

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.

Request for Hearing on Motion to Dismiss for
Want of Prosecution

2025-06-05

To the Honorable 322nd District Court of Tarrant County:

Since first obtaining relief at the show cause hearing on January 16, 2024, the Petitioner in that matter, MORGAN MICHELLE MYERS, has not done her part in this lawsuit. Starting with vile claims against the undersigned, and later shrouded in the illusion of representation and agreement, she has escaped not only her burden of proof for the initial claims, but every facet of the undersigned's warnings first pled to this Court have materialized. An extraordinary amount of time has been wasted, irreparable harm is ongoing, and the foundation of this matter coupled with the procedural posture and lack of participation from our friends on the other side is astonishing. We've let the *pro-se* bias cloud the judgement and the purpose of why we are here: to dissolve a marriage in a manner that best suits the best interests of the children and in accordance with Texas law.

So far – the opposite has been occurring, and it must not continue.

I. INTRODUCTION

This case was filed on December 18, 2023, and was consolidated with a later filed protective order suit. The amount of case activity is remarkable in two aspects:

1. The voluminous pleadings, exhibits, and other materials filed and served to the Petitioner and her legal representative that have received no response.
2. The lack thereof from the Petitioner and her legal representative which have been properly responded to.

In sum, the Petitioner has filed as a *pro-se* party:

1. An Emergency Ex-Parte Order (12.14.23)¹
2. Original Petition for Divorce (12.18.23)
3. Affidavit of Inability to Pay Court Costs (12.18.23)
4. A Request Form for Uncontested Cases (12.18.23)
5. Application for Protective Order (12.22.23)
6. Motion for Temporary Orders²

Throughout these pleadings, Petitioner claimed abuse, harassment, sexual harassment, drug use, child endangerment, and credit card fraud in contrast to her request for joint-managing conservatorship and standard visitation. All these claims were made while still cohabitating with the undersigned, which was the case up until this Court removed the undersigned from the home, temporarily terminated his parental rights, and awarded the Petitioner on all issues central to the case prior to a formal hearing. Since that day Petitioner has vanished, and her claims abandoned.

¹ This pleading is referenced in the original petition for divorce at 9B.

² This pleading has not been served on the Respondent and is referenced in the March 26 Temporary Orders on Page 1. Included further claims of drug use and child endangerment and credit card fraud.

This is because on January 22, 2024, Petitioner allegedly retained the services of COOPER L. CARTER in her individual capacity for one purpose: to hide behind her actions. This attorney, who has been served hundreds of documents and exhibits – has not responded to one of them. In fact, in total – the Petitioner’s counsel has filed the following pleadings in this matter³:

1. First Amended Petition for Divorce (01.31.2024)
2. Motion for Pre-Trial Conference (04.24.2024)
3. Respondent’s Original Answer (03.20.2025)
4. Motion to Consolidate (03.20.2025)
5. Motion to Consolidate (04.03.2025)

The Petitioner, in just a few weeks of being a *pro-se* litigant, filed more documents than the legal representative that she allegedly retained in over fifteen months of litigation.

The undersigned must pause for a moment here and address the Court directly: he is not an angry litigant, or a parent unhappy with a ruling. He does not think negatively of any Honorable Judge who has presided over these matters as an individual, and he understands that his pleadings may not be perfect or may come off as contemptuous to the Court or reviewing staff. Nor does he think negatively of the opposing party or the opposing counsel. The record before this Court is nothing more than a product of a litigant who was deprived of his children, home, and ability to earn a living initially due to claims which painted a false first impression upon himself and his family – including false claims of indigency by the Petitioner.

For the forthcoming reasons, the Court should consider dismissing this matter:

³ These pleadings were not directly filed by COOPER L. CARTER, but on her behalf by RODERICK D. MARX.

II. REASONS TO DISMISS

A. ABUSE OF PROCESS

1. Under Texas law, abuse of process occurs when a party makes an illegal, improper, or perverted use of legal proceedings for an ulterior purpose, resulting in damage to the other party. The described conduct—where the petitioner raised serious allegations but failed to prosecute them for 14 months, retained custody while the respondent was unable to obtain relief, and used court appearances primarily to block progress—appears to satisfy all three elements required for an abuse of process finding.

