



**NUMBER 13-21-00009-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**IN RE CHRISTOPHER WAYNE HOLT**

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**On Petition for Writ of Mandamus.**

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**MEMORANDUM OPINION**

**Before Chief Justice Contreras and Justices Hinojosa and Silva  
Memorandum Opinion by Justice Hinojosa<sup>1</sup>**

By petition for writ of mandamus, pro se relator Christopher Wayne Holt seeks to compel the trial court to vacate its order referring the underlying case to mediation, set relator's motion for enforcement for hearing, rule on relator's motion for substitute service, and order real party in interest Michelle Ann Frazee to personally appear in the proceedings below.<sup>2</sup> See TEX. FAM. CODE ANN. § 157.061(a) ("On filing a motion for enforcement

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<sup>1</sup> See TEX. R. APP. P. 52.8(d) ("When denying relief, the court may hand down an opinion but is not required to do so," but "[w]hen granting relief, the court must hand down an opinion as in any other case"); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

<sup>2</sup> This case arises from trial court cause number 09-01754-00-0D in the 105th District Court of Nueces County, Texas. Relator has previously pursued other requests for relief in this Court. See *In re Holt*,

requesting contempt, the court shall set the date, time, and place of the hearing and order the respondent to personally appear and respond to the motion.”).

This Court requested that the real parties in interest file a response to the petition for writ of mandamus. The OAG filed a letter stating that it “declines to file a brief in this matter.” Frazee filed a response asserting that the respondent in this original proceeding, the Honorable Jack Pulcher, recused himself and the Presiding Judge of the Fifth Administrative Judicial Region assigned the Honorable Martin Chiuminatto to preside over the underlying case. Frazee thus asserts that this original proceeding has been rendered moot and she requests that we dismiss it.

“Although a particular respondent is not critical in a mandamus proceeding, the writ must be directed to someone.” *In re Blevins*, 480 S.W.3d 542, 543–44 (Tex. 2013) (orig. proceeding) (per curiam); see *In re Schmitz*, 285 S.W.3d 451, 454 (Tex. 2009) (orig. proceeding). Generally, “a writ will not issue against one judge for what another did.” *In re Blevins*, 480 S.W.3d at 543; see *In re Baylor Med. Ctr. at Garland*, 280 S.W.3d 227, 228 (Tex. 2008) (orig. proceeding); see also *State v. Olsen*, 360 S.W.2d 402, 403 (Tex. 1962). Texas Rule of Appellate Procedure 7.2 addresses this topic, in part, and provides that when a judge who is the respondent in an original proceeding ceases to hold office, “the court must abate the proceeding to allow the successor to reconsider the original party's decision.” TEX. R. APP. P. 7.2(b). When the trial judge who signed the order at

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No. 13-20-00510-CV, 2020 WL 7063694, at \*1 (Tex. App.—Corpus Christi—Edinburg Dec. 2, 2020, orig. proceeding) (mem. op.) (denying relator’s petition for writ of mandamus seeking to set aside an oral order holding relator in contempt, but suspending confinement, for violations of a previous order regarding child custody and possession); *In re S.H.*, No. 13-20-00247-CV, 2020 WL 6601602, at \*1 (Tex. App.—Corpus Christi—Edinburg Nov. 12, 2020, no pet. h.) (mem. op.) (dismissing as moot relator’s appeal of an order denying his request to proceed as indigent because the trial court vacated the order subject to appeal); *In re Marriage of Holt*, No. 13-20-00166-CV, 2020 WL 5582362, at \*1 (Tex. App.—Corpus Christi—Edinburg Sept. 17, 2020, no pet.) (mem. op.) (dismissing as interlocutory relator’s appeal of an order on special exceptions and a motion to strike).

issue has not ceased to hold office but has only recused himself or herself from further participation in the 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. *In re Blevins*, 480 S.W.3d at 544. 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. *See id.*

Given the current posture of this case and the multiple issues presented in this petition for writ of mandamus, we conclude that that this matter is not properly before us at this time and further proceedings at this juncture should be devoted to the sound discretion of Judge Chiuminatto. Accordingly, we LIFT the stay previously imposed in this case. *See* TEX. R. APP. P. 52.10(b) (“Unless vacated or modified, an order granting temporary relief is effective until the case is finally decided.”). We DENY Frazze’s request that we dismiss this original proceeding as moot and we DENY relator’s motion for additional time to file a reply to Frazze’s response. *See In re Blevins*, 480 S.W.3d at 544. We DENY relator’s petition for writ of mandamus WITHOUT PREJUDICE.

LETICIA HINOJOSA  
Justice

Delivered and filed on the  
27th day of January, 2021.