

Deny and Opinion Filed May 15, 2025



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-25-00428-CV

**IN RE STILLWATER CAPITAL INVESTMENTS, LLC; SW COMPANY
MANAGERII, LLC; STILLWATER AP-1 DEVELOPMENT, LLC;
ROBERT C. ELLIOTT; RICHARD J. COADY, IV; AND ROBERT AARON
SHERMAN, Relators**

**Original Proceeding from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-21-00298**

MEMORANDUM OPINION

**Before Justices Miskel, Kennedy, and Lee
Opinion by Justice Lee**

In this original proceeding, relators challenge certain orders signed by the Presiding Judge of the First Administrative Judicial Region (the Presiding Judge). In two issues, relators ask this Court to conclude the Presiding Judge abused his discretion by (1) denying two motions to disqualify the former trial judge, and (2) denying their request for a hearing as required by Texas Rule of Civil Procedure 18a. Relators request this Court to (1) enter such orders as may be necessary to declare and confirm that the former trial judge was disqualified and declare void all of her orders rendered in this case, or, in the alternative, (2) enter an order directing the

Presiding Judge to set a hearing on relators' motion to Disqualify and Vacate Rulings and their Amended Motion to Vacate Rulings and Request for Evidentiary Hearing. After considering relators' petition, the mandamus record, real parties' response, and relators' reply to real parties, we deny mandamus relief.

Background

After the trial court litigation was filed, the former trial judge was appointed to the 162nd Judicial District Court. She signed several orders in the case involving, among other things, discovery, scheduling orders, exclusion of certain evidence, and orders on partial summary judgment. She also referred certain matters to an associate judge for consideration. The case was set for a bench trial, and on the first day of trial, the former trial judge orally recused herself. She later signed an order of recusal on October 17, 2024.

Based on the recusal, the Presiding Judge transferred the suit from the 162nd Judicial District Court to the 193rd Judicial District Court on November 1, 2024. The former trial judge's term of office expired on December 31, 2024.

The day before the former trial judge's term expired—but after the former trial judge had recused and the case was transferred to the 193rd District Court—relators filed a Motion to Disqualify and Vacate Rulings (the Motion to Disqualify). In that motion, relators sought an order from the Presiding Judge declaring the former trial judge was disqualified from presiding over the trial, and vacating any orders she had signed as well as any referral orders and an order signed by the

associate judge. Relators acknowledged their motion “may technically be moot at this juncture” but they still sought a declaration that the former judge’s recusal was in fact a disqualification. They requested an order (1) vacating all prior rulings of the former judge and of an associate judge due to the former judge’s purported disqualification to preside over the case, (2) restoring the case and parties to the status quo existing immediately before the former judge’s appointment to the 162nd Judicial District Court, and (3) cancelling a trial setting and establishing a new trial date and pretrial deadlines.

On January 3, 2025, relators requested that the Motion to Disqualify be referred to the Presiding Judge and set for hearing. On January 15, 2025, the Presiding Judge signed an order denying the Motion to Disqualify as moot, taking judicial notice “of the fact that [the former judge] voluntarily recused in this case,” “the matter was transferred to another court,” and that the former judge’s “term of office ended December 31, 2024 and that she is no longer an active judge.”

Relators then filed an Amended Motion to Vacate Rulings and Request for Evidentiary Hearing (the Motion to Vacate). In that motion, relators again acknowledged that the motion may “technically be moot at this juncture” but sought the same relief sought in their previous motion. The motion was set for a hearing before the 193rd District Court on February 27, 2025.

However, before the trial court conducted a hearing on the motion, the Presiding Judge signed an order denying the motion to vacate. In that February 13,

2025 order, the Presiding Judge found, among other things, that that there was no need for a rule 18a hearing.

Relators then filed a letter with the trial court asking that the February 27, 2025 hearing be converted to a status conference and requesting guidance on the proper forum for further proceedings. According to relators, the trial judge declined to address the Motion to Vacate pending in her Court, and instead instructed relators to seek mandamus review of the Presiding Judge's rulings. This mandamus proceeding followed.

