NO. 233-765358-25

IN THE 233RD DISTRICT COURT OF TARRANT COUNTY, TEXAS

IN RE: M.E.M., ET AL. **CHARLES DUSTIN MYERS, ** Petitioner, **MORGAN MICHELLE MYERS,** Respondent. 2025-04-10	NOTICE AND LEGAL ANALYSIS

TO THE COURT:

Petitioner, CHARLES DUSTIN MYERS, brings forward this notice to the court, and respectfully shows the following:

I. STATEMENT OF FACTS

1. On March 19, 2025, Petitioner opened a separate SAPCR suit in this court to escape procedural abandonment from the 322nd district court and lack of prosecution from the opposing counsel and a cover letter explaining why the suit was properly before the court.

2. On March 20, 2025, Respondent answered this suit in a pleading filed by a non-party, RODERICK D. MARX.

3. Subsequently, Respondent, through RODERICK D. MARX, a non party, filed a MOTION TO CONSOLIDATE on March 20, 2025.

4. On March 20, 2025, Petitioner filed a MOTION TO STRIKE RESPONDENT'S ANSWER AND MOTION TO CONSOLIDATE.

5. On March 21, 2025, Petitioner filed a verified motion challenging COOPER L. CARTER'S authority to represent the Respondent in this matter.

6. On March 24, 2025, COOPER L. CARTER reached out to the court coordinator for the

233rd, and stated “Could you please provide dates and times that the Court is available to hear my motion?”.

7. On March 24, 2025, the court coordinator, a non-lawyer, provided responded with “[t]he Motion to Consolidate just needs to be filed in the 322nd Divorce case and sent to their Judge to sign; no hearing necessary, it’s a mandatory consolidation.

8. On March 25, 2025, Petitioner filed an EMERGENCY EX-PARTE TRO for the safety and welfare of the minor children named in this suit.

8. On March 27, 2025, Petitioner reached out to the coordinator and informed the court he intended to present the TRO to the court on March 28, 2025, at 9:00 A.M.

9. Later that evening, without contacting the Petitioner, the opposing counsel reached out and mentioned a forward consolidation motion *that would be filed* at a alter date, and requested to be “patched in” to the judge during the presentation of the TRO despite not providing any written response.

10. On March 28, 2025, Petitioner got ready, drove to court, paid for parking, met with the coordinator, contacted opposing counsel, and everyone agreed to set the TRO for a full hearing on April 10, 2025, and Petitioner went before the Associate Judge to have his emergency motion heard.

11. Prior to being called up to present, the Associate Judge left the room, and came back and declined to hear the emergency TRO outright.

12. The reason provided was that "the consolidation motion was filed in the wrong court" and that a *forward-looking* consolidation motion warranted outright refusal of the emergency TRO before her.

13. The referenced consolidation motion was not filed until April 3, 2025, in the 322nd District Court of Tarrant County, and COOPER L. CARTER'S availability suddenly dried up, as she earliest possible date to hear the motion filed in the 322nd was April 24th despite just telling this court she could hear the TRO on April 10th, 2025.

14. This unnecessary delay in the face of an emergency is the exact reason why Petitioner opened the SAPCR, and notified this court of his intention to file a PETITION FOR WRIT OF MANDAMUS in the second court of appeals.

15. On April 8, 2025, prior to the submission of his MANDAMUS, the Petitioner reached out to the court coordinator of this court, and explained that he would be filing Mandamus, and he wanted to ensure that the District Judge of the 233rd was made aware of the situation out of procedural fairness and transparency.

16. The coordinator replied with "I'm sorry, I cannot help you. Per Judge Stone this matter is to be taken up with the 322nd."

17. Two days later, without any notice to the parties, without any hearing set, without addressing the objection on file, and before transferring the case, the District Judge of this court signed and filed an order titled ORDER ON MOTION TO CONSOLIDATE.

18. The court has shown it has the ability to act on its' own accord, but intentionally chose the path of most resistance.

19. The court is misapplying the law in several areas and is blatantly violating due process in the face of an emergency.