2. The petitioner's pattern of behavior suggests the legal system was being used not to resolve legitimate disputes but rather to gain and maintain an unfair advantage. Texas courts have consistently held that using legal process as "a threat or a club" to obtain collateral advantages constitutes an abuse of process. In this case, the collateral advantage has been maintaining custody without having to substantiate the initial allegations of violence, drug use, and fear for her safety as well as financial indigency.

3. The claims made to gain this advantage were significant – such as falsifying the existence of protective orders, which is further explained in the *First Amended Case Memorandum* filed in cause number 25-0361 before the Texas Supreme Court.

4. To prevail on a claim of abuse of process, the essential elements that must be satisfied in Texas are:

- i. The [Petitioner] made an illegal, improper, or perverted use of the process, a use neither warranted nor authorized by the process;

ii. The [Petitioner] had an ulterior motive or purpose in exercising such illegal, perverted, or improper use of the process; and

iii. Damage resulted to the [Respondent] from the irregularity.

5. This three-part test has been consistently applied across Texas jurisprudence, as articulated in multiple cases including *In re Garate*, 13-24-00625-CV (Tex. App. Mar 13, 2025) ("Alvarado's sole cause of action against Garate, abuse of process, 'is the malicious use or misapplication of process in order to accomplish an ulterior purpose.'"), *Human Power of N Co. v. Turturro* (Tex. App. 2024), *Univ. of Tex. of Permian Basin v. Banzhoff*, No. 11-17-00325-CV (Tex. App. May 31, 2019), *Moore v. Lisa Bushman & Integrity Land Servs. & Invs., LLC*, 559 S.W.3d 645 (Tex. App. 2018), *Liverman v. Payne-Hall*, 486 S.W.3d 1 (Tex. App. 2015), *Davis v. West*, 433 S.W.3d 101 (Tex. App. 2014), *Nath v. Texas Children's Hosp.*, NO. 14-11-00034-CV, NO. 14-11-00127-CV (Tex. App. May 03, 2012), *Pitts & Collard, L.L.P. v. Schechter*, 369 S.W.3d 301 (Tex. App. 2011), *Whitehead v. Mackenzie*, NO. 02-09-00383-CV (Tex. App. Jul 14, 2011), *Preston Gate, LP v. Bukaty*, 248 S.W.3d 892 (Tex. App. 2008), *Hunt v. Baldwin*, 68 S.W.3d 117 (Tex. App. 2001), *Bossin v. Towber*, 894 S.W.2d 25 (Tex. App. 1994), *Detenbeck v. Koester*, 886 S.W.2d 477 (Tex. App. 1994), *Futerfas v. Park Towers*, 707 S.W.2d 149 (Tex. App. 1986), *Lozano v. Tex-Paint, Inc.*, 606 S.W.2d 40 (Tex. Ct. App. 1980), and *Tandy Corp. v. McGregor*, 527 S.W.2d 246 (Tex. Ct. App. 1975).

6. In the family law context specifically, Texas courts have addressed patterns of behavior similar to those described in our scenario here. In *Saavedra v. Schmidt*, 96 S.W.3d 533 (Tex. App. 2002), the court identified a pattern of behavior that included "fail[ing] to comply with prior court orders relating to the children," "refus[ing] to allow supervised visits," "engag[ing] in child alienation," and "agree[ing] to share parenting orders with no intent to carry out that

agreement or comply with those orders." The court recognized that such conduct could constitute improper use of the legal process in family court proceedings.

7. In the present matter, these patterns of behavior exist. Despite the undersigned's zealous opposition to the orders in place, he still follows him to the best of his ability out of respect to the Honorable Judge who signed them. However, the same cannot be said for the Petitioner. The undersigned has provided evidence that she has been disposing of his personal belongings, preventing the children from contacting him, exposing the children to unsafe environments, neglecting the children medically, and refusing to communicate or co-parent. This situation adds unnecessary layers to the tragedy and in no logical way could be in the best interests of the children.

