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TARRANT COUNTY
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THOMAS A. WILDER
DISTRICT CLERK

NO. 322-744263-23

IN THE MATTER OF	§	IN THE DISTRICT COURT
THE MARRIAGE OF	§	
MORGAN MICHELLE MYERS	§	
AND	§	322ND JUDICIAL DISTRICT
CHARLES DUSTIN MYERS	§	
AND IN THE INTEREST OF	§	
M.E.M. AND C.R.M.,	§	
CHILDREN		TARRANT COUNTY, TEXAS

MOTION FOR NO-EVIDENCE SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF THE COURT:

I. Introduction

Respondent Charles Dustin Myers (hereinafter "Father") moves for *no-evidence* summary judgment pursuant to Texas Rule of Civil Procedure 166a(i) to dismiss all claims filed by Petitioner Morgan Michelle Myers ("Mother"). After an adequate time for discovery has passed, Rule 166a(i) authorizes summary judgment on the ground that there is no evidence of one or more essential elements of a claim on which the adverse party would bear the burden of proof at trial. This rule is *"essentially a pretrial directed verdict"* procedure, shifting the burden to the non-movant to produce more than a scintilla of probative evidence once a proper motion is filed. Here, Father specifically identifies each essential element of Mother's claims for which no evidence exists. Because Mother has failed to produce any evidence to support those elements

despite nearly two years of litigation, the Court must grant summary judgment in Respondent's favor unless Mother comes forward with competent evidence raising a genuine fact issue.

In this case, more than 22 months have elapsed since Mother initiated the divorce, and she has *produced nothing* to substantiate her serious allegations of family violence, the existence of a protective order, financial indigence, or the supposed benefit of onerous temporary orders to the children. She also ignored written discovery requests, allowing requests for admission to be deemed admitted by operation of law. Texas law does not permit a claimant to continue a lawsuit in the absence of evidence. Indeed, courts have not hesitated to dispose of divorce-related claims by summary judgment where a spouse lacks evidence on an essential fact – for example, an alleged informal marriage was summarily dismissed when one party was underage and **"there was no evidence"** of the required parental or court consent. Likewise, Mother's claims here should be conclusively resolved now. After such a prolonged and unsupported litigation and two years of substantial damages, Respondent is entitled to judgment as a matter of law.

II. Background and Undisputed Facts

1. Father incorporates by reference the chronology of events in this case leading up to May 27, 2025, which are drawn from the Father's Statement of Facts as outlined in his "Third Amended Motion to Consolidate" which exists in the public domain, and has been served on the opposing party. See Third Amended Consolidated Mandamus Record – p.6-36; See also Second Amended Consolidated Mandamus Record. Both of these documents have been duly served on the opposing party, who continues to remain silent on the issues within this matter. No factual statements are in dispute at the time of filing this motion for no-evidence summary judgment which is November 5, 2025.

III. Legal Standards

A. No-Evidence Summary Judgment Under Rule 166a(i)

2. Under Texas Rule of Civil Procedure 166a(i), after an adequate time for discovery, a party may move for summary judgment on the ground that there is **"no evidence"** of one or more essential elements of a claim or defense on which the non-movant would bear the burden of proof at trial. The rule was added in 1997 to provide a mechanism analogous to a directed verdict **before trial**, allowing courts to dispose of baseless claims or defenses at the summary judgment stage. The movant is **not** required to present evidence in support of a no-evidence motion; rather, the motion itself can be based solely on the absence of evidence in the record.

3. A proper no-evidence motion **must** state the specific elements as to which there is no evidence, and it must not be conclusory or overly general. The purpose of this specificity requirement is to give fair notice to the non-movant of exactly what must be rebutted. Once such a motion is filed, the burden shifts to the non-moving party (here, Petitioner) to **produce evidence** raising a genuine issue of material fact on each challenged element. The non-movant must come forward with more than a scintilla of evidence – i.e., evidence that rises above mere speculation and would enable reasonable jurors to differ. If the non-movant fails to meet this burden, the court *"must"* grant the motion.

