

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 OBJECTION TO
CONSOLIDATION

2025-03-24

INTRODUCTION

1. Texas law does generally **require consolidation of divorce and custody matters** to avoid conflicting parallel litigation. Under Family Code § 6.407, if a SAPCR involving the child is already pending in one court when a divorce is filed in another court, the SAPCR must be **transferred to the divorce court** so that one judge handles everything. Likewise, if the parents are in the middle of a divorce, any new custody suit typically should be joined into that divorce case instead of proceeding separately. The policy behind this is to have one court speak on all parent-child issues at a time, preventing inconsistent orders. In a normal scenario, if Parent A filed for divorce (including child custody) in Court X, Parent B would **not be allowed to file a separate SAPCR in Court Y** at the same time – the law would mandate that the child's case be heard in the first-filed divorce court.

2. So, generally, an active divorce case would mean any custody claims belong in that lawsuit, not in a new, independent suit elsewhere.

3. However, § 6.407 assumes the initial divorce suit is properly filed and being pursued. Its joinder and transfer rules are meant to coordinate *valid, concurrent* proceedings. It does **not explicitly address** a situation where the original divorce/SAPCR is essentially a sham or has stalled out. In your case, while technically the divorce case exists, it was filed in bad faith and has produced no valid orders or final judgment. This puts it outside the typical scenario § 6.407 contemplates. If the original case is on track to be dismissed or is proven to be jurisdictionally defective, there may soon be no **“pending” case to join into**. Thus, the usual mandatory joinder rule may not pose a long-term barrier, especially if you move to dismiss the old case for lack of prosecution. In short, **ordinarily you must litigate child issues in the divorce suit**, but when that suit is effectively defunct or void, the rationale for mandatory joinder falls away.

II. Dominant Jurisdiction and Exceptions for Bad-Faith First Filings

4. Even when no final order exists, Texas follows a “first in time” rule for parallel cases: the court where a suit is first filed generally has dominant jurisdiction, meaning it has the primary right to proceed, and any later-filed suit involving the same parties and issues should be abated (paused) or dismissed. Applied here, because the divorce case was filed earlier, a new SAPCR in another court would normally face a plea in abatement from the first filer. The second court would typically defer to the first-filed court’s authority over the matter. **But importantly, Texas law also recognizes exceptions** to the first-filed rule in cases of inequitable conduct. If the person who filed the first suit did so *merely to gain an upper hand* (for example, to lock in a preferred venue or harass the other parent) **without any genuine intent to prosecute the case**, that behavior can **estop** (prevent) them from claiming the benefits of dominant jurisdiction.

5. Here, this is precisely what has occurred. COOPER L. CARTER, attorney for Respondent, has not prosecuted the first-filed case in over *eight months*. Her authority remains

in question under rule 12 of the Texas Rules of Civil Procedure, and hasn't filed the mandatory **notice of remand** after federal removal, which occurred back in December of 2024. This procedurally prevents the case from moving forward until this requirement is met, which has not only been pointed out to Ms. Carter, but has been wholly disregarded.

6. Now, Ms. Carter is before this court seeking to consolidate the SAPCR suit filed and captioned above back into the original suit *in which she has not been prosecuting*. Such action would further prejudice the children, and Ms. Carter should have to explain why she has failed to prosecute the main case, but yet can show up here and request consolidation. If Ms. Carter were genuinely looking to uphold the best interests of the children in this case, she wouldn't allow their well-being to hang in the balance within the originally filed case – but she has been – which is why this SAPCR was brought before this court.

7. Further, The Texas Supreme Court in *Curtis v. Gibbs* explained that a first filer's bad faith or fraud can remove the shield of the first-filed rule and allow a later suit to go forward. This also applies here. Ms. Carter's client initiated the divorce action in bad faith, and waived the 60-day waiting period for divorce claiming an active order of protection was in effect against the undersigned. This was elected for the *sole purpose* of gaining an unfair advantage in the divorce proceedings. Once this advantage was gained, she stopped prosecuting the suit.

