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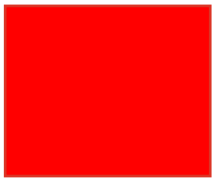

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PLEA TO THE JURISDICTION

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TARRANT COUNTY
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THOMAS A. WILDER
DISTRICT CLERK

NO. 322-744263-23

IN THE 322nd DISTRICT COURT OF TARRANT COUNTY, TEXAS

IN THE INTEREST OF *M.E.M., C.R.M., two children)*
MORGAN MICHELLE MYERS

Petitioner,

CHARLES DUSTIN MYERS,

Respondent.

2025-04-24

Plea to the Jurisdiction

TO THE HONORABLE JAMES MUNFORD:

The record reveals a pattern of the Court acting beyond its jurisdiction: on **January 16, 2024**, the Court ousted Respondent from the marital residence **without any finding of family violence or protective order**; on **March 26, 2024**, the Court entered "Agreed" Temporary Orders **without Respondent's consent**, flouting the statutory procedures for entry of such orders. These actions violate Respondent's due process rights and the Texas Family Code. Under Texas law, orders issued **without jurisdiction or in the absence of a party's consent are void** and cannot confer jurisdiction. Respondent asks the Court to recognize these fundamental defects and dismiss the current orders as a matter of law.

Until these orders are resolved, or the court issues written findings regarding their legitimacy, Respondent will not appear and risk further deprivation of his rights from this court.

I. INTRODUCTION

Petitioner filed a divorce petition under Title 5 of the Texas Family Code on December 18, 2023. That petition did not seek exclusive possession of the residence or ask that Respondent be excluded from the home. Shortly thereafter, on December 22, 2023, Petitioner filed a separate **Application for Protective Order** under Title 4 of the Family Code, in which she explicitly requested exclusive possession of the home, removal of Respondent, and child support. The Court consolidated the protective-order case into the divorce case.

On January 16, 2024, the court—without holding an evidentiary hearing or finding family violence—entered Temporary Orders granting Petitioner exclusive possession of the home and primary custody and child support, and requiring Respondent to vacate the residence that same day. No protective order was ever issued and no findings of family violence were made, even though Tex. Fam. Code §§ 83.006 and 85.001 plainly require such findings. In the weeks that followed, the court continued these arrangements and ultimately entered "Agreed" Temporary Orders (March 26, 2024) allocating parenting time and support. All of these extreme orders were based solely on Petitioner's Title 4 application (and allegations of family violence), and no amendments to the pleadings were ever filed to convert the case into a Title 5 SAPCR. Respondent never received any notice or hearing on custody, possession, or support issues under Title 5.

II. Legal Standards

The trial court's authority is strictly limited by the statutes and pleadings. It may consider only the claims and relief expressly pleaded by the parties, and must follow the Family Code's procedures for protective orders and SAPCRs. Subject-matter jurisdiction is a threshold issue: if

the court acted beyond the law, its orders are void. A plea to the jurisdiction is decided as a matter of law when the relevant facts are undisputed (see *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004)). Here, the material jurisdictional facts are not in dispute.

III. Title 4 (Protective Order) Proceedings Cannot Support Custody or Support

Under Texas law, a protective-order proceeding (Title 4) is *not* a custody (SAPCR) proceeding (Title 5). The San Antonio Court of Appeals recently reaffirmed that without a proper SAPCR petition under Title 5, a court may not award conservatorship, possession, or support. In *Rivera v. Figueroa* (Tex. App.–San Antonio 2019), the court held that orders issued in a protective-order case cannot support conservatorship or child-support relief unless a Title 5 petition was filed and noticed. Likewise, *In re Sheffield*, 639 S.W.2d 270 (Tex. App.–Dallas 1982), long held that Title 4 and Title 5 proceedings are jurisdictionally separate: "a court may not grant relief beyond the scope of the protective-order statute without compliance with the SAPCR statutes" (sheffield, 639 S.W.2d at 272-73). Here, Petitioner's December 22 Title 4 application was never amended or converted into a Title 5 petition. Respondent never waived notice or a hearing on conservatorship/possession issues. The court's decision to exclude Respondent from the home and divest him of custody on January 16, 2024 therefore had no jurisdictional basis. In short, "[w]ithout a valid protective order in place, the court lacked jurisdiction to continue enforcing the extreme relief originally granted".

