

Question

1 NO. 25-_____ IN THE SUPREME COURT OF TEXAS IN RE: CHARLES DUSTIN MYERS, RELATOR. On Petition for Writ of Mandamus to the 233rd Judicial District Court, Tarrant County Cause No. 233-765358-25 On Mandamus Review from Cause No. 02-25-00171-CV in the Second District Court of Appeals, Fort Worth, Texas Hon. Kenneth Newell Presiding PETITION FOR WRIT OF MANDAMUS Respectfully submitted by: Charles Dustin Myers chuckdustin12@gmail.com Tel.: 817-546-3693 6641 Anne Court Watauga, Texas 76148 Emergency Relief Requested FILED 25-0378 5/7/2025 10:58 AM tex-100538816 SUPREME COURT OF TEXAS BLAKE A. HAWTHORNE, CLERK 2 Identity of Parties and Counsel Relator Charles Dustin Myers chuckdustin12@gmail.com Real Party in Interest Morgan Michelle Myers Morganmw02@gmail.com Respondent Hon. Kenneth Newell District Judge 233rd District Court, Tarrant County, Texas adwierzbicki@tarrantcountytexas.gov Tel.: 817-884-1794 200 E. Weatherford St. 5th Floor Fort Worth, TX 76196-0227 Counsel for Real Party in Interest Cooper L. Carter cooper.carter@majadmin.com Tel.: (817) 926-6211 Marx, Altman & Johnson 2905 Lackland Road Fort Worth, TX 76116; 3 Table of Contents Identity of Parties and	
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Statement of the Case Nature of the Underlying Proceeding and Order Complained Of This is an original proceeding seeking a writ of mandamus to compel the Honorable Kenneth Newell, Presiding Judge of the 233rd Judicial District Court, Tarrant County, Texas, to vacate his order dated April 11, 2025. This order granted a contested motion to consolidate Relator's Suit Affecting the Parent-Child Relationship (SAPCR), Cause No. 233-765358-25, with a firstfiled divorce proceeding, Cause No. 322-744263-23, pending in the 322nd Judicial District Court of Tarrant County. Respondent Judge The Honorable Kenneth Newell, District Judge, 233rd Judicial District Court, Tarrant County, Texas. His office is located at the Family Law Center, 200 E. Weatherford St., 5th Floor, Fort Worth, TX 76196-0230. Respondent's Challenged Actions: Respondent granted Real Party in Interest's contested motion to consolidate the SAPCR (the later-filed case) into the divorce proceeding (the first-filed case). This order was issued sua sponte as to its timing and effect, without prior notice to Relator of an imminent ruling, without a hearing on Relator's timely filed objections to the consolidation, and in direct contravention of Tarrant County Local Rule 4.01(8)(a), which mandates that consolidation motions be filed and heard in the earliest-filed case. Procedural History in the Court of Appeals Relator previously sought mandamus relief from the Second District Court of Appeals, Fort Worth, Texas, in Cause No. 02-25-00164-CV, challenging the Associate Judge's refusal to hear his Emergency Temporary Restraining Order in the SAPCR. That petition was denied per curiam. The current petition for writ of mandamus arises from the consolidation order issued by Respondent moments after Relator filed the aforementioned mandamus in the court of appeals. Relator also has two pending mandamus in this Court, cause Nos. 25-0361 & 25-0367, related to the underlying divorce matter. 7 Statement of Jurisdiction STATEMENT OF JURISDICTION This Honorable Court has jurisdiction to consider this original proceeding for writ of mandamus. Tex. Const. art. V, § 3(a); Tex. Gov't Code § 22.002. 8 Issue Presented Did the Respondent clearly abuse his discretion, leaving Relator with no adequate remedy by appeal, by sua sponte granting a contested motion to consolidate a later-filed Suit Affecting the Parent-Child Relationship with a first-filed divorce case, where such order was issued without prior notice to Relator, without a hearing on Relator's timely filed objections, and in direct violation of a mandatory Tarrant County Local Rule requiring consolidation motions to be filed and heard in the earliest-filed case? 9 Introduction This Petition for Writ of Mandamus presents a case of profound and continuing injustice, compelling Relator, Charles Dustin Myers, to seek this Court's extraordinary intervention. For over fifteen agonizing months, Relator has been ensnared in a procedural labyrinth, his fundamental parental rights systematically

imperiled by a pattern of judicial actions that defy due process and the clear mandates of Texas law. This is not a mere disagreement with a discretionary ruling; it is a challenge to actions taken *sua sponte*, without notice, without hearing, and in direct contravention of established legal safeguards, culminating in an improper consolidation order that further entrenches the denial of Relator's access to a fair and timely resolution of matters critical to his relationship with his children. This mandamus marks the third concurrent petition before this Honorable Court, and in totality, spell out a complete failure of the courts below to provide an adequate forum. The circumstances detailed herein are not only extraordinary but also represent an unprecedented disregard for the basic tenets of procedural fairness within the very system designed to uphold them. Relator has diligently pursued every available avenue to protect his rights and seek redress for the clear abuses of discretion by the 233rd and 322nd District Courts of Tarrant County. These efforts, however, have been met with a series of per curiam denials from the Second Court of Appeals, leaving Relator with no answers and without an adequate remedy by an appeal, resulting in continuous and ongoing irreparable harm. The challenged consolidation order, issued moments after Relator sought mandamus relief from the Court of Appeals concerning a related TRO denial, is the latest manifestation of a judicial course that appears determined to frustrate appellate review and perpetuate the denial of Relator's rights. This Court's intervention is not merely sought to correct a single erroneous order, but to address a situation where the lower courts' actions, if left uncorrected, threaten to render Relator's substantive parental rights meaningless and undermine public confidence in the integrity of the judicial process. The facts of this case cry out for the exercise of this Court's mandamus power to uphold the rule of law, ensure fundamental fairness, and prevent the permanent loss of Relator's most precious rights. This petition demonstrates a clear abuse of discretion for which no adequate appellate remedy exists, demanding this Court's immediate and decisive action to restore due process and rectify a stunning departure from judicial propriety. A MOTION TO CONSOLIDATE these three mandamus petitions will be filed by May 8th, 2025, to provide this Court with the full context of this matter, the efforts put forth by the Relator, and to showcase the silence and lack of engagement from the opposing party and trial courts below.

