

NO. 25-0378

IN THE SUPREME COURT OF

TEXAS

IN RE: CHARLES DUSTIN MYERS

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MOTION FOR REHEARING

TO THE HONORABLE SUPREME COURT OF TEXAS:

Relator CHARLES DUSTIN MYERS respectfully submits this motion for rehearing regarding cause number 25-0378 before this Honorable Court.

There exist five judges involved in the same family law matter before this Court, none of which have provided a response, and the case remains inactive in the trial court below.

Because there has been no response, Relator will file a motion similar to this in case numbers 25-0361, 25-0367, 25-0426, and 25-0458 to incorporate potential counter arguments and why they fail. This Court should grant mandamus relief for

cause number 25-0378, and in support of this request, Relator Charles Dustin Myers shows the following:

I. Introduction

1. The motion for rehearing in Charles Dustin Myers' mandamus petition should be granted because the trial court clearly abused its discretion by violating mandatory local rules and denying due process, and Relator lacks an adequate appellate remedy due to the extraordinary circumstances involving his parental rights.

II. Summary

2. Relator's motion for rehearing regarding his petition for writ of mandamus warrants granting because the circumstances present both elements required for mandamus relief: a clear abuse of discretion by the trial court and the absence of an adequate remedy by appeal. Judge Kenneth Newell of the 233rd District Court clearly abused his discretion by granting a contested consolidation motion in violation of Tarrant County Local Rule 4.01(8)(a), which expressly requires consolidation motions to be filed and heard in the earliest-filed case. The sua sponte nature of the ruling, made without notice or hearing and in disregard of Relator's timely objections, further constitutes a violation of due process that the trial court had no discretion to commit.

3. Additionally, Relator lacks an adequate remedy by appeal because the improper consolidation creates extraordinary circumstances that threaten his substantial parental rights. The procedural irregularities, including the suspicious timing of the consolidation order issued immediately after Relator sought mandamus relief for a related matter, suggest a pattern of judicial action that impairs his ability to present his case effectively. Given the fundamental nature of parental rights at stake and the difficulty in quantifying harm from an improper consolidation after trial, allowing this procedural error to stand would subject Relator to continued irreparable harm (which it has) that cannot be adequately remedied through the normal appellate process.

III. Background and Relevant Law

A. Standard for Motions for Rehearing in Mandamus Proceedings

4. In Texas, motions for rehearing in mandamus proceedings must satisfy strict criteria to warrant reconsideration. Generally, a motion for rehearing must "identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous" and "state the legal and factual basis for the claimed error." Tex. Gov't. Code § 2001.146 (2025). The motion must demonstrate specific errors in the court's analysis or application of the law to justify reconsideration.

5. In administrative contexts, which provide guidance by analogy, a motion for rehearing should be denied if it lacks specific grounds. As 7 Tex. Admin. Code § 105.17 (2025) provides, "In the absence of specific grounds in the motion, the Commissioner shall presume that the motion should be overruled." Similarly, regulatory provisions emphasize that motions for rehearing must identify "with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous" and "state the legal and factual basis for the claimed error." 16 Tex. Admin. Code § 60.309 (2025).

6. For mandamus relief specifically, Texas courts consistently apply a two-prong test: the relator must demonstrate (1) that the trial court clearly abused its discretion and (2) that the relator lacks an adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). A trial court clearly abuses its discretion if "it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law." *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992).

B. Clear Abuse of Discretion

7. A trial court abuses its discretion when it fails to analyze or apply the law correctly. As explained in *Perry v. Del Rio*, 66 S.W.3d 239, 257 (Tex. 2001): "A trial court has no 'discretion' in determining what the law is or applying the law to

the facts," and "erroneous legal conclusion, even in an unsettled area of law, is an abuse of discretion." This principle is particularly relevant when a trial court disregards established rules or denies fundamental due process rights.

