

No. \_\_\_\_\_ -CV

IN THE  
SECOND JUDICIAL DISTRICT COURT OF APPEALS  
AT FORT WORTH, TEXAS

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IN RE: C.D.M., *RELATOR*.

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Original Proceeding Arising Out of  
the 322<sup>ND</sup> Judicial District Court of Tarrant  
County

Cause No. 322-744263-23 (consolidated)

Honorable James B. Munford, District Judge  
Presiding

Honorable Jeffrey N. Kaitcer, Associate Judge  
Presiding

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**PETITION FOR WRIT OF MANDAMUS**

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Respectfully submitted by:

C.D.M.

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**PRO-SE LITIGANT**

**Emergency Relief Requested**

## **IDENTITY OF PARTIES AND COUNSEL**

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Relator certifies that the following is a list of  
all parties and all counsel who have appeared in  
this matter:

### ***RELATOR:***

C.D.M.

### ***RESPONDENTS***

The Honorable James Munford  
The Honorable Jeffrey Kaitcer  
322<sup>nd</sup> Judicial District Court  
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Fort Worth, Texas 76102

### ***RELATOR'S PRIOR COUNSEL***

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### ***REAL PARTIES OF INTEREST:***

M.M.M. (Respondent Mother)

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## ABBREVIATIONS AND APPENDIX REFERENCES

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### *Abbreviations:*

1. Relator C.D.M. will be referred to as "**Father**" or "**Relator**".
2. Respondents , the Honorable James Munford, district judge presiding, will be referred to as "**DJ Respondent**" and the Honorable Jeffrey Kaitcer will be referred to as "**AJ Respondent**".
4. Father's children with Mother will be referred to as "**Children**" or "**the Children**".
5. Real Party in Interest M.M.M., the Mother of the Children, will be referred to as "**Mother**" or "**Petitioner**".
6. The appendix filed with this Petition for Writ of Mandamus will be referred to as "**App.**" and will be cited by page number(s) as appropriate. **App.** \_\_\_\_-\_\_\_\_.
7. A comprehensive court record is not available for this case. This is due to the absence of a court reporter at the hearings presided over by both the DJ Respondent and the AJ Respondent.
8. For efficient navigation, by clicking on "**App**" references, the Court may directly access the relevant sections in the Appendix. To return to the original point in the document after review, the Court can select the "**APPENDIX**" link located at the bottom right corner of the referenced section.

## STATEMENT OF THE CASE

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**Nature of the Case:** The underlying suit is a divorce proceeding initiated by Mother overseen by two separate Judges which waived the 60-day waiting period due to an alleged active order of protection against the Father and was consolidated with a protective order claiming harassment and sexual harassment from the Relator.

**Respondents:** Respondents are Hon. James Munford, presiding District Judge & Hon. Jeffrey N. Kaitcer, presiding Associate Judge of the 322<sup>nd</sup> District Court of Tarrant County, Texas.

**Respondents' actions:**

*Both respondents contributed to the removal of an active and involved father from his children's lives, lacking judicial oversight and disregarding the facts, thereby destabilizing the children's lives, and overlooking the father's significant role. This approach not only enabled the mother's frivolous litigation but also cast a long shadow on the children's future by prioritizing unsubstantiated claims over the well-being and stability of the family.*



### **Statement of Jurisdiction**

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This Honorable Court has jurisdiction to issue a writ of mandamus under Section 22.221(b) of the Texas Government Code.

## **Issues Presented**

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**Issue No. 1:** The District Judge prematurely removed the Father from his home and children's lives without a formal hearing, and the Associate Judge extended this separation by granting a continuance due to the Mother's last-minute acquisition of counsel, exacerbating the Father's unjust removal, and disregarding due process and the children's best interests.

**Issue No. 2:** AJ Respondent abused his discretion when rendering temporary orders affecting the parent-child relationship without notice and hearing, allowing the Mother more time to acquire Counsel while prolonging the Relator's unjustified removal from his home and business, and leaving the Children without an involved parent who provides for them out of the home, disregarding their best interests and emotional well-being entirely.

**Issue No. 3:** Both Respondents abused their discretion by participating in the drafting, prolonging, and subsequent upholding of temporary orders that lacked factual or legal grounding and disregarded the children's best interests while allowing counsel to commandeer the proceedings without substantial discovery or judicial oversight, leading to the drastic upheaval of the Children's only known way of life.

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# PETITION FOR WRIT OF MANDAMUS

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TO THE HONORABLE JUSTICES OF THE SECOND COURT OF APPEALS:

Relator C.D.M., ("Father") submits this Petition for Writ of Mandamus, and as grounds, therefore, would show as follows:

## I.

### STATEMENT OF FACTS

A. Between December 14<sup>th</sup>, 2023, and December 27<sup>th</sup>, 2023, the Mother filed for two protective orders, a divorce, and influenced an eviction suit - each of them claiming family violence.

