

233-765358-25

**PETITIONER'S
NOTICE OF INTENT
TO FILE MANDAMUS**

04.07.25

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THOMAS A. WILDER
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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.

**PETITIONER'S NOTICE OF INTENT TO
FILE MANDAMUS AND EMERGENCY
STAY**

2025-04-07

TO THE HONORABLE JUDGE OF SAID COURT:**I. INTRODUCTION**

There comes a time in the journey of life when a man finds himself standing in the same muddy footprints he left as a child, gazing up at the same towering courthouse steps, and feeling that same sinking sensation in his chest. It's a peculiar thing, this cycle of disappointment—to have lived it once as a bewildered child and then again as a rule-abiding adult. The faces change, the dates on the calendar advance, but the feeling remains as familiar as an old, worn book.

Petitioner comes before this Court not with anger burning in his chest, nor with vindictiveness poisoning his pen, but rather with that quiet, heavy disappointment that settles in a person's bones when they've done everything by

the book only to find the book itself has been shelved away, forgotten by those sworn to read from it.

Petitioner followed the rules. He honored the procedures. He placed his faith in a system that promised justice would flow like water, clear and unobstructed, to those who seek it properly. He lived under the façade of facially void orders, and sustained extraordinary damages that were all caused intentionally by one person: **the Respondent**, who has sat in complete silence as this breakdown has continued to occur.

Yet here stands Petitioner, a father twice removed—once from his home and once from his children—knocking on the courthouse door with papers properly filed, only to be told that the door shall remain closed because someone else might, at some future date, file papers at another door entirely. If this strikes the Court as a curious interpretation of justice, then we find ourselves in rare agreement.

Mark Twain once observed that “the difference between the almost right word and the right word is really a large matter—it’s the difference between the lightning bug and the lightning.” In matters of law and children’s welfare, the difference between almost justice and actual justice is equally vast—it’s the difference between children thriving and children suffering, between a father’s presence and his absence, between following the law and merely gesturing toward it.

The Petitioner is now in an extraordinary circumstance. On one hand, he must seek mandamus relief respectfully compelling this Court to fulfill its

ministerial duty to hear and rule on Petitioner's properly filed emergency TRO, which this Court refused to hear on March 28, 2025. The refusal came not from any defect in the filing itself, but solely from representations made by opposing counsel regarding a future filing in another court which she abandoned—a procedural sleight of hand that has left children in distress and a father without an adequate remedy for an appeal.

On the other hand, the Petitioner must prohibit the 322nd District Court from setting a matter for a hearing that cannot bear a valid result through a concurrent Writ of Prohibition. The proper procedure wasn't followed, and cannot be overlooked in the face of an emergency.

In essence, a procedurally improper forward-looking consolidation motion to be filed in a different court was used to block a properly filed emergency TRO before this court. The court cannot rule on a case not before it, and mandamus is the proper remedy here if this court refuses to act. Given the extraordinary circumstances of this matter, and given there has been no response or opposition to the relief being requested, the court should **grant the emergency TRO immediately through a written order delivered to all the parties via the electronic filing manager**, set the matter for a hearing 14 days from the signing of the order, and require a written response from the opposing party no later than 7 days prior to the hearing.

Despite the circumstances of this case, Petitioner feels that settlement will and could be a possibility in the future, but the priority remains to rebuild the status quo of the children that has been destroyed and regain the ability to provide for his children financially while damages are assessed and attended to. Petitioner is at the very least entitled to this immediate relief. He is not asking this court for anything more than what it has the discretion to do and what the law demands that it must do given the circumstances. This intent to file mandamus is filed out of respect and serves as a notice to all parties of record of my position on this matter.

Such absurdity should end with an order from this court in Petitioner's favor, and in support thereof, he shows the following unopposed facts:

II. STATEMENT OF FACTS

1. On January 24, 2025, after more than 11 months of inaction, Petitioner filed a Motion to Dismiss for Want of Prosecution. The divorce case no substantive action from Respondent since April 2024, a legal ghost ship drifting without direction or purpose. That motion wasn't attempted to be set for hearing until **September of 2024**, only after the Petitioner exhausted all efforts seeking relief throughout the Texas Judiciary without any participation from the opposing side.

2. On March 19, 2025, driven by mounting concerns about the children's welfare and learning that the 322nd District Court did not have continuous, exclusive jurisdiction over the children in this matter, Petitioner filed a new

SAPCR in this Court (Cause No. 233-765358-25) seeking emergency relief for the children. The very next day, March 20, 2025, Ms. Carter suddenly reappeared like a character presumed missing in the second act, filing an answer to the SAPCR petition in this Court and thereby submitting to this Court's jurisdiction by filing a response rather than a motion to abate.

