

IN THE 322<sup>nd</sup> DISTRICT COURT OF TARRANT COUNTY  
STATE OF TEXAS

**Morgan Michelle Myers,**

Petitioner,

v.

**Charles Dustin Myers,**

Respondent

Cause No. 322-744263-23

**RESPONDENT'S MOTION FOR PARTIAL  
SUMMARY JUDGEMENT**

Pursuant to *Rule 166a of the Texas Rules of Civil Procedure*<sup>1</sup>, the Respondent, Charles Dustin Myers, firmly seeks a partial Summary Judgment in regard to the upcoming hearing scheduled for March 14<sup>th</sup>, 2024. He categorically asserts that the evidence on file with the Court definitively demonstrates there is no genuine issue as to any material fact related to the allegations against him which have led to his unwarranted removal from his home, significantly disrupted his business operations, and unjustly granted the Petitioner full custody of their children and possession of the family home on a temporary basis.

The Respondent has meticulously and persistently contested the baseless allegations of family violence that have unjustly prejudiced the custody resolution to the detriment of the children's interests. The absence of substantive evidence supporting these claims has been made clear through detailed submissions.<sup>2</sup> This unwarranted influence on custody

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<sup>1</sup> Rule 166a specifically allows for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." This provision is utilized here to highlight the lack of factual dispute regarding the allegations of family violence which have led to the continuation of unlawful temporary orders currently in place.

<sup>2</sup> Submissions on record filed by the Respondent: Motion of Continuance (granted), Motion of Consolidation (granted), Protective Order Answer (ignored), Counter Petition for Divorce (ignored), Motion of Withdrawal for Attorney (granted), Emergency Motion of Reconsideration of Evidence and to Vacate Temporary Orders (Scheduled for March 14<sup>th</sup>, 2024). See attached EXHIBIT A.

arrangements negate the principles of fairness and due process. The subsequent dismissal of the Protective Order suit not only vindicates the Respondent but also invalidates the current custody orders, revealing that the initial award of custody was grounded solely in unsubstantiated claims of family violence.<sup>3</sup>

## **BACKGROUND**

The documents on record filed by the Respondent, by virtue of their acceptance, inherently meet the threshold for self-authentication, thereby bolstering the legal foundation for the requested partial Summary Judgment. Detailed herewith are the enumerated facts underpinning this motion:

1. On December 14th, 2023, the Petitioner sought an EX-PARTE Order of Protection from the Court, which was judiciously denied, affirming the absence of immediate threat or harm that warranted such an extraordinary measure. Undeterred by this judicial determination, the Petitioner proceeded to file for divorce on December 18th, 2023, misleadingly alleging the existence of an active Order of Protection against the Respondent. This deliberate misrepresentation constitutes not merely an attempt to skew the legal process in the Petitioner's favor but represents a flagrant abuse of the judicial system designed to secure an undue advantage in the divorce proceedings, which has ultimately been successful.
2. On December 22nd, 2023, the Petitioner initiated a subsequent application for a Protective Order, forming the cornerstone of litigation since the initial hearing on January 16th, 2024.
3. On January 16<sup>th</sup>, 2024, the Court rendered Temporary Orders which required the Respondent to vacate his family home and give up custody of his children on the presumption of family violence. The Court's decision did not meet the statutory requirements of the *Texas Family Code, Sec. 6.502*.<sup>4</sup>

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<sup>3</sup> The non-suit of the protective order entitles the Respondent to this Partial Summary Judgement as a matter of law, as there is now no genuine dispute over the baselessness of the allegations made against him which are the foundation of the current temporary orders in place.

<sup>4</sup> Sec. 6.502 mandates that a Court may make such a decision while a suit for dissolution of a marriage is pending and on the motion of a party or on the court's own motion after notice and hearing. No hearing took place, and no reasonable notice was given prior to the decision rendered on January 16<sup>th</sup>, 2024.