11 STATEMENT OF FACTS

This case arises from a deeply troubling sequence of procedural events in underlying family law matters involving Relator, Charles Dustin Myers, and his children. The facts, meticulously supported by the record, paint a picture of Relator's persistent efforts to protect his parental rights and seek due process, met with actions by the 233rd District Court of Tarrant County and its Associate Judge that give rise to this petition. See *In Re: Myers*, No. 25-0367 (Tex. pending). On March 18, 2025, Relator initiated an original Suit Affecting the ParentChild Relationship (SAPCR), providing a comprehensive cover letter detailing his legal position. R. 1.0-1.18; R. 2.1-2.11. Accompanying this filing was an Application for Emergency Injunctive Relief, which outlined the series of events spanning from December 15, 2023, to the present day. R. 3.1-3.31. This application included numerous exhibits evidencing concerning issues such as badfaith actions by the opposing party, (R. 3.33-3.37) problematic third-party involvement (R. 3.38-R. 3.41), a decline in the eldest child's academic performance, (R. 3.44-3.45) and signs of medical neglect concerning the youngest child R. 3.46-3.47. Despite months of inactivity in

the first-filed divorce matter, the opposing party answered the SAPCR suit merely two days after its filing R. 4.1-4.5. Shortly 12 thereafter, a motion to consolidate the SAPCR with the divorce case was filed by the opposing party in the 233rd District Court. R. 5.0-5.4 In response to these developments and to protect his procedural rights, Relator moved to strike certain pleadings (R.6.1-6.10) and filed a Rule 12 motion against opposing counsel R. 7.1-7.14. No response was ever filed to these motions. Faced with ongoing harm and the urgent need to care for his children, Relator then filed for an Emergency Temporary Restraining Order (TRO) seeking to prevent the Real Party in Interest from barring the Relator from his residence. R. 8.1-8.31. See also R. 12.15. (Relator providing merits of TRO to opposing party) The attempt to secure a hearing on this critical TRO was summarily thwarted despite following proper procedure. R. 12.9; 12.12-12.13. Relator was denied the opportunity to even present his motion in the courtroom. Instead, he left with only the Court Coordinator's initials regarding a hearing scheduled for April 10, 2024, a hearing that was subsequently unset by the Associate Judge without explanation or rescheduling. See In Re: Charles Dustin Myers, No. 02-25-00164- CV; see also R.12.29. The decision to refuse to hear Relator's emergency motion was based on an out-of-court statement made by opposing counsel, who was not even present in the courtroom at the time R.12.20. A forward-looking motion related to these matters was not filed by the opposing party until a week later, on April 3, 2025 R.13-13.2. Subsequently, the 13 opposing party attempted to have a motion signed by the court without addressing Relator's timely filed objections R.12.31, an attempt Relator was forced to rebut R.12.32. No further correspondence was received from opposing counsel on this matter. Having been denied a hearing on his emergency TRO, Relator formally informed the 233rd District Court of his intention to seek mandamus relief from the Second Court of Appeals regarding this outright denial (R. 14-14.18) and provided a statement of facts recapping the situation. R. 14.4-14.6. Relator then prepared and, on April 11, 2025, filed his petition for writ of mandamus with the Second Court of Appeals (See In re: Charles Dustin Myers, No. 02-25-00164-CV, challenging the TRO denial). In a striking turn of events, mere moments after Relator sought this appellate oversight, he was served with an order, signed by the Respondent Judge of the 233rd District Court, granting the opposing party's contested motion to consolidate. This consolidation order was issued sua sponte as to its timing and effect, without notice to Relator of any imminent ruling, without a hearing on the consolidation motion itself, and without addressing Relator's timely filed objections to the consolidation R.15-15.1. Relator promptly moved for en banc reconsideration of the Second Court of Appeals' subsequent per curiam denial of his TRO mandamus, but this too was denied without any substantive reasoning, 14 marking the ninth such summary per curiam denial Relator has faced from that court concerning the same set of underlying facts and without any opposition from the opposing party or the judges below. This mandamus petition to the Supreme Court of Texas concerning the improper consolidation order necessarily followed. Summary of Argument The Second Court of Appeals per curiam denials cannot be reconciled with Texas jurisprudence.¹ Respondent's sua sponte grant of a contested motion to consolidate after the refusal to hear an un-contested emergency TRO by his Associate Judge constitutes an abuse of discretion that has left Relator without an adequate appellate remedy. Relator, Charles