4. Importantly, Rule 166a(i) requires that an **adequate time for discovery** has elapsed before a no-evidence motion is heard. The rule does not mandate that discovery be entirely completed – only that the parties have had a reasonable opportunity to conduct discovery on the issues. All cases in Texas are governed by one of the discovery control plans in Rule 190. In a **Level 2** family law case (the category this divorce falls under), there is a presumptive discovery

period that ends 30 days before trial. In other words, by a month before the trial date, the parties are expected to have had adequate time to gather evidence. Here, this case has been pending for almost two years without trial, and Petitioner has neither responded to discovery nor sought additional time. Courts have held that even if the formal discovery period has not expired, a movant can show an adequate time has passed by demonstrating that further discovery would be futile or that the non-movant had ample opportunity but failed to act. If a non-movant believes more discovery is needed, the proper course is to file a verified motion for continuance explaining the necessity. Petitioner here filed no such motion or affidavit. Accordingly, the "adequate time" requirement is satisfied by the lengthy pendency of the case and Petitioner's inaction.

B. Equitable Defense of Laches in Divorce Cases

5. Laches is an equitable defense that prevents a party from asserting a claim after an unreasonable delay that has caused prejudice to the opposing party. The two essential elements of laches are: **(1)** an *unreasonable delay* by one having a legal or equitable right in asserting it, and **(2)** a *good faith change of position* by another to their detriment because of the delay. In Texas, courts have observed that *"[a]s a general rule, laches will not bar a plaintiff's suit before the statute of limitations has run absent extraordinary circumstances that would work a grave injustice."* See *Fox v. O'Leary*, No. 03-11-00270-CV, 2012 WL 2979053, at *3 (Tex. App.—Austin July 10, 2012, pet. denied) (mem. op.) (quoting *Caldwell v. Barnes*, 975 S.W.2d 535, 538 (Tex. 1989)).

6. In other words, if a claim is brought within the limitations period, laches typically does not apply unless the delay was extraordinarily prejudicial. However, where no fixed limitations period governs (as in certain divorce-related proceedings), or where the delay extends well

beyond what is reasonable, laches can be invoked to protect the opposing party from inequity. The Texas Family Code explicitly acknowledges that equitable defenses like laches and estoppel are available to bar enforcement of certain family law agreements or judgments. See Tex. Fam. Code § 4.008.

7. In the present case, Mother effectively **slept on her rights** for nearly two years after obtaining temporary orders. She initiated claims of abuse and other misconduct but then failed to prosecute those claims or produce evidence, allowing the case to stagnate. During that time, Father drastically changed his position in reliance on the expectation that Mother had abandoned her allegations – he incurred debt, lost employment opportunities, and scrambled to maintain stability for the children, all while Mother remained silent as Father appealed and exhausted every available remedy for redress. Equity aids the vigilant, not those who slumber on their rights. Mother's extreme delay in pursuing any final resolution is unreasonable, and it has caused real prejudice to Father and the children's well-being. Should Mother attempt at the last minute to introduce new claims or evidence that were available long ago, the Court should find such maneuver barred by laches. In the context of divorce litigation, Texas courts have applied laches to prevent unfair surprise or prejudice – for example, a party who waited many years to enforce a divorce decree faced a laches defense, and the courts noted that unless "extraordinary circumstances" exist, laches will not save a dilatory party acting within limitations. Here, Mother's delay is coupled with extraordinary circumstances: Father has been forced to undertake multiple legal battles and the children have endured prolonged instability, all due to Mother's inaction. Therefore, **even if** Mother were now to scramble and produce some evidence, the Court should exercise its equitable power to deny relief on grounds of laches. (Notably, Mother has not even attempted to bring forth evidence to this day, so the laches discussion is somewhat

hypothetical; the primary basis for judgment remains the lack of evidence. Nonetheless, Respondent raises laches in an abundance of caution to foreclose any eleventh-hour revival of stale claims.)