3. On March 21, 2025, Petitioner filed a verified Rule 12 motion challenging Ms. Carter's authority to represent Respondent in this matter—the second such challenge, met with the same resounding silence as the first.

4. On March 25, 2025, Petitioner filed an Objection to Consolidation and an Ex-Parte Emergency Motion for TRO. Two days later, on March 27, 2025, Petitioner contacted the court coordinator, requested a date and time to present the motion, and served the documents to the opposing party with the intent to present on March 28, 2025, at 9:00 A.M. before the Associate Judge of this Court. On that fateful morning of March 28, 2025, Petitioner drove to the courthouse, paid for parking, met with the coordinator, communicated with opposing counsel, and secured a hearing date of April 10, 2025. Petitioner then proceeded to the Associate Judge's courtroom to present the TRO.

5. Before Petitioner could present his case—before he could speak a single word about his children's welfare—he was told that Ms. Carter would be filing a motion to consolidate in the 322nd District Court, that his motion was improperly before the court, and that the Associate Judge refused to hear the motion. It was a

curious thing, this refusal. Ms. Carter wasn't even present in the courtroom, yet her words carried more weight than Petitioner's physical presence, his properly filed papers, and most importantly, the urgent needs of his children. She stopped the proceedings with nothing more than word of mouth for the incorrect motion. A true showcasing of disregard for the process, and the children.

6. On April 2, 2025, Petitioner filed a Pre-Objection to Motion to Consolidate in the 322nd District Court. Ms. Carter's motion to consolidate wasn't filed with the 322nd District Court until April 3, 2025—six days after she used its mere possibility to prevent this Court from hearing Petitioner's emergency motion. Her motion disregarded Petitioner's pre-objection entirely, as if it were invisible ink on the page.

7. On April 4, 2025, unable to acquire a ruling due to Petitioner's objection, Ms. Carter attempted to set the motion for a hearing before the 322nd District Court. That same day, Petitioner filed a Pre-Objection to Motion to Transfer in this Court, given that a motion to transfer must come before any attempt at consolidation. Ms. Carter, who had been so urgently concerned about consolidation when it served to block Petitioner's emergency hearing, suddenly claimed to be unavailable until late April—causing significant delays that could have been avoided had this Court simply heard the motion before it on March 28, 2025.

8. Throughout this period of procedural maneuvering, the children have been subjected to psychological manipulation and medical neglect. They have been removed from Petitioner's care and placed with elderly great-grandparents on a daily basis, and are being gaslighted into a false belief that the divorce is finalized. Petitioner's eldest child's academic performance has plummeted, and both children have become emotionally estranged from both parents. Petitioner has suffered approximately \$110,500 in verifiable financial damages due to being locked out of his home and business, and it grows each day. But the financial toll pales in comparison to the emotional cost of watching Petitioner's children suffer while the courts exchange procedurally incorrect volleys over his head.

III. ARGUMENT

A. The Court's Ministerial Duty

9. It is well-established Texas law that a trial court has a ministerial duty—not a discretionary duty—to consider and rule upon motions properly filed and pending before it. *In re Sheppard*, 193 S.W.3d 181, 183 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding); *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding). The Texas Supreme Court has consistently held that while a court has discretion in how it rules on a motion, it has no discretion to refuse to rule at all. *In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding) ("When a motion is properly filed and pending before a trial court, the act of considering and ruling upon that

motion is a ministerial act, and mandamus may issue to compel the trial judge to act.").

10. This principle is not merely a procedural nicety but a fundamental cornerstone of our judicial system. When a court refuses to hear a properly filed motion, it effectively denies access to justice itself. As the Texas courts have repeatedly emphasized, "A trial court's refusal to rule on a pending motion within a reasonable amount of time constitutes a clear abuse of discretion." *In re Bonds*, 57 S.W.3d 456, 457 (Tex. App.—San Antonio 2001, orig. proceeding). This abuse is magnified exponentially when the motion concerns the welfare of children and seeks emergency relief.

11. The Court's refusal to hear Petitioner's properly filed emergency TRO on March 28, 2025, constitutes a clear failure to perform a ministerial duty. This failure is particularly concerning given that:

- a) The motion was properly filed and noticed for hearing and the parties agreed on a date and time set for April 10th, 2025;
- b) Petitioner communicated with court staff, physically appeared at the courthouse ready to present the motion and was told he could present his motion;
- c) The motion concerned the immediate welfare of children; and
- d) The refusal was based solely on representations about a future filing in another court that had not yet occurred.

