

IN THE 322nd DISTRICT COURT OF TARRANT COUNTY, TEXAS

ITMOMO

(AITIO M.E.M., C.R.M., two children)

MORGAN MICHELLE MYERS

Petitioner,

CHARLES DUSTIN MYERS,

Respondent.

RESPONDENT'S NOTICE OF INTENT TO
SEEK AN EXTRAORDINARY WRIT OF
PROHIBITION

2025-04-07

TO THE HONORABLE JAMES MUNFORD:

Respondent, CHARLES DUSTIN MYERS, submits his NOTICE OF INTENT TO
SEEK AN EXTRAORDINARY WRIT OF PROHIBITION, and in support thereof, shows the
following:

I. INTRODUCTION

After over a year of one-sided litigation, this court has permitted a purported settlement agreement to destroy the lives of two children, their father's livelihood, and have rewarded both the Petitioner and her attorney by refusing to prosecute the case. There is no excuse for allowing the Petitioner to blatantly deceive this court into acquiring agreed temporary orders without the consent of all parties through her attorney of record only to then fail to prosecute the case. This situation has resulted in unenforceable orders that remain facially void and now this court, after

months of inaction, is seeking to set an improperly filed consolidation motion used as a tactic to stall emergency relief.

Notably, the participation from Petitioner resurfaces again only in the face of an emergency TRO. It doesn't come with good faith or arguments; it only comes with a false sense of urgency by the opposing counsel in this matter. This court has sat on its' hands for months, and then despite the failure to prosecute from the other side, it chooses to act on ***the wrong motion***. Such a display is legally improper, unjustified, and showcases the complete disregard for what would otherwise be a prima facie case warranting dismissal for want of prosecution.

Now, rather than acting *sua sponte* to set the DWOP for hearing, the court instead chooses to entertain a prematurely filed consolidation motion ***which it has no jurisdiction to rule on***. As the Texas Supreme Court has held previously: “[a] plaintiff has a duty to “prosecut[e] the suit to a conclusion with reasonable diligence,” failing which a trial court may dismiss for want of prosecution.” *In re Conner*, 458 S.W.3d 532 (Tex. 2015) (citing *Callahan v. Staples*, 139 Tex. 8, 161 S.W.2d 489, 491 (1942)). The court has wide discretion to manage its' docket, so it begs the question as to why the court wants to act on its own accord on a motion to consolidate before the case is properly transferred.

Although the writ of prohibition is intended to prevent this Court from setting a matter for hearing that is procedurally improper, the issue in this case mirrors that addressed by the Texas Supreme Court in *In re Conner*, 458 S.W.3d 532 (Tex. 2015). There, the Court considered whether a trial court abuses its discretion by refusing to grant a motion to dismiss for want of prosecution in the face of unmitigated and unexplained delay—and held that it does. That is precisely the circumstance presented here, and this intended writ of prohibition is to prevent this court from causing even further delays by setting a matter for a hearing which it has no

jurisdiction to rule on, and give the court the ability to *dismiss this case for want of prosecution* given that it has the discretion to do so, and no opposition to it from the opposing party.

II. LEGAL FRAMEWORK

A. Writ of Prohibition

A writ of prohibition is an extraordinary legal remedy that serves specific, limited purposes in the Texas legal system. It is a judicial order issued by a higher court to prevent a lower court from exceeding its jurisdiction or interfering with the higher court's determination of a case.

Key characteristics of a writ of prohibition include:

1. **Limited Purpose Remedy:** A writ of prohibition is used to protect the subject matter of an appeal or to prohibit unlawful interference with enforcement of a superior court's judgment (*Sivley v. Sivley*, 972 S.W.2d 850, 863, Tex. App.—Tyler 1998).
2. **Preventive Nature:** The writ is designed to prevent future actions, not to remedy acts already completed. It can only be used to prevent what is about to be or could be done, not as a remedy for acts that are already completed (*United States v. Hoffman*, 71 U.S. 158, 1866). Here, Respondent seeks to use this writ as a means to prevent the court from causing further delays by setting opposing counsel's improper motion to consolidate.
3. **Extraordinary Remedy:** Courts have characterized a writ of prohibition as a "drastic remedy" and the legal equivalent of an equitable injunction (*In re Lewis*, 223 S.W.3d 756, 761, Tex. App.—Texarkana 2007). This is a drastic circumstance. The Respondent has

been barred from his own residence for over a year without any explanation, and without any case prosecution in a one-sided effort to obtain relief from facially void orders.

