

24-0395

FIRST AMENDED
REHEARING
MANDAMUS

09.16.24

No. 24-0395

In the

Supreme Court of Texas

In Re: Charles Dustin Myers,

Relator.

On Rehearing

FIRST AMENDED

PETITION FOR WRIT OF MANDAMUS

Presented for the Court's reconsideration,

Charles Dustin Myers,
Chuckdustin12@gmail.com



817-507-6562

IDENTITY OF PARTIES AND COUNSEL

Relator certifies that the following is a list of all parties and all counsel
who have appeared in this matter:

RELATOR

Charles Dustin Myers

RESPONDENT(s)

Honorable District Judge James Munford
Honorable Associate Judge Jeffrey Kaitcer
322nd Judicial District Court
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Fort Worth, Texas 76102

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INTRODUCTION

The law is a remarkable institution, built to evolve, adapt, and ensure that justice and fairness are upheld at all costs. Yet, in this case, despite glaring procedural failures, the legal process has fallen short of delivering the remedy that justice demands. Throughout the entire scope of the Texas judiciary, there has been no response from the opposing party—no depositions, no witness lists, no admitted evidence, and most critically, no meaningful hearing. These omissions have not just gone unanswered; they've left harm unaddressed, with the full consequences still unresolved.

The pleadings in this case tell the entire story—because, in truth, there's nothing else to go off of. Third-party influences, embedded within the clerk's records before this case even began, have quietly fueled this destruction, unnoticed by the system. The lack of response, discovery, or any trace of substantive legal engagement raises a troubling question: how did we reach the summit of the judiciary with nothing more than general denials as our compass?

What's remarkable about the law is that before a court can entertain such an unbelievable situation, the Relator must meet a heavy burden. This case has traveled through the courts without resolution, its impact growing heavier with every missed safeguard. That burden is now before this Court, and it is here, at the threshold of justice, that the Relator turns to address it.

REASONS TO GRANT REHEARING

Relator files this First Amended Motion for Rehearing pursuant to Tex. R. App. P. 52.9, and 10.1(a). In support of this motion, Relator shows the following:

1. The Supreme Court of Texas denied a Petition for Writ of Mandamus in case **24-0395** on **2024-08-30**. Therefore, the Motion for Rehearing is due no later than **2024-09-16**.

2. The Relator filed his Motion for Rehearing on **09-10-2024** and was later amended on **09-16-2024** to provide clarity to the Court regarding the Sullivan case backdrop.
3. In support of this first amended motion, the Relator highlights the following unresolved issues:

I. Overlooked due process and ethical concerns must be addressed

A. The present case bears some procedural resemblance to *Sullivan v. Lepage-Sullivan*, but the differences in how these complaints were addressed are both substantial and troubling. In *Sullivan*, the parties appeared in court on April 16, 2013, and through their counsel announced an agreement on Yvonne's motion for temporary orders. The court specifically noted that "Yvonne's counsel would prepare and submit formal temporary orders within ten days." *Id.*, No. 07-15-00081-CV, at 4 (Tex. App. Jan. 25, 2017). Formal

temporary orders were properly entered on May 21, 2013, appointing the parties as temporary joint managing conservators. *Id.* at 4.

B. In the present case, by contrast, no formal motion for temporary orders was ever served. On February 1, 2024, an associate judge's report was drafted by Dan Bacalis¹, prior counsel for Relator, after the parties appeared in person, but this report was not based on any formally served motion for temporary orders. It was further specified that:

A typed written Order conforming to this Report will follow within 20 days from the date this Report is signed. The Temporary Order shall be prepared by Dan Bacalis. Each attorney should approve the Order. The parties do not need to approve the Order. The attorney reviewing the proposed Order shall have five (5) days to do so. There are no ten (10) day letters. If an agreement is not reached, a Motion to Sign shall be filed and set within thirty (30) days from the signing of this Report.

AGREED AS TO FORM AND SUBSTANCE

SO ORDERED *Exhibit A*

The critical difference here is the procedural requirements set forth in the associate judge's report were not respected and there was no supporting motion for temporary orders ever served to the Relator in this case.

¹ A true, accurate, and certified copy of this associate judge's report is attached as Exhibit A.