8. In *Dal-Briar Corp. v. Baskette*, 833 S.W.2d 612, 616 (Tex. App. 1992), the court clarified that while reviewing courts give deference to a trial court's factual determinations, "A trial court possesses no discretion to determine what the law is. A clear failure of the trial court to correctly analyze or apply the law will constitute an abuse of discretion with resulting reversal by extraordinary writ." Although this case was later abrogated, this concept still applies in regard to abuse of discretion.

C. Adequacy of Appellate Remedy

9. The second prong—whether an adequate appellate remedy exists—requires a careful balancing of jurisprudential considerations. As the court explained in *In re Gold*, 04-25-00085-CV (Tex. App. May 07, 2025): "Whether a remedy is adequate precluding mandamus review depends heavily on the circumstances, and that determination requires a balancing of jurisprudential considerations... An adequate appellate remedy exists when any benefits to mandamus review are outweighed by the detriments. Conversely, the requirement that there be no other adequate remedy by law is met when parties are in danger of permanently losing substantial rights."

10. The Texas Supreme Court has recognized that certain extraordinary circumstances may render an appellate remedy inadequate, particularly when fundamental rights are at stake. As explained in *In re Van Waters & Rogers, Inc.*, 145 S.W.3d 203, 211 (Tex. 2004): "An appeal is inadequate when parties are in danger of permanently losing substantial rights. Such a danger arises when the appellate court would not be able to cure the error, when the party's ability to present a viable claim or defense is vitiated, or when the error cannot be made part of the appellate record."

11. In the context of parental rights specifically, the Texas Supreme Court has recognized that mandamus relief is appropriate where a trial court's order improperly affects such rights: "And we previously have granted relief to require a trial court to vacate orders erroneously permitting nonparents access to a child over a fit parent's objection... after concluding that the temporary orders 'divest[ed] a fit parent of possession of his children,' we observed that '[s]uch a divestiture is irremediable, and mandamus relief is therefore appropriate.'" *In re C.J.C.*, 603 S.W.3d 804 (Tex. 2020).

IV. Analysis

D. Application of Legal Standards to Relator's Petition

12. Analyzing Relator's petition for writ of mandamus through the lens of these established legal principles, the case for granting his motion for rehearing is

compelling. The petition identifies with particularity clear legal errors by the trial court that warrant mandamus relief.

E. Clear Abuse of Discretion by Trial Court

13. The record demonstrates that Judge Newell clearly abused his discretion in multiple ways:

i. The trial court violated Tarrant County Local Rule 4.01(8)(a), which unambiguously mandates that "every motion to...consolidate...shall be filed in the earliest-filed case and the motion shall be heard in the earliest-filed case." (emphasis added). This rule is mandatory, not discretionary. Despite this clear directive, Judge Newell in the 233rd District Court (the later-filed case) granted the motion to consolidate, usurping the authority that properly belonged to the 322nd District Court where the divorce proceeding (the first-filed case) was pending.

14. As established in *In re Christus Spohn Hosp. Kleberg*, 222 S.W.3d 434, 437 (Tex. 2007) and noted in Relator's petition, "trial courts are required to follow local rules." The trial court had no discretion to disregard this procedural requirement, and doing so constitutes a clear abuse of discretion.

ii. Judge Newell granted the contested consolidation motion sua sponte, without providing notice to Myers of an imminent

ruling and without holding a hearing on Relator's timely filed objections. This procedural shortcut deprived Relator of his fundamental right to be heard on a potentially case-dispositive motion, which constitutes a denial of due process.

15. As recognized in *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 299-300 (Tex. 2016), "due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner." The trial court's failure to provide this basic procedural protection is a clear abuse of discretion.

iii. The suspicious timing of the consolidation order—issued moments after Myers sought mandamus relief from the Court of Appeals regarding the Associate Judge's refusal to hear his Emergency TRO—suggests the order may have been issued to frustrate appellate review. This pattern of procedural maneuvering further supports finding an abuse of discretion.

