

02-25-00164-CV

EN BANC SAPCR

04.22.25

No. 02-25-00164-CV
IN THE
SECOND JUDICIAL DISTRICT COURT OF APPEALS
AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

On Petition for Writ of Mandamus
to the 233rd Judicial District Court, Tarrant County
Cause Number 233-765358-25
Hon. Kate Stone Presiding

MOTION FOR
EN BANC
RECONSIDERATION

Respectfully submitted by:

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ISSUES PRESENTED FOR RECONSIDERATION**Rehearing Issue No. 1:**

According to the Texas Supreme Court, mandamus may issue to compel a judge to perform a ministerial act. The panel erred by overlooking that the trial court had a legal duty to act, that a demand for performance was made, and that the court refused to rule.

Rehearing Issue No. 2:

The panel erred by overlooking that the burden for mandamus was satisfied. The mandamus and supplemental records establish a prima facie showing that an emergency TRO was properly filed, a date and time to present the motion was secured, opposing counsel participated in scheduling the full hearing, and the trial court declined to proceed, resulting in no ruling or order.

TO THE HONORABLE SECOND COURT OF APPEALS:

Relator CHARLES DUSTIN MYERS respectfully moves this Honorable Court for en banc reconsideration of the panel decisions rendered in three separate but interwoven mandamus proceedings to be presented for reconsideration in the following order:

- i. Cause No. 02-25-00166-CV (denied April 14, 2025) (“Void Order”)
- ii. Cause No. 02-25-00171-CV (denied April 17, 2025) (“Consolidation”)
- iii. Cause No. 02-25-00164-CV (denied April 11, 2025) (“SAPCR/TRO”)

This motion serves as the third filed reconsideration motion and addresses the panel’s denial of Cause No. 02-25-00164-CV (attached as Tab A), referred to as the “SAPCR” mandamus. It is respectfully submitted that the panel’s *per curiam* dismissal overlooked substantial, uncontested factual inaccuracies and manifest procedural deficiencies meticulously substantiated within the mandamus and supplemental mandamus records. Such judicial oversight necessitates comprehensive *en banc* scrutiny to preserve jurisprudential coherence and fidelity to established precedents of Texas law.

Relator welcomes a response from the Real Party or Respondent if such would provide meaningful insight into the situation.

STATEMENT OF FACTS

On March 19, 2025, Relator filed a SAPCR as an original proceeding in the 233rd District Court of Tarrant County which was subsequently answered by counsel for Real Party in Interest the following day. (MR 3). An emergency TRO was later filed on March 24, 2025, in the 233rd District Court of Tarrant County. (MR 7, MR 7.26) The trial court was asked to perform a ministerial duty when a date and time was secured to present the motion. (SUPP 2.11, SUPP 2.24, SUPP 2.26). The undersigned appeared on March 28, 2025, and it is undeniable that the full hearing was set for April 10, 2025, at 9:30a.m. The judge refused to hear the motion. Accordingly, no appealable order was issued.

SUMMARY OF ARGUMENT

It is clear that the trial court below had a ministerial duty to act and refused to do so. When a trial court fails to rule on a motion that is properly filed and brought to its attention, the abuse of discretion is established as a matter of law. This aligns with longstanding mandamus jurisprudence, which requires only three elements to establish a clear abuse of discretion: the existence of a legal duty to act, a clear request for that action, and the court's failure or refusal to do so. *In re Shredder Co., L.L.C.*, 225 S.W.3d 676, 679 (Tex. App.- El Paso 2006, orig. proceeding); *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979). All three elements are present here.

ARGUMENT AND AUTHORITY

I. Although disfavored in routine matters, en banc reconsideration is appropriate where the legal standard is met, as it is here.

En banc reconsideration is reserved for the rare case that satisfies one or both of the “hard-to-satisfy requirements” set forth in Texas Rule of Appellate Procedure 41.2(c): ensuring uniformity in the court’s decisions or addressing extraordinary circumstances. The Texas Supreme Court has endorsed this narrow standard, cautioning against overuse to preserve judicial efficiency and ensure that “the appellate trains... run on time.” See *In re Marriage of Harrison*, 507 S.W.3d 259, 260–61 (Tex. App.—[14th Dist.] 2016) (Frost, J., dissenting).

Here, this is precisely the kind of novel case that warrants *en banc* reconsideration. The panel’s decision threatens a fundamental departure from settled Texas law—made more urgent by the fact that the emergency relief sought is on behalf of two minor children and remains unopposed by any party at the time of filing this motion.