B. Clear Abuse of Discretion

12. A writ of mandamus is appropriate when a trial court clearly abuses its discretion and there is no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992). An abuse of discretion is clearly established from point one below, and supported by points two through eight:

- i. First, it refused to perform its ministerial duty to hear and rule on a properly filed motion based solely on representations about a future filing in another court. It's as if a doctor refused to treat a bleeding patient because another doctor might, at some future date, claim the patient should be treated at a different hospital.
- ii. Second, it failed to recognize that by answering the SAPCR petition in this Court, Respondent submitted to this Court's jurisdiction and should have instead filed a motion to abate or should have moved to transfer the case. The law doesn't allow for half-measures of jurisdiction.
- iii. Third, it failed to recognize that this Court maintained jurisdiction until any transfer was completed pursuant to Texas Family Code § 155.005(d) as no final order has been rendered in the 322nd District Court. Jurisdiction isn't a hot potato to be

dropped at the first mention of another court—it's a solemn responsibility that remains until properly transferred.

iv. Fourth, it failed to recognize that the proper procedure for consolidation of cases in different courts requires a motion to transfer to be filed and granted before any motion to consolidate can be considered, pursuant to Texas Family Code §§ 155.201 and 6.407. The law provides a sequence, a proper order of operations, that cannot be reversed or circumvented without creating procedural delay, which is what the emergency TRO sought to prevent from occurring.

v. Fifth, it allowed opposing counsel to circumvent proper legal procedure by influencing this Court's decision without being present and without having filed any response to the emergency TRO properly before this Court. It's as if the referee in a football game made a call based on what someone in the parking lot said might happen in the fourth quarter when she had the rules of the game mixed up.

vi. Sixth, it failed to consider that the purported "agreed" orders in the divorce case are void for lack of consent under *Burnaman v. Heaton*, 240 S.W.2d 288, 291 (Tex. 1951). A void order is no order at all—it's a legal nullity, as insubstantial as a

shadow on the wall. No court has continuous, exclusive jurisdiction over the children in this matter.

vii. Seventh, it failed to recognize that the Associate Judge's orders in the divorce case were never properly adopted by the referring District Court as required by Texas Family Code § 201.013(b). An unadopted order is like an unsigned check—it may look official, but it carries no legal weight, yet it has been used to bar the Petitioner from his residence, business, and children, and impose a disruptive and chaotic schedule upon the children.

viii. Eighth, and perhaps most troublingly, it disregarded the children's best interests in favor of procedural considerations, contrary to Texas Family Code § 153.002 and has languished for over a year due to the opposition's failure to prosecute.

12. The law is clear that in matters involving children, their welfare must be the court's primary consideration—not procedural niceties, not docket management, and certainly not the convenience of opposing counsel.

C. No Adequate Remedy by Appeal

13. When Justice Delayed Is Justice Denied Petitioner has no adequate remedy by appeal for reasons that should stir the conscience of any court: The emergency nature of the injunctive relief sought requires immediate action, as

Petitioner's children are suffering immediate and ongoing harm while procedural issues remain unresolved. *In re Texas Dep't of Family & Protective Servs.*, 255 S.W.3d 613, 615 (Tex. 2008) (granting emergency relief where children's welfare was at immediate risk). Petitioner's children are being alienated from him, causing long-term psychological damage that cannot be undone by a favorable ruling months or years in the future. *In re Scheller*, 325 S.W.3d 640, 643 (Tex. 2010) (recognizing that interference with the parent-child relationship can constitute irreparable harm).

14. The improper procedural maneuvers by opposing counsel are causing significant delays that cannot be remedied through the normal appellate process. Each day that passes is another day the children suffer, another day their academic performance declines, another day they become more emotionally estranged in a situation that the law should've prevented from existing to begin with.

15. Temporary orders in family law cases are generally not appealable, leaving Petitioner in a procedural trap with no exit. Waiting for a final judgment to appeal would allow the improper procedural tactics to succeed, causing irreparable harm to Petitioner and his children.

16. Void orders are being enforced against Petitioner, causing ongoing harm that cannot be adequately remedied by appeal. *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000). Petitioner is caught in a procedural echo chamber

with no effective remedy, as both courts have effectively denied him access to the judicial system. *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008).

D. Opposing Counsel's Contradictory Behavior

17. Cooper L. Carter's contradictory behavior warrants particular attention, like a character in a novel whose actions never quite align with their words: She zealously defended her client by filing an answer to the SAPCR in this Court, thereby submitting to this Court's jurisdiction, only to then influence this Court to refuse to hear Petitioner's properly filed motion by representing that she would file a motion to consolidate in the 322nd Court, which would be moot by statute.

