

**02-25-00166-CV**

**EMERGENCY STAY**

**04.15.25**

No. '02-25-00166-CV  
IN THE  
SECOND JUDICIAL DISTRICT COURT OF APPEALS  
AT FORT WORTH, TEXAS

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IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

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Original Proceeding arising from  
the 322<sup>nd</sup> Judicial District Court, Tarrant County  
Cause Number 322-744263-23  
Hon. Jeff Kaitcer Presiding

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EMERGENCY MOTION TO STAY  
PROCEEDINGS

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Respectfully submitted by:

Charles Dustin Myers  
chuckdustin12@gmail.com  
Tel.: 817-546-3693  
  
Pro-se Relator

## I. INTRODUCTION

Relator intends to invoke this Court’s original jurisdiction in three closely related mandamus proceedings arising from overlapping family law cases in Tarrant County. The three issues central to this dispute involve facially void temporary orders, the refusal to hear an emergency TRO, and the granting of the opposing party’s consolidation motion *sua sponte* in the face of an objection. All three matters are legally and procedurally interdependent yet hinge on each-other to effectuate resolution. To provide context, the three mandamus matters are:

### **1. No. 02-25-00164-CV (“TRO Mandamus”)**

**Issue Presented:** Whether the 233rd District Court erred in refusing to adjudicate an emergency request for temporary relief in a SAPCR properly filed before it on March 28, 2025.

**Procedural Posture:** Denied per curiam on April 11, 2025; rehearing

**Brief Posture:** The TRO mandamus proceeding raises core legal issues concerning a trial court’s ministerial duty to rule on properly filed motions, the abuse of discretion in refusing to hear an emergency TRO based on a future, unfiled consolidation motion, and the denial of due process by refusing to rule on the matter before it.

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### **2. No. 02-25-00166-CV (“Void-Order Mandamus”)**

**Issue Presented:** Whether temporary orders issued by the 322nd District Court on March 14, 2024, are void ab initio for want of consent. (MR 17.1)

**Procedural Posture:** Pending decision before this Court.

**Brief Posture:** Showcases a total breakdown of procedure between January 16<sup>th</sup>, 2024's "kick-out" order (MR 6.1) and March 14<sup>th</sup>, 2024's one-sided consent judgement. (MR. 17.38)

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### **3. Forthcoming Petition – To Be Filed By April 16, 2025 (“Consolidation Mandamus”)**

**Issue Presented:** Whether the sua sponte granting of Real Party's consolidation motion without addressing the objection, notice, or holding a hearing caused further prejudice to the Relator.

**Relief Anticipated:** A writ of mandamus vacating the consolidation order on grounds that it was entered without notice, without hearing, and in the face of Relator's standing objection to consolidate, and a pending rule 12 motion.

## **II. BACKGROUND SUMMARY**

Between December 14, 2023, and December 22, 2023, Real Party in Interest, Morgan Myers, attempted to get an emergency ex-parte order of protection from the court below (MR 2.7), initiated an eviction proceeding (MR 19.15), converted \$1,576 of joint-marital assets to a family member on her way to receive help in preparing divorce paperwork (MR 19.14), initiated a protective order suit, (MR 19.15), and filed for divorce claiming that an active order of protection existed against the undersigned. (MR 2.7)

This frenzy of frivolous lawsuits was designed to acquire an advantage in the divorce proceedings, which ultimately succeeded on January 16, 2024.

(MR 6.1). Spinning a narrative of the need for protection, Real Party leveraged this initial award to her advantage and was able to delay the proceedings further on January 22 by acquiring her legal representative three minutes prior to the hearing. (MR 7), eventually leading to settlement and a non-suit of her allegations (MR 8.3), which became the orders of the court on March 14, 2024, and were rendered as an agreement without Mr. Myers' consent. (MR. 17.38) The remainder of the litigation amounted to a one-sided effort by the undersigned to seek relief while the opposing party sat in silence and abandoned their case. (MR 1)

After eleven months of silence, the Real Party became active again only after the SAPCR was opened by Mr. Myers, who was prevented from presenting his emergency TRO at the 11th hour, resulting in no order, and the emergency still ongoing.