IV. No-Evidence Grounds for Summary Judgment

8. Respondent **challenges the following essential elements** of Petitioner's claims, for which **there is no evidence**:

i. **Family Violence During the Marriage** – Petitioner cannot produce evidence that *family violence* occurred at any time during the marriage. There are no police reports, medical records, credible witness testimony, or other admissible evidence to substantiate any act or threat of "family violence" as defined by Texas law. Petitioner's own conduct – including her continued cohabitation with Father after the alleged incidents and her withdrawal of the protective order application – contradicts her allegations. Without evidence meeting the statutory definition, Petitioner cannot satisfy this essential element (see Tex. Fam. Code § 71.004, defining "family violence" as an act intended to result in physical harm, bodily injury, assault, or a threat that reasonably places the family member in fear of imminent harm).

ii. **Existence of an Active Protective Order with a Finding of Family Violence** – Petitioner cannot produce evidence that any *active protective order* with a finding of family violence existed during the marriage. No court ever **issued** such an order, and Petitioner's only application was withdrawn before any hearing. There is no signed order or judgment in the record titled "Protective Order" as required by law, and no judicial finding of family violence was ever made. Texas law requires a hearing and family-

violence finding for a protective order to issue (Tex. Fam. Code §§ 85.001, 81.001). Without a court's finding and a resulting order, this alleged element fails as a matter of law. (See also Tex. Fam. Code § 85.004, requiring a protective order to be a separate document.)

iii. **Petitioner's Alleged Indigence on December 18, 2023** – Petitioner cannot produce evidence that she was financially *indigent* on the date she filed suit (Dec. 18, 2023) under oath. Her sworn **affidavit of inability to pay costs** is conclusively refuted by objective facts – e.g., her withdrawal of $1,576 in marital funds just days earlier (Dec. 15, 2023) which she failed to disclose. There are no bank statements or other financial records supporting her claim that she only had $21 to her name on that date. To the contrary, the evidence shows she had access to and actually took substantial funds. Without any evidence to substantiate true indigence, this element cannot be established, making this case ripe for dismissal under the Texas Practice and Remedies Code.

iv. **Notice and Hearing on Temporary Orders (February 1, 2024)** – Petitioner cannot produce evidence that a proper hearing occurred on her **Motion for Temporary Orders and Injunction** on February 1, 2024, or that this motion was ever properly served on Respondent. There is no transcript, no court reporter's record, no signed waiver, and not even a file-marked copy of any such motion served on Respondent in advance containing a certificate of service. Absent proof that Respondent received due notice of a temporary orders hearing and that an actual evidentiary hearing was held, any Temporary Orders resulting from that date lack a lawful foundation. In short, there is no evidence that the procedural prerequisites (notice, hearing, opportunity to be heard) for temporary

injunctive relief were satisfied, so any claim by Petitioner premised on the validity of those February 1 proceedings is unsupported.

v. **Respondent's Agreement to the March 14, 2024 "Agreed" Orders** – Petitioner cannot produce evidence that Respondent ever *agreed* to the terms of the **March 14, 2024, Temporary Orders**. There is no signed agreement by Respondent, no written consent, no email, no testimony – nothing – indicating that Respondent approved those terms. In fact, all evidence is to the contrary: the orders were drafted exclusively by Petitioner's counsel and imposed unilaterally by the court over Respondent's objection. The signature line for Respondent is blank (since he refused to sign), and there is sworn testimony from Respondent that he objected at every opportunity. Thus, Petitioner cannot show the Temporary Orders were truly "agreed" – an essential underpinning of their legitimacy. Without evidence of a meeting of the minds or consent, any contention that Respondent agreed to those orders fails, as evidenced by his lack of signature.