4. **Last Resort:** Prohibition is not appropriate if any other remedy, such as appeal, is available and adequate (*In re Castle Tex. Prod. Ltd. P'ship*, 189 S.W.3d 400, 404, Tex. App.—Tyler 2006). Here, Respondent has no adequate remedy by appeal, because there is currently no court with continuous, exclusive jurisdiction over the children in this matter.

III. STATEMENT OF FACTS

5. On January 24, 2025, after more than 11 months of inaction, Petitioner filed a Motion to Dismiss for Want of Prosecution in this court. The divorce case has had no substantive action from Petitioner 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 Respondent exhausted all efforts seeking relief throughout the Texas Judiciary without any participation from the opposing side.

6. 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 the 233rd District 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.

7. On March 21, 2025, Respondent filed a verified Rule 12 motion challenging Ms. Carter's authority in the 233rd to represent Petitioner in the matter—the second such challenge, met with the same resounding silence as the first.

8. On March 25, 2025, Respondent filed an Objection to Consolidation and an Ex-Parte Emergency Motion for TRO in the 233rd. Two days later, on March 27, 2025, Respondent 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, Respondent drove to the courthouse, paid for parking, met with the coordinator, communicated with opposing counsel, and secured a hearing date of April 10, 2025 agreed by the parties. Respondent then proceeded to the Associate Judge's courtroom to present the TRO.

9. Before Respondent 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 233rd court, and 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 Respondent'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.

10. On April 2, 2025, Respondent 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 the 233rd Court

from hearing Respondent's emergency motion. Her motion disregarded Respondent's pre-objection entirely, as if it were invisible ink on the page.

11. On April 4, 2025, unable to acquire a ruling due to Respondent's objection, Ms. Carter attempted to set the motion for a hearing before the 322nd District Court. That same day, Respondent filed a Pre-Objection to Motion to Transfer in the 233rd 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 Respondent's emergency hearing, suddenly claimed to be unavailable until late April—causing significant delays that could have been avoided had the 233rd Court simply heard the motion before it on March 28, 2025.

12. 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. Respondent's eldest child's academic performance has plummeted, and both children have become emotionally estranged from both parents.

Respondent 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 Respondent's children suffer while the courts exchange procedurally incorrect volleys over his head.

IV. THE PROHIBITION PREDICAMENT

13. The writ of prohibition exists for precisely this sort of situation—where a court is about to act in a way that exceeds its authority and threatens to compound an already untenable situation. The law on this matter is as clear as a bell on a still morning:

A. The Procedural Parade Must Follow Its Proper Order

14. The Texas Family Code establishes a clear sequence for the consolidation of cases from different courts. First, a motion to transfer must be filed and granted, bringing both cases into the same court. Only then may a motion to consolidate be considered. See Tex. Fam. Code §§ 155.201 and 6.407.

15. This isn't merely a matter of dotting i's and crossing t's—it's the fundamental roadmap that ensures cases proceed in an orderly fashion. A court cannot consolidate what it does not possess, any more than a chef can cook ingredients that haven't yet been delivered to the kitchen.

16. The Texas Supreme Court has consistently held that courts must follow proper procedural sequence. *In re Southwestern Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000). When a court attempts to rule on a matter for which it lacks jurisdiction or authority, prohibition is the appropriate remedy. *In re Lewis*, 223 S.W.3d 756, 761 (Tex. App.—Texarkana 2007, orig. proceeding).

17. Respondent is no legal scholar with a library of case law memorized, but even he can see that this principle is as plain as a full moon on a cloudless night. This Court's potential willingness to hear a motion to consolidate before a motion to transfer has been filed and granted would be like a judge sentencing a defendant before the trial has begun—a clear inversion of the proper order of legal proceedings.

B. The Discretion Dilemma

18. The writ of prohibition as used in Texas has three functions: 1) preventing interference with higher courts in deciding a pending appeal, 2) preventing inferior courts from entertaining suits that will relitigate controversies which have already been settled by issuing

courts, and 3) prohibiting a trial court's action when it affirmatively appears that the court lacks jurisdiction. *Texas Capital Bank-Westwood v. Johnson*, 864 S.W.2d 186, 187 (Tex.App.-Texarkana 1993, orig. proceeding). Here, function three is directly relevant. A court cannot hear a motion to consolidate a case it does not have before it.

