

DKT (209)



***2ND COA ORD (ORIG PROC) MTN/REHEARING
DENIED**

FILED ON: 04/25/2024

FEE: \$0.00

FILER/REQUESTOR: N/A

No. 02-24-00149-CV

IN THE
COURT OF APPEALS FOR THE SECOND DISTRICT
OF TEXAS

IN RE: CHARLES DUSTIN MYERS, RELATOR.

Appeal from the 322nd District of Tarrant County,
Texas,

Honorable James Munford, District Judge
Presiding

Honorable Jeffrey Kaitcer, Associate Judge
Presiding

MOTION FOR REHEARING

Respectfully submitted by:

Charles Dustin Myers

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Emergency Relief Requested

IDENTITY OF PARTIES AND COUNSEL

Relator certifies that the following is a list of all parties and all counsel who have appeared in this matter:

RELATOR:

Charles Dustin Myers

RESPONDENT(S):

The Honorable James Munford
The Honorable Jeffrey Kaitcer
322nd Judicial District Court
200 E Weatherford St
Fort Worth, Texas 76102

RELATOR'S PRIOR COUNSEL

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***COUNSEL FOR REAL PARTY IN
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I.**REASONS FOR REHEARING**

Relator respectfully submits this Motion for Rehearing pursuant to *TEX. R. APP. P § 49.1*, and which should be granted for the following reasons:

A. Issue

On April 8th, 2024, Relator filed for a petition for writ of Mandamus and concurrently requested temporary relief , where it went before Justices Walker, Womack, and Wallach, JJ, who issued a memorandum opinion denying the emergency relief sought and petition with a general denial.¹

The issue and need for re-hearing is not due to the opinion of this Honorable Court, but in-fact is within the Relator's petition

¹ "The court has considered relator's petition for writ of mandamus and motion for emergency relief and is of the opinion that relief should be denied. Accordingly, relator's petition for writ of mandamus and motion for emergency relief are denied."

for mandamus itself. The petition lacked certified copies of the record, was missing one respondent², and contained over-redacted documents critical to the case - making it impossible for this Court to conduct judicial review³ - thereby warranting the general denial issued.

B. Rule

The appendix to a petition for mandamus must contain a certified or sworn copy of any order complained of, or any other document showing the matter complained of.⁴ In practice, this refers to the key documents such as motions and orders that are central to the discussion in a petition for a

² The Relator's petition for writ of mandamus was addressed to both Honorable District Judge James Munford and the Honorable Associate Judge Jeffrey Kaitcer.

³ *In re Bledsoe*, 41 S.W.3d 807 (Tex. App.-Fort Worth 2001, orig. proceeding at 811 (determining that an accurate record is important to mandamus relief))

⁴ TEX. R. APP. P. § 52.3(k)(1)(A); *Id* § 52.7(a)(1)

writ of mandamus or that are relied upon for the relief sought.

Given that strict adherence to this rule is mandatory for the Relator's petition for mandamus to warrant a thorough judicial review⁵, and given the over-redaction of documents within the Relator's compiled record, this Honorable Court could not determine what the trial court reviewed in reaching its' decision based on these errors.

In light of the above, the Relator's petition for writ of mandamus could not have possibly met the two-pronged burden to warrant mandamus relief set forth in *Walker vs. Packer*⁶ and was unable to demonstrate that the trial court's decisions within this case were arbitrary, or unreasonable.⁷

⁵ *In re Jordan*, No. 05-12-00185-CV, 2012 WL 506579, at *1 (rex. App.-Dallas Apr.3, 2012, orig. proceeding) (mem. op.)

⁶ *Id* at 839-40 (a party must establish that the trial court abused its discretion and that the party has no adequate remedy by appeal)

⁷ *Id* (citing *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985) (orig. proceeding))

C. Application

The Relator has filed with this motion for rehearing a certified record that contains the matters complained of in the original petition for writ of mandamus and motion for emergency relief.

The Relator has also corrected the redaction errors within the petition which will allow this Honorable Court to give a thorough judicial review of the record, and issue the mandamus relief sought when the clear abuse of discretion by the trial court is discovered on the face of the record.

This rehearing motion is critical to address the significant errors made not only in the Relator's original petition, but also the misapplications of law committed by the trial court.

Now that the face of the record is uncovered, this Court can accurately relate the presented issues to the underlying facts given its' ability

provided by *The Texas Constitution* to exercise mandamus power.⁸

II.

CONCLUSION

The opinion issued on April 10th, 2024 by this Court should be revisited, and the Respondent(s) should be compelled to provide a response to this motion so that it may be granted.⁹

The matters at stake are crucial to the future stability of the Children involved in this case, and will have a profound impact on future cases if given the necessary judicial review the Relator seeks from this motion.

⁸ TEX. CONST. art. V, § 6

⁹ TEX. R. APP. P. § 49.2 stating that "No response to a motion for rehearing need be filed unless the court so requests. The motion will not be granted unless a response has been filed or requested by the court."

