M.2448

02-25-00166-CV

EN BANC VOID ORDER

04.21.25

M.2448

M.2449

No. 02-25-00166-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

On Petition for Writ of Mandamus

to the 322nd Judicial District Court, Tarrant County

Cause Number 322-744263-23

Hon. Jeff Kaitcer Presiding

MOTION FOR EN BANC RECONSIDERATION

Respectfully submitted by:

Charles Dustin Myers
chuckdustin12@gmail.com
Tel.: 817-546-3693
[redacted]

M.2449

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES **PAGE**

STATUTES

ISSUES PRESENTED FOR RECONSIDERATION

Rehearing Issue No. 1:

According to the Texas Supreme Court, a trial court cannot render a valid consent judgment when a party's consent is absent at the time of rendition. The panel erred in issuing a *per curiam* denial that left undisturbed a facially invalid judgment.

Rehearing Issue No. 2:

According to the Texas Supreme Court, a judgment is void when the court rendering judgment has no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act. The panel erred in issuing a *per curiam* denial that upheld a judgement in which the trial court had no capacity to act on.

FOREWORD

"The Dragon in Triplicate"

Relator CHARLES DUSTIN MYERS respectfully presents this motion for *en banc* reconsideration as the first in a trilogy of mandamus petitions, each receiving the same summary denial from the initial panel, which has given rise to what Relator calls "*A Dragon in Triplicate"*.

But the *Dragon* is not the lower courts themselves nor the panel. The *Dragon* is the Real Party— whose procedural misrepresentations, tactical silence, and evasions of judicial review have spawned a procedural hydra. One flawed order gave rise to the next, and then another, until due process itself was obscured beneath the scales.

The result is a tripartite error: a void order, a refusal to rule, and a consolidation entered without notice or consent — each reinforcing the next. Relief cannot be meaningfully granted unless each of these errors is severed in the correct sequence.

Although Rule 52.8(d) of the Texas Rules of Appellate Procedure does not require an opinion be issued when denying relief, the panel's *per curiam* denial here is irreconcilable with the undisputed facts in the record. Much like a hydra depicted in Greek mythology, this court can cauterize each individual head of this *Dragon* by imputing targeted relief lest each head regenerate unchecked.

TO THE HONORABLE SECOND COURT OF APPEALS:

Relator CHARLES DUSTIN MYERS respectfully moves this Honorable Court for *en banc* reconsideration of the panel decisions rendered in three separate but interwoven mandamus proceedings to be presented for reconsideration in the following order:

i. Cause No. 02-25-00166-CV (denied April 14, 2025) (“Void Order”)
ii. Cause No. 02-25-00171-CV (denied April 17, 2025) (“Consolidation”)
iii. Cause No. 02-25-00164-CV (denied April 11, 2025) (“SAPCR/TRO”)

This motion serves as the first filed reconsideration and addresses the panel’s denial of Cause No. 02-25-00166-CV (attached as Tab 1), referred to as the **“Void Order Mandamus”**.

SUMMARY OF ARGUMENT

Relator begins by demonstrating that this matter satisfies the standards for en banc reconsideration due to its extraordinary procedural posture, the interdependence of three concurrently pending motions, and the unique opportunity it presents for the Court to act as a unified body. The instant petition, as the first filed, serves as the natural point of entry for full court review.

The panel’s *per curiam* denial is irreconcilable with the undisputed facts and procedural defects clearly reflected in the mandamus record. Resolution of this petition offers the Court an opportunity to simultaneously uphold Texas precedent across three distinct areas of family law: (1) void judgments, (2) procedural due

process, and (3) case consolidation. The totality of circumstances further invites consideration of broader legal doctrines and frameworks.

Here, the question is whether the March 14, 2024, temporary orders are void or merely voidable. Relator contends that the face of the mandamus record conclusively demonstrates that the March 14, 2024, orders are *void ab initio*. As such, they are subject to collateral attack. These orders currently operate to deprive Relator of core constitutional and property rights, including access to his home, the ability to maintain and operate his business, and his conservatorship and possession rights over his minor children. Vacatur is necessary to eliminate these unlawful barriers to relief and to restore the status quo ante, pending adjudication of the subsequent *en banc* motions to be presented.

ARGUMENT AND AUTHORITY

I. Although disfavored in routine matters, en banc reconsideration is appropriate where the legal standard is met, as it is here.

En banc reconsideration is reserved for the rare case that satisfies one or both of the "hard-to-satisfy requirements" set forth in Texas Rule of Appellate Procedure 41.2(c): ensuring uniformity in the court's decisions or addressing extraordinary circumstances. The Texas Supreme Court has endorsed this narrow standard, cautioning against overuse to preserve judicial efficiency and ensure that "the appellate trains... run on time." See *In re Marriage of Harrison*, 507 S.W.3d 259, 260–61 (Tex. App.—[14th Dist.] 2016) (Frost, J., dissenting).