Shortly after the initial mandamus was filed on April 10, 2025, the Honorable Kenneth Newell *sua sponte* consolidated the cases without notice by granting Real Party's motion in the face of an objection, and without a hearing to discuss the pertinent issues.

The undersigned is prepared to litigate these matters, and the necessity to stay these proceedings is essential to preserve the rights of the parties and prevent further irreparable harm from occurring in the interim.

### III. NECESSITY FOR STAY

Texas Rule of Appellate Procedure 52.10 Authorizes a Stay to Preserve the Status Quo. Texas Rule of Appellate Procedure 52.10(b) empowers this Court to “stay the underlying proceedings pending mandamus review”. A stay is warranted here to “preserve important substantive and procedural rights from impairment or loss” which here, is exactly the situation calling for such a remedy.

The procedural posture of this case combined by the lack of participation by the opposing side and lack of input from the courts below throughout presents a truly unique situation from a legal perspective.

### IV. SUMMARY OF THE ARGUMENT

The 322nd and 233rd District Courts of Tarrant County, Texas, are locked in a jurisdictional impasse that must be resolved to protect the best interests of the children and restore procedural integrity. These matters can be concurrently resolved through stepwise legal analysis. The first and most critical question is whether the current temporary orders—issued as an agreed judgement without the consent of all parties—can stand (MR 17.1, MR 17.38).

If those orders are deemed void, then the 322nd District Court cannot assert continuing, exclusive jurisdiction (CEJ) under the Texas Family Code, which requires a valid final order to attach. *see* Tex. Fam. Code §155.001. In that event, the SAPCR filed in the 233rd District Court by the undersigned should stand as a procedurally proper original suit, and mandamus should issue to administer a hearing regarding the emergency TRO refused on March 28, 2025, without producing any valid order to challenge.

At that juncture, should the Real Party argue dominant jurisdiction, the court must weigh the well-recognized exceptions under Texas law, including bad faith, unjustified delay, and strategic pretext—all of which are clearly demonstrated and conclusively established in the mandamus record filed concurrently with this matter.

## V. ARGUMENT

### **A. An agreed judgement rendered without consent is void**

The first point of issue in this matter is the facially void orders rendered on March 14, 2024. an order cannot expressly claim all parties consent “*as evidenced by the signatures below*” (MR 17.1) and then be absent from the document. (MR 17.38)

This is clear and cut Texas precedent. “A valid consent judgment cannot be rendered by a court when consent of one of the parties thereto is wanting. 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.” *Burnaman v. Heaton*, 240 S.W.2d 288, 291 (Tex. 1951)

Here, the exact opposite occurred but our case takes it a step further. Mr. Myers was *ordered* to sign an agreement that he was in court that very same day to challenge. (MR 16.1) (“3. It is *ordered* that the parties shall present the temporary orders regarding the [associate judge’s report] signed on 02/01/2024 by 1:30 p.m. today.”)

Moreover, the order explicitly refers to the Associate Judge’s Report signed on February 1, 2024, which could not have been possible because the attorney who was ordered to prepare the orders *was no longer on the case*. (MR 11) Therefore, the orders must be set aside, and mandamus should issue here.

### **B. Continuous, exclusive jurisdiction**

Once the orders are declared void, we can then turn to the Texas Family Code § 155.001(a), which states “Specifically, except as otherwise provided



by this section, a court acquires continuing, exclusive jurisdiction over the matters provided for by this title in connection with a child on the rendition of a final order.” Without the March 14 orders in place, which were a nullity from the start, the 322<sup>nd</sup> District Court does not retain continuous, exclusive jurisdiction as no other orders exist. Therefore, § 155.001(d) makes the SAPCR suit valid by statute, which leads us to an analysis of dominant jurisdiction.

### **C. Doctrine of Dominant Jurisdiction**

Under Texas law, the doctrine of dominant jurisdiction provides that when two suits are pending in courts of concurrent jurisdiction involving the same parties and subject matter, the court in which the suit was first filed acquires dominant jurisdiction to the exclusion of the other court. This doctrine is established in the seminal case of *Curtis v. Gibbs*, 511 S.W.2d 263 (Tex. 1974), where the Texas Supreme Court held that any subsequent suit involving the same parties and controversy must be dismissed if a party to that suit calls the second court's attention to the pendency of the prior suit.

