Gmail **FUDSTOP <chuckdustin12@gmail.com>**

Notice of Temporary EX-Parte TRO

2 messages

FUDSTOP <chuckdustin12@gmail.com> Fri, Mar 21, 2025 at 10:44 PM
To: Cooper Carter <coopercarter@majadmin.com>

Ms. Carter,

Pursuant to **Tarrant County Local Rule 3.30(c)** , this letter provides notice that I intend to present an **Emergency Ex Parte Application for Temporary Restraining Order (TRO)** seeking immediate relief in the interest of my children's well-being and to prevent irreparable harm to my property, family relationships, and ability to earn a living.

The TRO will **NOT** request **exclusive temporary use of the marital residence** but that if your client has issue, she has alternative housing and has used possession of the residence to damage my livelihood and restrict my parenting time. The application will include verified evidence supporting the necessity of immediate relief, including:

- Verified communications acknowledging my need for the home to work
- Records of financial losses from displacement (Airbnb receipts, business losses, etc.)
- Evidence of your client disposing of or concealing my personal property
- Proof that the children have been left unsupervised overnight by your client on multiple occasions.
- Documentation from the school showing excessive absences and academic concerns regarding Mara.
- Text evidence between myself and the multiple AIRBNB hosts showcasing the difficulty faced in setting up operations outside of the reliable setup of the house.
- Photographs and texts contradicting claims made in previous pleadings
- Dental neglect of my youngest daughter (photos of untreated cavities)
- Financial documents showing I paid all vehicle and rent obligations, contrary to your client's claims
- Text messages between myself and the grandparents of your client showing we can be amicable during this situation and put the children first.
- Photo evidence showing the only way I have to communicate with my daughters is via an online game, ROBLOX, due to your client preventing communications.
- My criminal record showing that I have never been convicted of a violent crime.
- The current temporary orders which are facially void and can be collaterally attacked in any court at any time.

Again, there is absolutely zero reason to have me barred from the residence and strip the children of their parents. It contradicts the lodestone of the Family Code which is in the best interests of the children.

This is the more logical solution. If we pursued this route in the beginning, we'd already be divorced and the children's financial stability wouldn't have been sacrificed. There is no risk of danger. There is no risk of harm to the children. There is only the possibility of recovery. **That is in their best interests.**

There is no legal reason your client has to want me out of the house other than just that. She cannot unilaterally decide that I agree to everything and then do as she pleases with my personal belongings and neglect the children in multiple areas.

Your argument that I agreed to the orders in place falls flat on its face for many reasons which will not be repeated here.

I am providing this notice strictly to comply with **Local Rule 11(e)**. I will proceed to present the application to the Court **without further delay** due to the nature of the harm and urgency involved.

If you wish to discuss these matters, I'm happy to do so - otherwise I will inform the court that you ***do not agree*** to the orders upon submission.

This situation cannot continue, and the alternatives that are available must be pursued to uphold the best interests of the children before any further damage to their well-being is sustained.

Respectfully,
Charles Dustin Myers

FUDSTOP <chuckdustin12@gmail.com> Sat, Mar 22, 2025 at 3:17 PM
To: Cooper Carter <coopercarter@majadmin.com>, Morgan Wilson <morganmw02@gmail.com>

Cooper,

Petitioner (your client) filed the original divorce petition in December 2023 in the 322nd District Court (Cause No. 322-744263-23). In that petition, she alleged **false claims of family violence** and sought a waiver of the 60-day waiting period for divorce, ostensibly to expedite temporary relief by labeling me as an abuser and claiming she had an **active order of protection against me at the time of filing**.

On February 1, 2024, a temporary orders hearing was held before an **Associate Judge**. The parties (through counsel) announced an apparent agreement on temporary custody and other matters. The associate judge signed an *"Associate Judge's Report for Temporary Orders"*, titled as "Agreed Temporary Orders." Importantly, this report **did not itself constitute a signed court order**; instead, it outlined the agreed terms and directed further action before any order would be final. Specifically, the report stated that **Respondent's attorney (Dan Bacalis) would prepare a formal temporary orders document**, which would be prepared from 20 days from the date of signing, which would have been **February 22nd, 2024.** It also required that **both attorneys were to approve it to form within 5 days (have 5 days to approve the order)**, and that if **no agreement on form was reached, a motion to sign would need to be filed within 30 days**. The report noted that the parties' personal approval was not required for entry of the order, implying the attorneys' sign-off or a court motion would suffice. No district judge signed an order at that time – the associate judge's report was essentially a **recommendation** to be formalized in a written order.

Immediately after the Feb 1 hearing, Respondent lost confidence in his attorney's actions and **fired his attorney**. Believing that the "agreement" did not reflect the child's best interests or was entered under false pretenses (due to Petitioner's unfounded allegations), Respondent promptly **withdrew his consent** to the announced terms. On February 5, 2024, *before any temporary order was signed by the court,* Respondent (now pro se) filed an *Emergency Motion to Reconsider and Vacate Temporary Orders*. This motion put the court on notice that Respondent **no longer consented** to the supposed agreed terms and that he objected to any temporary order being entered as announced.