C. In *Sullivan*, Larry Sullivan expressed dissatisfaction with the temporary orders, discharged his original counsel, and retained new counsel, who promptly filed a Motion to Set Aside the Temporary Orders. Larry's complaint was that his original counsel had rushed him into signing the associate judge's report without giving him adequate time to review it.

D. In the present case, the Relator filed a timely motion to vacate the associate judge's report on February 9, 2024, after terminating his legal counsel for rushing him into an agreement much like Larry Sullivan.² However, this motion was filed *prior* to the associate judge's report being formalized. A hearing on the motion to vacate was scheduled for March 14, 2024.

E. On March 4th, 2024, the Relator filed notice with the trial court explaining that it would not be in the best interests of the children to leave the home given the necessity to financially support the children.³ On March 6th, 2024, while walking his daughters to school during her visitation period, the real party in interest ran inside the house and locked the Relator out.

² A true, accurate, and certified copy of the Relator's motion to vacate is attached as Exhibit B.

³ A true, accurate, and certified copy of this notice is attached as Exhibit C.

F. At their respective hearings, both Larry and the Relator's motions to vacate were denied. However, unlike in *Sullivan*, where Larry was given time to address his concerns despite being an attorney and despite challenging the orders after they had been properly reduced. *Id.*, at 5. In contrast, the Relator was ambushed by the opposing counsel just minutes before his hearing was to be held. She handed him a 38-page document entitled "Temporary Orders",⁴ which were the formalized orders based on the associate judge's report signed on February 1st, 2024. Furthermore, in the denial of the Relator's motion to vacate, the associate judge ordered that he sign the formally reduced temporary orders by 1:30 P.M. that same day rather than providing an explanation for the denial.⁵

G. The actions above are reflected in the orders themselves. Without hesitation, at the top of page one, the orders read:

"On February 8 1, 2024, the Court heard Petitioner's motion

for temporary orders." *Exhibit E*

The absence of such a motion raises the question: How can a hearing be referenced in an official court order that was never held and lacks a served motion? Further on page one the order states:

⁴ A true, accurate, and certified copy of these orders currently in effect are attached as Exhibit D.

⁵ A true, accurate, and certified copy of this denial is attached as Exhibit E.

“The parties have agreed to the terms of this order as
evidenced by the signatures below” *Exhibit D*

H. Relator did not sign these orders. *Exhibit D*. Moreover, the opposing counsel was well aware that he did not consent to them. Consent is a fundamental element in settlement agreements. In *Quintero v. Jim Walter Homes, Inc.*, this Court referenced its earlier decision in *Burnaman v. Heaton*, 150 Tex. 333, 240 S.W.2d 288 (1951), where it was held that a judgement "cannot be rendered by a court when consent of one of the parties thereto is wanting." *Id.* at 291. "The power to render an agreed judgment depends upon the 'substance of the consent' at the time judgment is rendered." *Id.* at 291. "Therefore, a party has the right to revoke his consent at any time before the rendition of judgment." *Quintero v. Jim Walter Homes Inc.*, 654 S.W.2d 442, 444 (Tex. 1983) (referencing *Samples Exterminators v. Samples*, 640 S.W.2d 873, 874 (Tex. 1982)). This right afforded to the Relator was disregarded in its entirety by the trial court.

I. The disparities between how the courts handled the temporary orders in *Sullivan* and in the present case are striking. In *Sullivan*, Larry was provided with the opportunity to propose alternatives, even though his motion to vacate was denied. In the present case, the Relator was ambushed with orders that violated procedural requirements and was compelled to sign

them without any opportunity for review despite his consent clearly being withdrawn. Considering consent was not present, the orders are void.

Samples Exterminators v. Samples, 640 S.W.2d at 875 (Tex. 1982) (per curiam.) (“Without consent, the judgment is void”); see also *Giles v. Giles*, 830 S.W.2d 232, 235 (Tex. App.—Fort Worth 1992, no writ). Therefore, the temporary orders issued by the Associate Judge Jeffrey Kaitcer must be vacated in light of the actions above.

II. Even if the orders survive due process and consent, they are void

A. The temporary orders issued by Associate Judge Jeffrey Kaitcer imposed a purported agreed mutual injunction on both parties, restricting communication and actions regarding property, and affecting child custody. The orders granted temporary joint conservatorship of the children and regulated the use of shared property, including the family home, pending further court proceedings.