B. WANT OF PROSECUTION

8. The petitioner's failure to actively pursue the case for over 14 months provides sufficient grounds for dismissal under Texas Rule of Civil Procedure 165a and the court's inherent power to dismiss cases not prosecuted with due diligence. The significant delays and prejudice to the respondent further strengthen the case for dismissal, as Texas courts consistently uphold dismissals based on unreasonable delays and lack of prosecution activity.

9. Under Texas law, a court may dismiss a case for want of prosecution through two independent sources of authority: Texas Rule of Civil Procedure 165a and the court's inherent power to maintain and control its docket. Rule 165a provides specific grounds for dismissal, including failure to appear for hearings or trials and failure to dispose of a case within the time standards promulgated by the Supreme Court. Additionally, courts have inherent authority to dismiss cases when plaintiffs fail to prosecute their claims with due diligence.

10. In this case, the petitioner's 14-month period of inaction despite raising serious allegations initially, coupled with the significant delays and prejudice caused to the respondent, strongly justifies dismissal under Rule 165a and the court's inherent power. In considering a dismissal, the court should consider factors including the length of time a case has been pending, the extent of activity in the case, whether trial settings were requested, and the existence of reasonable excuses for delay. The absence of diligent prosecution over such a prolonged period, with resulting prejudice to the respondent who has been unable to obtain relief, presents compelling grounds for dismissal for want of prosecution.

11. In Texas, trial courts derive their authority to dismiss cases for want of prosecution from two independent sources: (1) Texas Rule of Civil Procedure 165a and (2) the court's inherent power to maintain and control its docket. *Carson v. Webster*, 11-23-00225-CV (Tex. App. Nov 07, 2024) ("The trial court's authority to dismiss a pending case for want of prosecution generally stems from two sources: (1) Rule 165a of the Texas Rules of Civil Procedure, and (2) the court's inherent power... The plaintiff's failure to prosecute a case with reasonable diligence will justify dismissal either under Rule 165a or the trial court's inherent authority...").

12. This dual basis for dismissal has been consistently recognized in Texas for decades. *Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999), cited in numerous recent cases, established this principle, which has been consistently applied by Texas courts. *Dueitt v. Arrowhead Lakes Property Owners*, 180 S.W.3d 733 (Tex. 2005) ("A trial court's power to dismiss a suit for want of prosecution originates from two sources: (1) Texas Rule of Civil Procedure 165a and (2) the trial court's inherent authority."). There is no doubt this court has the discretion to dismiss a cause in consideration of these factors.

13. As far as Rule 165a, it provides three independent grounds upon which a trial court may dismiss a case for want of prosecution:

- i. Failure to appear for hearings or trials
- ii. Failure to comply with time standards
- iii. Failure to prosecute with due diligence under the court's inherent authority

14. For grounds of dismissal pursuant to the inherent authority of the Court, due diligence would be a relevant consideration. Texas law imposes a clear duty on parties seeking affirmative relief to prosecute their cases diligently. *McGilvray v. Graceland Logistics, LLC*, 07-23-00364-CV (Tex. App. Jul 31, 2024) ("A plaintiff must prosecute her suit with reasonable diligence or the trial court may dismiss it for want of prosecution.").

15. Here, there has been a complete absence of diligence by the opposing party. They may argue that the Respondent has been delaying the case unreasonably, but this argument fails considering no material argument can be found on the record in opposition of the relief being sought.

C. FALSE AFFIDAVIT OF INDIGENCY

16. Notwithstanding the above, the Petitioner's divorce petition was filed with an affidavit of indigency, claims raised in a still pending summary judgment motion filed on February 22, 2024. Petitioner cannot prevail in proving these claims, and is an independent reason why this case can be dismissed pursuant to the Texas Practice and Remedies Code Sec. 13.001.

III. CONCLUSION AND PRAYER

For all these reasons, after notice and hearing, this case should be dismissed. The undersigned's efforts in seeking relief for his Children in contrast to the lack thereof by the Petitioner, alongside the claims of abuse of process and the false claim of indigency should be taken into account in the court's determination.

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