20. Furthermore, the court is causing undue delay and prejudice to the Petitioner and is denying him equal protection under the U.S. Constitution by refusing to allow him to submit exhibits, granting orders sua sponte without his input or without a scheduled hearing, and is now actively rubber-stamping boilerplate orders without any logical basis.

21. This information will be supplemented into the Petitioner's PETITION FOR WRIT OF MANDAMUS, as the court's collective actions with the opposing counsel and recent erroneous order showcase a clear attempt to thwart the Mandamus proceedings, deprive the Petitioner of an ability to accurately make a record, and disregard Texas law at the most fundamental level.

LEGAL ANALYSIS

Lack of Notice and Hearing

1. A Texas district court's sua sponte consolidation of cases **without notice or a hearing** offends fundamental due process and violates Texas procedure. Texas Rule of Civil Procedure 21(b) mandates that any motion and *"*notice of any court proceeding…must be served upon all other parties not less than three days before the time specified for the court proceeding*"*. This rule exists to ensure each party has an opportunity to be heard and to prepare objections.

2. Consolidating two family law cases without giving the parties notice or a chance to be heard flouts this requirement and thus **constitutes an abuse of discretion**. The Texas Supreme Court recognizes that *"*[f]ailure to give notice violates 'the most rudimentary demands of due process*" Armstrong v. Manzo, 380 U.S. 545, 550, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965))*. While a

lack of notice or hearing may not automatically render an order void, it does render it voidable as a due process violation. In short, entering a consolidation order on its own motion, without any party setting the matter for submission or hearing, deprives the objecting party of the fair process guaranteed by Rule 21 and the Fourteenth Amendment.

3. The judge's failure to hold a hearing here is especially egregious because Petitioner had filed a written objection in this court, and a pre-objection in the 322nd district court, putting both courts on notice that consolidation was contested.

B. Ignoring the Written Objection

4. Consolidating in the face of a pending written objection – without addressing or formally overruling that objection – is contrary to Texas procedure and due process. Texas Rule of Civil Procedure 174 authorizes consolidation only *"[w]hen actions involving a common question of law or fact are pending before the court"* and anticipates that the court will exercise "sound and legal discretion" to **avoid prejudice** to the parties.

5. Here, the objector squarely raised their opposition in writing, yet the court neither held a hearing nor entered any ruling on the objection before ordering consolidation. In analogous contexts, the Texas Supreme Court has insisted that a trial court **must not proceed to decide a matter while an objection or lack of consent is known and unresolved**. For example, in *Burnaman v. Heaton*, the high court held it improper for a court to sign an agreed judgment when it knows a party has withdrawn consent; *"*consent must exist at the very moment the court undertakes to make the agreement the judgment of the court*"*.

6. When a trial judge is aware that one party does **not** consent or objects, the judge should refuse to approve the proposed action without hearing the party's challenge. By analogy, the judge here had notice that consolidation was contested yet proceeded regardless – effectively

treating the motion as if unopposed. This undermines the purpose of Rule 174, which is to promote convenience **without unfairly prejudicing** a party's rights.

7. Ignoring a live objection also violates basic due process, as it denied the objecting party any forum to argue why consolidation was improper (for example, due to dominant jurisdiction or prejudice). In sum, issuing the order without addressing the objection was a clear **abuse of discretion**. At minimum, the consolidation order is voidable for lack of due process and should be vacated upon a proper challenge. If the objection went entirely unheard, the order's validity is highly suspect under *Burnaman*'s mandate of a party's right to be heard before an adverse order. *Id.* 240 S.W.2d 288, 291 (Tex. 1951). Here, that is what happened.

C. No Transfer of Venue

8. The situation is compounded if the two suits were in different courts and the judge consolidated **"without first transferring venue from the newer court to the older case."** Under Texas law, when two courts have concurrent jurisdiction over related SAPCR or family law matters, the **first-filed case enjoys "dominant jurisdiction"**. The Texas Supreme Court's seminal decision in *Curtis v. Gibbs* instructs that *"*Any subsequent suit involving the same parties and the same controversy must be dismissed if a party to that suit calls it to the court's attention." *Id.* **511 S.W.2d 263 (1974).**