B. Pursuant to Rule 683 of the Texas Rules of Civil Procedure:

“[e]very order granting a temporary injunction shall include an order setting the cause for trial on the merits with respect to the ultimate relief sought”. Tex. R. Civ. P. 683.

Moreover, Rule 684 states that:

“[b]efore the issuance of the temporary restraining order or temporary injunction the applicant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by the clerk”. Tex. R. Civ. P. 684.

C. This Court has provided the controlling authority over the facial validity of temporary injunctions and provides a clear resolution to this case. In *Lancaster v. Lancaster*, the injunction was considered void for noncompliance with Rule 684 of the Texas Rules of Civil Procedure. *Id.*, 155 Tex. 528, 291 S.W.2d 303, 308 (Tex. 1956). This was later reaffirmed in *Goodwin v. Goodwin*, where an injunction without bond was considered “void Ab initio” *Id.*, 456 S.W.2d 885, (Tex. 1970).

D. In the present situation, the waiver of bond in this case is ambiguous, as it fails to state the reasons for the waiver, the authority under which it was waived, or what justifies its waiver. It simply states, "the bond requirement is waived." Moreover, the associate judge's report from which this is based mentions no bond. Further, this fails to comport with the statutory language set out in Texas Family Code § 105.001(d), which allows the court to dispense with the necessity of a bond in temporary orders on behalf of the child. The only statement regarding the children's welfare in the orders is that “The following orders are for the safety and welfare and in the best interest of the following children:” which as noted above, is predicated from a hearing that never happened, a motion which was never filed nor served, and without supporting evidence supporting the claim and from where consent was withdrawn.

E. Moreover, the Dallas Court of Appeals invalidated a temporary injunction for failing to either set a bond or expressly dispense with the bond requirement. The court noted, "[b]ecause the temporary injunction in this case neither sets a bond nor states that it is dispensing with the necessity of one, we conclude the temporary injunction is void." *In re McCray*, 05-13-01195-CV, 2013 WL 5925776, at *3 (Tex. App.—Dallas Nov. 7, 2013, orig. proceeding) (mem. op.). Despite the orders in this case waiving a bond, it was waived by purported agreement and did not contain the language required to dispense the necessity of the bond, subjecting them to being declared void and dissolved.

F. Therefore, by following this reasoning, the temporary orders in the present case should similarly be declared void notwithstanding the first issue of due process as the bond requirements were not met, and the waiver of bond didn't contain the statutory language needed to properly dispense of it under Section 105.001(d) of the Texas Family Code, and it was waived by the parties in an agreement from which consent was withdrawn from. As stated in *In re Garza*, 126 S.W.3d 268, 271 (Tex. App. 2003) "...a party who agrees to a void order has agreed to nothing." *Id.* This is precisely what happened here.

III. Preservation of error

A. All but two appellate courts in this State have agreed that error preservation is not required regarding noncompliance with these rules. The Second Court of Appeals is not one of those two. *See BSR SurfResort, LLC v. Stabile*, No. 10-20-00006-CV, 4 (Tex. App. Nov. 18, 2020). It was reaffirmed that standing precedent is that “the majority of the Texas courts of appeals, and the Texas supreme court establish that the requirements of Rules 683 and 684 are mandatory and that a party need not preserve error in the trial court when a temporary injunction order does not comply with them.”

Id.

B. The Second Court of Appeals falls within the majority. “Only the Amarillo and Austin courts of appeals have required preservation of error when a temporary injunction order fails to comply with Rules 683 and/or 684.” *Id* (referencing *Tex. Tech. Univ. Health Sci. Ctr. v. Rao*, 105 S.W.3d 763, 768 (Tex. App.—Amarillo 2003, pet. dism'd)).

C. Therefore, since the current orders are based on a motion never served to the Relator, where no hearing was held, and fail to comply with the mandatory requirements set forth by both Rule 683 and 684 of the Texas Rules of Civil Procedure regarding bond due to ambiguous language, they are void and must be dissolved.