On December 14<sup>th</sup>, 2023, Mother requested an emergency ex-parte order of protection from DJ Respondent.<sup>1</sup>

On December 17<sup>th</sup>, 2023, the Mother's grandmother served the Relator with an eviction notice citing a yet to be filed divorce petition and protective order. On

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<sup>1</sup> This reference can be found in the Original Petition for Divorce, page 7 under 9B. See *App. 11*.

December 18<sup>th</sup>, 2024, the Mother wrote “**VOID**” on the notice in black ink and physically tore it in half.**App 1-2.**

**On December 18<sup>th</sup>, 2023,** The Mother filed for divorce waiving the 60-day waiting period claiming that an active order of protection was active against the Father.**App. 11.**

**On December 22<sup>nd</sup>, 2023,** the Mother filed for a Protective Order against the Father despite getting denied an emergency protective order on December 14<sup>th</sup>, 2024.**App. 15-21.**

**On December 27<sup>th</sup>, 2023,** The ex-parte protective order was filed with the Court against the Father, indicating a denial based on the “Xs” marked over the pages.**App.22-25.**

**On December 28<sup>th</sup>, 2023,** the Father was served with the Eviction suit initiated by the Mother’s grandparents.**App. 26.** A third ex-parte protective order

was filed with the Court also containing "Xs" marked across the pages.**App. 27-30.**

**B. Between January 2<sup>nd</sup>, 2024, and the initial Show Cause hearing scheduled for January 16<sup>th</sup>, 2024, the Father prepared his defense to address the baseless allegations of family violence made against him.<sup>2</sup>**

**On January 2<sup>nd</sup>, 2024, Father filed his answer to the protective order.App. 31-35. The answer was accompanied by the Father's criminal record from the Texas Department of Public Safety, marked as EXHIBIT B.App. 36-37.**

**On January 3<sup>rd</sup>, 2024, Father filed a motion to consolidate for judicial efficiency.App. 38-41.** Father's motion to consolidate was accompanied by his Background Report for Case Consolidation.

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<sup>2</sup>At the time of this filing, not one document has been filed corroborating the claims made by the Mother or her Counsel regarding family violence.

On January 8<sup>th</sup>, 2024, the Father filed a motion for continuance.**App. 44-46.** The Father's motion for continuance was filed with a brief attached, explaining that he had been focusing on the Children's holidays and school vacation while simultaneously battling concurrent litigation by the Mother and landlords, and was requesting the continuance to allow more time to prepare given these circumstances.**App. 47-49.**

**C. On January 16<sup>th</sup>, 2024, the Father was ordered to vacate the family home and place of business on four hours' notice, and full custody was awarded to the Mother.**

On January 16<sup>th</sup>, 2024, the Father was ordered to vacate his home without due process, and despite the Father's motion for continuance being granted alongside his motion for consolidation, this decision was made without any witnesses being called and before the Father could obtain legal Counsel and the hearing was re-scheduled for January 22<sup>nd</sup>, 2024.**App. 50-51.**

**On the evening of January 16<sup>th</sup>, 2024,** Father filed his Counterpetition for Divorce **App. 52-61**, accompanied by a comprehensive statement of context to provide insights into the case, detailing the situation, and outline the evidence the Father would present at the reset hearing on January 22<sup>nd</sup>, 2024. **App. 62-67**. Father also filed an unsworn declaration to shed light on the conspiratorial nature of the collective actions taken against him by the Mother and her family. **App. 68-71**.

**D. After being removed from his home, the Father attended the eviction hearing and prevailed on January 17<sup>th</sup>, 2024.**

**On January 17<sup>th</sup>, 2024,** less than 24 hours after being ordered to vacate the residence, the Father attended the eviction hearing at Justice of the Peace 1 in Fort Worth, Texas, where he prevailed for lack of jurisdiction. **App. 72**.

**On January 19<sup>th</sup>, 2024, Father retained Counsel.**

On January 19<sup>th</sup>, 2024, Father retained Counsel to advocate on his Children's behalf and represent his interests.

**E. Mother's failure to acquire counsel in time for the reset hearing resulted in further delays on January 22<sup>nd</sup>, 2024, due to AJ Respondent granting her continuance.**

On January 22<sup>nd</sup>, 2024, after Father acquired Counsel and attending the reset hearing, Mother failed to acquire representation until minutes before the hearing started to which a continuance was requested and subsequently granted, causing further delays in the proceedings, and prompting yet another reset for February 1<sup>st</sup>, 2024. **App. 73-74.**

**F. At the next hearing on February 1<sup>st</sup>, 2024, Father's Counsel drafted an Associate Judge's Agreed Report, and**



part of this agreement, Mother dropped the protective order suit against the Father while granting him temporary relief until March 1st.

