

No. 02-24-00149-CV

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2nd COURT OF APPEALS
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DEBRA SPISAK
Clerk

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 EN BANC RECONSIDERATION

Respectfully submitted by:

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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:

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RESPONDENT(S):

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Honorable Jeffrey Kaitcer 322nd

Judicial District Court

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I.

REASONS FOR RECONSIDERATION EN BANC

Pursuant to *Tex. App. R. P. § 49.7*, Relator submits this motion for reconsideration en banc for the following reasons:

A. Extraordinary Circumstances

Reconsideration en banc is particularly disfavored by the appellate courts unless extraordinary circumstances exist.¹

The circumstances of this case involve the series of Temporary Orders issued by Hon. James Munford, District Judge, and Hon. Jeffrey Kaitcer, Associate Judge of the 322nd District Court of Tarrant County.²

1. Violation of constitutional rights.

Under no circumstance may a Judge of this State order a citizen of the United states out of his

¹ TEX. R. APP. P. § 41.2(c)(stating that unless extraordinary circumstances exist - en banc reconsideration is disfavored).

² Both Relator's Petition for Mandamus and Motion for Rehearing En Banc were incorrectly addressed to only James Munford, extending the procedural defects of this case into the appellate process.

residency without first providing him an opportunity to be heard,³ or without any indication that there was an imminent risk of harm present.⁴ Despite this fundamental safeguard, this is exactly what happened in this case when the when Judge James Munford ordered the Relator out of his home, business, and severed the relationship with his two Children on January 16th, 2024, before providing him an opportunity to present his case. This deprivation of fundamental rights occurred at the onset of the case, indefinitely prejudicing the Relator into subsequent proceedings, the first of which was reset for January 22nd, 2024.

2. Extension of constitutional deprivation.

After the initial decision was made by Hon. James Munford, the case was passed along to Associate Judge Jeffrey Kaitcer, where the constitutional deprivation

³ *TEX. CONST. ART. I, § 19* (No citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land.)

⁴ *TEX. FAM. CODE. § 105.001(a)*(the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child)

was continued due to the Mother's failure to acquire legal representation in time to conduct the hearing. Despite the Relator having legal representation, the case was continued, prolonging the effects initially decided by Hon. James Munford on January 16th, 2024, to the further date of February 1st, 2024.

3. Ineffective counsel and agreed orders.

For the third reset hearing on February 1st, 2024, the Mother's initial claims of family violence were never required to be substantiated but were rather used in a settlement agreement between the parties – drafted by the attorneys – which effectively allowed the father back into the home for 30 days, but yet removed the Children. With no better alternative at the time, the agreement was signed, which also non-suited the protective order which was the foundational basis for all judgements up to this point in the case.

4. Prejudice continues indefinitely.

By the time Counsel was involved, the Relator had already been removed from his home, business, and Children's lives for 16 days. This ultimately rendered the services of Dan. Bacalis, Relator's Counsel, ineffective, as his relationship with the Judge was seemingly his only strategy to address the issued communicated to him in-between the reset hearings.⁸

The drafting of the agreed orders was not only inappropriate, but it gave the Mother a free pass out of her knowingly false statements of family violence, which awarded her the Children, the home, and child support payments without ever having to meet her burden of proof.

After terminating his Counsel for failing to represent him in any useful manner on February 5th, 2024, Relator wasn't able to secure a hearing to challenge the

⁸ <https://www.youtube.com/watch?v=tNsNb-oE9oY> (Dan Bacalis' advertising campaign discovered after his termination on February 5th, 2024, where he entices his clients with the inter-personal relationships he has with the Judges)

basis of the agreed temporary orders until March 14th, 2024, due to opposing Counsel's unwarranted delay given that no documents were submitted that would substantiate the opposition's position in the case.

Despite not a single document being filed which supported the Mother's side of the case between when the agreed orders were signed and the motion for reconsideration was heard, the Associate Judge denied the motion without any justifiable reason and prevented the Father from admitting crucial affidavits into evidence, and without providing a court reporter to document the hearing, which substantially affected the ability of the Relator to present his case to the Second Court of Appeals.⁹

B. Complete misapplication of law by the trial court.

The *Texas Family Code* mentions the "best interest of the child" exactly 109 times throughout the code to safeguard

⁹ Given this fact, no decision from the panel should have been issued pursuant to *TEX. R. APP. P.* § 44.1(a)(2) as by not providing a court reporter - the trial court prevented a proper presentation of his case to this Court.

parents and children alike from the exact decisions that were made by both Respondents in this case.

Not only should the “best interest of the child” always be the primary driver in any Judicial Officer’s decision making¹⁰ when it comes to conservatorship and possession of and access to a child, but it’s also the public policy of this State to “assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child”¹¹

The decision to render the Relator homeless, award full custody to the mother, deprive him of his business, and uphold those decisions on reconsideration without any factual support is a direct violation of these safeguards, and discriminatory in nature, a direct contradiction to *Id.* §

¹⁰ *Id.* § 153.002 (The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.)

¹¹ *Id.* § 153.001(a)

153.003(1)¹² which requires the trial court to consider the qualifications of each party, which it did not do.

What the court did do, however, is allow false allegations of violence without any follow-up to be the primary driver in the destruction of the stability the Relator had provided to his Children.

C. This court can fix the errors of this case and must fix the errors of this case.

Not only can this court correct the egregious misapplication of law committed by the trial court, but the relief requested by the Relator is appropriate, as temporary orders are not subject to interlocutory appeal.¹³

Should this court not intervene, the decision will set a perilous precedent, allowing future instances where state interference in family matters could occur without substantial or justifiable cause. It is imperative that this court addresses these extraordinary circumstances to restore

¹² The court shall consider the qualifications of the parties without regard to their marital status or to the sex of the party or the child in determining who is to have primary conservatorship.

¹³ TEX. FAM. CODE § 105.001(e)

faith in the judicial system and protect the constitutional rights of all citizens.

D. Reasons not provided in any denial of relief.

Given the lack of reasoning for the initial decisions in the trial court, the denial of the relief requested in the appellate court, the lack of record provided by the trial court, and the important questions of law brought forth in this case, en banc reconsideration is warranted to correct the trial court's reversible error.

If the initial relief was denied for a procedural defect, the Relator is entitled to know what those defects are and be given additional time to rectify the errors for proper judicial review.¹⁴

¹⁴ TEX. R. APP. P § 44.3

II. PRAYER

Relator respectfully requests that this Honorable Court grant this motion for en banc reconsideration. A comprehensive review of this case is imperative to uphold the fundamental principles of justice and fairness. This reconsideration is essential not only to protect the constitutional rights of the Relator but also to safeguard the best interests of the children involved. Additionally, it is crucial to prevent the recurrence of similar due process violations in the future, ensuring that all actions within this jurisdiction adhere strictly to the rule of law and respect the rights and well-being of all parties, particularly children.

Respectfully submitted,

/s/ Charles Dustin Myers

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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 En Banc Consideration, excluding the caption and introductory matters, signature, proof of service, certification, certificate of compliance, and appendix totals **1,122** words.

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Certificate of Service

Relator Charles Dustin Myers certifies that a true copy of this Motion for En Banc Reconsideration was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on 04-26-2024:

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Hon James Munford by ELECTRONIC SERVICE

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