IV. Diligence met with silence

A. Without knowing the reasonings behind the denials of relief faced thus far, and if such reasonings were for procedural reasons will remain unknown. However, the Relator's diligent pursuit for relief has remained rigorous, and as this Court has previously stated in January of this year:

"[e]quity aids the diligent and not those who slumber on their rights." *In re Walker*, 683 S.W.3d 400, 402 (Tex. 2024) (quoting *Callahan v. Giles*, 137 Tex. 571, 155 S.W.2d 793, 795 (1941))

The status quo of children has been destroyed by these orders without a second thought. This cannot be the way we conduct our institutions of law in this great State and Relator hopes this Court will step in and rightfully restore the status quo to the children by ordering the Respondent to vacate the current order issued by Associate Judge Jeffrey Kaitcer.

B. The time wasted thus far in addressing these procedural missteps and the resulting complications has been significant and regrettable. However, the Relator remains fully committed to pursuing a constructive and cooperative resolution for the benefit of all parties involved, especially the children. The Relator's need for residency to provide financial support for the children cannot be carelessly replaced by a parent who chooses to put herself before all else involved in the suit, including the children.

CONCLUSION

This case is about responsibility. Everyone makes mistakes; it is the human condition. However, when those mistakes impact the lives of children, the law and conscience compel us to correct them. The best interests of the children must always come first. Both parents in this case are exemplary, and a better path can be forged for them.

This case reveals a fundamental truth: when justice wavers, the law provides a way to make things right. With the wisdom of this Court, these wrongs can be corrected to secure the well-being of the children at the heart of this dispute. The temporary orders must be vacated, not simply to honor the law but to restore fairness to these children's lives and preserve their status quo and the principles of justice that form the foundation of our system.

The journey has been long, but there's only one just conclusion before the court today: put these orders to rest and enable this Relator who is nothing more than a Father to return to the home and business he was unjustly discarded from so that an amicable path forward can be forged in the best interests of the children. In the pursuit of justice, the Relator holds no ill will towards the Respondent, the associate judge, opposing counsel, the real party in interest, or third parties. Moving forward, we must all work together to ensure the best interests come first as the Texas Family Code mandates.

PRAYER FOR EXPEDITED RELIEF

In light of the above, Relator respectfully prays that this Honorable Court:

1. Grant Relator's First Amended Motion for Rehearing;
2. Reverse the opinion of the Second Court of Appeals and the denial of Relator's emergency motion for relief;
3. Order the Respondent, Honorable District Judge James B. Munford, to vacate the temporary orders issued by Honorable Associate Judge Jeffrey Kaitcer;
4. Remand the case to the trial court for further proceedings consistent with the law, ensuring the protection of the best interests of the children and the restoration of the status quo;
5. Grant any further relief to which Relator may be justly entitled.

Respectfully submitted by,

/s/ Charles Dustin Myers
Charles Dustin Myers
Chuckdustin12@gmail.com

Tel: 1-817-507-6562
Pro-se

CERTIFICATE OF COMPLIANCE

Relator hereby certifies that Microsoft Word reports that this brief contains **2728** words, excluding the portions of the brief exempted by TRAP Rule 9.4(i)(1). It is in Times New Roman 13-point font, converted to Adobe Acrobat portable document format (PDF), and is word-searchable, indexed, and tabbed for the court's convenience with clickable links to help with navigation.

/s/ Charles Dustin Myers
Charles Dustin Myers

CERTIFICATE OF SERVICE

Relator certifies that a true copy of this First Amended Motion for Rehearing and all exhibits was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on **09/16/2024**:

Cooper L. Carter (Counsel for real party in interest)
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Hon James B. Munford (Respondent)
by ELECTRONIC SERVICE

Presiding District Judge, 322nd District Court of Tarrant County
200 E Weatherford St, Fort Worth, TX 76102

Hon Jeffrey Kaitcer (Associate Judge)
by ELECTRONIC SERVICE

Presiding Associate Judge, 322nd District Court of Tarrant County
200 E Weatherford St, Fort Worth, TX 76102

/s/ Charles Dustin Myers
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DKT (220)



***POST CARD (SUP/CT) PET/MAND DENIED**

FILED ON: 08/30/2024

FEE: \$0.00

FILER/REQUESTOR: N/A

M.1158

FILE COPY

RE: Case No. 24-0395

COA #: 02-24-00149-CV

STYLE: IN RE C.M.