On February 1<sup>st</sup>, 2024, the hearing was usurped by Father's Counsel and was suddenly focused on the drafting of an Associate Judge's Report **App. 75-80** with the addition of temporary child support to be paid by the Father **App. 76** rather than holding a hearing to discuss the issues that were directly communicated via email leading up to the hearing. The last page of the orders had specific procedural requirements that were part of the order that stated:

"A typed written Order conforming to this Report will follow within 20 days from the date this Report is signed. The Temporary Order shall be prepared by **Dan Bacalis**<sup>3</sup>. Each attorney should approve the Order. The parties do not need to approve the Order. The attorney reviewing the proposed Order shall have five (5) days to do so. There are no ten (10) day letters. If an agreement is not reached, a Motion to Sign shall be filed and set within thirty (30) days from the signing of this Report." **App. 79**.

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<sup>3</sup> Dan Bacalis was terminated on February 5<sup>th</sup>, 2024, by the Father, making these procedural stipulations outlined in the order arguably impossible to satisfy without modification.

The agreement allowed the Father back into the family home so he could work and regain his active role in his Children's lives until March 1<sup>st</sup> **App. 77** while simultaneously removing the Children from their own home until the same date and dropping the protective order suit initiated by the Mother which had been the basis for every decision leading up to this point in the case.**App. 77.**

**G. Father terminated the services of his legal Counsel on February 5<sup>th</sup>, 2024.**

**On February 5<sup>th</sup>, 2024,** Father's Counsel was terminated due to ineffective representation, and a notice was promptly filed with the Court.**App. 81-83.**

**On February 6<sup>th</sup>, 2024,** an agreed motion for withdrawal of attorney was signed by the Father and his Counsel and filed with the Court.**App. 84-87.**

**H. On February 9<sup>th</sup>, 2024, Father filed his emergency motion to reconsider / vacate temporary orders.**

The Father filed his motion to reconsider evidence and vacate temporary orders on **February 9<sup>th</sup>, 2024, App. 88-90**, accompanied by a detailed brief which aimed to challenge the overall foundation of the case and bring to light the procedural missteps and re-focus the case on the Children's best interests. **App. 91-98.**

**I. The Order for Withdrawal of Attorney was rendered and served to all parties on February 12<sup>th</sup>, 2024.**

On **February 12<sup>th</sup>, 2024**, the Order for Withdrawal of Attorney was filed with the Clerk containing AJ Respondent's signature dated February 8th, 2024, which stated that the Court found no pending settings or deadlines within the case. **App. 99-101.**

**J. On February 13<sup>th</sup>, 2024, Father communicated with Mother's Counsel regarding the scheduling of the reconsideration motion.**

On February 13<sup>th</sup>, 2024, Father reached out via email to Mother's counsel regarding the scheduling of the reconsideration motion, where she claimed that she

would have availability nearly a month later, and also claimed that she would be filing a counter-motion.<sup>4</sup>

**K. The Father moved for a Partial Summary Judgement on February 22<sup>nd</sup>, 2024.**

On February 22<sup>nd</sup>, 2024, Father filed a Motion for Partial Summary Judgement after no counter-motion was filed by Mother's Counsel with an accompanying brief to argue that the evidence and procedural history presented in the case clearly favor his position, demonstrating that the actions taken against him were not supported by the substantive facts of the case or in the best interest of the children, eliminating the need for a hearing regarding the reconsideration motion. [App. 102-111](#). The Father's proposed parenting plan was attached to the motion as EXHIBIT D. [App. 112-115](#).

**L. On February 27<sup>th</sup>, a Notice of Hearing was served regarding Father's Reconsideration Motion.**

On February 27<sup>th</sup>, a Notice of Hearing was served on all Parties scheduled for March 14<sup>th</sup>, 2024, on Father's reconsideration Motion. [App. 116-117](#).

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<sup>4</sup> This counter motion was never filed.

**M. Father filed an Unsworn Declaration with the Court on March 3<sup>rd</sup>, 2024.**

On March 3<sup>rd</sup>, 2024, Father filed a Notice and unsworn declaration with the Court explaining he would be unable to vacate the home by March 1<sup>st</sup>, as the Mother's employment had changed, and that it would not be in the Children's best interest. [App.118-121](#).

**N. Father and Mother attended the reconsideration hearing on March 14<sup>th</sup>, 2024.**

On March 14<sup>th</sup>, 2024, Minutes before the hearing, Mother's Counsel hands the Father the agreed orders reduced to writing in the Courtroom, which differed from the original agreed orders signed on February 1<sup>st</sup>, 2024, such as the Father requiring to vacate the home by March 20<sup>th</sup>, rather than March 1<sup>st</sup>, and the Mother and Children being allowed to return on the 30<sup>th</sup>, not the 1<sup>st</sup>, which left a 10-day gap where neither party would be occupying the residence. Father's reconsideration motion was denied on March 14<sup>th</sup>, 2024. [App. 122](#).