9. Texas Family Code §155.201 (the continuing exclusive jurisdiction statute) requires that when a SAPCR is pending in one court and a new proceeding concerning the child is filed in another court, the second action **must be transferred** to the court with continuing jurisdiction. In fact, *transfer is a necessary condition precedent to consolidation* in such situations. *See In the Interest of J.V.O. and J.R.O. III.,* No. 04-20-00346-CV (Tex. App. – San Antonio, 2021). The Fourth Court of Appeals recently emphasized that a motion to "consolidate" an earlier SAPCR

with a later divorce implied a mandatory transfer; while labeled a consolidation, it **"accomplished the same purpose"** as a transfer, and the judge signing the order was effectively acting on behalf of the SAPCR court to effect the required transfer. *Id.*

10. By contrast, in our case no such transfer order or exchange of benches occurred. The newer case was never properly **vested** in the court that assumed control. A judge cannot unilaterally reach out and seize a case from another court's docket without a statutory transfer. Thus, to the extent the consolidation order was entered *without a valid transfer of venue or jurisdiction*, it is **void** (not merely voidable) for want of subject-matter jurisdiction over the second case. An order entered without jurisdiction "had no effect" and can be attacked at any time.

11. Even when the cases were in the *same county*, such as here, local practice requires a motion to transfer and consolidate be filed in the earliest case and heard by that court. Here, the judge consolidated into the older case *sua sponte* without the new case ever being properly transferred. This end-run around the usual venue transfer process is inconsistent with *Curtis v. Gibbs* and Texas's dominant-jurisdiction doctrine. It suggests the consolidation order is procedurally invalid and should be treated as a nullity.

Void or Voidable?

12. Given the above defects, one must determine whether the consolidation order is *void ab initio* or merely voidable (subject to reversal upon direct attack). Under Texas law, an order is *void* if the court lacked jurisdiction or capacity to act, whereas an order issued in violation of procedural requirements (but within the court's jurisdiction) is typically *voidable. Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 863 (Tex.2010).

13. In this case, the consolidation was accomplished through serious procedural irregularities: no notice, no hearing, ignoring a filed objection, and, critically, no proper transfer of the case between courts. The strongest argument for treating the order as **void** is the lack of jurisdictional authority to consolidate without a transfer. Because the newer SAPCR was never formally transferred, the judge who consolidated may have had **no power over that case or the subject matter** – a jurisdictional flaw rendering the order void.

14. On the other hand, to the extent the court *did* have subject-matter jurisdiction, such as here, the consolidation order's other defects of no notice, hearing, or considering the objection, would make it voidable for abuse of discretion, but not absolutely void. Even then, Texas courts have held that proceeding without the required notice or hearing is a **due process violation** warranting reversal.

15. In either event, the order cannot stand. If void, it can be attacked *anytime* (even collaterally); if voidable, it must be set aside through direct appellate relief. Here, the Petitioner has promptly sought relief, so whether labeled void or voidable, the improper consolidation should be vacated. Notably, the order's timing—issued while a mandamus was pending on the TRO—further indicates it was a mechanism of expediency rather than a valid judicial act, reinforcing that it should carry no legal force.

Conflict with Texas Supreme Court Precedent

16. By consolidating the newer action into the older one on its own motion – rather than dismissing or abating it – the trial judge here achieved the opposite of *Curtis*: instead of eliminating the conflict, the judge effectively **absorbed** the second suit without following the safeguards (notice, transfer order, etc.) that *Curtis* and its sister cases require. The consolidation order thus **violates the spirit of *Curtis v. Gibbs***, which is to uphold the orderly administration of

justice and prevent "unseemly conflict" between courts. Most egregious, is the court continues to incorrectly apply the law in the face of an emergency.

Effect on the Pending Mandamus

17. Finally, Petitioner addresses whether the trial court's consolidation gambit – executed **while a mandamus proceeding is pending involving the very TRO the consolidation moots** succeeded in depriving the appellate court of jurisdiction.