Dustin Myers, seeks a writ of mandamus directing the Honorable Kenneth Newell, Presiding Judge of the 233rd District Court, Tarrant County, to vacate his order granting a contested motion to consolidate. This order was issued sua sponte, without notice to Relator, without a hearing, and without See In re C.M., No. 02-24-00149-CV (Tex. App.—Fort Worth Apr. 10, 2024, orig. proceeding) (mem. op., per curiam); id. (Tex. App.—Fort Worth Apr. 25, 2024, orig. proceeding) (per curiam) (denying motion for rehearing); id. (Tex. App.—Fort Worth May 2, 2024, orig. proceeding) (per curiam) (denying en banc reconsideration); In re Myers, No. 02-25-00164-CV (Tex. App.—Fort Worth Apr. 11, 2025, orig. proceeding) (mem. op., per curiam); id. (Tex. App.—Fort Worth May 1, 2025, orig. proceeding) (per curiam) (denying en banc reconsideration); In re Myers, No. 02-25-00166-CV (Tex. App.—Fort Worth Apr. 15, 2025, orig. proceeding) (mem. op., per curiam); id. (Tex. App.—Fort Worth Apr. 24, 2025, orig. proceeding) (per curiam) (denying en banc reconsideration); In re Myers, No. 02-25-00171-CV (Tex. App.—Fort Worth Apr. 17, 2025, orig. proceeding) (mem. op., per curiam); id. (Tex. App.—Fort Worth May 1, 2025, orig. proceeding) (per curiam) (denying en banc reconsideration). 15 addressing Relator's timely filed objections. The Respondent's actions constitute a clear abuse of discretion for at least two fundamental reasons: first, the consolidation order directly violates Tarrant County Local Rule 4.01(8)(a), which mandates that consolidation motions be filed and heard in the earliest-filed case—a rule the Respondent had no discretion to ignore. Second, the denial of notice and an opportunity to be heard on a contested, potentially case-dispositive motion is a fundamental violation of due process. Relator lacks an adequate remedy by appeal. The improper consolidation, effected under highly prejudicial circumstances (including the prior refusal of the Associate Judge to hear Relator's emergency TRO and the suspicious timing of the consolidation order itself, issued moments after Relator sought mandamus relief from the Court of Appeals concerning the TRO denial), creates extraordinary circumstances. Forcing Relator to proceed through trial based on this voidable order would result in wasted judicial and personal resources, subject Relator to ongoing irreparable harm concerning his fundamental parental rights, and present insurmountable difficulties in demonstrating harm on appeal from proceedings tainted by such clear procedural error. The consistent per curiam denials by the Second Court of Appeals, without addressing the merits of Relator's well-founded complaints, further underscore the inadequacy of ordinary appellate remedies and 16 the necessity of this Court's intervention to uphold the rule of law and ensure Relator receives a fair process before his rights are irrevocably prejudiced. Argument Mandamus relief is an extraordinary but essential remedy to correct clear abuses of discretion by a trial court when no adequate appellate remedy exists. In re Prudential Ins. Co. of Am., 148 S.W.3d 124, 135-36 (Tex. 2004) (orig. proceeding). The circumstances of this case unequivocally meet this high standard, demanding this Court's intervention to prevent manifest injustice and uphold the integrity of judicial proceedings. I. Standard for Mandamus review. Mandamus relief is available where the trial court's error "constitute[s] a clear abuse of discretion" and the relator lacks "an adequate remedy by appeal." Walker v. Packer, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). A trial court clearly abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law, or if it clearly fails to analyze or apply the law correctly to the facts.

Id. at 839-40; *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding). A trial court has no discretion in determining what the law is or applying the law to the facts. Walker, 827 S.W.2d at 840. Thus, “a clear failure by the trial court to analyze or apply the 17 law correctly will constitute an abuse of discretion.” Id. Both elements for mandamus relief are met here. II. Respondent clearly abused his discretion when he granted a contested consolidation motion *sua sponte*, without notice, without a hearing, and in clear violation of local rules. The actions of the 233rd District Court, through its Presiding Judge, Respondent, constitute a clear and reversible abuse of discretion for at least two fundamental reasons: first, the consolidation order directly violates mandatory Tarrant County Local Rules, and second, the manner of its issuance—*sua sponte*, without notice to Relator, without a hearing, and without addressing Relator’s timely filed objections—is a profound denial of fundamental due process. A. Extraordinary circumstances exist warranting mandamus review While mandamus typically does not lie from a trial court’s consolidation order because such orders usually do not threaten a party’s substantial rights, this Court has recognized that “if an ordinary appeal is inadequate because extraordinary circumstances exist, mandamus relief may be appropriate.” *In re Van Waters & Rogers, Inc.*, 145 S.W.3d 203, 210-11 (Tex. 2004) (orig. proceeding). Extraordinary circumstances are present when the appellate remedy is inadequate because, *inter alia*, “the party is in danger of permanently losing substantial rights,” “the error cannot be cured on appeal,” or “the party’s ability to present a 18 viable claim or defense is vitiated.” Id. at 211. Such circumstances are manifest here. The Tarrant County Local Rules are unequivocal. Local Rule 4.01(8)(a) mandates that “every motion to . . . consolidate . . . shall be filed in the earliestfiled case and the motion shall be heard in the earliest-filed case.” (emphasis added). This rule is not merely advisory but a directive ensuring orderly case management and has the force of law. See *In re Christus Spohn Hosp. Kleberg*, 222 S.W.3d 434, 437 (Tex. 2007) (orig. proceeding) (trial courts are required to follow local rules). Here, the underlying divorce matter (Cause No. 322-744263-23), pending in the 322nd District Court, is the first-filed case. The SAPCR (Cause No. 233-765358-25) was filed later in the 233rd District Court. Despite the clear mandate of Local Rule 4.01(8)(a), and the fact that the consolidation motion was filed in both Courts, Respondent in the 233rd District Court (the later-filed case) granted the motion. This action directly contravenes the local first-filed rule, an act for which the trial court had no discretion. Walker, 827 S.W.2d at 840. B. The respondent had no discretion to violate local rules or deny due process. Furthermore, Respondent granted the consolidation motion *sua sponte* as to its timing and effect, without providing Relator notice or an opportunity for a hearing on his timely filed objections. This deprived Relator of his fundamental right to due process. A trial court has no discretion to ignore or misapply clear local 19 rules or to deny a party due process. See *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 299-300 (Tex. 2016) (orig. proceeding) (due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner). The Respondent’s decision to grant consolidation in the later-filed case, particularly under these circumstances—*sua sponte*, without notice or hearing on Relator’s objections, and with the effect of centralizing proceedings before a court that had previously demonstrated a reluctance to afford Relator emergency relief—constitutes a clear abuse of