**O. Father filed a Notice of Judicial Review With the Court on March 26<sup>th</sup>, 2024. (LINKS REDACTED DUE TO PRIVACY FOR MINORS)**

**On March 26<sup>th</sup>, 2024**, Father filed his Second Amended Notice of Judicial Review **App. 123-171** that contains familial background history, **App.132** as well as employment history and family dynamics. **App. 133-140**. This review also contains a statement of facts with several linked documents embedded within the filing that reiterate many facts brought forth within this mandamus petition. **App.141-150**. Most critically, the Respondent's Parental Index within the document highlights the Father's pivotal role in the Children's lives throughout these proceedings. **App.151-154**.

This document also contains sworn statements from the Father's business clients that was offered at the hearing on March 14<sup>th</sup>, 2024, corroborating the Father's active involvement in the Children's lives, work ethic, and history working out of the family residence. **App.172-187**.

**P. On March 26<sup>th</sup>, 2024, the Agreed Associate Judge's Report was reduced to writing and became Temporary Orders and was served on the parties.**

On March 26<sup>th</sup>, 2024, the judgement and denial of Father's reconsideration motion was filed with the Clerk and served on the parties, rendering the current temporary orders **App. 188-226** effective until the signing of the final decree of divorce. **App 224.**

## **II.**

### **SUMMARY OF THE ARGUMENT**

The actions taken by DJ Respondent and AJ Respondent represent a clear abuse of discretion, violating the explicit statutory mandates of the Texas Family Code concerning the issuance of orders affecting conservatorship and support, without due notice and a formal hearing.

DJ Respondent overstepped by appointing the Mother as primary managing conservator of the children during

a protective order hearing, sidestepping the critical procedural requirement for evidence presentation and witness testimony. This contravenes *TEX. FAM. CODE § 105.001(b)*, which mandates that orders under subsections (a)(1), (2), or (5) – directly relevant to conservatorship – cannot be rendered absent notice and a hearing. By preemptively assigning conservatorship to the Mother under *TEX. FAM. CODE § 105.001(a)(1)*, DJ Respondent disregarded these statutory obligations, underscoring an unequivocal abuse of discretion.

Similarly, AJ Respondent compounded this disregard for statutory requirements on January 22nd, 2024. With the expiration of DJ Respondent's orders, AJ Respondent enacted temporary orders affecting the conservatorship of the children and Father's access to his residence, all without the benefit of a hearing, attributed to the Mother's last-minute retention of counsel. This action flouts the same legal requirement for notice and a hearing as outlined in *TEX. FAM. CODE § 105.001(b)*, highlighting a systemic breach of due process.



The infringement continued on February 1st, 2024, with AJ Respondent's ratification of the Agreed Associate Judge's Report, prepared by the Father's attorney, concerning "the temporary conservatorship of the children" and "temporary support of the children" as per *TEX. FAM. CODE §§ 105.001(a)(1) & (a)(2)*. The stipulation that such orders must not be rendered without a prior hearing, as per *TEX. FAM. CODE § 105.001(b)*, was once again overlooked. This neglect forced the Father into agreeing to conditions without the foundational due process, further compelling his termination of legal counsel and challenging the orders on March 14th—a challenge that was met with denial, which leads the Relator to this petition of mandamus, where he must climb Mount Everest without oxygen to preserve the stability of his Children that was swiftly discarded by both Respondents, the Mother, and both Counsel involved in this case.

Moreover, in the actions taken by AJ Respondent—specifically, the issuance of temporary orders after

providing notice and holding a hearing, but not following the procedural requirements outlined in the Agreed Associate Judge's Report—there is a clear deviation from the essential legal principle articulated in *TEX. FAM. CODE § 153.002*. This statute mandates that the best interest of the child shall be the primary consideration in decisions related to conservatorship, possession, and access. The Temporary Orders filed on March 26th, 2024, not only lacked a substantial evidentiary basis but also failed to prioritize the children's best interests as required by *Id.* This lapse, pending the final decree of divorce, significantly misapplies the statutory directive to ensure the children's welfare and best interests are at the forefront of all judicial determinations regarding their care and custody.

Collectively, these actions by DJ Respondent and AJ Respondent not only breached the Texas Family Code's procedural safeguards but also severely impacted the Father's parental rights and the Children's welfare,

and have taken the only stability the Children have ever known and turned it on its' head, underscoring the necessity for this writ of mandamus to correct these judicial missteps.

### **III.**

#### **ARGUMENT**

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##### **A. AVAILABILITY OF MANDAMUS RELIEF**

Mandamus is an appropriate remedy for a parent to attack the issuance of temporary orders in a custody proceeding, since such orders are not subject to interlocutory appeal. *Dancy v. Daggett*, 815 S.W.2d 548, 549 (Tex. 1991) (*per curiam*).