18. She had abandoned the divorce case for nearly a year, filing nothing since April 24, 2024, only to suddenly reappear precisely when I sought emergency relief for the children—like a firefighter who ignores a smoldering house for months, only to rush in when someone else calls for help. She failed to respond to a Rule 12 motion challenging her authority to represent the Respondent, her silence speaking volumes about the nature of her representation. She subsequently filed an improper motion to consolidate in the 322nd Court without first filing the required motion to transfer, putting the procedural cart before the horse. She is now claiming unavailability until late April in the 322nd Court, creating unnecessary delay after using the urgency of consolidation to block Petitioner's emergency hearing.

19. This pattern demonstrates a tactical attempt to manipulate both courts' dockets to prevent me from obtaining a timely hearing on Petitioner's properly filed emergency motion. It's a shell game played with the children's welfare as the prize. This Court should not allow itself to be used as an instrument in such procedural gamesmanship, particularly when it involves a failure to perform a ministerial duty required by law and when children's welfare is at stake.

IV. CONCLUSION

This Court's refusal to hear Petitioner's properly filed motion constitutes a failure to perform a ministerial duty for which there is no adequate remedy by appeal. The proper legal procedure requires a motion to transfer to be filed and granted before any motion to consolidate can be considered, and by answering the SAPCR petition in this Court, Respondent submitted to this Court's jurisdiction.

The children who are the subject of this proceeding are suffering immediate and ongoing harm while procedural issues remain unresolved. Each day that passes without addressing the emergency concerns raised in Petitioner's TRO is a day of certain damage to the children's psychological well-being and development.

Petitioner once heard it said that the true measure of a society is found in how it treats its most vulnerable members. By that measure, the procedural labyrinth that has prevented this Court from hearing Petitioner's emergency

motion speaks volumes about how far we have strayed from the ideal of justice. The children— innocent, vulnerable, and deserving of the Court’s protection— have instead become collateral damage in a game of procedural chess.

Petitioner provides this petition not out of anger or vindictiveness, but out of that quiet, heavy disappointment that settles in a person’s bones when they’ve done everything by the book only to find the book itself has been shelved away. Petitioner followed the rules. He reiterates that he honored the procedures. He placed his faith in a system that promised justice would flow like water, clear and unobstructed, to those who seek it properly.

Petitioner asks this Court to remember that behind every case number, behind every filing, behind every procedural rule, there are often real children with real lives that continue whether the courts act or not. Time doesn’t stop for them while adults sort out procedural disagreements. They grow, they hurt, they form memories and impressions that will shape them for a lifetime.

As Mark Twain might have observed, the difference between justice served and justice delayed is the difference between a father’s presence and his absence, between children thriving and children suffering, between following the law and merely gesturing toward it.

V. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully requests that this Court correct its error sua sponte, recognize the seriousness of

this situation, and grant relief without delay given the extraordinary circumstances of this case. Petitioner specifically requests that this Court:

- i. Immediately grant the attached proposed order requesting an emergency TRO preventing the Respondent from barring Petitioner's access to the matrimonial home located at [REDACTED]
[REDACTED] pursuant to Texas Family Code § 105.001(b) and serve the order on all parties of record through the EFM pursuant to rule 21a of the Texas Rules of Civil Procedure;
- ii. Have the parties confer with the court coordinator to set this matter for a hearing within 14 days from the signing of the order, and require Respondent's written response no later than 7 days before the hearing;
- iii. Take judicial notice that this Court has personal jurisdiction over the respondent to issue a TRO given her response to the original SAPCR;
- iv. Take judicial notice that no opposition to the requested relief appears on record;
- v. Grant such other and further relief as the Court deems just and necessary to protect the best interests of the children, under § 153.002 and aid the parties in satisfying Texas State policy under § 153.001.

Petitioner emphasizes that this request is urgent and narrowly tailored to avoid further procedural delay that places the children at risk.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
PRO-SE

CERTIFICATE OF SERVICE

Respondent, CHARLES DUSTIN MYERS, certifies that, pursuant to Rule 21a of the Texas Rules of Civil Procedure that:

A copy of this NOTICE has been served to MORGAN MICHELLE MYERS through her EFM registered under MORGANMW02@GMAIL.COM

A copy of this NOTICE has been provided to COOPER L. CARTER through her email COOPERCARTER@MAJADMIN.COM

A copy of this NOTICE has been served to HOLLY HAYES through her EFM registered email address: CSD-FILER914@TEXAS.OAG.GOV

Served on: 04/07/2025

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
817-546-3693
CHUCKDUSTIN12@GMAIL.COM
PRO-SE

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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