discretion. The timing and manner of this consolidation, occurring immediately after Relator sought mandamus relief from the Associate Judge's refusal to hear his TRO, strongly suggests that this procedural maneuver was intended to circumvent appellate oversight and further entrench the existing denial of Relator's access to justice. III. Relator lacks an adequate appellate remedy. An appellate remedy is inadequate when a party is in real danger of losing substantial rights, *Perry v. Del Rio*, 66 S.W.3d 239, 257 (Tex. 2001) (orig. proceeding), or when the trial court's error is such that it cannot be effectively cured on appeal, potentially leading to wasted judicial resources and irreparable harm to the litigant. See *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 469 (Tex. 2008) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136. 20 In this case, the Respondent's sua sponte consolidation order, issued without notice, hearing, and in violation of local rules, presents precisely such a scenario. Relator's substantial rights, particularly his fundamental parental rights and his right to a fair process in the determination of those rights, are directly imperiled. The improper consolidation forces Relator to litigate critical issues concerning his children in a procedural posture tainted by clear legal error and apparent judicial resistance to affording him due process. Forcing Relator to endure a full trial under these circumstances, only to argue on appeal that the consolidation was improper, is not an adequate remedy. The prejudice from such a procedurally flawed consolidation, especially in a sensitive family law context involving custody of children, is difficult to quantify and may be impossible to fully "untangle" on appeal. See *Dal-Briar Corp. v. Baskette*, 833 S.W.2d 612, 616 (Tex. App.—El Paso 1992, orig. proceeding) (noting difficulty in showing harm from improper consolidation after trial). Furthermore, the history of this case, including the prior denial to hear a motion requesting emergency relief based on ex parte communications and the pattern of per curiam denials from the appellate court without substantive review, demonstrates that ordinary appellate processes have thus far failed to provide Relator with a meaningful opportunity to be heard or to correct clear abuses of discretion. The challenged consolidation order is not an isolated incident but part 21 of a continuing course of conduct that effectively denies Relator due process and access to justice, specifically his ability to protect his relationship with his daughters and ensure their well-being. Waiting for a final appeal would subject Relator to further irreparable harm, including the continued deprivation of his parental rights and the significant expense and burden of a trial predicated on a voidable order. This Court has recognized that mandamus is appropriate to spare parties and the public the expense of a trial and appeal when the trial court's ruling is a clear abuse of discretion that an appellate court would likely correct. See *In re USAA*, 307 S.W.3d 299, 314 (Tex. 2010) (orig. proceeding). The circumstances here cry out for such intervention to prevent further injustice and the needless expenditure of judicial and personal resources on proceedings founded upon clear and prejudicial error. CONCLUSION For the reasons stated, Respondent clearly abused his discretion by granting the contested consolidation motion sua sponte, without notice, without a hearing, without addressing Relator's objections, and in violation of Tarrant County Local Rules. Relator lacks an adequate remedy by appeal due to the extraordinary circumstances presented and the inability of a final appeal to cure the prejudice caused by these procedural violations. Relator respectfully requests that this Court

grant his Petition for Writ of Mandamus. 22 PRAYER FOR EXPEDITED RELIEF For the foregoing reasons, Relator respectfully requests that this Honorable Court: i. Grant this Petition for Writ of Mandamus; ii. Reverse or vacate the Second Court of Appeals' per curiam denial of mandamus relief issued in Cause No. 02-25-00171-CV iii. Issue a writ of mandamus directing the 233rd District Court of Tarrant County, Texas, Honorable Kenneth Newell presiding, to vacate the Order Granting Motion to Consolidate, signed April 11, 2025, in Cause No. 233- 765358-25; and iv. Grant Relator such other and further relief to which he may be justly entitled. Respectfully submitted, /s/ Charles Dustin Myers CHARLES DUSTIN MYERS

CHUCKDUSTIN12@GMAIL.COM 817-546-3693 PRO-SE Relator 23

CERTIFICATION OF FACTS AND VERIFICATION OF RECORD Before me, the undersigned authority, on this day personally appeared Charles Dustin Myers, Relator, and upon his oath, stated that (i) he is representing himself in this matter; (ii) he has reviewed the Petition for Writ of Mandamus and concluded that every factual statement in the petition is supported by competent evidence included in the appendix and record; and (3) he has personal knowledge that the items in the appendix and record are true and correct copies of documents material to Relator's claims and are either pleadings that are on file in the underlying suit or orders signed by the trial court in the underlying suit. There was no testimony or evidence admitted into this matter. Subscribed and sworn on May 7TH 2025. Charles Dustin Myers Electronically signed and notarized online using the Proof platform.

State of Texas County of Harris 24 Certification (TRAP 52.3(j)) Relator, Charles Dustin Myers, certifies that he has reviewed this petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix and record. /s/ Charles Dustin Myers CHARLES DUSTIN MYERS PRO-SE RELATOR Certificate of Compliance (TRAP 9.4(i)(3)) Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), Relator certifies that this document is 3102 words. /s/ Charles Dustin Myers CHARLES DUSTIN MYERS PRO-SE RELATOR 25

CERTIFICATE OF SERVICE Pursuant to Rule 9.5(d) of the Texas Rules of Appellate Procedure, this Petition for Mandamus has been served on all parties of record on May 1st, 2025. Real Party in Interest Morgan Michelle Myers morganmw02@gmail.com Respondent Hon. Kenneth Newell District Judge 233rd District Court, Tarrant County, Texas

adwierzbicki@tarrantcountytexas.gov Tel.: 817-884-1794 200 E. Weatherford St. 5th Floor Fort Worth, TX 76196-0227 Counsel for Real Party in Interest Cooper L. Carter coopercarter@majadmin.com Tel.: (817) 926-6211 Marx, Altman & Johnson 2905 Lackland Road Fort Worth, TX 76116; NO. 25-

IN THE SUPREME COURT OF TEXAS IN RE: CHARLES DUSTIN MYERS, RELATOR. On Petition for Writ of Mandamus to the UG Judicial District Court, Tarrant County Cause No. 233-765358-25 On Mandamus Review from Cause No. 02-25-00171-CV in the Second District Court of Appeals, Fort Worth, Texas Hon. Kenneth Newell Presiding RELATOR'S APPENDIX