Despite this, the reconsideration was denied and no findings were ever entered. In fact, the order **explicitly ordered Respondent to sign the orders to which he did not agree in violation of his own directives.**

Texas law is clear that an associate judge's report or proposed order is *not* a final, enforceable court order unless and until it is adopted and signed by the referring court. Under the Family Code, an associate judge may conduct hearings and recommend orders, but those recommendations *remain subject to approval by the district court judge.* Section 201.011 of the Texas Family Code provides that an associate judge's report "may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order". In other words, the associate judge's report (even if titled "Temporary Orders") is essentially a *draft* or advisory decision; it does **not** itself carry the force of a court order until the proper procedures are completed.

Family Code § 201.013 unambiguously outlines how and when an associate judge's proposal becomes an order of the court. If a party timely requests a de novo hearing by the referring judge, the associate judge's proposed order may be enforced in the interim (except for certain matters) pending that hearing. **However, if no timely request for a de novo hearing is filed, the statute states that "the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's *signing* the proposed order or judgment."**

Thus, absent a de novo appeal, an associate judge's recommendation **must be signed by the district judge** to have any legal effect. Until the judge signs it, it is merely a *proposed* order, not an actual court order.

Because the February 1, 2024 temporary orders were never signed or adopted by the court, Respondent was (and is) under no legal obligation to follow them, and neither party could properly enforce those terms through contempt or other remedies. A party cannot be held in contempt for violating a **non-existent court order**. Here, the "Agreed Temporary Orders" are, at most, an agreement between the parties that was not entered as a judgment. When Respondent withdrew his agreement (as discussed below), even that contractual underpinning fell apart. The Family Code's requirements were not met, and thus the purported temporary orders are **void ab initio** due to lack of rendition or entry by the referring court.

The stage is thus set for this Court to intervene, because as of now, **there is no operative temporary order governing the child's conservatorship or possession**.

The Purported Temporary Orders Are Void and Subject to Collateral Attack in This SAPCR

Because the February 1, 2024 temporary orders were never properly entered as a court order (and would have been invalid if entered without consent - which is clearly the case here), they are **void** and can be attacked in this proceeding. Generally, once a court renders a final judgment, parties are constrained to challenge that judgment on direct appeal or in the original case; *collateral attacks* on final judgments are disfavored. **However, only a *void* judgment is subject to collateral attack in a separate proceeding.** *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005) ("*Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985)")

In this SAPCR, Respondent is effectively **collaterally attacking** the temporary orders from the divorce case by asserting their invalidity. Such a collateral challenge is permissible here because those orders are void. As the Texas Supreme Court has explained, *"Only a void judgment may be collaterally attacked." Id.*

Accordingly, Respondent asks this Court to **formally declare** that the March 26, 2024 "Agreed Temporary Orders" (and any interlocutory rulings associated with them) in Cause No. 322-744263-23 are **void, of no effect, and not binding** on the parties. This declaration will remove any doubt or argument by Petitioner that those terms still govern the parties' rights. It will also foreclose any attempt to enforce or rely on those non-orders (for example, in claims of violation or in arguing res judicata). The Court has the authority in equity and under the Uniform Declaratory Judgments Act (Tex. Civ. Prac. & Rem. Code chapter 37) to declare the rights and status of the parties vis-à-vis that prior proceeding – particularly given that the SAPCR directly concerns the child who was also at issue in the divorce temporary orders. Granting such relief is appropriate to prevent confusion and multiplicative litigation. Once the prior "orders" are declared void, this Court can proceed to issue fresh temporary orders for the child without any conflict or cloud from the divorce case.

In sum, the prior temporary orders are a legal nullity and this Court should treat them as such. The Court's order declaring them void will simply recognize the reality that, due to the procedural faults and lack of consent, those orders never had legal existence. This clarification is critical to move forward in protecting the child's welfare, as discussed next.

Immediate Emergency Relief Is Necessary to Protect the Child's Best Interest

Every day that passes without a valid temporary order is a day of potential harm or uncertainty for the child. The current situation – a divorce case stuck in limbo with no operative orders, and parents in dispute – is untenable for a child's well-being. The child has effectively been living under an informal or contested arrangement since February 2024. Petitioner has acted as though she has primary custody under the (void) temporary orders, while Respondent has been sidelined and denied the normal possession or decision-making that a proper order (or a true agreement) would have provided him. This dynamic, fueled by Petitioner's unproven allegations of family violence, has caused significant stress and instability for the child. Respondent fears that Petitioner is leveraging the appearance of an order to restrict his contact with the child and to make unilateral decisions that are not in the child's best interest. Meanwhile, the divorce proceeding has not moved forward to a final resolution – **over 12 months** have elapsed since the March hearing, with no trial setting in sight. This stalemate directly affects the child: there is no clear court-sanctioned framework for conservatorship, visitation, or support, and your client has only introduced chaos into their lives.