18. It did not. A party cannot, by procedural manipulation, divest the Court of Appeals of its power to review a serious abuse of discretion. Even if the consolidation order is merely voidable, equity and public policy counsel against treating the mandamus as moot. Texas appellate courts have recognized that they may proceed to decide an issue that is "technically" moot when the surrounding circumstances indicate manipulation or when the underlying problem is capable of repetition yet evading review. Here, the timing and method of the consolidation suggest it was done for the express purpose of "mooting" the mandamus complaint about the TRO. Courts disfavor such tactics. As Chief Justice Hecht has observed, mandamus relief acts on a judge's conduct, not merely on the existence of an order: *"*Unlike remedies granted by appeal, a mandamus writ is not an action on an order or judgment but is instead an order against the respondent to correct a clear abuse of discretion*."* In other words, the appellate court's mandamus jurisdiction is **"original, not derivative of the trial court's order"**, and cannot be defeated by the trial court attempting to obscure jurisdiction.

19. Allowing the consolidation to moot the mandamus would reward the very procedural trickery that the appellate process is designed to check. The Second Court of Appeals should therefore retain jurisdiction to review the TRO issue (and the consolidation order itself, if necessary) despite the trial court's attempt to merge the cases. Texas law is clear that a trial court

cannot evade appellate review by unilateral actions. For example, in *Curtis v. Gibbs* the Supreme Court granted mandamus to undo conflicting orders, ensuring the first court's orders (like a TRO or injunction) were subject to proper review.

20. Likewise here, the consolidation that "mooted" the TRO is itself fatally flawed, and the appellate court may address that defect. The appellate court can either: (1) disregard the consolidation as void and decide the mandamus on its merits, or (2) treat the mandamus petition as also encompassing a challenge to the consolidation (given that it occurred post-filing) and grant relief restoring the cases to their prior posture. Either route prevents a miscarriage of justice. The key point is that the Court of Appeals' **mandamus power persists** in the face of these procedural anomalies. A party's right to appellate review of a void/voidable order cannot be defeated by the trial judge's self-help remedy of consolidation. If it were otherwise, a trial court could always attempt to moot pending appeals or mandamus actions by hurriedly altering the status quo – a result no appellate court should countenance.

Conclusion

In sum, a sua sponte consolidation under these circumstances is rife with legal error. It violated the notice and hearing requirements of Rule 21, ignored a pending objection (in derogation of due process and *Burnaman*), defied the dominant-jurisdiction rule (*Curtis v. Gibbs*) by bypassing a required transfer, and appears calculated to evade appellate oversight. Such an order is invalid – void if viewed as a jurisdictional transgression, or at least voidable as an abuse of discretion – and it cannot extinguish the appellate court's authority to review the underlying TRO and the consolidation itself. The Second Court of Appeals should grant relief to undo the improper consolidation, refuse to dismiss the mandamus as moot, and ensure that Relator's objections are heard in an orderly, lawful proceeding. This not only vindicates Relator's due

process rights but also upholds the integrity of Texas's procedural rules and precedent in family law cases.

When combined in concert with the actions of the opposing counsel in this matter, it is clear that the court and counsel's intent was to **stall the father's case and continue denying him access to his children and residence without a legal basis**, which is harassment via legal process. Courts have sanctioned attorneys for less egregious tactics when they primarily serve to impede an adversary's lawful claims (*In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997) (orig. proceeding) – recognizing that abuse of the judicial process can warrant sanctions). Here, opposing counsel's consolidation gambit appears to cross into that territory, and the court not only enabled it, but is actively supporting it.

Petitioner asks this court to re-think the manner in which it is choosing to handle this matter. His self-represented status does not authorize this court, or any other court, to ignore the best interests of the children in the face of an un-disputed, un-opposed, and now un-adjudicated emergency. This court is allowing legal advice to be given from a court coordinator which is the foundation for this mess that has been created given COOPER L. CARTER'S incompetence and lack of skill necessary to handle such a case. The court has a duty to administer justice, and here, that has wholly failed in all aspects. All information related to this pleading will be supplemented into the Mandamus record given the court's unjustified refusal to permit exhibits to be filed.

Respectfully submitted,

/s/ Charles Dustin Myers
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CERTIFICATE OF SERVICE

Relator certifies that on April 11, 2025, a true and correct copy of the foregoing Notice was served on all parties and counsel of record as follows:

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PRO-SE PETITIONER/RELATOR

SERVED: 04/10/2025