4. On January 22<sup>nd</sup>, 2024, before the start of the reset hearing, the Petitioner acquired legal counsel at the last minute, delaying the case further until the reset date of February 1<sup>st</sup>, 2024.
5. On February 1<sup>st</sup>, 2024, both parties entered into an agreement which allowed the respondent back into the home on a temporary basis, yet still awarded the Petitioner with full custody of the children. The Respondent was given 30 days per the agreement to remain in the home. Despite having the ability to stay next door, and after dropping the Protective Suit that initiated and are the foundation for this agreement, the Petitioner chose to stay with her friend 9 miles away and remove the children from their stable environment.
6. On February 5<sup>th</sup>, 2024, the Respondent discharged his Legal Counsel for failure to address any of the issues mentioned herewith, and for failure to diligently represent the Respondent, as no genuine effort was made to make the court aware of these errors. The Protective Order suit was non-suited on this day, invalidating the current agreement, and requiring by law that the Court reset the case back to the status quo ante until a fair discovery process can be conducted on relevant matters to the divorce proceeding, and restoring order back into the lives of the Respondent and his Children.
7. The Petitioner's decision to reside outside the family home, despite alternatives that would minimize disruption during this transitional period, is a deliberate choice. This choice, made independently, should not facilitate the continuation of unfounded claims that have since been dismissed. Such actions have unduly influenced the living arrangements and well-being of the children at the heart of this case.
8. The Respondent explicitly refrains from pursuing any sanctions or penalties against the Petitioner, emphasizing instead a heartfelt plea for a reasonable transition period. This adjustment period is advocated as crucial for safeguarding the welfare of his children, himself, and the Petitioner, ensuring their collective long-term well-being. Furthermore, the Respondent underscores that the prevailing custody determinations were unjustly predicated on unsubstantiated allegations of family violence—a point underscored by the unequivocal dismissal of the Protective Order, which confirms the absence of any contested material facts.

## **LEGAL BASIS**

The legal foundation for this Partial Summary Judgment is firmly rooted in the principles and mandates of the law, notably where the current temporary orders are predicated on unsubstantiated claims of family violence, for which no concrete evidence has been presented. This lack of evidence fundamentally challenges the integrity and validity of the orders affecting the lives and welfare of the children involved. The necessity for the court to vacate these orders and revert to the status quo ante is underscored by the following critical legal arguments:

### **1 . Misalignment with Texas Family Code Sec. 105.001:**

1.1 The orders issued on January 16th, 2024, and continued on January 22nd, 2024, starkly conflict with Texas Family Code Sec. 105.001, which unequivocally necessitates notice and a hearing prior to the issuance of such orders. This statute ensures that parties are given a fair opportunity to be heard, a fundamental aspect of due process, which was conspicuously absent in this case.

### **2. Contravention of Texas Family Code Sec. 105.005:**

2.1 The initial rendering of temporary orders on January 16th, 2024, did not adhere to *Texas Family Code Sec. 105.005*, requiring that court's findings be grounded in a preponderance of the evidence before making any child custody determination affecting the parent-child relationship.

2.2 The absence of evidence from the Petitioner, juxtaposed with the disregard for the Respondent's timely submissions, underscores a significant deviation from this legal requirement.

### **3. Violation of Texas Family Code Sec. 153.002:**

3.1 The proceedings failed to prioritize "The best interest of the child," as mandated by Texas Family Code Sec. 153.002. This principle, deemed paramount in determining issues of conservatorship, possession, and access, was overlooked.

3.2 The Respondent's work-from-home situation and the need for a

reasonable transition period to maintain his pivotal role in his children's lives were disregarded, further exacerbating the impact of the Petitioner's actions and the court's decisions on the children's stability and well-being.

**4. Equal Opportunity and Fair Hearing (Sec. 152.205 & Sec. 105.003):**

4.1 *The Texas Family Code Sec. 152.205 and Sec. 105.003 enshrine the necessity for equitable procedural rights, mandating that all parties are granted a fair opportunity for notification and a meaningful hearing.* The Respondent's ability to engage fully in the hearing process and to present a comprehensive defense was significantly impeded, a deviation from the due process envisaged by these statutes. Consequently, the temporary orders issued lack the foundational fairness that is central to the justice system and contravene the legal safeguards intended to ensure balanced participation by all parties in family law proceedings.