IV. Statutory Prerequisites for Exclusion and Protective Orders Were Not Met

Even if the court treated the relief as a protective-order, the Family Code's strict requirements were ignored. Tex. Fam. Code § 83.006(a) permits exclusion of a party from the

home *only* if (1) the applicant files a sworn affidavit describing facts requiring exclusion, and (2) appears at the hearing to testify on those facts. Section 83.006(b) further requires that the court make three findings: (i) the applicant resides (or recently resided) at the premises, (ii) the other party committed family violence within the past 30 days, and (iii) there is a clear and present danger of future family violence. Likewise, § 85.001(a) mandates that at the close of a protective-order hearing, the court must explicitly find whether family violence occurred. If so, the court "*shall*" issue a protective order against the perpetrator. In this case, none of these prerequisites were satisfied. Petitioner did file an application and affidavit, but no hearing on January 16 (or thereafter) produced any finding of family violence. The court did not issue a protective order as the statute requires, and instead simply extended the eviction and custody restrictions indefinitely. By failing to hold a hearing, make any family-violence finding, or enter a protective order, the court "bypass[ed] the statutory prerequisites" entirely. Without those statutorily required findings, the January 16 "kick-out" and custody order was outside the court's power.

V. All Orders Exceeding the Pleadings or Statutory Authority Are Void

It is a bedrock rule that a Texas court must confine its rulings to the relief requested by the pleadings and authorized by statute. Any order beyond that scope is void. The Houston First Court of Appeals has stated that "[a]n order purporting to grant relief beyond the pleadings is void ab initio". In *Guillory v. Boykins*, 442 S.W.3d 682, 690 (Tex. App.–Houston [1st Dist.] 2014, no pet.), the court held that where a trial court lacks jurisdiction or statutory authority to grant the relief, the order is void. Similarly, *In re P.M.G.*, 405 S.W.3d 406, 416–17 (Tex. App.–Texarkana 2013, no pet.), confirms that orders entered without pleadings or outside statutory scope are null. Here, not only did the protective-order pleadings not include any SAPCR claims,

but the later "agreed" orders on March 26, 2024 were not signed or even consented to by Respondent (violating Tex. R. Civ. P. 11). In short, every custody and exclusion order in this case was "predicated on a void order". As the Second Court of Appeals recognized in *In re C.L.*, 933 S.W.2d 402, 405 (Tex. App.–Fort Worth 1996, no writ), an order that is void ab initio "cannot form the basis for any valid subsequent judgment". That's exactly what is happening here. The court is now moving to finalize fraud, constitutional deprivation, and is trying to finalize its' original excision of Respondent's constitutional rights. The court cannot destroy a family and then move to finalize that without a lawful basis, and over orders that are fundamentally void.

IV. Violation of Respondent's Constitutional Rights to Due Process and Family Integrity

The trial court's actions not only violated statute but also trampled Respondent's fundamental constitutional rights. By evicting the Respondent from his home and effectively separating him from his children with **no prior notice or opportunity to be heard**, the court deprived him of liberty and property without due process of law. This violates **Article I, § 19 of the Texas Constitution** (the "due course of law" guarantee) and the **Fourteenth Amendment to the U.S. Constitution**. Now, the court seeks to *finalize* this fundamental error amidst an ongoing appeal, showing a continuous and complete disregard for the Respondent's rights.

A. Deprivation of Property Without Due Process

The January 16 order forced Respondent to vacate his own home on the same day it was issued. A person's right to occupy their home is a significant property interest, protected by due process. Yet Respondent was ousted immediately, with no notice that such relief would be sought and no chance to contest the allegations. The Texas Constitution and the 14th Amendment both forbid the State from depriving any person of property without due process of law. *Fuentes v. Shevin*, 407 U.S. 67, 81-82 (1972) (even temporary, non-final deprivations of property require

notice and hearing absent extraordinary circumstances). While Texas law does allow ex parte orders in truly exigent circumstances, those orders must be narrowly tailored and followed promptly by a full hearing. Here, the statutory requirements for an ex parte *kick-out* were disregarded, and Respondent was left homeless and separated from his belongings based on one-sided assertions. This is precisely the kind of state action that due process is meant to guard against.

B. Deprivation of Parental Rights Without Due Process

Even more critically, the court's orders infringed Respondent's fundamental right to parent his children, also without due process. A parent's interest in the care, custody, and control of their children is **fundamental**. The United States Supreme Court has recognized that "the interest of parents in the care, custody, and control of their children…is perhaps the **oldest of the fundamental liberty interests** recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). Likewise, the Texas Supreme Court has affirmed that "the fundamental right of parents to make decisions concerning the care, custody, and control of their children" is constitutionally protected. *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020) (citing *Troxel*, 530 U.S. at 66). Governmental interference with this right is subject to strict scrutiny and must be accomplished only with rigorous procedural safeguards.