This Court, now handling the SAPCR, has both the authority and the duty to step in and provide stability. Under Tex. Fam. Code § 105.001, **"the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child,"** including orders for temporary conservatorship and possession.

The Family Code specifically empowers courts to act **expeditiously** to protect a child: if there is immediate danger to the child's physical or emotional health, the court can even issue temporary orders **without notice** (such as a temporary restraining order) to address the emergency. Here, Respondent asserts that the child's emotional welfare is indeed in jeopardy. The lack of a valid order has enabled Petitioner to marginalize Respondent's role in the child's life, purportedly under the guise of the void temporary orders. Petitioner's false accusations of violence – never tested or proven in court – have created a pretext for her to limit Respondent's access. Consequently, the child is being unjustly deprived of time and a relationship with Respondent, who has been a loving father with no history of abuse. This scenario is precisely what emergency temporary orders are designed to prevent. The Court should not allow a procedural quagmire to result in a child effectively losing a parent or receiving inferior care.

Most importantly, the **"best interest of the child" is the paramount consideration** in any conservatorship or possession decision. *See* 153.002 TEX. FAM. CODE.

All Texas courts must ensure that their orders first and foremost serve the child's best interest. By that standard, continuing under the shadow of void orders and parental discord is plainly not in this child's best interest. Instead, the child's best interest calls for fresh, valid temporary orders that set forth clear, fair, and safe arrangements for custody and visitation while the parents' disputes are resolved. The Court should craft these orders based on current evidence and the child's needs – not based on an outdated and unconsented plan from February. The Family Code's public policy (Tex. Fam. Code § 153.001) favors frequent, continuing contact with fit parents and stable environments free of violence or abuse. Here, Respondent is ready, willing, and able to care for the child and poses no danger, and he simply seeks a normal custody schedule that allows the child to have both parents in his life. Petitioner's unsupported claims of family

violence (made to gain a litigation advantage) should not dictate the child's reality any longer, especially since those claims have not been substantiated in any court hearing.

Why your consolidation motion and response are insufficient, and will fail, or be met with mandamus if granted (after reconsideration)

Normally, even without continuing *exclusive* jurisdiction, a prior *pending* suit would require the new suit to be consolidated or abated (as discussed above with § 6.407 and dominant jurisdiction). The mother (divorce petitioner) could argue that the original court "has jurisdiction" over the children by virtue of the pending divorce, so the SAPCR should not proceed separately. However, the **void nature of the prior temporary orders** is a game-changer. If those orders are void, then the original case has not effectively adjudicated anything regarding the children's current custody or support. The SAPCR petitioner can contend that because the prior orders are null, there is no valid existing order or active management of the children's case, and the new court is free to act in the children's best interests. This is the **EXACT argument made**. In effect, the argument is that the divorce case's jurisdiction over the children lapsed into dormancy or "dormant jurisdiction" due to your failure to prosecute the case.

It's important to distinguish *jurisdiction* from *orders*. The **continuing jurisdiction doctrine** would typically prevent a different court from issuing orders if a final order existed or if another court was actively handling the case. But here the SAPCR is filed in the *same county* as the divorce. There is no risk of two different counties competing; it's an internal issue. The SAPCR effectively asks the **court to take up a new cause number** and to recognize that the old cause has stalled and its orders are void.

EVEN IF the void argument fails, there is another nuance to this area of law. Despite the lack of a final order, the pending divorce still technically invokes the court's jurisdiction over the children. Typically, the proper course is to *revive or dismiss* the dormant divorce, rather than maintain a wholly separate SAPCR on the side. Texas courts adhere to the principle that the first suit filed (here, the divorce) should dominate; a later-filed suit concerning the same subject (the children) can be abated to prevent conflicting rulings. In fact, in ***In re Shifflet***, for example, a party attempted parallel litigation regarding child custody, and the court emphasized that modifications must be filed in the court with jurisdiction over the original case

The **only exception** to the one-court rule is narrow. Texas law **does allow** a court to **lose dominant jurisdiction if the party with the first suit proceeded in bad faith or the suit is not actively pursued.** Both apply here. The first suit was unquestionably brought in bad faith, as the declaration of an active protective order being in effect against the Respondent was **an intentional fabrication designed to provide your client with an advantage.** Despite this, the Texas legislature should have prevented the first hearing from **ever happening, because 6.405b of the Texas Family Code** required your client to present the alleged order to the court ***BEFORE ANY HEARING.***

CONCLUSION

Thus, the SAPCR is appropriately before the court, and the only argument you made in your Response fails. The court denied my attempt to open this separate suit, requiring me to file a **17 page argument** as to why the case should be accepted, and then it was.

So your response **effectively mirrors the first denial from the court,** which amounts to no response being filed at all.

It is clear you are not representing your client in a manner to uphold the law or the best interests of the children, but to only appear when needed to obstruct the much needed justice that the children need and deserve.

This is my position.

Charles Dustin Myers