C. Opposing Counsel's Conduct

19. Ms. Carter's behavior throughout this saga deserves special attention, like a character in a novel whose actions consistently contradict their stated intentions.

20. She abandoned the divorce case for nearly a year, filing nothing since April 2024, only to suddenly reappear when Respondent 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.

21. She filed an answer in the 233rd Court, thereby submitting to its jurisdiction, only to then argue that the case belongs in this Court—a contradiction as glaring as claiming to be both inside and outside a room simultaneously.

22. She used the mere possibility of a future filing to block an emergency hearing, then waited six days to file the motion—a delay that speaks volumes about the true urgency of the matter.

23. She filed a motion to consolidate without first filing a motion to transfer, putting the procedural cart before the horse in a manner that defies both logic and law.

24. She now claims to be unavailable until late April, creating further delay after using the urgency of consolidation to block Respondent's emergency hearing—a scheduling contradiction that would be comical if not for the children caught in its web.

25. This pattern reveals a tactical attempt to manipulate both courts' dockets to prevent me from obtaining timely relief. It's a shell game played with Respondent's children's welfare as the prize. This Court should not allow itself to be used as an instrument in such procedural gamesmanship, particularly when children's lives hang in the balance.

V. MORAL FIBER

26. If there's a lesson to be drawn from this procedural quagmire, it's that the law's complexity should never obscure its fundamental purpose: to provide justice, particularly for those most vulnerable. My children—innocent bystanders in this adult conflict—have become collateral damage in a game of procedural chess where the rules seem to change with each move.

27. It has been stated 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 the 233rd Court from hearing Respondent's emergency motion, and now threatens to compound the error by having this Court act prematurely, speaks volumes about how far we have strayed from the ideal of justice.

28. Respondent provide this notice not out of anger or vindictiveness, but out of that quiet, bewildered astonishment that settles in a person's bones when they've witnessed the law being twisted into shapes that would make a carnival contortionist blush with envy. Respondent 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.

29. Behind every case number, behind every filing, behind every procedural rule, there are 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.

30. As Mark Twain might have observed, the difference between proper procedure and improper procedure is not merely academic—it's the difference between justice served and justice denied, between children protected and children neglected, between a system that works and one that merely pretends to.

VI. CONCLUSION AND PRAYER

31. I respectfully request that this Court pause, reflect on the procedural peculiarity before it, and decline to hear a motion to consolidate until the proper preliminary steps have been taken. Specifically, I ask that this Court:

- a. Recognize that it lacks jurisdiction to hear a motion to consolidate until a motion to transfer has been filed in the 233rd Court and granted;
- b. Take judicial notice that Petitioner submitted to the 233rd Court's jurisdiction by answering the SAPCR petition;
- c. Acknowledge the improper procedural sequence attempted by Petitioner's counsel in filing a motion to consolidate without first filing a motion to transfer;
- d. Consider that proceeding with a hearing on the consolidation motion would only compound the procedural irregularities and further delay relief for the children;

- e. Recognize that the 233rd Court has the power and jurisdiction to address the emergency concerns raised in my TRO motion, which remains unopposed on the record.
- f. Using the court's own inherent power, dismiss the divorce outright for failure to prosecute given the circumstances of this case.

Respondent understands that in most situations, courts give deference to licensed attorneys over self-represented litigants. But the procedural impropriety here is so glaring, so fundamental, that it transcends the usual presumptions. Even a layperson can see that you cannot consolidate what you do not possess, just as you cannot serve a meal with ingredients you haven't yet purchased.

The children deserve better than to have their fate determined by procedural sleight of hand. They deserve courts that follow the law's clear sequence, that prioritize substance over form, and that remember that behind every procedural rule are real lives hanging in the balance. The truth of this matter can only be revealed once the injustices are duly corrected by this court.

Respondent has filed a similar notice to the 233rd court informing of the intent to file a writ of mandamus to compel a ruling on the emergency TRO that was unlawfully blocked from being heard by COOPER L. CARTER.

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