



02-25-00171-CV

**EN BANC
CONSOLIDATION**

04.22.25

No. 02-25-00171-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. Kenneth E. Newell Presiding

MOTION FOR EN BANC
RECONSIDERATION

Respectfully submitted by:

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ISSUES PRESENTED FOR RECONSIDERATION

Rehearing Issue No. 1:

The Texas Supreme Court has held that consolidation constitutes an abuse of discretion when it prejudices a party or misjudges the relatedness of actions.

The panel erred by denying mandamus relief and allowing to stand a sua sponte consolidation order that prejudiced Relator by delaying urgent child custody proceedings, eliminating strategic advantages, pre-empted appellate review, generated further procedural confusion.

Rehearing Issue No. 2:

When the record demonstrates that separate proceedings are necessary to prevent manifest injustice, the trial court has a duty to avoid consolidation.

The panel erred by overlooking the manifest injustice resulting from the trial court's sua sponte consolidation, which violated due process by ignoring a pending Rule 12 motion and written objection, and introduced further procedural irregularities into already strained litigation.

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 second filed reconsideration motion and addresses the panel’s denial of Cause No. 02-25-00171-CV (attached as Tab 1), referred to as the **“Consolidation”** mandamus.

SUMMARY OF ARGUMENT

This motion satisfies the stringent standards for *en banc* reconsideration under Tex. R. App. P. 41.2(c) because the panel’s denial conflicts with controlling precedent and overlooks critical facts in the mandamus record. The trial court abused its discretion by sua sponte consolidating Relator’s SAPCR with a stalled divorce case on April 11, 2025, without notice, hearing, or consideration of Relator’s objection and pending Rule 12 motion. This consolidation prejudiced Relator by delaying urgent child custody and support resolutions, eliminating strategic advantages, pre-empted appellate review, and caused further procedural confusion, violating Tex. R. Civ. P. 174(a) and Tex. Fam. Code § 153 .002. The

panel's denial conflicts with *Womack v. Berry*, 291 S.W.2d 677 (Tex. 1956), *Dalbriar Corp. v. Baskette*, 833 S.W.2d 612 (Tex. App.—El Paso 1992), and *Lone Star Ford, Inc. v. McCormick*, 838 S.W.2d 734 (Tex. App.—Houston [1st Dist.] 1992), which emphasize that consolidation must not prejudice a party. En banc review is essential to ensure uniformity in family law and protect the children's best interests.

ARGUMENT AND AUTHORITY

I. En banc reconsideration is warranted under Rule 41.2(c) due to extraordinary circumstances and the need for uniformity.

En banc reconsideration is appropriate when a panel's decision conflicts with controlling authority or involves an issue of exceptional importance. Tex. R. App. P. 41.2(c); *In re Marriage of Harrison*, 507 S.W.3d 259, 260 (Tex. App.—[14th Dist.] April 26, 2016, order) as corrected May 10, 2016 (Frost, J., dissenting to partial grant of en banc reconsideration). This matter meets both criteria.

The panel's per curiam denial on April 17, 2025, conflicts with Texas Supreme Court precedent requiring trial courts to exercise discretion within guiding rules and principles. *Womack v. Berry*, 291 S.W.2d 677, 683 (Tex. 1956) (mandamus appropriate to correct clear abuse of discretion in trial management). The consolidation delays critical child custody and support determinations, undermining Tex. Fam. Code § 153.002, which mandates that “the best interest of

the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child”. Allowing trial courts to consolidate cases sua sponte without addressing objections or pending motions sets a dangerous precedent in family law, where procedural fairness is paramount. En banc review is necessary to maintain uniformity and protect the children’s welfare.

II. The panel’s denial conflicts with controlling authority and overlooks critical facts established in the mandamus record.

The panel’s denial fails to recognize the trial court’s abuse of discretion and the resulting prejudice, as evidenced by the mandamus record and established Texas law.

A. The trial court abused its discretion by consolidating without sound legal basis.

Tex. R. Civ. P. 174(a) permits consolidation only when cases share common questions of law or fact and when it does not prejudice any party. The trial court’s sua sponte consolidation of Relator’s SAPCR with an unprosecuted divorce case lacks a sound legal basis and contravenes this rule. In *Dal-Briar Corp. v. Baskette*, 833 S.W.2d 612, 615 (Tex. App.—El Paso 1992, no writ), the court held that consolidation constitutes an abuse of discretion if it prejudices a party, such as by delaying urgent proceedings or creating procedural confusion. Here, the

consolidation delays time-sensitive child custody and support decisions, directly undermining Tex. Fam. Code § 153.002. For example, the SAPCR's unresolved custody issues, critical to the children's stability, are stalled by the divorce case's procedural complexities, causing ongoing harm to their welfare.