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

HON. JAMES B. MUNFORD
JUDGE, 322ND DISTRICT COURT
FAMILY LAW CENTER
200 E. WEAVERFORD ST., 4TH FLOOR
FORT WORTH, TX 76196-0230

DATE: 8/30/2024
TC#: 322-744263-23

M.1159

FILE COPY

RE: Case No. 24-0395

COA #: 02-24-00149-CV

STYLE: IN RE C.M.

DATE: 8/30/2024
TC#: 322-744263-23

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

C. M.
* DELIVERED VIA E-MAIL *

M.1160

FILE COPY

RE: Case No. 24-0395
COA #: 02-24-00149-CV
STYLE: IN RE C.M.

DATE: 8/30/2024
TC#: 322-744263-23

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

MS. DEBRA SPISAK
CLERK, SECOND COURT OF APPEALS
401 WEST BELKNAP, SUITE 9000
FORT WORTH, TX 76196
* DELIVERED VIA E-MAIL *

M.1161

FILE COPY

RE: Case No. 24-0395
COA #: 02-24-00149-CV
STYLE: IN RE C.M.

DATE: 8/30/2024
TC#: 322-744263-23

Today the Supreme Court of Texas denied the petition
for writ of mandamus in the above-referenced case.

COOPER CARTER
* DELIVERED VIA E-MAIL *

M.1162

FILE COPY

RE: Case No. 24-0395

COA #: 02-24-00149-CV

STYLE: IN RE C.M.

Today the Supreme Court of Texas denied the petition for writ of mandamus in the above-referenced case.

DISTRICT CLERK TARRANT COUNTY
TARRANT COUNTY COURT
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100 N. CALHOUN ST, 2ND FLOOR
FORT WORTH, TX 76196-0402
* DELIVERED VIA E-MAIL *

DATE: 8/30/2024
TC#: 322-744263-23

DKT (221)



***POST CARD (SUP CT) REHEARING PET/MAND FILED**

FILED ON: 09/10/2024

FEE: \$0.00

FILER/REQUESTOR: N/A

M.1164

FILE COPY

RE: Case No. 24-0395

COA #: 02-24-00149-CV

STYLE: IN RE C.M.

Today, the Supreme Court of Texas received and filed relator's motion for rehearing of the petition for writ of mandamus.

DATE: 9/10/2024
TC#: 322-744263-23

HON. JAMES B. MUNFORD
JUDGE, 322ND DISTRICT COURT
FAMILY LAW CENTER
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M.1165

FILE COPY

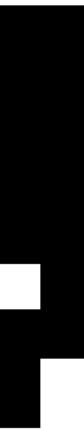
RE: Case No. 24-0395

COA #: 02-24-00149-CV

STYLE: IN RE C.M.

Today, the Supreme Court of Texas received and filed relator's motion for rehearing of the petition for writ of mandamus.

DATE: 9/10/2024
TC#: 322-744263-23

C. M.


* DELIVERED VIA E-MAIL & POSTAL *

M.1166

FILE COPY

RE: Case No. 24-0395

COA #: 02-24-00149-CV

STYLE: IN RE C.M.

Today, the Supreme Court of Texas received and filed relator's motion for rehearing of the petition for writ of mandamus.

DATE: 9/10/2024
TC#: 322-744263-23

MS. DEBRA SPISAK
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401 WEST BELKNAP, SUITE 9000
FORT WORTH, TX 76196
* DELIVERED VIA E-MAIL *

M.1167

FILE COPY

RE: Case No. 24-0395

COA #: 02-24-00149-CV

STYLE: IN RE C.M.

Today, the Supreme Court of Texas received and filed relator's motion for rehearing of the petition for writ of mandamus.

DATE: 9/10/2024

TC#: 322-744263-23

COOPER CARTER
2905 LACKLAND RD.
FORT WORTH, TX 76116
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M.1168

FILE COPY

RE: Case No. 24-0395

COA #: 02-24-00149-CV

STYLE: IN RE C.M.

Today, the Supreme Court of Texas received and filed relator's motion for rehearing of the petition for writ of mandamus.

DATE: 9/10/2024
TC#: 322-744263-23

DISTRICT CLERK TARRANT COUNTY
TARRANT COUNTY COURT
TOM VANDERGRIFF CIVIL COURTS BLDG
100 N. CALHOUN ST, 2ND FLOOR
FORT WORTH, TX 76196-0402
* DELIVERED VIA E-MAIL *