Normally, if the SAPCR matter were to try and set a matter for hearing, the Real Party could argue for dominant jurisdiction, as the divorce matter

was the “first filed” suit, and is pending before the 322<sup>nd</sup> District Court, and would have the suit transferred or abated.

#### **D. Bad Faith Exception**

However, Texas courts recognize an important exception to the dominant jurisdiction doctrine: when the first-filed suit was brought in bad faith or for the purpose of delay. As established in *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988), the first court's dominant jurisdiction can be defeated by showing that the first suit was filed:

1. As a mere pretext to establish priority;
2. In anticipation of the second suit;
3. For the purpose of delay; or
4. In bad faith.

#### **E. Three of four exceptions to dominant jurisdiction apply here**

Here, three out of four of these exceptions apply. The suit was a mere pretext to establish priority, as Real Party went out of her way to file multiple frivolous lawsuits alleging family violence (MR 2.7, MR 3) only to then drop her claims after securing the children and home and abandon the case. (MR 8.3)

The bad faith conducted by Real Party can be discerned by looking at the face of her pleadings themselves. On her original petition for divorce, on page 7, Real Party makes it known that she attempted to seek an emergency ex-parte order of protection on December 14, 2023. (MR 2.7) So the logical question to ask would be: why did Real Party need an emergency ex-parte order of protection if she *already had an active order of protection*? Better yet, why did mother seek a *third* protective order on December 22, 2023, if an *active protective* order was already in place? (MR 3) More importantly, why would she claim an active order of protection existed when she *knew* that wasn't the case? (MR 2.7) This is a clear establishment of bad faith litigation, which also precluded her advantage by labeling the undersigned as an abuser prior to adjudication, satisfying two of four exceptions to dominant jurisdiction.

Finally, after acquiring the children and home at the outset (MR. 6.1) and through the series of orders leading up to March 14, 2024, Real Party then abandoned her case and left the undersigned seeking relief throughout the Texas judiciary without opposition or participation. The only item found on the docket from the opposing side since then is a motion for pre-trial conference on April 24, 2024. (MR 1.7 DKT 206) In fact, it was only when

the undersigned opened the separate SAPCR that opposing counsel rushed in to defend it, leading to the concurrent mandamus filed under cause number No. 02-25-00164-CV currently at the rehearing stage.

Therefore, because three of the four exceptions established in *Wyatt* apply here, the 322<sup>nd</sup> District Court of Tarrant county arguably would not retain dominant jurisdiction over the SAPCR suit filed by the undersigned to escape this procedural quagmire, and mandamus could issue there on rehearing so that they may lawfully proceed with the emergency TRO hearing which was turned away on March 28, 2025, which will lead to a situation that resembles what the legislature intends rather than the exact opposite. *See* Tex. Fam. Code 153.001.

VI. Under the procedural posture of this case, a stay is not burdensome or unduly prejudicial to the Real Party

Given the unique and intertwined procedural posture of this matter, a stay is both appropriate and necessary to preserve the integrity of appellate review. Unlike Relator and the children—who continues to suffer irreparable harm under the force of void orders and were thrown into a chaotic arrangement—the Real Party in Interest faces no comparable prejudice from a stay. In fact, the Real Party has taken no meaningful action to prosecute their

claims and has allowed the case to stall for nearly a full calendar year. Any suggestion of prejudice is undermined by their own inaction. Relator, by contrast, has acted swiftly to correct procedural defects and vindicate his rights, and is fully prepared to brief this Honorable court regarding the matters at issue.

#### VII. PRAYER

To the undersigned's knowledge, no pro se litigant has ever been compelled to file three concurrent mandamus petitions addressing three separate structural irregularities involving two district courts in a single-family law matter. This unprecedented procedural posture is not the result of litigation excess, but rather a response to a cascading breakdown of jurisdiction, due process, and court administration, which independently threatens the ability of this Honorable Court to grant meaningful relief.