**5. Managing Conservatorship Considerations (Sec. 153.005 & Sec. 153.007):**

5.1 In deliberations of conservatorship, *Texas Family Code Sec. 153.005 obligates the court to deliberate thoroughly on the child's best interest, including the living circumstances and stability provided by the parents.* Additionally, *Sec. 153.007 advocates for the establishment of a mutually agreed parenting plan, prioritizing the child's welfare and the continuity of their established routine.* The current custodial provisions do not correspond with a collaboratively designed parenting plan that satisfies these essential criteria. Given the disproven allegations of family violence and the unnecessary protective measures imposed during this period of change, it is imperative for the Court to rescind these provisional measures. The immediate restoration of the status quo ante is crucial to uphold the children's best interest, allowing for a planned and considerate period of adjustment that acknowledges the absence of any immediate risk or harm to their well-being and without disruption to the Respondent's business operations at-home.

**6. Rules of Dispositions for Family Law Cases – (Tarrant County Rules):**

6.1 The provisions under *Rule 4.02: Trial Procedures of the Tarrant Family Rules*, specifically *Part 4* concerning the disposition of family law cases, have been notably contravened in the ongoing proceedings of the. This rule

mandates that, except upon order of the Court or a showing of good cause, and notably in cases involving the characterization, value, or division of property, each party is required to provide the Court and opposing counsel with a concise written summary of the relief requested and, in the context of a final trial, the party's inventory and appraisement and proposed division of property and debts at the time of the temporary hearing, final trial, or other court proceeding.

6.2 The failure to adhere to this procedural requirement undermines the fairness and efficiency of the legal process, particularly in this case where the Respondent, has faced significant challenges and disruptions based on temporary orders and allegations without the foundation of substantiated evidence or the proper procedural disclosures as outlined by *Rule 4.02*. The absence of such critical documentation and summaries from the Petitioner has not only impaired the Respondent's ability to prepare and present a comprehensive defense but has also deprived the Court of essential information necessary for a fair and informed decision-making process.

## **7. Rule 60. Relief from a Judgment or Order (Federal Rules of Civil Procedure):**

7.1 In accordance with *Rule 60(b)* of the *Federal Rules of Civil Procedure*, this motion seeks relief from the temporary orders previously granted, and which are the basis of the current orders, which have unjustifiably removed the Respondent from his residence and disrupted his custodial rights without substantial evidence. *Rule 60(b)* expressly allows for such relief under conditions including, but not limited to, mistake, inadvertence, surprise, excusable neglect, and most pertinently, fraud or misrepresentation by an opposing party. Given the demonstrated lack of evidence supporting the allegations of family violence and the procedural discrepancies noted throughout the initiation and execution of these temporary orders, it is imperative that the court immediately vacate the current arrangements as their basis no longer exists. The circumstances surrounding the issuance of these orders align with the instances wherein *Rule 60(b)* provides clear recourse for relief, underscoring the necessity for their immediate reevaluation to restore fairness and ensure justice is served in accordance with the foundational principles of our legal system.

## **STATEMENTS OF FACT**

Below are the enumerated statements of fact with no genuine dispute of material fact that entitle the Respondent to this Partial Summary Judgement:

1. The Petitioner has not provided any evidence of Family Violence.<sup>6</sup> These claims unjustly removed the Respondent from his home starting on January 16<sup>th</sup>, 2024 and significantly impaired his at-home business operations, and are the basis for the current custodial arrangements which are unlawful and founded on false claims.<sup>7</sup>
2. No basis exists for the current arrangements, as the Court has not considered the best interests of the children throughout this case, but rather has operated solely on the accusations of family violence, which are now non-suited.<sup>8</sup>
3. The deadline approaching March 1<sup>st</sup> to vacate, and the current custodial arrangements are void of any lawful basis. Any custodial arrangements are required to consider the best interests of the children involved.
4. Respondent's parenting plan has been overlooked by the Court, filed January 6<sup>th</sup>, 2024.<sup>9</sup>
5. The Court's basis for conservatorship was based solely on the claims of Family Violence, which are now void.
6. The respondent is entitled to this Partial Summary Judgement as a matter of law, which will rightfully restore the status quo ante given no genuine dispute of material fact exists regarding family violence, which are the basis for the ongoing and current orders.