vi. **Temporary Orders Are in the Best Interests of the Children** – Petitioner cannot produce evidence that the current Temporary Orders (which grant Mother exclusive occupancy of the home and curtail Father's rights) are in the **best interest of the children**. Under Texas law, the best interest of the child is the paramount consideration in determining conservatorship or possession (Tex. Fam. Code § 153.002). Petitioner has offered no expert testimony, no child therapist statements, no school records, no medical records, nor any factual evidence at all demonstrating that these Temporary Orders (which severely limit Father's access and removed the children from their father and home) benefit the children. To the contrary, Petitioner ignored a court-ordered parenting course designed to benefit the children, which undercuts any claim that the current orders

serve the children's best interests. With zero evidence showing that the children are better off under these restrictive orders, Petitioner cannot meet her burden on this essential issue.

8. Each of the above elements is one on which Petitioner bears the burden of proof at trial. After nearly two years, she has adduced nothing – no documents, no affidavits, no testimony – that could prove any of these points. By contrast, Father has actively sought to uncover the truth and provide evidence, but in a no-evidence motion the movant's evidence need not be considered. Still, for completeness, Father summarizes below some of the evidence that further negates Petitioner's claims.

V. Respondent's Affirmative Evidence (For Context)

9. While not required to prevail on a no-evidence motion, Respondent notes that ample evidence in the record **affirmatively disproves** Petitioner's allegations, including but not limited to:

i. **Financial Responsibility:** Father was the financially responsible spouse throughout the marriage, as shown by bank records, pay stubs, and tax returns. He paid the bills, managed investments, and ensured both car payments were made – directly contradicting Petitioner's claim of her own indigence or that Father left her without support.

ii. **No History of Violence:** Father has no criminal or family-violence history. A Texas Department of Public Safety background check and sworn affidavits from acquaintances confirm he has never been reported or charged with any act of family violence. This clean record undermines Petitioner's assertions that Father suddenly became abusive.

iii. **Use of Home for Work:** Father's livelihood depended on the marital residence (specifically, its home office and internet access) for his business operations and remote work. The Temporary Orders removing him inflicted immediate financial harm – which was precisely what Petitioner sought in order to gain leverage. This evidence reinforces that the orders were punitive, not child-centered.

iv. **Mother's Misconduct:** Petitioner unilaterally disposed of many of Father's personal belongings after obtaining exclusive use of the house (e.g. throwing items onto the curb or selling them). She also interfered with Father's possession of the children (as evidenced by text messages and emails), further indicating that her actions were motivated by malice rather than any genuine fear.

v. **False Statements:** There is documented proof of numerous false statements made by Petitioner under oath (for example, claiming an active protective order existed when it did not, claiming poverty while hiding funds, etc.). These falsehoods, now proven, erode any credibility Petitioner might try to invoke if she belatedly offers self-serving testimony.

10. In sum, not only is Petitioner's case devoid of supporting evidence, but the evidence that *does* exist in the record affirmatively supports Father's position that Petitioner's claims are unfounded. Nevertheless, because Rule 166a(i) places no burden on Respondent to produce evidence at this stage, the above points are provided merely for context and to illustrate the futility of any further proceedings on Petitioner's claims.

VI. Adequate Time for Discovery

11. This Motion is filed **after an adequate time for discovery** has passed, as required by Rule 166a(i). The divorce has been pending since December 2023 (nearly 23 months as of this filing). Petitioner had every opportunity to conduct discovery, compel information, or otherwise develop evidence to support her claims. Respondent, for his part, served discovery requests on Petitioner (interrogatories, requests for production, requests for admissions) in September 2024 – to which Petitioner never responded, thereby resulting in deemed admissions. Under the Level 2 discovery control plan applicable to this case, an adequate time for discovery is presumptively 30 days before trial. Although a final trial setting was only recently contemplated, and not even by the Petitioner but the Court itself, the reality is that Petitioner effectively ceased litigating this case for almost **two years**. By any measure, the parties have had more than an adequate opportunity to investigate the claims. Petitioner cannot credibly claim she needs more time – if she believed as much, her remedy was to file a motion for continuance with an affidavit explaining what additional discovery was needed. She filed no such motion. Accordingly, the Court can confidently conclude that the "adequate time for discovery" requirement is met. In fact, further delay would reward the very indifference that necessitated this motion in the first place.