8. Generally, if *Suit 1* was essentially a placeholder or manipulation (filed “merely to obtain priority, without a bona fide intention to prosecute the suit” and the filer's conduct kept *Suit 2* from being filed sooner, a court can find that *Suit 1* was an inequitable sham. In that event, the second court may **deny the plea in abatement and take the case**, effectively jumping past the first court. *Id.* Here, the facts suggest the prior divorce action was in bad faith and then abandoned – precisely the kind of scenario in which Texas courts allow an exception to the

“first-filed” rule. The Respondent in this matter had no serious intent to pursue the divorce/SAPCR (e.g. they filed to harass or to get temporary orders, then let the case languish), giving this court the discretion to refuse to abate/consolidate this SAPCR. The first court’s **dominant jurisdiction dissolves if the first suit was a null effort**. Therefore, given the circumstances, the opposing counsel should have to explain the reasoning behind her failure to prosecute before consolidation ordered under the assertion that it is “mandatory”.

III. Filing a New SAPCR in a Different Court Under These Circumstances

9. Given the above, **nothing in Texas law absolutely bars the undersigned from filing a new SAPCR** for his children in this court, because the original case truly produced no final orders and is effectively moribund. Texas Family Code § 155.001(d) explicitly provides that if no final order has been rendered in a SAPCR, any *subsequent suit* regarding the child is simply treated as a new original proceeding.

9. That means the undersigned legally permitted to start fresh with a new custody suit because the first case never culminated in a final judgment. Additionally, the Texas Supreme Court has described a subsequent SAPCR in these circumstances as “a **new suit** in which no court has continuing exclusive jurisdiction”. *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974) (orig. proceeding) - confirming that a pending-but-unresolved prior case does not freeze the undersigned out of seeking relief from this court on behalf of his children.

IV. The Old Case Faces Statutory Dismissal for Failure to Prosecute

10. Interestingly, the first case has already had a motion to dismiss for want of prosecution filed. Unfortunately, due to Ms. Carter’s inability to prosecute the case, it remains in procedural limbo never properly remanded from federal court. So even if the cases were

consolidated, she would have no ability to proceed with the litigation, effectively putting this scenario back in the same spot, which would be prejudicial to the children.

11. Under the *Curtis v. Gibbs* line of cases, the new court has authority to determine if the first filer's conduct was inequitable. The Petitioner in this matter has not received any counter argument or denial regarding the claims of the Respondent's inequitable conduct, only continuous attempts to subvert justice for the children named in this suit.

12. The key point is that **no “continuing, exclusive” jurisdiction binds the undersigned or the children to the old case**, and an **abandoned/invalid suit should not prevent a parent from protecting their child's interests in a new forum**. The law intends for one court at a time to handle a child's case, but it does not reward a party who tried to game the system by filing first and then dropping the ball. The undersigned has proceeded diligently and transparently in the new SAPCR, and Texas law provides a path for him to do so.

IV. CONCLUSION

13. Because the prior divorce/SAPCR never resulted in a valid final order (and its only interim orders are void), that court **never obtained continuing, exclusive jurisdiction** over the children. *In the INTEREST OF A.F., W.J., A.J., and J.J., Children* No. 02-19-00117-CV. A parent in this situation is generally free to initiate a new SAPCR as an original proceeding in the appropriate court. TEX. FAM. CODE 155.001(b)(2). While Texas law usually tries to funnel all custody matters into one court, it will not force you to remain tethered to a lawsuit that was filed in bad faith and then abandoned. The doctrines of continuing exclusive jurisdiction and mandatory joinder **do not bar a new suit** when the original case is effectively *a nullity*. Here, that is precisely the case, and until these points are rebutted by the opposing party, they prevail.

Respectfully submitted,

/s/ Charles Dustin Myers

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CERTIFICATE OF SERVICE

Petitioner, Charles Dustin Myers, hereby certifies that a true and correct copy of the foregoing PETITIONER'S OBJECTION TO CONSOLIDATION was served on Respondent's counsel of record, Cooper L. Carter, via the via email to cooperlcarter@majadmin.com (email address on file) on this 24th day of March, 2025, in accordance with the Texas Rules of Civil Procedure and to Petitioner, MORGAN MICHELLE MYERS, through the Electronic Filing Manger in accordance with Texas Rules of Civil Procedure 21a to her email address MORGANMW02@GMAIL.COM.

/s/ Charles Dustin Myers

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