A writ of mandamus is the correct recourse when the trial court exhibits an abuse of discretion and there is no other adequate legal remedy available, such as an appeal. *In re Prudential Insurance Company of America*, 148 S.W.3d 124, 135-36 (Tex. 2004)

Furthermore, conservatorship determinations made after a bench trial are "subject to review only for

abuse of discretion and may be reversed only if the decision is arbitrary and unreasonable." *In re J.A.J.*, 243 S.W.3d 611, 616 (Tex. 2007) quoting *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex.1982)

#### **B. Issue No. 1**

**The District Judge prematurely removed the Father from his home, business, and children's lives without a formal hearing, and the Associate Judge extended this separation by granting a continuance due to the Mother's last-minute acquisition of counsel, exacerbating the Father's unjust removal, and disregarding due process and the children's best interests.**

The *Texas Family Code* provides that "after notice and hearing, the court may render an appropriate order, including the granting of a temporary injunction for the preservation of the property and protection of the parties as deemed necessary and equitable." *Id* § 6.502(a). Considering no witnesses were called or evidence produced at the initial appearance on January 16<sup>th</sup>, 2024, the necessity of such significant actions was unreasonable.

The District Judge's directives, effectuating the Father's removal from his home, business, and the

assignment of temporary primary conservatorship to the Mother without a formal evidentiary hearing, starkly contravened statutory requirements, and due process principles. This is underscored by the clear mandate that “[c]ertain orders, such as those regarding temporary conservatorship of children, may not be rendered without notice and a hearing...” *In re S.M.*, 13-23-00371-CV at 11 (Tex. App. Oct 04, 2023), which the District Judge disregarded.

### **1. Unjust Consolidation and Disregard for Father's Motion**

Compounding this error, the initially scheduled Show Cause hearing concerning the protective order was abruptly consolidated into the Suit Affecting the Parent-Child Relationship (SAPCR) when the Relator already had his own motion filed to consolidate the case with accompanying background facts [App. 42-43](#) that would have shed light on the situation.

This transformation occurred without setting a first appearance for the divorce, directly conflicting with *TEX. R. CIV. P. § 245*. This rule explicitly states that the trial court "may set contested cases on written request of any party, or on the court's own motion, with reasonable notice of not less than forty-five days to the parties of a first setting for trial, or by agreement of the parties." The significance of this provision is emphasized in *In re V.J., 02-22-00233-CV* (Tex. App. Aug 10, 2023), which affirms that "The forty-five-day notice provision of Rule 245 is mandatory."

## **2. Neglect of Children's Best Interests in Custody Decisions**

On January 16<sup>th</sup>, 2024, this significant decision was made, effectively removing one parent from the Children's lives, and introducing instability without any consideration of the Children's best interests when "the best interest[s] of the child[ren] shall always be the primary consideration in determining

conservatorship, possession of, and access to the child[ren]." *TEX. FAM. CODE* § 153.002. The fact that the Father requires the residency for his at-home business, and given that such a business would take time to transition to an alternative residency, the DJ Respondent erred in not taking these facts into consideration when "[s]uits affecting the parent-child relationship are 'intensely fact-driven' and require courts to balance many factors." *Billisits v. Billisits*, No. 03-21-00358-CV, 2023 WL 2191330, at \*2 (Tex. App.—Austin Feb. 24, 2023, no pet.) (mem. op.).

## **B. Issue No. 2**

**AJ Respondent abused his discretion when rendering temporary orders affecting the parent-child relationship without notice and hearing, allowing the Mother more time to acquire Counsel while prolonging the Relator's unjustified removal from his home and business, and leaving the Children without an involved parent who provides for them out of the home, disregarding their best interests and emotional well-being entirely.**

During the rescheduled appearance on January 22nd, despite both parties being present, the Mother's last-

minute acquisition of counsel led to further delays, culminating in an Associate Judge's Report that, once more, allocated primary conservatorship to the Mother without the foundational step of calling witnesses or presenting any evidence. This absence of procedural due diligence, in stark contrast to the paramount importance of a thorough and evidence-based consideration mandated by family law, highlights a failure to prioritize the children's best interests.

The threshold for determining an abuse of discretion by a judicial officer, as articulated in *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998), is whether the court's actions were arbitrary, unreasonable, or detached from guiding legal principles or supportive evidence. By issuing temporary orders that significantly impact the parent-child relationship and the stability of the children's environment without a duly constituted hearing or evidence evaluation, AJ Respondent's decisions manifestly contravened these criteria. The unilateral imposition of such



consequential orders, without procedural fairness or a substantiated basis, unequivocally disregarded the statutory imperative to ensure the children's best interests remains the focal point of any custody determination. *TEX. FAM. CODE § 153.002*.

