

Supreme Court of Texas
November 1, 2013

In re Blevins

No. 12-0636

Case summary written by Caleb Segrest, Staff Member.

Per Curiam.

This proceeding arose from an order in a Suit Affecting the Parent-Child Relationship (SAPCR) that transferred the possession of two children from the foster parents with whom the children had been living to the children's father and paternal grandmother. The father and grandmother both resided in Mexico. The foster parents sought a temporary restraining order that would allow them to retain custody of the children, but the trial judge denied this request. Subsequently, the trial judge recused from the case and a replacement judge was assigned. The foster parents asserted that the trial court abused its discretion by transferring possession and sought a writ of mandamus directing the trial judge to set aside the order.

Issue: What is the effect of a writ of mandamus issued against a new judge for his/her predecessor's actions if the predecessor has recused from the case? May the writ be issued against the new judge or may the new judge reconsider the original judge's decisions?

Generally, a writ will not issue against one judge for what another did. Thus, when a judge who signed the order at issue has "ceased to hold office," an appellate court "must abate the proceeding to allow the successor to reconsider the original party's decision." TEX. R. APP. P. 7.2. The question is whether recusing from a case is equivalent to ceasing to hold office. The courts of appeals are split on this matter.

The Court concluded that under circumstances such as those in the present case, appellate courts should either deny the petition for mandamus or abate the proceedings pending consideration of the challenged order by the new trial judge. Because mandamus is a discretionary writ, the appellate court involved should exercise discretion to determine which of the two approaches affords the better and more efficient manner of resolving the dispute.

In the present case, the Court concluded that the better and more efficient approach was to abate the proceedings instead of denying the petition. The Court further directed the new trial judge assigned to the case to take whatever actions and to hold whatever hearings it determines are necessary for it to reconsider the order and those matters underlying it.