Applicable Law

Generally, entitlement to mandamus relief requires relators to show that the Presiding Judge clearly abused his discretion and that relators lack an adequate appellate remedy. *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). When a judge continues to sit in violation of a constitutional proscription, mandamus is available to compel the judge's mandatory disqualification without a showing that relator lacks an adequate remedy by appeal. *See In re Union Pac. Resources*, 969 S.W. 2d 427, 428 (Tex. 1998) (orig. proceeding). This is because any orders or judgments signed by a judge who is constitutionally disqualified are void and without effect. *Id.* Similarly, mandamus is available to challenge void orders without the need to show lack of an adequate remedy by appeal. *See In re Saving Grace #2, LLC*, No. 05-23-00745-CV, 2023 WL 6783511, at *3 (Tex. App.—Dallas Oct. 13, 2023, orig. proceeding) (mem. op.).

Rule 18a provides a procedural mechanism for a party to recuse or disqualify a judge who is *sitting* in the case. *See* TEX. CIV. P. 18a(a) (a party in a case in any trial court other than a statutory probate court or justice court may seek to recuse or disqualify a judge *who is sitting in the case* by filing a motion . . .) (emphasis added). The purpose of rule 18a is to ensure that all litigants have the opportunity to have an impartial judge preside over their case. *See Gen. Motors Corp. v. Evins*, 830 S.W.2d 355, 358 (Tex. App.—Corpus Christi—Edinburg 1992, orig. proceeding). Judges may be removed from a particular case because they are constitutionally disqualified, TEX. CONST. art. V, § 11, because they are subject to a statutory strike, TEX. GOV'T CODE § 74.053(d), or because they are recused under rules promulgated by the supreme court. TEX. R. CIV. P. 18a; TEX. R. APP. P. 16. The grounds and procedures for each are fundamentally different. *See In re Union Pac. Resources*, 969 S.W. 2d 427, 428 (Tex. 1998) (orig. proceeding).

If a judge is constitutionally disqualified under the Texas Constitution, the judge is without jurisdiction to hear the case, and any judgments or orders signed by that judge are void and a nullity. *Buckholts Indep. Sch. Dist. v. Glaser*, 632 S.W.2d 146, 148 (Tex.1982). Unlike recusal, disqualification can be raised at any time. *Bulkholts*, 632 S.W.2d at 148. A trial or appellate court may raise the issue on its own motion. *See McElwee v. McElwee*, 911 S.W.2d 182, 185 (Tex. App.—Houston [1st Dist.] 1995, writ denied). And, if the question of disqualification is unclear on

appeal, an appellate court may abate the appeal and return the matter to the trial court for an evidentiary hearing on the issue. *Id.*

Discussion

Here, relators did not seek to have the former trial judge disqualified until after she had voluntarily recused herself from the proceeding and was no longer sitting in the case, and the day before her term expired. Consequently, the purpose of a rule 18a hearing had already been accomplished, and there was no need for the Presiding Judge to hold a rule 18a hearing and *remove* the former trial judge from the case. And relators did not seek removal of the former trial judge in their motion. Rather, the crux of both of the motions was to have the former trial judge declared disqualified, rather than recused, and for all orders signed by that judge and an associate judge to be found void. Such matters need not be determined by the Presiding Judge; they may be determined by the trial court. *See McElwee*, 911 S.W.2d 185. Under the circumstances in this case, and based on the arguments presented in their petition, we conclude relators have failed to show the Presiding Judge abused his discretion by failing to conduct a rule 18a hearing.

With respect to relators' request that we vacate the Presiding Judge's January 15, 2025 and February 13, 2025 orders and enter an order declaring the former judge disqualified from the underlying suit, and declare all orders and rulings entered by that former judge and an associate judge void and without effect, we note that the Presiding Judge transferred the underlying suit to the 193rd District Court before

relators filed their Motion to Disqualify or Motion to Vacate Rulings. Although relators asked for the Motion to Disqualify to be referred to the Presiding Judge, they did not request their Motion to Vacate to be sent to the Presiding Judge. Rather, they set that motion for a hearing before the trial court. After the former trial judge's recusal and the transfer of the case on November 1, 2024, there was no longer any relief for the Presiding Judge to grant pursuant to rule 18a. The trial court has not had the opportunity to decide whether the former trial judge was disqualified. The mandamus record reflects that the trial court has not yet ruled on the Motion to Vacate, and until the trial court has a chance to do so, we decline to address the merits of that motion.

We therefore conclude that relators have failed to establish the respondent Presiding Judge clearly abused his discretion, and we deny the petition for writ of mandamus.

/Mike Lee/

MIKE LEE
JUSTICE