### **C. Issue No. 3**

**Both Respondents abused their discretion by playing their respective parts in drafting and then upholding temporary orders that have no basis in fact or law and have taken no consideration to the Children's best interests, which resulted in turning the only stability the Children had ever known on its' head.**

This abuse is manifest in two critical aspects: firstly, through a failure to exercise the discretionary powers vested by law in a manner required by the circumstances; and secondly, by making determinations that contravene established legal rules, principles, or criteria. Specifically, *In re Marriage of Runberg*, 159 S.W.3d 194 (Tex. App. 2005) elucidates that "a trial court abuses its discretion

if it declines to exercise a power of discretion vested in it by law when the circumstances require that the power be exercised; or if it arrives at its choice in violation of an applicable legal rule, principle, or criterion." This definition of judicial discretion underscores the errors committed in the present case.

**1. Rather than a hearing, Counsel usurped the proceedings and began negotiations, giving no other alternative to the Relator.**

On February 1, 2024, the court's proceedings took a turn that did not prioritize a hearing but rather led to negotiations culminating in an Agreed Associate Judge's Report. This report granted the Father temporary access to his home until March 1, 2024, while paradoxically removing the Children and reaffirming the Mother's status as the primary conservator.

**2. None of the factors known by the Courts for nearly half a century were applied to the Children in this case.**

Long ago, *Holly v. Adams* 544 S.W.2d 367 (1976) set forth a non-exhaustive list of factors for the Court to use as guidance when the Children's best interests are at issue.

Integrating the *Holley v. Adams* factors into the narrative reveals a profound oversight by the court in recognizing the essential elements critical to the Children's best interests. Each factor, when applied to the circumstances of this case, illustrates the judicial missteps, and underscores the necessity for immediate mandamus relief to rectify these errors:

### **Desires of the Child**

Although the children's specific desires might not be directly ascertainable due to their young ages, the stability and presence of both parents, especially the Father's significant role in their daily lives, reflect

a presumed preference for maintaining those relationships, and coincides with the public policy set forth in *TEX. FAM. CODE 153.001(a)(1)*. The court's initial decision disrupted the status quo without considering the Children's need for stability.

### **Emotional and Physical Needs**

The court's actions have inadvertently jeopardized the children's emotional security by severing their primary support system. Removing the Father, without evidence of harm, significantly impairs the children's emotional development, contrary to ensuring their well-being now and in the future.

### **Emotional and Physical Danger**

No credible evidence was presented to suggest that the Father's presence posed any danger. Instead, the protective order and subsequent decisions were based on allegations lacking substantive proof, thereby endangering the children's emotional stability rather

than protecting it by effectively removing a parent from their lives abruptly.

### **Parental Abilities**

The court's intervention has had a profound and detrimental effect on the children's well-being and the Relator's parenting capacity. Prior to this intervention, the Relator's ability to parent was exceptional, providing a stable and nurturing environment while also sustaining the family through his home-based business. However, the decision to remove him not only compromised his professional operations, directly impacting his financial ability to support his children, but also left the children in a situation where their primary care now falls to a mother whose ability to provide, already stretched thin by increased work hours, is further strained by the absence of the Relator's support.

### **Programs Available to Assist Parents**

Had the Court duly considered the *Holley* factor concerning the programs available to assist the parents, it would have discerned that the necessity for such support services was effectively moot prior to its intervention. Before the court's involvement, the family operated as a cohesive unit, with the Relator adeptly managing his professional duties from home, thus ensuring the family's needs were met without external intervention. The mother, similarly, fulfilled her responsibilities independently, further evidencing the lack of reliance on support programs.

The trial Court's decision to remove the Relator from his home and disrupt his business, pivotal not only to his personal identity but crucially to his provision for the children, introduced an unwarranted destabilization into the children's lives and financial insecurity into the family structure. This intervention inadvertently necessitated a shift towards external support such as legal aid, financial assistance, and emotional counseling, which were services that were

previously unneeded due to the family's self-sufficiency and stability.

### **THE PLANS FOR THE CHILDREN**

In the intricate web of this case, the Court's oversight has inadvertently woven a narrative that starkly contrasts the parents' approaches toward ensuring the welfare of their children. While the Relator meticulously strategized to safeguard the children's Christmas, ensuring their holiday was not marred by the ongoing legal battles, the Mother took actions that directly undermined the family's stability. Orchestrating attempts to evict the Relator right before Christmas and seeking protection from him while he was caring for the Children at home was not for any other reason to gain an unfair advantage in the divorce proceedings, which ultimately succeeded.

This systematic effort to alienate familial support and destabilize the home environment, particularly at such a critical time, not only deviates from acting in the children's best interests but also reflects a lack

of foresight and planning for their well-being. The court, through its decisions, and counsel, through their lack of due diligence, have inadvertently facilitated this disruption. The absence of any substantive evidence against the Relator further exacerbates the situation, turning the legal proceedings into a tool for personal vendetta rather than a means to serve the Children's best interests.