Respectfully submitted by: Charles Dustin Myers chuckdustin12@gmail.com Tel.: 817-546-3693 PRO-SE Relator APPENDIX TABLE OF CONTENTS TAB # ITEM TAB 1.....Order granting

consolidation TAB 2.....Tarrant county

local rule 4.01(8) TAB A 233-765358-25 NO. 233-765358-25 IN THE INTEREST OF § IN THE DISTRICT COURT § MARA MYERS AND CAROLINE § 233RD JUDICIAL DISTRICT MYERS, CHILDREN IN THE MA TIER OF THE

MARRIAGE OF MORGAN MYERS AND CHARLES MYERS AND IN THE INTEREST OF MARA MYERS AND CAROLINE MYERS §§ TARRANT COUNTY, TEXAS NO. 322-744263-23 § IN THE DISTRICT COURT §§ 322ND JUDICIAL DISTRICT §§§§ TARRANT COUNTY, TEXAS ORDER ON MOTION TO CONSOLIDATE On A.0.11, I «J, ~&¹º"Sthe Court considered the Motion to Consolidate of MORGAN I MYERS and ORDERS that the above lawsuits be consolidated under the older and lower cause number.of the divorce action in the 322-744263-23 cause of action. SIGNED on ¥r; { JO I 322-744263-23 FILED TARRANT COUNTY 4/10/2025 2:15 PM THOMAS A. WILDER DISTRICT CLERK 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. Envelope ID: 99522208 Filing Code Description: No Fee Documents Filing Description: Status as of 4/10/2025 2:22 PM CST Associated Case Party: MORGANMICHELLEMYERS Name Cooper L.Carter MORGAN MICHELLEMYERS BarNumber Email coopercarter@majadmin.com MORGANMW02@GMAIL.COM TimestampSubmitted 4/10/2025 2:15:17 PM 4/10/2025 2:15:17 PM Status SENT SENT Associated Case Party: CHARLESDUSTINMYERS Name CHARLES MYERS BarNumber Email chuckdustin12@gmail.com TimestampSubmitted 4/10/2025 2:15:17 PM Status SENT Associated Case Party: ATTORNEY GENERAL OF TEXAS Name HOLLY HAYES BarNumber Email csd-filer-914@texasattorneygeneral.gov TimestampSubmitted 4/10/2025 2:15:17 PM Status SENT TAB B Part 4. Rules for Disposition of Family Law Cases Rule 4.01: General Disposition Rules 8. Motion to Transfer, Consolidate, or for Joint Hearing a. Every motion to transfer, for consolidation, or for joint hearing of two or more cases under Rule 174(a), Texas Rules of Civil Procedure, shall be filed in the earliest filed case. b. Each such motion shall have the cause number and style of each applicable case. c. If granted, the transferee Tarrant County Family District Court shall enter an order consolidating all other actions into the earliest filed case, except in situations where a suit affecting parent-child relationship is pending and a subsequent divorce is filed, in which case the transfer or consolidation shall be done pursuant to the Texas Family Code. d. This section is subject to Section 262.203 of the Texas Family Code as it relates to cases that are subject to Chapter 262 of the Texas Family Code. e. Pursuant to subchapter D of Chapter 85 of the Texas Family Code, if an Application for a Protective Order is filed regarding the parties to a Divorce and/or a child the subject of a Divorce or Suit Affecting the Parent-Child Relationship that is currently pending and/or has been finalized in Tarrant County, the Protective Order proceeding shall be transferred to the court where the Divorce or Suit Affecting the Parent-Child relationship is pending, but may continue to be in a separate cause of action. TRCP 330(e). TARRANT COUNTY LOCAL RULES - FAMILY Additionally, if a Divorce proceeding or Suit Affecting the Parent-Child Relationship is filed after an Application for Protective Order is filed, but prior to a rendition of final Protective Order, the Protective Order proceeding should be transferred to the Court in which the Divorce or Suit Affecting the Parent-Child Relationship is pending. All parties and/or attorneys shall have a duty to the Court to advise the Court of ANY other currently pending proceeding

involving any of the parties and/or children who may be the subject of these proceedings. 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: Envelope ID: 100538816 Filing Code Description: Record - Original Proceeding Filing Description: Record to Petition for Writ of Mandamus Status as of 5/7/2025 11:16 AM CST Case Contacts Name HONORABLE KENNETH NEWELL MORGAN MICHELLEMYERS CHARLES DMYERS BarNumber Email adwierzbicki@tarrantcountytexas.gov MORGANMW02@GMAIL.COM CHUCKDUSTIN12@GMAIL.COM TimestampSubmitted 5/7/2025 10:58:49 AM 5/7/2025 10:58:49 AM 5/7/2025 10:58:49 AM Status NOT SENT NOT SENT NOT SENT Did Judge Kenneth Newell sign a consolidation motion in favor of opposing counsel without a hearing, sua sponte, in the wrong court, immediately after denying the complainant access to the court, and does this conduct violate Texas law or judicial ethics?

Answer (Texas)

Short response

Judge Kenneth Newell's action in signing a contested consolidation order sua sponte, without notice or hearing, and in the wrong court, appears to violate both Texas law and judicial ethics, as it disregards mandatory local rules and fundamental due process requirements. Such conduct constitutes a clear abuse of discretion and is subject to correction by mandamus.

Summary

The facts indicate that Judge Newell granted a contested motion to consolidate two family law cases—one a Suit Affecting the Parent-Child Relationship (SAPCR) and the other a divorce—without providing notice or a hearing to the complainant, and did so in the later-filed court rather than the earliest-filed court as required by Tarrant County Local Rule 4.01(8)(a). Texas law, as interpreted by the courts, requires strict adherence to local rules and due process, including notice and an opportunity to be heard before a court takes action on contested matters.