F. No Adequate Remedy by Appeal

16. The second prong—the lack of an adequate appellate remedy—is also satisfied in Myers' case for several compelling reasons:

i. **Extraordinary Circumstances:** While consolidation orders typically do not warrant mandamus relief, *In re Van Waters & Rogers, Inc.*, 145 S.W.3d at 210-11 (Tex. 2004) recognized that

"if 'extraordinary circumstances' are present that make an ordinary appeal inadequate, mandamus relief may be warranted." The circumstances here—including multiple procedural irregularities, the apparent pattern of denying Relator a meaningful opportunity to be heard, and the fundamental parental rights at stake—qualify as extraordinary.

- ii. **Danger of Permanently Losing Substantial Rights:** Relator's petition implicates his fundamental parental rights and his ability to protect his children's welfare. As the court recognized in *In re J.H.*, 02-21-00124-CV (Tex. App. Jul 15, 2021), mandamus is appropriate when it "will preserve important substantive and procedural rights from impairment or loss" and when "the party's ability to present a viable claim or defense is vitiated, or when the error cannot be made a part of the appellate record."
- iii. The prejudice from an improper consolidation in a family law context involving children's custody is difficult to quantify and may be impossible to fully remedy on appeal. As noted in *Dal-Briar Corp. v. Baskette*, 833 S.W.2d at 616 (Tex. App. 1992), there is "difficulty in showing harm from improper

consolidation after trial." Once a trial proceeds under an improper consolidation, the intertwining of evidence and issues may make it virtually impossible to disentangle on appeal.

iv. Allowing a trial to proceed based on a clearly improper consolidation order would waste judicial resources and impose unnecessary burdens on Relator. This Court has recognized that mandamus is appropriate "to spare parties and the public the time and money utterly wasted enduring eventual reversal of improperly conducted proceedings." *In re USAA*, 307 S.W.3d 299, 314 (Tex. 2010).

v. The fact that Relator has received nine per curiam denials from the Second Court of Appeals "concerning the same set of underlying facts and without any opposition from the opposing party or the judges below" suggests that ordinary appellate processes have thus far failed to provide Relator with a meaningful opportunity to be heard or to correct clear abuses of discretion.

V. Specific Grounds for Granting Rehearing

17. Several specific legal principles support granting Myers' motion for rehearing:

G. New Analysis of Local Rule Violation

18. The court may not have fully appreciated the mandatory nature of Tarrant County Local Rule 4.01(8)(a) and its significance to the orderly administration of justice. This clear violation of a mandatory procedural rule constitutes a legal error that warrants reconsideration.

H. Due Process Concerns

19. The fact that Relator was denied notice and an opportunity to be heard on his objections to consolidation raises significant due process concerns that the court should address. As the Court stated in *In re Williams*, 05-25-00273-CR (Tex. App. Apr 28, 2025), entitlement to mandamus relief requires "showing that the trial court clearly abused its discretion and that relator lacks an adequate appellate remedy." The denial of basic procedural rights constitutes such an abuse of discretion.

I. Impact on Parental Rights

20. The court should reconsider its ruling in light of this Court's recognition in *In re C.J.C.*, 603 S.W.3d 804 (Tex. 2020) that mandamus relief is appropriate when a trial court's order improperly affects parental rights, as such a divestiture is "irremediable."

J. Extraordinary Circumstances

21. The court should reevaluate whether the totality of circumstances—including the procedural irregularities, the fundamental rights at stake, and the pattern of judicial action that appears to be frustrating Relator's ability to obtain meaningful review—constitute “extraordinary circumstances” warranting mandamus relief under *In re Van Waters & Rogers, Inc.*, 145 S.W.3d at 211 (Tex. 2004).

VI. Potential Arguments

22. While there are strong grounds for granting Myers' motion for rehearing, several potential counterarguments should be considered:

K. Deference to Trial Court Procedural Rulings

23. Courts generally give significant deference to trial courts in managing their dockets and procedural matters. However, this deference is not unlimited and does not extend to clear violations of mandatory rules or denials of due process.

L. Consolidation as Discretionary

24. While trial courts have discretion regarding whether to consolidate related cases, they do not have discretion to violate the procedural requirements governing how consolidation motions must be filed and heard.

