timely motion for rehearing in the county court at law. *See* Tex. R. App. P. 49.1. Subsequently, appellant filed a timely notice of appeal in this court. *See* Tex. Gov't Code § 30.00027(a).

After appellant filed her notice of appeal in this court, the county court at law granted her motion for rehearing and set the motion for a hearing. *See* Tex. R. App. P. 49.3. Appellant then sought a stay of the proceedings in this court pending the outcome of the hearing on the motion for rehearing. We abated the appeal and remanded the cause to the county court at law to conduct the hearing on appellant’s motion for rehearing and rule thereon. *See Williams v. State*, No. 03-11-00598-CR, 2013 WL 6921489, at *3 (Tex. App.—Austin Dec. 31, 2013, pet. ref’d) (once appellant has filed notice of appeal and record has been filed in appellate court, lower court lacks authority to act until it receives appellate court’s mandate) (citing Tex. R. App. P. 25.2(g)); *but see Lewis v. State*, 711 S.W.2d 41, 43 (Tex. Crim. App. 1986) (when appeal is abated by court of appeals, limited jurisdiction may be properly returned to trial court); *Nava v. State*, 480 S.W.3d 759, 763 (Tex. App.—Houston [1st Dist.] 2015), pet. ref’d) (“When an appeal is abated, the trial court regains limited jurisdiction.”). The county court at law conducted the hearing and subsequently issued a written opinion and judgment, which was filed in this court in a supplemental clerk’s record. *See* Tex. R. App. P. 34.5(c). The county court at law reversed the judgment of the municipal court and remanded the case to the municipal court for further proceedings consistent with its opinion. *See* Tex. R. App. P. 43.2(d).

In Texas, appeals in a criminal case are permitted only when they are specifically authorized by statute. *State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 915 (Tex. Crim. App. 2011); *Haile v. State*, 451 S.W.3d 856, 857–58 (Tex. App.—Austin 2014, no pet.); *see Bayless v. State*, 91 S.W.3d 801, 805 (Tex. Crim. App. 2002) (“[A] defendant’s right of appeal is a statutorily created right.”). The standard for determining whether an appellate court has jurisdiction to hear and

determine a case “is not whether the appeal is precluded by law, but whether the appeal is authorized by law.” *Blanton v. State*, 369 S.W.3d 894, 902 (Tex. Crim. App. 2012) (quoting *Abbott v. State*, 271 S.W.3d 694, 696–97 (Tex. Crim. App. 2008)); *State ex rel. Lykos*, 330 S.W.3d at 915; *Haile*, 451 S.W.3d at 858.

The Government Code grants a defendant convicted in a municipal court of record the right to appeal to the court of appeals if the fine assessed against the defendant exceeds \$100 and the appellate court affirms the municipal court’s judgment. *See* Tex. Gov’t Code § 30.00027(a)(1). Here, the county court at law, acting as the appellate court, has reversed the judgment of the municipal court and set aside appellant’s conviction for speeding. Accordingly, no appeal is authorized under the statute and we lack jurisdiction in this appeal.¹ *See, e.g., Schatz v. State*, 471 S.W.3d 928, 929 (Tex. App.—Fort Worth 2015, no pet.) (concluding that it lacked jurisdiction over appeals because county court did not affirm municipal court’s judgment but instead dismissed the appeals); *Flores v. State*, 462 S.W.3d 551 (Tex. App.—Houston [1st Dist.] Mar. 5, 2015, no pet.) (dismissing appeals for lack of jurisdiction when county criminal court dismissed appeal of municipal court judgments); *Jamshedji v. State*, 230 S.W.3d 224, 225 (Tex. App.—Houston [14th Dist.] 2006, pet. ref’d) (concluding that it had no jurisdiction to hear appeal because right of appeal to court of appeals exists only where conviction in municipal court has been affirmed by county court and judgment was instead dismissed by county court).

¹ The Government Code also authorizes an appeal if “the sole issue is the constitutionality of the statute or ordinance on which a conviction is based.” Tex. Gov’t Code § 30.00027(a)(2). A review of the record demonstrates that Geraci raised six issues in the county court at law, none of which challenged the constitutionality of the speeding statute. Thus, her appeal is not authorized under this portion of the statute.

We dismiss this appeal for want of jurisdiction.² *See* Tex. R. App. P. 43.2(f).

Melissa Goodwin, Justice

Before Justices Puryear, Pemberton, and Goodwin

Dismissed for Want of Jurisdiction

Filed: April 6, 2017

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² All motions currently pending in this appeal are dismissed as moot.