



**IN THE
TENTH COURT OF APPEALS**

No. 10-12-00377-CV

**IN RE MARY FLENTGE MCCAULEY,
WILLIE O. FLENTGE, JR., AND CHARLES RAY FLENTGE**

Original Proceeding

ABATEMENT ORDER

Relators have petitioned this Court to issue a writ of mandamus directing Respondent, the Honorable Terry Flenniken, Judge of the 21st District Court of Burleson County, to vacate his orders of June 11, 2012 and August 31, 2012 granting partial summary judgment in favor of the Real Parties in Interest, and to compel Judge Flenniken to enter an order granting Relators' motion for partial summary judgment that the corporate by-law restrictions on the transferability of W.L. Ranch, Inc. shares must be enforced and that the 100 shares of each of the probate estates of Willie O. Flentge, deceased, and Laverna Flentge, deceased, must be tendered to W.L. Ranch, Inc. for it to exercise its right of first refusal as to whether or not to purchase the shares.

Relators have also petitioned this Court to issue a writ of prohibition ordering Judge Flenniken not to authorize the release of money held in the registry of the court on behalf of W.L. Ranch, Inc. until a final judgment is entered in the case.

Judge Flenniken did not seek reelection and is no longer the elected Judge of the 21st District Court. The Honorable Carson Campbell is now the duly elected judge.

The proper procedure is to abate the proceeding and give Relators the opportunity to present their requests for relief to the successor judge (Judge Campbell) and to allow him to reconsider the original party's (Judge Flenniken's) decisions. TEX. R. APP. P. 7.2(b); *In re Whitfield*, 134 S.W.3d 314 (Tex. App.—Waco 2003, order) (abating because elected trial judge was no longer in office, having chosen not to seek reelection). Nothing in the record indicates that such a request has been made of Judge Campbell. If Judge Campbell refuses to grant the relief sought, Relators may then amend their petition to specifically allege that Judge Campbell denied the relief requested, and we would duly consider an amended petition. *See Whitfield*, 134 S.W.3d at 314.

We abate this proceeding for 45 days from the date of this order to allow Relators the opportunity to present their requests for relief to the Judge of the 21st District Court, obtain a ruling or rulings, and to proceed accordingly. During this period of abatement, our stay of all proceedings is vacated only to the extent to allow Relators to present their requests for relief that they have sought in this original proceeding to the Judge of the 21st District Court.

PER CURIAM

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Proceeding abated
Order issued and filed February 7, 2013
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