Case law establishes that a trial court abuses its discretion when it acts arbitrarily, unreasonably, or in disregard of guiding rules or principles, especially where due process is denied. The combination of violating a mandatory local rule, denying notice and hearing, and acting in a manner that prejudices a party's substantial rights meets the threshold for mandamus relief and raises serious concerns under Texas judicial ethics.

Background and Relevant Law

Tarrant County Local Rule 4.01(8)(a)

Tarrant County Local Rule 4.01(8)(a) mandates that every motion to consolidate must be filed and heard in the earliest-filed case. This rule is designed to ensure orderly case management and prevent forum shopping or procedural gamesmanship. The rule is not merely advisory; it has the force of law within the county and must be followed by all district courts in Tarrant County.

Texas Rules of Civil Procedure 174(a)

Texas Rule of Civil Procedure 174(a) grants trial courts broad discretion to consolidate cases involving common questions of law or fact. However, this discretion is not unlimited and must be exercised in a manner that furthers convenience, avoids prejudice, and promotes justice. The rule does not override local rules or due process requirements.

Due Process

Fundamental due process under Texas law requires that parties receive notice and an opportunity to be heard before the court rules on contested matters that affect their substantial rights. The denial of these rights constitutes a clear abuse of discretion and may be remedied by mandamus.

Case Law

Texas appellate courts have repeatedly held that a trial court abuses its discretion when it acts arbitrarily, unreasonably, or in disregard of guiding rules or principles, including local rules and due process requirements. Several cases are directly on point:

- In [In re Shumate, 13-23-00150-CV \(Tex. App. May 18, 2023\)](#), the court held that a trial court abuses its discretion when it disregards guiding rules or acts arbitrarily, and that mandamus may be appropriate where an appeal is inadequate to address an improper consolidation order.
- [In re Romo, NUMBER 13-20-00440-CV \(Tex. App. Mar 29, 2021\)](#) reiterates that a trial court's decision is an abuse of discretion if it is arbitrary, unreasonable, or fails to correctly apply the law.
- [In re Shell Oil Co., 202 S.W.3d 286 \(Tex. App. 2006\)](#) clarifies that while courts have broad discretion to consolidate, this discretion is not unlimited and must be exercised to avoid manifest injustice.
- [In re Van Waters & Rogers, Inc., 145 S.W.3d 203 \(Tex. 2004\)](#) holds that mandamus relief is appropriate when a consolidation order threatens substantial rights or when extraordinary circumstances make an ordinary appeal inadequate.
- [In re Acceptance Insurance Co., 33 S.W.3d 443 \(Tex. App. 2000\)](#) and [Dal-Briar Corp. v. Baskette, 833 S.W.2d 612 \(Tex. App. 1992\)](#) (noting subsequent abrogation, discussed below) both emphasize that

mandamus is proper to correct a clear abuse of discretion, especially where due process rights such as notice are denied.

Analysis

Violation of Local Rule

The record shows that the motion to consolidate was granted by Judge Newell in the 233rd District Court, which was the later-filed case, rather than in the earliest-filed case as required by Tarrant County Local Rule 4.01(8)(a). This is a direct violation of the local rule, which is binding on the court. Texas courts have held that a trial court has no discretion to disregard mandatory local rules; doing so is a clear abuse of discretion (*Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992), as cited in multiple cases above).

Lack of Notice and Hearing

The facts further indicate that the order was issued *sua sponte*, without notice to the complainant and without a hearing on the contested motion. Texas law is clear that due process requires notice and an opportunity to be heard before a court rules on a contested matter affecting substantial rights ([*In re Acceptance Insurance Co., 33 S.W.3d 443 \(Tex. App. 2000\)*](#)). The denial of these rights is itself a clear abuse of discretion and grounds for mandamus relief.

Abuse of Discretion and Mandamus

The combination of violating a mandatory local rule and denying due process constitutes a clear abuse of discretion. The Texas Supreme Court and courts of appeals have repeatedly held that such conduct is subject to correction by mandamus, especially where an ordinary appeal would be inadequate to remedy the harm ([*In re Van Waters & Rogers, Inc., 145 S.W.3d 203 \(Tex. 2004\)*](#); [*In re Shumate, 13-23-00150-CV \(Tex. App. May 18, 2023\)*](#)). The facts here—where the consolidation order was issued immediately after the complainant sought appellate relief for denial of access to the court—underscore the extraordinary circumstances justifying mandamus.

Prejudice and Substantial Rights

Improper consolidation, especially in family law cases involving parental rights, can result in irreparable harm that cannot be adequately remedied on appeal. The prejudice is compounded when the order is issued in violation of local rules and without due process, as it undermines the integrity of the proceedings and the party's ability to protect their rights ([*In re Shell Oil Co., 202 S.W.3d 286 \(Tex. App. 2006\)*](#); [*Dal-Briar Corp. v. Baskette, 833 S.W.2d 612 \(Tex. App. 1992\)*](#)).

Judicial Ethics

While the provided materials do not include specific judicial ethics opinions, Texas judicial ethics require judges to uphold the law, act impartially, and ensure that all parties receive fair process. Disregarding mandatory rules and denying a party notice and a hearing, particularly in a manner that appears to retaliate for seeking appellate review, raises serious ethical concerns and may constitute a violation of the Texas Code of Judicial Conduct.

Negative Treatment of Dal-Briar

It is important to note that [Dal-Briar Corp. v. Baskette, 833 S.W.2d 612 \(Tex. App. 1992\)](#) has been abrogated by a later case (Eagle Fabricators Inc. v. Raymond Rakowitz D/B/A Redline Welding & Steel Serv., 344 S.W.3d 414 (Tex. App. 2011)). However, the abrogation relates to the standard for showing harm from improper consolidation after trial, not to the core principle that a clear abuse of discretion is subject to mandamus. The other authorities cited above remain good law and support the analysis.

Exceptions and Caveats

There may be rare circumstances where a court's failure to follow a local rule or provide notice and hearing could be excused, such as in true emergencies or where the party's rights are not substantially affected. However, no such circumstances appear in the present facts. The violation of both the local rule and due process requirements, especially in a contested and prejudicial context, leaves little room for justification.