Here, Respondent's removal from the home effectively **altered custody of the children** without any hearing or finding of unfitness. Respondent went from being an equal managing conservator of the children to having *zero possession or access* (by virtue of being excluded from the home and the children's presence) overnight and without notice. This is a profound deprivation of parental rights. As the U.S. Supreme Court held in *Stanley v. Illinois*, an unwed father could not be presumed unfit and have his children taken without a hearing – "**the Due**

Process Clause of the Fourteenth Amendment requires that [a father] be given a hearing on his fitness as a parent **before** his children are removed from his custody." *Stanley v. Illinois*, 405 U.S. 645, 649 (1972) (emphasis added). The State **"cannot, consistently with due process, merely presume"** a parent's unfitness or danger and bypass a hearing; **"parental unfitness must be established on the basis of individualized proof"** before a child is taken away. *Id.* at 647, 649. Yet in Respondent's case, the court did exactly what *Stanley* forbids – it presumed the necessity of removing the father, without any adversarial testing of the evidence or finding of actual misconduct and left the determination for later (a hearing that kept getting postponed). This violated Respondent's **procedural due process** rights to be heard *before* being deprived of custody of his children.

Moreover, the **substantive** aspect of due process was violated. There is a "**strong presumption** that the best interest of a child is served by remaining with a fit parent." *Troxel*, 530 U.S. at 68-69. The government may not "infringe on the fundamental right of parents to make child rearing decisions **simply because a state judge believes a 'better decision' could be made**." *Id.* at 72 (plurality op.). In the absence of any evidence or finding that Respondent was an unfit or dangerous parent, removing his children from him was an arbitrary infringement on his fundamental liberty interest. The orders entered in this case prioritized a one-sided allegation over a father's constitutional rights, in a manner repugnant to both the Texas and U.S. Constitutions. Article I, Section 19 of the Texas Constitution guarantees that no citizen shall be deprived of liberty or property **except by the due course of the law of the land** – here, Respondent was deprived of both without the lawful procedures or any adjudication of wrongdoing.

In sum, the process (or lack thereof) employed by the court fell far short of constitutional requirements. This constitutional infirmity is independently sufficient to render the court's orders void. A judgment entered in violation of due process is void and subject to collateral attack. *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84-85 (1988) (judgment rendered without proper notice violates due process and is void). The proper remedy for a void order that stems from a due process violation is to declare it a nullity and dismiss any action that cannot proceed without it.

VI. Plea to the Jurisdiction Must Be Granted

The undisputed record shows no factual or legal basis for the court's jurisdiction over the extreme relief granted. Under *Miranda v. Texas Dept. of Parks & Wildlife*, a plea to the jurisdiction should be granted as a matter of law if the jurisdictional facts are undisputed or uncontroverted by competent evidence. Here, there is no genuine issue that (a) no protective order was issued and no findings of family violence were made, (b) no Title 5 SAPCR notice of hearing exists on the record, or was ever on file, and (c) all of Petitioner's requests for home exclusion and support were styled under Title 4 and unsupported by any pleaded conservatorship claim. The court cannot "proceed further on the merits" without first resolving these fundamental defects. Because these jurisdictional defects are purely legal, a full evidentiary hearing is unnecessary – the Court should rule as a matter of law that it never had authority to enter any of the challenged orders, vacate them accordingly, and allow the status quo to reset. Additionally, the March 14, 2024, orders are a mere extension of the initial orders, which claim consent where consent is not present. These orders must be vacated as a matter of law as this court has no power to rule on void orders.

Respondent puts the court on notice that this plea serves as non-appearance notice in that he will not participate in any further proceedings until these issues are resolved in writing on the record, and will challenge any orders or decisions made prior to the resolution of these issues.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Charles Dustin Myers respectfully prays that the Court:

1. Rule, as a matter of law, that the January 16, 2024, exclusion and custody order and all subsequent temporary orders are **void ab initio** for lack of subject-matter jurisdiction;

2. Vacate and rescind those orders, and dismiss with prejudice any custody, possession, or support claims that rest on them; alternatively, dismiss all SAPCR claims for want of proper pleadings, notice, and jurisdiction;

3. Issue a written ruling on this plea as required by law, and stay all further proceedings in this case pending resolution of this jurisdictional challenge; and

4. Grant such other and further relief, at law or in equity, to which Respondent may be justly entitled.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
[redacted]
817-546-3693
Chuckdustin12@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Plea and Motion has been served on counsel for Petitioner on this 24th day of April 2025.

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
Pro-se respondent

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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