This is precisely the kind of novel case that warrants *en banc* reconsideration, where the panel's decision represents a fundamental oversight resulting in a departure from settled Texas law—made more urgent by the fact that the emergency relief sought was on behalf of two minor children and remains unopposed by any party at the time of filing this motion.

Finally, this may be the first time in American legal history that three *en banc* reconsideration motions—each arising from separate appellate causes within a single-family law controversy—have been presented simultaneously. This posture affords the Court a singular opportunity to ensure uniformity in its rulings, reinforce established precedent, and restore confidence in the fair administration of justice.

II. The panel's *per curiam* denial conflicts with controlling authority and overlooks critical facts established in the mandamus record.

Relator contends that the temporary orders signed on March 14, 2024, are facially invalid, violated the Relator's due process rights, and were rendered by the trial court when it had no capacity to act. If true, Texas precedent would declare the orders *void ab initio,* a legal nullity from the very beginning. First, we address whether the orders are invalid by examining the Temporary Orders signed on March 14, 2024, by the trial court.

A. The temporary orders are facially invalid for want of consent.

In *Burnaman v. Heaton*, the Texas Supreme Court held that "[w]hen a trial court has knowledge that one of the parties to a suit does not consent to a judgment, agreed to by his attorney, the trial court should refuse to give the agreement the sanction of the court so as to make it the judgment of the court. *Id.* 240 S.W.2d 288, 150 Tex. 333. Here, the orders in question (APP 1) reveal a departure from this precedent.

On Page 1 of the orders, they expressly state that the consent of all parties has been given as evidenced by the signatures below. (APP 1.1). However, on page 38 of the orders, the signatures of Relator and his prior counsel are missing. (APP 1.38) under *Burnaman*, "[a] valid consent judgment cannot be rendered by a court when consent of one of the parties thereto is wanting." The Relator's missing signature is a prima facie showing that the temporary orders are, at the very least, invalid for want of consent.

Compounding this issue is the fact that the orders were based on a February 1 Associate Judge's Report where the consent of the parties was memorialized by their signatures. However, even still - it is not sufficient to support the judgment that a party's consent thereto may at one time have been given; consent must exist at the very moment the court undertakes to make the agreement the judgment of the court. *Id*. The record conclusively demonstrates that consent was not present at the time of rendition. Supported by the case docket (MR 1), a cursory glance

reveals that the only appearance made by the Real Party came on January 16, 2024. In fact, the March 14 setting was set to hear Relator's EMERGENCY MOTION TO VACATE evidenced by the NOTICE OF HEARING served on the parties (MR 1.3 – #74) and the order denying the motion itself. (MR 16.1) Therefore, the orders are at the very least invalid.

However, this defect doesn't necessarily render the orders *void ab initio,* but instead *voidable* so long as the orders didn't violate the Relator's due process rights. The question is whether the trial court had the capacity to act. The Relator contends that it did not.

B. The temporary orders issued on March 14, 2024, are void ab initio because the trial court had no capacity to act when it rendered the orders, subjecting them to collateral attack before this court.

In *PNS Stores, Inc. v. Rivera* 379 S.W.3d 267, 271–73 (Tex. 2012) the Texas Supreme Court discussed clarifying principles concerning important distinctions between void and voidable judgments and direct and collateral attacks. It is well settled that a litigant may attack a void judgment directly or collaterally, but a voidable judgment may only be attacked directly. *Id.* (citing *Hagen v. Hagen,* 282 S.W.3d 899, 902 (Tex. 2009); *Ramsey v. Ramsey,* 19 S.W.3d 548, 552 (Tex. App.—Austin2000, no pet.). A collateral attack seeks to avoid the binding effect of a judgment in order to obtain specific relief that the judgment currently impedes. *Id.* (citing *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005)). Here, the Relator

seeks relief from the judgement entered by the trial court which has impeded his right to property, limited access to his minor children, and prevented him from conducting his normal business operations. Therefore, the orders must in fact be *void* in order for them to be collaterally attacked here.

The Court reaffirmed that orders are void when "the court rendering judgment had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act." *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 863 (Tex. 2010) (quoting *Browning*, 165S.W.3d at 346). In the instant matter, the Relator contends the court had no capacity to act.