In her pursuit to dismantle the structure she once benefited from, the mother has not only jeopardized the family's financial foundation but also the emotional and psychological well-being of the children, without presenting any viable alternative to replace the stability she seeks to destroy. Despite reaping the benefits of the secure environment painstakingly built by the Relator, she remains resistant to obtaining full-time employment, exhibiting a glaring absence of any strategic plan for the future. This decision-making void, indicative of a lack of commitment to the children's long-term welfare, starkly undermines the



core principle of acting in the children's best interests. The court's failure to recognize this lack of foresight and the detrimental effects of her actions not only exacerbates the family's predicament but also challenges the premise of equitable legal intervention aimed at safeguarding the children's future.

The Relator's meticulously devised plan to relocate to a nearby residence was crafted with dual objectives: to ensure his children benefit from continuous, meaningful parental interaction, and to allow for the careful transition of his business operations—a cornerstone of the family's financial stability. This proposal embodies a deep-seated commitment to the Children's emotional well-being and the family's economic health, demanding a period for thoughtful implementation. Contrastingly, this well-intentioned plan meets with unwarranted judicial restrictions that significantly curtail his parental involvement and challenge his professional continuity.

While the Relator's plan was a testament to forward-thinking and stability, ensuring the children's access to both parents without sacrificing the family's livelihood, the response it elicited from the judicial system, influenced by the other parent's actions, underscores a lack of similar strategic planning for the children's future well-being.

### **Stability of the Home Environment**

The decisions have removed the children from a stable home environment, undermining their sense of security and continuity. The Father's efforts to provide stability have been disregarded, now only able to see his Children at various family member's houses and hotels across the Tarrant County while relief is sought. The Mother's home environment, now void of a stay-at-home parent, had the stability

removed from it rather than preserved during the pendency of the case.

**Acts or Omissions Indicating the Existing Parent-Child Relationship is not Proper**

The Father's consistent advocacy for his children's best interests starkly contrasts with any claims against him, for which no substantial evidence was provided. The Court's reliance on unsubstantiated allegations rather than on factual evidence of the Father's dedication highlights a significant judicial oversight and warrants mandamus relief and a temporary stay of the proceedings, affording the Relator re-entry to his home, his business, and most importantly: his Children's lives until alternative residency can be established by vacating the order.

**IV.**

**CONCLUSION**

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Granting this writ of mandamus is not only profoundly beneficial for the children by

reinstating their father into the family home and his essential business operations but also places a negligible burden on the Mother. This action's necessity is compellingly highlighted in *In re Team Rocket, L.P.*, which asserts, "The adequacy of an appellate remedy must be determined by balancing the benefits of mandamus review against the detriments." *Id.* at 256 S.W.3d 257, 262 (Tex. 2008). This principle underscores the critical importance of immediate judicial intervention in this case, where the balance decidedly favors the restoration of the Father's roles, both as a parent and a provider.

The Mother's decision to live elsewhere, driven by personal choices rather than any substantiated need for protection, should not preclude the children from maintaining a stable and nurturing environment with their Father. Available alternative residencies nearby afford a practical solution for both parents to continue playing active roles in their children's lives amidst the legal proceedings. This arrangement

would also facilitate the Father's endeavor to transition his home-based business to a new location, an objective that current restrictions render impossible.

### **PRAYER**

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Wherefore premises considered, for all the foregoing reasons alleged and briefed herein, Relator C.D.M. prays that this court grant him mandamus relief and order AJ Respondent to vacate the current temporary orders that have no factual backing, thereby restoring the status quo to the Children's lives, the Relator's business, and restoring the stability the Children have always known while the case is pending and until the Relator can have a reasonable amount of time to transition from the family home.

Relator C.D.M. further requests that this court grant him such other relief both general and special, at law or in equity, to which he may show himself to be justly entitled.

Respectfully submitted,

C.D.M.

/s/ C. D. M.

Pro-Se Litigant

chuckdustin12@gmail.com

## **CERTIFICATION OF FACTS AND VERIFICATION OF RECORD**

Before me, the undersigned authority, on this day personally appeared Relator, C.D.M., and upon his oath, stated that (i) he is self-represented in this cause; (ii) he has reviewed the Petition for Writ of Mandamus and concluded that every factual statement in the petition is supported by competent evidence included in the appendix and supplemental electronic appendix; and (3) the items in the appendix and supplemental electronic appendix are true and correct copies of documents material to Relator's claims and are either pleadings that are on file in the underlying suit, links to documents found on the clerk's record, or orders signed by the Trial Court in the underlying suit.

/s/ C.D.M.

C.D.M.

PRO-SE

Subscribed and sworn on April \_\_\_, 2024.

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Notary Public for and in the State of Texas

**CERTIFICATE OF RELATOR REGARDING WORD  
COUNT**

Pursuant to rule 9 of the Texas Rules of Appellate Procedure, I certify that the word count in this Petition for Writ of Mandamus, excluding the caption and introductory matters, signature, proof of service, certification, certificate of compliance, and appendix, totals **4,751** words.

