

Dismissed and Opinion filed July 13, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-01406-CR

RAQUEL SALINAS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from County Court at Law No. 2
Brazos County, Texas
Trial Court Cause No. 1908-99**

OPINION

In this interlocutory appeal, Raquel Salinas challenges the denial of her motion to recuse Judge Richard Davis. We dismiss the appeal for lack of jurisdiction.

Background

Appellant was charged in May of 1999 with driving while intoxicated. Her case was assigned to Brazos County Court at Law No. 2, the Honorable Richard W. B. Davis presiding. On November 30, 1999, Judge Davis announced his candidacy for judge of the 272nd District Court. On December 6, appellant filed a "Motion for Judge to Disqualify or Recuse Himself," asserting that Judge Davis was no longer qualified to sit due to his announced candidacy. Judge

J. D. Langley was assigned to hear appellant’s motion and denied it on December 7, 1999. Appellant filed a Notice of Appeal that same day, requesting an “immediate interlocutory appeal therefrom.”

Appellant’s only point of error asserts that the trial court erred in refusing to “disqualify” Judge Davis. Appellant argues that because Davis’s announcement of his candidacy constituted an automatic resignation of his office under the Texas Constitution,¹ and because there is no time limit in which the commissioners court must appoint a successor under section 25.0009(a) of the Texas Government Code,² then if the commissioners court does not act quickly to fill such vacancy, the resigning judge could potentially be allowed to “hold-over” until a successor is sworn in following the next election. Appellant further asserts that article XVI, section 17, of the Texas Constitution, providing that any officers continue to perform the duties of their offices until their successors are sworn in, should not apply in the context of a “resignation” under section 65. *See* TEX. CONST. Art. XVI, § 17. According to appellant, the combination of these various constitutional and statutory provisions “present an unacceptable and fundamentally unfair process for replacing ambitious judges.”

The procedure for recusal or disqualification of a judge is governed by Texas Rule of Civil Procedure 18a. *See Arnold v. State*, 853 S.W.2d 543, 544 (Tex. Crim. App. 1993). Rule 18a provides that if a motion to recuse or disqualify is denied, it may be reviewed on appeal from a final judgment. *See* TEX. R. CIV. P. 18a(f); *Rio Grande Valley Gas Co. v. City of Pharr*, 962 S.W.2d 631, 638 (Tex. App. – Corpus Christi 1997, pet. dism’d w.o.j.). Because the denial of appellant’s motion to recuse comes to us through an interlocutory rather than final appeal, we do not have jurisdiction to address it. Accordingly, the appeal is dismissed for lack of jurisdiction.

¹ *See* TEX. CONST. Art. XVI, § 65 (providing that if a county judge, among others, announces his candidacy for any office other than that held, and has an unexpired term exceeding one year, his announcement constitutes an automatic resignation of the office then held).

² *See* TEX. GOV’T CODE ANN. § 25.0009(a) (Vernon 1988) (“The commissioners court of each county shall appoint a person to fill a vacancy in the office of judge of a statutory county court”).

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed July 13, 2000.

Panel consists of Justices Fowler, Edelman, and Baird.³

Do not publish — TEX. R. APP. P. 47.3(b).

³ Former Judge Charles F. Baird sitting by assignment.