Conclusion

Judge Kenneth Newell's action in granting a contested consolidation motion sua sponte, without notice or hearing, and in the wrong court, constitutes a clear abuse of discretion under Texas law. This conduct violates both mandatory local rules and fundamental due process, and is subject to correction by mandamus. The facts also raise serious concerns under Texas judicial ethics, as judges are required to uphold the law and ensure fair process for all parties. The complainant is entitled to relief, and the consolidation order should be vacated.

Legal Authorities

[In re Acceptance Insurance Co., 33 S.W.3d 443 \(Tex. App. 2000\)](#)

Texas Court of Appeals

Extract

Mandamus issues only to correct a clear abuse of discretion or the violation of a duty imposed by law where there is no adequate remedy by appeal.

Walker v. Packer, 827 S.W.2d 833, 839 (Tex. 1992); Johnson v. Fourth Court of Appeals, 700 S.W.2d 916, 917 (Tex. 1985). This standard is satisfied where the trial court 'effectively deprive[s] [the relator] of its fundamental due process right to notice. . . .' In re L.A.M. & Assocs., 975 S.W.2d 80, 83 (Tex. App. San Antonio 1998, orig. proceeding) (quoting from Union Carbide Corp. v. Moye, 798 S.W.2d 792, 793 (Tex. 1990)).

Summary

Mandamus relief is appropriate when a trial court's actions deprive a party of fundamental due process rights, such as notice and the opportunity to be heard. This is relevant to the question because it addresses the potential violation of due process rights if a judge signs a consolidation motion without a hearing and without notice, which could be considered a clear abuse of discretion.

[Monroe v. Blackmon, 946 S.W.2d 533 \(Tex. App. 1997\)](#)

Texas Court of Appeals

Extract

Mandamus is proper (1) to correct a clear abuse of discretion committed by the trial court, (2) when there exists no adequate remedy by appeal. Walker v. Packer, 827 S.W.2d 833, 839-40 (Tex. 1992)... A trial court has no 'discretion' in determining what the law is or applying the law to the facts. Thus, a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion, and may result in appellate reversal by extraordinary writ.

Summary

Conditions under which a writ of mandamus is appropriate, specifically when a trial court commits a clear abuse of discretion and when there is no adequate remedy by appeal. It emphasizes that a trial court has no discretion in determining or applying the law incorrectly, which constitutes an abuse of discretion. This is relevant to the question as it provides a legal basis for challenging a trial court's decision if it was made without proper legal procedure, such as signing a consolidation motion without a hearing or in the wrong court.

[Dal-Briar Corp. v. Baskette, 833 S.W.2d 612 \(Tex. App. 1992\)](#)

Texas Court of Appeals

Extract

As a reviewing court, we may issue a writ of mandamus only to correct a 'clear abuse of discretion' committed by the trial court. This occurs where the trial court reaches a decision so arbitrary and unreasonable as to amount to clear and prejudicial error. *Walker v. Packer*, 827 S.W.2d 833, 839 (1992, orig. proceeding). ... A trial court possesses no discretion to determine what the law is. A clear failure of the trial court to correctly analyze or apply the law will constitute an abuse of discretion with resulting reversal by extraordinary writ. *Walker*, 827 S.W.2d at 839-40.

Summary

A trial court's decision can be considered a "clear abuse of discretion" if it is arbitrary, unreasonable, and amounts to a clear and prejudicial error. The trial court has no discretion to misapply the law, and such misapplication can be corrected by a writ of mandamus. This principle is applicable to the question of whether Judge Kenneth Newell's actions in signing a consolidation motion without a hearing and in the wrong court constitute a violation of Texas law or judicial ethics.

[In re Van Waters & Rogers, Inc., 145 S.W.3d 203 \(Tex. 2004\)](#)

Texas Supreme Court

Extract

Because we hold that the trial court abused its discretion and the defendants have no adequate remedy by appeal, we conditionally grant mandamus relief... Having concluded the trial court abused its discretion, we now must determine whether the defendants nevertheless have an adequate remedy by appeal. Absent extraordinary circumstances, mandamus will not issue unless defendants lack an adequate appellate remedy. An appeal is inadequate when parties are in danger of permanently losing substantial rights. Such a danger arises when the appellate court would not be able to cure the error, when the party's ability to present a viable claim or defense is vitiated, or when the error cannot be made part of the appellate record... Because most consolidation orders do not threaten a defendant's substantial rights, mandamus typically does not lie from a trial court's consolidation order. But if 'extraordinary circumstances' are present that make an ordinary appeal inadequate, mandamus relief may be warranted.

Summary

A trial court's consolidation order can be considered an abuse of discretion if it threatens substantial rights or if extraordinary circumstances make an ordinary appeal inadequate. The passage also suggests that mandamus relief is appropriate in such cases. This is relevant to the question as it

provides a legal basis for challenging a consolidation order that was issued without a hearing, *sua sponte*, and potentially in the wrong court, especially if it results in a denial of due process or judicial ethics.

[In re All Repair & Restoration](#)

Texas Court of Appeals

Extract

A trial court has broad but not unlimited discretion to consolidate cases with common issues of law or fact. See *In re Gulf Coast Bus. Dev. Corp.*, 247 S.W.3d 787, 794 (Tex. App.-Dallas 2008, orig. proceeding). A trial court may consolidate actions that related to substantially the same transaction, occurrence, subject matter, or question. Id. 'The actions should be so related that the evidence presented will be material, relevant, and admissible in each case.' Id. A trial court may abuse its discretion by 'incorrectly resolving the relatedness issue or by consolidating cases when the consolidation results in prejudice to the complaining party.' Id. 'The central and primary requirement for consolidation of actions as directed by rule 174(a) is that there must exist common issues of law or fact in both cases.' Id. at 795.