The mandamus record conclusively establishes that:

1. The orders were required to be prepared by DAN BACALIS within 20 days from the signing of the February 1st, 2024, Associate Judge's Report. (MR 8.5)
2. If no agreement was reached, a motion to sign *shall* be filed within 30 days from February 1st, 2024. (MR 8.5)
3. The Temporary orders were prepared by COOPER L. CARTER.
4. An agreement was not reached. (APP 1.38)
5. No motion to sign can be found on the case docket. (MR 1-1.3)

Despite clear procedural and jurisdictional defects, the same judge who issued the March 14, 2024, orders disregarded his own directives and ordered Relator to sign orders to which he had never consented. (MR 16.1). The orders further misrepresent that a hearing on a motion for temporary orders occurred on February 1, 2024—yet there is no evidence such a motion was ever served on Relator, and the trial court's docket does not comport with this statement .

These are not technical deficiencies. They strike at the core of due process and judicial integrity. A judgment rendered without service, without hearing, and without consent is void—not voidable—and may be challenged at any time. In re E.R., __ S.W.3d __, __ (Tex. 2012). These orders must be declared *void ab initio* and set aside accordingly. This Court need not resolve all three mandamus proceedings at once—but must begin with this one, the origin point of the procedural unraveling below

CONCLUSION AND PRAYER

With this prima facie showing of a void judgment and a corresponding abuse of discretion, the panel's denial—issued without written explanation—raises serious concerns about uniformity, precedent, and due process. This Court now sits in a position to correct the record and prevent further harm by granting the relief requested.

Relator further advises the Court that the two remaining en banc reconsideration motions will be filed on or before April 23, 2025. If this Court continues to deny relief without substantive explanation while both trial courts and the Real Party remain silent, Relator will have no choice but to pursue additional litigation to vindicate his rights and preserve the rule of law.

Relator respectfully prays that this Court grant the instant motion for en banc reconsideration, issue writ relief vacating the March 14, 2024, temporary orders, and stay all further trial court proceedings related to those orders pending resolution of the forthcoming motions—so that Relator's fundamental rights may be promptly restored and the appellate process given meaningful effect. Relator has been barred from his residence, prevented from performing his normal business occupation, and has had the custody, care, and control over his minor children limited for 410 days without a single response from the opposing side.

The Dragon in Triplicate—each addressing a distinct but compounding judicial failure – presents a rare opportunity for this Honorable Court. Only by addressing this first head as an entry point can the Court begin to remedy the procedural and constitutional breakdown that has taken root below. Relator prays for any further relief entitled to him by law.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS (pro-se Relator)
[redacted]
Tel.: 817-546-3693
Email: chuckdustin12@gmail.com

CERTIFICATE OF COMPLIANCE

I certify that the number of words in this motion (excluding any caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, issues presented, signature, proof of service, certificate of conference and certificate of compliance) is **2,016**.

CERTIFICATE OF SERVICE

Relator certifies that on April 21, 2025, a true and correct copy of the foregoing Motion for En Banc Reconsideration was served on all parties and counsel of record as follows:

Respondent
Hon. Jeff Kaitcer
Associate Judge, 322nd District Court
Tarrant County Family Law Center
200 E. Weatherford St. 4th Floor Fort Worth, TX 76196
817-884-1888
Via electronic submission to the court coordinator
Via email: LKBaker@tarrantcountytx.gov

Real Party In Interest
Morgan Michelle Myers
Real Party in Interest
MORGANMW02@GMAIL.COM

COUNSEL FOR REAL PARTY IN INTEREST

Cooper L. Carter
24121530
Marx, Altman & Johnson
2905 Lackland Road
Fort Worth, TX 76116
coopercarter@majadmin.com

INTERVENOR

Holly Hayes
24110698

2001 Beach St
Fort Worth, TX 76103-2308
817-459-6878
CSD-Legal-914@oag.texas.gov

M.2464

A

M.2464

M.2465

In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-25-00166-CV

IN RE CHARLES DUSTIN MYERS, Relator

Original Proceeding
322nd District Court of Tarrant County, Texas
Trial Court No. 322-744263-23

Before Bassel, Kerr, and Wallach, JJ.
Per Curiam Memorandum Opinion

M.2465

MEMORANDUM OPINION

The court has considered relator's petition for writ of mandamus and emergency motion to stay proceedings and is of the opinion that relief should be denied. Accordingly, relator's petition for writ of mandamus and emergency motion to stay proceedings are denied.

Per Curiam

Delivered: April 15, 2025

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 99883479
Filing Code Description: Motion for Rehearing
Filing Description: Motion for Rehearing En Banc (First of three)
Status as of 4/21/2025 2:34 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
CHARLES MYERS		CHUCKDUSTIN12@GMAIL.COM	4/21/2025 1:03:17 PM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/21/2025 1:03:17 PM	SENT
COOPER L.CARTER		COOPERCARTER@MAJADMIN.COM	4/21/2025 1:03:17 PM	SENT
JEFF NKAITCER		LKBaker@tarrantcountytx.gov	4/21/2025 1:03:17 PM	SENT