Furthermore, in *Lone Star Ford, Inc. v. McCormick*, 838 S.W.2d 734, 737 (Tex. App.—Houston [1st Dist.] 1992, writ denied), the court affirmed that while trial courts have broad discretion to consolidate cases with common issues, such discretion is abused if consolidation results in prejudice to a party. In that case, the court found no abuse because the appellant failed to demonstrate prejudice, noting, “Appellant failed to demonstrate how it was prejudiced as a result of consolidation.” *Id.* at 738. In contrast, here, the consolidation has caused significant prejudice by delaying urgent child custody and support resolutions, which are time-sensitive and critical to the children's welfare under Tex. Fam. Code § 153.002. This delay distinguishes the present case from *Lone Star Ford* and underscores the trial court's abuse of discretion, as the issues still remain adjudicated.

Moreover, *Womack v. Berry*, 291 S.W.2d at 683, establishes that mandamus relief is appropriate when a trial court abuses its discretion to a party's detriment, such as through improper trial management. Although *Womack* addressed separate trials, its principle applies analogously to consolidation decisions that prejudice a

party. The trial court's failure to demonstrate common questions justifying consolidation, coupled with its disregard for the prejudice caused by delay, constitutes a clear abuse of discretion. See also *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 658 (Tex. 1990) (trial court discretion in consolidation is not unbounded). The panel's denial overlooks these precedents, allowing an unsupported consolidation to stand.

B. The sua sponte consolidation resulted in prejudice and violated due process.

The trial court's consolidation order, issued without notice or hearing, violated Relator's due process rights by ignoring a pending Tex. R. Civ. P. 12 motion challenging the Real Party's counsel's authority and Relator's objection to consolidation. (MR 7, MR 9) In *Crestway Care Center, Inc. v. Berchermann*, 945 S.W.2d 872, 873 (Tex. App.—San Antonio 1997, orig. proceeding), the court emphasized that significant procedural actions, like consolidation, require clarity and proper documentation to ensure fair review. Here, the trial court's failure to provide notice or a hearing—despite Relator's objection (MR 9.1, MR 12.32) and pending Rule 12 motion (MR 7)—created procedural irregularities. Moreover, Tex. R. Civ. P. 12 requires an attorney to demonstrate authority when challenged, and the trial court's failure to resolve this motion risks validating actions by potentially unauthorized counsel, creating a procedural quagmire.

This consolidation action prejudiced Relator in four critical ways: (1) delaying urgent child custody and support resolutions that remain unopposed, causing further harm to the children's welfare; (2) eliminating strategic advantages in the SAPCR court; (3) causing procedural confusion by merging distinct legal issues; and (4) thwarted Relator's attempt at seeking mandamus relief. These impacts mirror the prejudice in *Dal-Briar Corp. v. Baskette*, where consolidation harmed a party's ability to pursue timely relief. The Real Party's counsel's failure to respond to this appeal further underscores the procedural irregularities. By upholding the trial court's order, the panel's denial conflicts with these authorities and fails to address the manifest injustice inflicted on Relator and the affected children.

These impacts mirror the prejudice in *Dal-Briar Corp. v. Baskette*, where consolidation harmed a party's ability to pursue timely relief, and contrast with *Lone Star Ford*, where no prejudice was found. The Real Party's counsel's non-participation at the trial court level further underscores the procedural irregularities, as it leaves the Rule 12 challenge unaddressed. By upholding the trial court's order, the panel's denial conflicts with these authorities and fails to address the manifest injustice inflicted on the Relator and the affected children, who remain left without an adequate remedy for an appeal.

CONCLUSION AND PRAYER

The trial court's sua sponte consolidation order of April 11, 2025, is not merely erroneous—it is procedurally indefensible. By consolidating Relator's SAPCR with a stalled divorce case without notice, hearing, or resolution of a pending Rule 12 motion and objection, the court flouted due process and Texas Family Code § 153.002's mandate to prioritize children's best interests. The pending Rule 12 motion challenged the Real Party's counsel's authority, yet the court and Real Party proceeded as if no question existed, risking the validity of every subsequent action. This illogic is akin to building a house on a contested foundation, inviting collapse.

Relator prays that this Court grant *en banc* reconsideration, withdraw or otherwise vacate the panel's denial, and issue mandamus relief compelling the Respondent to vacate the consolidation order. Such relief will restore procedural fairness, protect constitutional rights, and ensure the children's best interests are not sacrificed to judicial expediency.

Respectfully submitted,

/s/ Charles Dustin Myers

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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 **1,427**.

CERTIFICATE OF SERVICE

Relator CHARLES DUSTIN MYERS certifies that on April 21, 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**Kenneth E. Newell**

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PRO-SE RELATOR

SERVED: 04/22/2025

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