M. Eventual Appeal as Remedy

25. It could be argued that Myers could eventually appeal the final judgment and raise the improper consolidation at that time. However, as noted in *Dal-Briar Corp. v. Baskette*, 833 S.W.2d at 616 (Tex. App. 1992), there is significant difficulty in showing harm from improper consolidation after trial, making this an inadequate remedy.

N. Standard for Rehearing

26. While 40 Tex. Admin. Code § 823.32 (2025) and 40 Tex. Admin. Code § 807.394 (2025) suggest that rehearings are generally granted "only for the presentation of new evidence," these administrative provisions are not directly applicable to mandamus proceedings in the Supreme Court, which instead focus on correcting clear abuses of discretion by lower courts, which is the case here across all five petitions.

O. Timing Limitations

27. *Gambill v. State*, 692 S.W.2d 106 (Tex. Crim. App. 1985) cautions against "belatedly present[ing] new grounds in such piecemeal fashion." However, Myers is not presenting new grounds but rather seeking reconsideration of his original petition based on the same grounds of clear abuse of discretion and lack of adequate appellate remedy.

VII. Conclusion

28. Based on the foregoing analysis, there are compelling grounds for granting Charles Dustin Myers' motion for rehearing regarding his petition for writ of mandamus. The trial court clearly abused its discretion by violating mandatory local rules and denying Relator due process, and Relator lacks an adequate appellate remedy due to the extraordinary circumstances involving his fundamental parental rights.

29. The violation of Tarrant County Local Rule 4.01(8)(a) alone constitutes a clear abuse of discretion, as the trial court had no discretion to ignore this mandatory procedural requirement. The added procedural irregularities—including the *sua sponte* nature of the ruling, the lack of notice or hearing, and the suspicious timing—further support finding an abuse of discretion that warrants mandamus relief.

30. Moreover, the extraordinary circumstances present in this case—including the fundamental parental rights at stake, the pattern of procedural obstacles Myers has encountered, and the difficulty in remedying an improper consolidation on appeal—demonstrate that Myers lacks an adequate appellate remedy.

31. Granting the motion for rehearing would allow this Court to correct a clear misapplication of law and prevent continuous irreparable harm to Relator's

parental rights before they are further compromised by proceedings tainted by procedural error. It would also serve the interests of judicial economy by preventing a trial based on an improper consolidation order that would likely necessitate reversal and retrial.

32. For these reasons, Relator's motion for rehearing should be granted, and the court should issue a writ of mandamus directing Judge Newell to vacate the improper consolidation order.

VIII. Prayer for Relief

33. WHEREFORE, PREMISES CONSIDERED, Relator Charles Dustin Myers respectfully prays that this Honorable Court:

- i. Grant this Motion for Rehearing in cause number 25-0378;
- ii. Withdraw its prior denial of the petition for writ of mandamus;
- iii. Issue a writ of mandamus directing the Honorable Kenneth Newell, Judge of the 233rd District Court of Tarrant County, to vacate the consolidation order entered in violation of Tarrant County Local Rule 4.01(8)(a);
- iv. Declare that the consolidation of the SAPCR and divorce proceedings was void or procedurally improper, as it was granted (1) Without proper notice or hearing, (2) By the wrong court and contrary to mandatory local rules, (3) Over timely

- objection, and (4) While mandamus relief was pending in a related matter;
- v. Recognize that this consolidation order has materially impaired Relator's parental rights and ability to seek redress, and that no adequate remedy by appeal exists to cure the prejudice resulting from these procedural violations;
- vi. Direct Judge Newell and the trial court to vacate the sua sponte consolidation order, restore the parties to their original procedural posture, and refrain from further rulings unless and until consolidation is properly and lawfully sought and adjudicated in the earliest-filed case;
- vii. Grant such other and further relief in law or in equity as this Court deems just and proper to prevent the continued erosion of Relator's rights and to preserve the integrity of the judicial process.

Respectfully submitted,

/s/ *Charles Dustin Myers*
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Dated: July 11, 2025

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