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<sup>6</sup> There exist no evidence supporting family violence on record, nullifying any custodial arrangements based on these foundational claims alone.

<sup>7</sup> See attached EXHIBIT B.

<sup>8</sup> Attached EXHIBIT C, page 3.

<sup>9</sup> See attached EXHIBIT D, filed January 6<sup>th</sup>, 2024, which better serve the children's best interests.

## **PRAYER FOR RELIEF**

WHEREFORE, Charles Dustin Myers, the Respondent herein, respectfully requests this Honorable Court to:

1. Annul the current temporary custody and visitation arrangements premised on allegations now proven to be baseless, taking into account the critical urgency imposed by the Respondent's work-from-home requirements and the ongoing detriment to his familial relationships.
2. Recognize that the initial accusations of family violence, which underpinned the imposition of these temporary measures, were not substantiated by credible evidence. This failure has unjustly prejudiced the Respondent, undermining his right to an equitable adjudication and rendering the imposed measures legally untenable.
3. Acknowledge the absence of substantial evidence for the allegations levied against the Respondent. Command a thorough reevaluation of both procedural and substantive legal missteps observed in the prevailing proceedings, with a view to rectifying the inequitable temporary orders that have adversely impacted the Respondent's familial and professional life.
4. In accordance with Rule 166a of the Texas Rules of Civil Procedure and Rule 60(b) of the Federal Rules of Civil Procedure, award relief predicated on identifiable mistakes, errors, and the conspicuous lack of evidential foundation for the accusations faced by the Respondent.
5. Uphold Fairness and Due Process: Reorient the ongoing legal process to align strictly with the principles of fairness, due process, and the paramount interests of the children involved. This reorientation is essential to ensure the administration of justice, uphold the Respondent's inalienable right to a fair trial, and ameliorate the unwarranted disruptions to his familial life.
6. Consideration of Respondent's Efforts: Reflect on the substantial time and effort dedicated by the Respondent in pursuit of equitable treatment under the

law and the significant repercussions stemming from his unjust displacement based on allegations now demonstrated to be without merit.

7. Reestablish the custodial and visitation status quo ante pending a lawful and unbiased reevaluation of the custody determination, ensuring that any future decisions are made in a manner that genuinely reflects the best interests of the children and respects the due process rights of all parties involved.

The Respondent avers that such relief is not only justified but imperative to rectify the injustices endured and to restore the integrity of this Court's proceedings.

Under penalty of perjury, I attest that the facts herein are true and accurate to the best of my knowledge and belief. Pursuant to the Tarrant Local Rules, no conference between Counsel was required to be filed with this motion.

Respectfully submitted,

/s/ Charles Dustin Myers

02/22/20224

Charles Dustin Myers

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CASE NO. 322-744263-23

MORGAN MICHELLE MYERS

PETITIONER (PRINT)

IN THE 322nd

VS

DISTRICT COURT

CHARLES DUSTIN MYERS

RESPONDENT (PRINT)

**TARRANT COUNTY, TEXAS**

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the : Motion for Partial Summary Judgement

has been delivered to all opposing parties on record in accordance with the Texas Rule of Civil Procedure, 501.4, on this 22nd day of February, 2024.

**SELECT ONE:**

- IN PERSON  
 MAILED/COURIER RECEIPT # \_\_\_\_\_  
 FAX  
 E-MAIL (Only if the other party has agreed in writing to accept email service)

/s/ Charles Dustin Myers  
SIGNATURE

Charles Dustin Myers  
PRINT NAME

6641 Anne Court  
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PHONE NUMBER