Further, the subject matter of this case—three concurrently pending mandamus proceedings, all arising from distinct but interconnected abuses of discretion—constitutes an extraordinary circumstance. Each petition was denied *per curiam* by the same panel despite a clearly established record of procedural violations and judicial inaction. The *en banc* court should examine and correct the

panel's cursory denials to ensure that this Court's precedent does not inadvertently endorse or perpetuate abuses of discretion that have been thoroughly documented across the mandamus and supplemental records without any opposition.

II. The panel's *per curiam* denial conflicts with controlling authority and overlooks critical facts established in the mandamus and supplemental mandamus records.

"When a motion is properly filed and pending before the trial court, the act of giving consideration to and ruling upon that motion is a ministerial act, and mandamus may issue to compel the trial judge to act." *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.- San Antonio 1997, orig. proceeding). However, the Relator must demonstrate that the trial court abused its discretion by failing or refusing to perform a ministerial act.

A. The trial court abused its discretion by failing to rule on a properly filed motion after being asked to act.

To establish an abuse of discretion, the Relator must show that the trial court received a properly filed motion, was made aware of it, and was asked to rule—whether through direct correspondence or other documents drawing the court's attention to the matter. *See In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding).

Here, the email correspondence between the court coordinator of the 233rd District Court, counsel for Real Party, and the undersigned found in SUPP 2.17-2.22 clearly demonstrates that: 1) a motion was filed and properly before the court

without objection; 2) the undersigned appeared in person at a designated time and requested the court rule on his motion with a full trial setting secured for April 10, 2025; 3) the court refused to rule on the motion.

Therefore, the trial court clearly abused its discretion by refusing to perform a ministerial act after being properly asked to rule on a pending motion, which is well supported in the verified supplemental mandamus record. When a motion has been properly filed and brought to the attention of the trial court, the act of considering and ruling upon the motion is ministerial in nature, and mandamus may issue to compel the trial court to act. See *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.—Amarillo 2008, orig. proceeding).

B. By refusing to act, the Relator was left without an adequate remedy for an appeal.

By refusing to rule, no order was issued. This left the undersigned without an adequate remedy by appeal and thus satisfies the standard for mandamus relief. See *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004). In other words, there is no adequate remedy at law for a trial court's failure to rule because "[f]undamental requirements of due process mandate an opportunity to be heard." See *In re Christensen*, 39 S.W.3d 250, 251 (Tex. App.—Amarillo 2000, orig. proceeding). Here, those fundamental requirements were not satisfied, resulting in these proceedings.

CONCLUSION AND PRAYER

Considering the facts incorporated herein, the *en banc* court should revisit the denial issued by the panel on April 11, 2025. (attached as Tab 1) It remains undisputed that an emergency motion was before the trial court (MR 7) the trial court was asked to rule on that motion, and the trial court refused to do so.

The undersigned, CHARLES DUSTIN MYERS, therefore, respectfully prays that this Court grant *en banc* reconsideration, withdraw or vacate the panel's *per curiam* denial, and remand this cause back to the 233rd District Court of Tarrant County for further proceedings consistent with law and justice. In doing so, the undersigned asks this Court to consider not only the record in this case, but the totality of the circumstances presented across all three pending *en banc* motions—each evidencing distinct but interlocking abuses of discretion that have left him without an adequate appellate remedy. The Triplicate of per curiam denials should be reconsidered. Relator holds deep respect for the judiciary, the judges of this Court, and all parties involved, and trusts that neither his zealous advocacy nor his self-represented status detracts from the merits of the arguments presented.

Respectfully submitted,

/s/ Charles Dustin Myers

CHARLES DUSTIN MYERS (pro-se Relator)

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CERTIFICATE OF COMPLIANCE

I certify that the number of words in this motion (excluding any caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, issues presented, signature, proof of service, certificate of conference and certificate of compliance) is **1,307**.

A



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-25-00164-CV

IN RE CHARLES DUSTIN MYERS, Relator

Original Proceeding
233rd District Court of Tarrant County, Texas
Trial Court No. 233-765358-25

Before Kerr, Bassel, and Wallach, JJ.
Per Curiam Memorandum Opinion

MEMORANDUM OPINION

The court has considered relator's petition for writ of mandamus and motion for emergency relief and is of the opinion that relief should be denied. Accordingly, relator's petition for writ of mandamus and motion for emergency relief are denied.

Per Curiam

Delivered: April 11, 2025

CERTIFICATE OF SERVICE

Relator CHARLES DUSTIN MYERS certifies that on April 22, 2025, a true and correct copy of the foregoing MOTION FOR EN BANC RECONSIDERATION was served on all parties and counsel of record as follows:

Respondent

Hon. Kate Stone J.D.

Associate Judge, 233rd District Court

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/s/ Charles Dustin Myers

Charles Dustin Myers

PRO-SE RELATOR

SERVED: 04/22/2025

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Status as of 4/22/2025 1:27 PM CST

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