III.**PRAYER**

The Relator respectfully requests that this Honorable Court compel the Respondent(s) to submit a response to this motion for rehearing, thereby enabling a thorough review and potential granting of the relief sought in the petition for Mandamus.

Additionally, the Relator urges the Court to conduct a detailed examination of his petition for a writ of mandamus and motion for emergency relief, considering the now available and adequate record that substantiates the claims and aligns with the facts of the case.

In the alternative, should the Court find the current submissions insufficient, the Relator seeks leave to file a corrected petition for writ of mandamus and an amended motion for emergency relief.

Respectfully submitted,

/s/ Charles Dustin Myers

Charles Dustin Myers

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Tel.: 817-507-6562

CERTIFICATE OF COMPLIANCE

Pursuant to rule 9.4(i)(3) of the Texas Rules of Appellate Procedure, Relator certifies that the word count in this Motion for Rehearing, excluding the caption and introductory matters, signature, proof of service, certification, certificate of compliance, and appendix totals **601** words.

Certificate of Service

Relator Charles Dustin Myers certifies that a true copy of this Notice for Emergency Relief was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on 04-18-2024:

Cooper L. Carter by EMAIL/ESERVE at
COOPERCARTER@MAJADMIN@COM

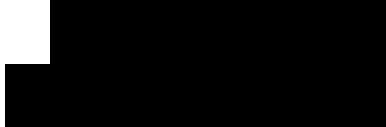
Hon James Munford by ELECTRONIC SERVICE
Presiding District Judge, 322nd District Court of
Tarrant County
200 E Weatherford St, Fort Worth, TX 76102

Hon Jeffrey Kaitcer by ELECTRONIC SERVICE
Presiding Associate Judge, 322nd District Court of
Tarrant County
200 E Weatherford St, Fort Worth, TX 76102

/s/ Charles Dustin Myers

Charles Dustin Myers

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NO. 02-24-00149-CV

IN THE COURT OF APPEALS FOR THE SECOND DISTRICT
OF TEXAS

IN RE: CHARLES DUSTIN MYERS, RELATOR

Appeal from the 322nd District Court, Tarrant
County, Texas

The Honorable James B. Munford, District Judge
Presiding

&&

The Honorable Jeffrey N. Kaitcer, Associate
Judge Presiding

APPENDIX

In support of the Motion for Rehearing,
Relator submits this Appendix in compliance with
Rule 52.3(k) of the Texas Rules of Appellate
Procedure:

TAB# / DOCUMENT	DATE SERVED
1. Eviction Notice.....	12.17.2023
2. Original Petition for Divorce.....	12.18.2023
3. Application for Protective Order.....	12.22.2023
4. Ex-Parte Temporary Order	12.27.2023
5. Ex-Parte Temporary Order.....	12.28.2023
6. Answer to Protective Order	01.02.2024
7. Motion to Consolidate.....	01.03.2024
8. Cases Background For Consolidation	01.03.2024
9. Motion of Continuance.....	01.06.2024
10. Motion of Continuance Brief.....	01.06.2024
11. COMPREHENSIVE STATEMENT OF CONTEXT.....	01.06.2024
12. Unsworn Declaration - General (1).....	01.07.2024
13. Rendition	01.17.2024
14. Associate Judges Report	01.23.2024
15. Notice of termination of counsel	02.05.2024

16. Agreed Motion for Withdrawal of Atty. 02.06.2024
17. Agreed AJ REP for Temporary Orders 02.08.2024
18. MOTION TO VACATE TEMPORARY ORDERS. 02.09.2024
19. MOTION FOR SUMMARY JUDGEMENT 02.22.2024
20. EXHIBIT D -PROPOSED PARENTING PLAN. 02.22.2024
21. NOTICE OF HEARING FOR MOTION TO VACATE .. 02.27.2024
22. NOTICE_UNSWORN_DECLARATION. 03.03.2024
23. NOTICE FOR JUDICIAL REVIEW 03.23.2024
24. ORDER ON MOTION TO VACATE (AJ REP) 03.23.2024
25. DANNY SLADE AFFIDAVIT. 03.23.2024
26. AARON WATSON AFFIDAVIT. 03.23.2024
27. LUZ_OBLE_AFFIDAVIT. 03.23.2024
28. JOHN VALERA AFFIDAVIT 03.23.2024
29. BRIANNA GALBO AFFIDAVIT 03.23.2024
30. NICHOLAS MORVAN AFFIDAVIT 03.23.2024

31. CHRISTIAN VROOM AFFIDAVIT 03.23.2024
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**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-24-00149-CV

IN RE C.M., Relator

Original Proceeding
322nd District Court of Tarrant County, Texas
Trial Court No. 322-744263-23

ORDER

We have considered relator's "Motion for Rehearing."

It is the opinion of the court that the motion for rehearing should be and is hereby denied and that the opinion of April 10, 2024, stands unchanged.

We direct the clerk of this court to send a notice of this order to the relator, the attorneys of record, the trial court judge, and the trial court clerk.

Dated Thursday, April 25, 2024.

Per Curiam

Panel: Walker, Bassel, and Womack, JJ.