

COURT OF APPEALS FOR THE TWELFTH COURT OF APPEALS DISTRICT  
OF TEXAS

In re Charles Ross

In re Charles Ross · No. 12-09-00317-CV · Decided August 18, 2010

SUMMARY

The Texas Twelfth Court of Appeals withdrew and replaced an earlier memorandum opinion and judgment in an appeal brought by Charles Ross. The court dismissed the appeal for want of jurisdiction because the record did not contain a final judgment or other appealable order.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals for the Twelfth Court of Appeals District of Texas                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Per Curiam; Worthen, C.J.; Griffith, J.; Hoyle, J.                                                                                                                                                                                                                                                                                     |
| JURISDICTION          | Texas                                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | August 18, 2010                                                                                                                                                                                                                                                                                                                        |
| DOCKET                | 12-09-00317-CV                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Charles Ross appealed the trial court's denial and dismissal of his petition seeking a probable-cause determination for a court of inquiry or the convening of a special grand jury. The court of appeals dismissed the appeal for want of jurisdiction because the record did not contain a final judgment or other appealable order. |
| STANDARD OF REVIEW    | The court independently examined whether it had appellate jurisdiction.                                                                                                                                                                                                                                                                |
| PRECEDENTIAL VALUE    | Published                                                                                                                                                                                                                                                                                                                              |
| PARTIES               | Charles Ross                                                                                                                                                                                                                                                                                                                           |

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- civil procedure

PRACTICE AREAS

- Appellate procedure
- Civil procedure

## QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction over Ross's appeal when the appellate record contained no final judgment or other appealable order.

## HOLDINGS

1. The court lacked appellate jurisdiction because the record did not contain a final judgment or other appealable order, and the appeal therefore had to be dismissed for want of jurisdiction.

## FACTUAL BACKGROUND

Ross filed a document in the trial court entitled "Petition for Smith County District Judge Determination for Probable Cause to Court of Inquiry or Convening Special Grand Jury." The trial court denied the requested relief and dismissed the cause by written order. The appellate record did not contain a final judgment or other appealable order, and Ross's later request for preparation of a final judgment did not result in one being included in the record.

## PROCEDURAL HISTORY

The 114th Judicial District Court of Smith County denied Ross's petition and dismissed the cause by written order dated August 5, 2009. Ross filed a notice of appeal. After the court of appeals notified him that the record did not establish appellate jurisdiction, Ross requested that the trial court prepare a final judgment, but no final judgment or other appealable order was filed in the appellate record. The court withdrew its March 20, 2010 memorandum opinion and judgment and issued this substitute opinion and judgment.

## DISPOSITION

dismissed

## CASES CITED

- In re Court of Inquiry, 148 S.W.3d 554, 555 (Tex. App.—El Paso 2004, no pet.)

## OPINION

PER CURIAM.

FILED!N SUPREME COURT OF TEXAS 10-0496 AUG 18 2010 NO. 12-09-00317-CV [3LAKE  
HA\VTHORNE, Clerk 8y Depu~ IN THE COURT OF APPEALS TWELFTH COURT OF  
APPEALS DISTRICT TYLER, TEXAS § APPEAL FROM THE 114TH LVRE:CHARLESROS~  
APPELLANT § JUDICIAL DISTRICT COURT § SMITH COUNTY, TEXAS MEMORANDUM  
OPINION PER CURIAM We withdraw our memorandum opinion and judgment of March 20,  
2010, and issue this substitute memorandum opinion and accompanying judgment in its place.

See TEX. R. App. P. 19.3(a) (permitting court, after expiration of plenary power, to correct clerical error in opinion and judgment). Appellant Charles Ross filed a document in the trial court entitled

"Petition for Smith County District Judge Determination for Probable Cause to Court of Inquiry or Convening Special Grand Jury." By written order signed on August 5, 2009, the trial court denied the relief sought and dismissed the cause.

Ross filed a notice of appeal from the order. On January 26, 2010, this court notified Ross that the district clerk's record received in this appeal does not include a final judgment or other appealable order. See *In re Court of Inquiry*, 148 S.W.3d 554, 555 (Tex. App.-El Paso 2004, no pet.) (no appeal from district judge's determination under Chapter 52 of the Texas Code of Criminal Procedure).

Therefore, the record does not show that this court has jurisdiction of the appeal. Ross was further notified that his appeal would be dismissed if the information received in the appeal was not amended on or before February 25, 2010 to show the jurisdiction of this court.

On February 3, 2010, we received a copy of a letter Ross sent to the district clerk requesting that the trial court be asked to prepare and sign a final judgment to be included in the appellate record. Along with the copy of the letter, we received a copy of a "Motion for Final Judgment," which had been sent to the district clerk for filing.

However, we have not received a final judgment or other appealable order in this appeal. Accordingly, the appeal is dismissed for want of jurisdiction. See TEX. R. APP. P. 37.2, 42.3. Opinion delivered August 18, 2010. Panel consisted of Worthen, CJ, Griffith, J, and Hoyle, J (PL'BLISH) 2 COURT OF APPEALS TWELFTH COURT OF APPEALS DISTRICT OF TEXAS JUDGMENT AUGUST 18,2010 NO. 12-09-00317-CV IN RE: CHARLES ROSS, APPELLANT Appeal from the 114th Judicial District Court of Smith County, Texas.

(Tr.Ct.No. 09-1723-B) THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of the court that this Court is without jurisdiction of the petition for writ of mandamus, and that the appeal should be DISMISSED. It is therefore ORDERED, ADJUDGED and DECREED by the 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, C1., Griffith, 1., and Hoyle, 1. 3