Summary

A trial court has discretion to consolidate cases with common issues of law or fact, but this discretion is not unlimited. The court may abuse its discretion if it consolidates cases incorrectly, especially if the consolidation results in prejudice to the complaining party. The passage highlights the importance of relatedness and the potential for prejudice, which are relevant to the question of whether Judge Newell's actions violated Texas law or judicial ethics.

[In re Shell Oil Co., 202 S.W.3d 286 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

Rule 174 of the Texas Rules of Civil Procedure provides as follows: (a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Tex. R. Civ. P. 174(a). Although Tex. R. Civ. P. 174 gives the trial court broad discretion to consolidate cases, the trial court's discretion is not unlimited. *Womack v. Berry*, 156 Tex. 44, 291 S.W.2d 677, 683 (1956). The express purpose of the rule is to further convenience and avoid prejudice, and thus promote the ends of justice. When all of the

facts and circumstances of the case unquestionably require a separate trial to prevent manifest injustice, and there is no fact or circumstance supporting or tending to support a contrary conclusion, and the legal rights of the parties will not be prejudiced thereby, there is no room for the exercise of discretion... . If it also appears that the injustice resulting from such refusal cannot later be remedied on appeal, the action of the court is subject to control by mandamus.

Summary

While Texas Rule of Civil Procedure 174 grants broad discretion to trial courts to consolidate cases, this discretion is not unlimited. The rule's purpose is to further convenience and avoid prejudice, promoting justice. If a separate trial is necessary to prevent manifest injustice, and no facts support a contrary conclusion, the court's discretion is limited. Moreover, if the injustice cannot be remedied on appeal, the court's action is subject to mandamus control. This suggests that a *sua sponte* consolidation without a hearing, especially if it violates local rules or due process, could be considered an abuse of discretion and subject to mandamus.

[In re Shumate, 13-23-00150-CV \(Tex. App. May 18, 2023\)](#)

Texas Court of Appeals

Extract

"A trial court abuses its discretion when it acts with disregard of guiding rules or principles or when it acts in an arbitrary or unreasonable manner." *In re Acad., Ltd.*, 625 S.W.3d 19, 25 (Tex. 2021) (orig. proceeding). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Essex Ins.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding) (per curiam); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136. Thus, under certain circumstances, a remedy by appeal may be inadequate to address an improper consolidation order.

Summary

A trial court abuses its discretion if it acts arbitrarily or unreasonably, or disregards guiding rules or principles. This is relevant to the question as it suggests that if Judge Newell signed a consolidation motion without a hearing, *sua sponte*, and in the wrong court, it could be considered an abuse of discretion. The passage also notes that under certain circumstances, an appeal may not be adequate to address such an improper order, which could justify mandamus relief.

[In re Romo, NUMBER 13-20-00440-CV \(Tex. App. Mar 29, 2021\)](#)

Texas Court of Appeals

Extract

Mandamus relief is proper only to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re State*, 355 S.W.3d 611, 613 (Tex. 2011) (orig. proceeding). A trial court abuses its discretion when it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it fails to correctly analyze or apply the law. *In re Olshan Found. Repair Co.*, 328 S.W.3d 883, 888 (Tex. 2010) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding).

Summary

A trial court abuses its discretion if its decision is arbitrary, unreasonable, or fails to correctly apply the law. This is relevant to assessing whether the judge's actions in signing a consolidation motion without a hearing and in the wrong court could be seen as an abuse of discretion.

[Seidler Oil & Gas Dev. v. Fletcher \(In re Seidler Oil & Gas Dev.\),
12-22-00009-CV \(Tex. App. Apr 06, 2022\)](#)

Texas Court of Appeals

Extract

Mandamus relief is available if the relator establishes a clear abuse of discretion for which there is no adequate remedy by appeal. *In re Deere & Co.*, 299 S.W.3d 819, 820 (Tex. 2009) (orig. proceeding). Whether a clear abuse of discretion adequately can be remedied by appeal depends on a careful analysis of costs and benefits of interlocutory review. *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 464 (Tex. 2008) (orig. proceeding). Because this balance depends heavily on the circumstances, it must be guided by analysis of principles rather than simple rules that treat cases as categories. *Id.* An appeal is inadequate when the parties are in danger of permanently losing substantial rights. *In re Van Waters & Rogers, Inc.*, 145 S.W.3d 203, 211 (Tex. 2004) (orig. proceeding).

Summary

Conditions under which mandamus relief is appropriate in Texas, specifically when there is a clear abuse of discretion by a trial court and no adequate remedy by appeal. It emphasizes that an appeal is inadequate when substantial rights are at risk of being permanently lost. This is relevant to the question as it provides a legal framework for evaluating whether Judge Newell's actions could be considered an abuse of discretion and whether mandamus relief would be appropriate.

[In re Gulf Coast Business Development Corp., 247 S.W.3d 787 \(Tex. App. 2008\)](#)

Texas Court of Appeals

Extract

This mandamus action arises from an order in the trial court consolidating two cases filed in that court. Relator Gulf Coast Business Development Corporation, individually and derivatively on behalf of Patients' Comprehensive Cancer Center, L.P., asserts the trial judge abused his discretion in consolidating the cases because (1) the two cases do not share common questions of law and fact; and (2) consolidation of the cases for trial will be confusing to the jury and will result in prejudice. Relator argues it has no adequate remedy by appeal because once the cases are tried together to a jury, there is no way to discern how or whether prejudice and confusion affected the jury's deliberations... Rule 174 of the Texas Rules of Civil Procedure governs consolidation of actions. Rule 174(a) provides: When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Summary

The passage provides insight into the requirements for consolidating cases under Texas law, specifically Rule 174. It emphasizes that consolidation should only occur when there are common questions of law or fact and that improper consolidation can lead to jury confusion and prejudice. The passage also suggests that a trial judge's discretion in consolidation is not unlimited and can be challenged if it results in an abuse of discretion.

This memo was compiled by Vincent AI based on vLex materials available as of August 22, 2025. [View full answer on vLex](#)