/s/ \_\_\_\_\_ C.            D.            M.  
C. D. M.



## **Certificate of Service**

I certify that a true copy of this Notice for Emergency Relief was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on **04-05-2024**:

**Cooper L. Carter** by EMAIL/ESERVE at  
COOPERCARTER@MAJADMIN@COM

**M. M. M. (Mother)** by EMAIL/ESERVE at  
MORGANMW02@GMAIL.COM

**Hon James B. Munford** by ELECTRONIC SERVICE

Presiding District Judge, 322<sup>nd</sup> District Court of  
Tarrant County

200 E Weatherford St, Fort Worth, TX 76102

**Hon Jeffrey N. Kaitcer** by ELECTRONIC SERVICE

Presiding Associate Judge, 322<sup>nd</sup> District Court of  
Tarrant County

200 E Weatherford St, Fort Worth, TX 76102

/s/ C. D. M.  
C. D. M.

Pro Se

No \_\_\_\_\_ -CV

**IN THE COURT OF APPEALS FOR THE SECOND JUDICIAL  
DISTRICT**

**FORT WORTH, TEXAS**

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**IN RE: C.D.M, Relator**

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Original Proceeding Arising Out of  
the 322<sup>nd</sup> District Court, Tarrant County  
Cause No. 322-744263-23 (consolidated)  
(Honorable James B. Munford, District Judge  
Presiding  
Honorable Jeffrey N. Kaitcer, Associate Judge  
Presiding)

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**Appendix**

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In support of this petition, Relator submits this  
Appendix in compliance with Rule 52.3(j) of the  
Texas Rules of Appellate Procedure:

1. Ex-Parte Temporary Order.....12.14.2023
2. Original Petition for Divorce.....12.18.2023
3. Application for Protective Order.....12.22.2023
4. Ex-Parte Temporary Orde.....12.27.2023

5. Ex-Parte Temporary Order.....	12.28.2023
6. Answer to Protective Order.....	01.02.2024
7. Motion to Consolidate.....	01.03.2024
8. Cases Background For Consolidation.....	01.03.2024
9. Motion of Continuance.....	01.06.2024
10. Motion of Continuance Brief.....	01.06.2024
11. COMPREHENSIVE STATEMENT OF CONTEXT.....	01.06.2024
12. Unsworn Declaration - General (1).....	01.07.2024
13. Initial temporary orders.....	01.17.2024
14. Second temporary orders.....	01.23.2024
17. NOTICE OF TERMINATION OF COUNSEL.....	02.05.2024
18. Agreed Motion for Withdrawal of Atty...02.06.2024	
19. Agreed Associate Judge's Report.....	02.08.2024
21. MOTION TO VACATE TEMPORARY ORDERS.....	02.09.2024
22. ORDER FOR WITHDRAWAL OF ATTORNEY.....	02.12.2024
23. MOTION FOR SUMMARY JUDGEMENT - BRIEF..	02.22.2024
24. EXHIBIT D -PROPOSED PARENTING PLAN.....	02.22.2024
25. NOTICE OF HEARING FOR 03/14.....	02.27.2024
26. NOTICE_UNSWORN_DECLARATION.....	03.03.2024
27. NOTICE FOR JUDICIAL REVIEW.....	03.23.2024
28. ORDER ON RECONSIDERATION MOTION.....	03.23.2024
29. DANNY SLADE AFFIDAVIT.....	03.23.2024
30. AARON WATSON AFFIDAVIT.....	03.23.2024
31. LUZ_OBLE_AFFIDAVIT.....	03.23.2024
32. JOHN VALERA AFFIDAVIT.....	03.23.2024

33. BRIANNA GALBO AFFIDAVIT.....	03.23.2024
34. CHRISTIAN VROOM AFFIDAVIT.....	03.23.2024
35. MORVAN AFFIDAVIT.....	03.23.2024
36. Current Temporary Orders.....	03.26.2024
37. TEX. FAM. CODE § 105.001(b)	
38. TEX. FAM. CODE § 105.001(a)(1)	
39. TEX. FAM. CODE § 153.002	
40. TEX.R.CIV.P. § 245	

Relator notes the absence of a court-reported record for this case, significantly hindering the ability to provide a verbatim transcript of proceedings crucial to this mandamus action. Notably, the only witness called during these proceedings was the mother, primarily for securing legal fees for the March 14th motion for reconsideration. This unique circumstance, compounded by the lack of a court reporter, accentuates the need for the Court's detailed review of the attached appendix. This appendix, containing all relevant documents filed in compliance with statutory requirements and unopposed to date, forms the core evidence for the Court's consideration. Despite these procedural anomalies, the Relator believes the submitted documents will sufficiently support the Petition for Writ of Mandamus.