VII. Legal Standard for Granting No-Evidence Summary Judgment

12. Under Rule 166a(i) and the applicable case law, a no-evidence summary judgment *must* be granted unless the non-movant produces more than a scintilla of evidence raising a genuine issue of material fact on each challenged element. In other words, if the evidence is so weak that it creates merely a surmise or suspicion of a fact, it is legally **insufficient** to defeat the motion. See *Cole v. Cole*, No. 03-24-00275-CV (Tex. App.–Austin Aug. 28, 2025) (mem. op.) (more than a scintilla is required); *In re G.D.P.*, No. 02-23-00001-CV, 2023 WL 5620089 (Tex. App.–Fort

Worth Aug. 1, 2023, no pet.) (mem. op.) (same standard). Evidence that is so slight or so thoroughly discredited that reasonable jurors could not infer the existence of the disputed fact is considered *"no evidence"* in legal contemplation. *See Wilkerson v. Wilkerson*, 321 S.W.3d 110, 117 (Tex. App.–Houston [1st Dist.] 2010, pet. denied) (evidence that amounts to nothing more than suspicion is legally insufficient).

13. Here, as detailed above, Petitioner has come forward with **zero** evidence on multiple essential elements of her case. By contrast, Respondent has highlighted the complete lack of proof and, indeed, the record reveals admissions and uncontested facts that negate Petitioner's claims. Because Petitioner cannot point to more than a scintilla of competent evidence in support of the challenged elements, the Court **must** grant summary judgment as a matter of law.

VII. Conclusion

14. There is no need for a trial on the merits in this case, as the Petitioner has no merit to her claims and has abused and intentionally misrepresented fact to the Court. She has intentionally disrupted the lives of her own children, intentionally displaced the Father from his home and chose to pursue an extramarital affair over finalizing the divorce, and has caused significant financial harm to the marital estate.

15. Because the Petitioner has failed to produce any evidence for her claims, has obtained a court order by fraudulent misrepresentations through her alleged attorney, Cooper L. Carter, and

because Petitioner brought this suit in bad faith, this no-evidence motion for summary judgment should be granted as a matter of law, and a subsequent hearing regarding Father's contempt motion should be held at the earliest opportunity to ensure Petitioner is held accountable for her egregious actions, and that her alleged attorney, Cooper L. Carter, is referred to the appropriate disciplinary authorities to prevent similar conduct from occurring in the future.

VIII. Prayer

WHEREFORE, PREMISES CONSIDERED, Respondent **Charles Dustin Myers** respectfully prays that this Court:

1. **Grant this No-Evidence Motion for Summary Judgment in its entirety upon written submission**, deny all relief requested by Petitioner, and **dismiss** all of Petitioner's claims **with prejudice** for want of any supporting evidence. In the alternative, Respondent prays that the Court hold that Petitioner's claims are equitably barred by laches due to her unreasonable delay and the resulting prejudice;
2. If the Petitioner is unable to prove her initial claims of financial indigency, dismiss this suit pursuant to Tex. Prac. Rem. Code § 13.001;
3. Vacate the December 10, 2025, trial setting;
4. Respondent further prays for such other and further relief, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

/s/ Charles Dustin Myers
Charles Dustin Myers -*Pro Se* Respondent
6641 Anne Court
Watauga, TX 76148

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CERTIFICATE OF SERVICE

Respondent certifies that on November 05, 2025, a true and accurate copy of this MOTION FOR SUMMARY JUDGMENT was served on all parties of record pursuant to rule 21a of the Texas Rules of Civil Procedure.

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

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