In fact, the only litigation that has occurred in this case has come from the undersigned. This litigation is not fueled by vindictiveness nor spite, but rather from the necessity to restore the status quo so that this divorce *may proceed*. The Relator holds the upmost respect for all three Judges named in this suit, and it is his prerogative to aid in the case's forward-looking

resolution, beginning with the restoration of the status quo. A stay should issue.

**WHEREFORE, PREMISES CONSIDERED,** Relator CHARLES DUSTIN MYERS respectfully prays that this Honorable Court:

1. Grant an immediate emergency stay pursuant to Texas Rule of Appellate Procedure 52.10(b), staying proceedings in the 322nd District Court of Tarrant County, Texas—including but not limited to the March 14, 2024 temporary orders—pending final disposition of the mandamus proceedings;

2. Grant mandamus relief to preserve the status quo to protect the best interests of the children, and to prevent further irreparable harm to Relator’s constitutional rights, business, and parent-child relationship;

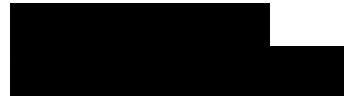
3. Permit Relator to file his third mandamus petition by April 16, 2025, if the court deems necessary;

4. Grant such other and further relief, at law or in equity, to which Relator may be justly entitled.

Respectfully submitted,

/s/ Charles Dustin Myers

CHARLES DUSTIN MYERS



817-546-3693

[Chuckdustin12@gmail.com](mailto:Chuckdustin12@gmail.com)

**CERTIFICATE OF COMPLIANCE WITH RULE 52.10(A)**

In accordance with Texas Rule of Appellate Procedure 52.10(a), I certify that I have made a diligent effort to notify all parties by expedited means (such as by electronic mail, telephone or fax) that a motion for temporary relief has been or will be filed.

/s/ Charles Dustin Myers

CHARLES DUSTIN MYERS

**CERTIFICATE OF COMPLIANCE WITH WORD COUNT**

In accordance with the Texas Rules of Appellate Procedure, I certify that this Motion contains 2,562 words.

/s/ Charles Dustin Myers

CHARLES DUSTIN MYERS

**CERTIFICATE OF COMPLIANCE WITH RULE 10.1(5)**

I certify that I made multiple reasonable attempts to confer with both the opposing counsel and real party regarding this motion and was unsuccessful, and could not determine whether it's opposed.

/s/ Charles Dustin Myers  
CHARLES DUSTIN MYERS



**CERTIFICATE OF SERVICE**

Relator certifies that on April 15, 2025, a true and correct copy of the foregoing EMERGENCY MOTION TO STAY 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@tarrantcountytexas.gov](mailto:LKBaker@tarrantcountytexas.gov)

**Real Party In Interest**

Morgan Michelle Myers  
Real Party in Interest

[MORGANMW02@GMAIL.COM](mailto:MORGANMW02@GMAIL.COM)

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TEXAS O.A.G.

**Automated Certificate of eService**

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Filing Code Description: Motion  
Filing Description: Emergency Motion to Stay  
Status as of 4/15/2025 10:00 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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COOPER L.CARTER		COOPERCARTER@MAJADMIN.COM	4/15/2025 8:13:34 AM	SENT
JEFF NKAITCER		LKBaker@tarrantcountytexas.gov	4/15/2025 8:13:34 AM	SENT

**02-25-00171-CV**

**MANDAMUS  
CONSOLIDATION**

**04.16.25**

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

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

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IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

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Original Proceeding Arising from  
the 233rd Judicial District Court, Tarrant County  
Cause Number 233-765358-25  
Hon. Kenneth E. Newell Presiding

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PETITION FOR WRIT OF  
MANDAMUS

---

Respectfully submitted by:

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

  
Pro-se Relator

ORAL ARGUMENT REQUESTED

Emergency Relief Requested before 04/24/2025

**Identity of Parties and Counsel*****Relator***

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***Respondent***

Hon. Kenneth E. Newell  
District Judge of the 233rd District Court,  
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200 E. Weatherford St. 5th Floor  
Fort Worth, TX 76196-0227

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**Statement of the Case**

**Nature of Underlying Proceeding:** This original proceeding arises from a Suit Affecting the Parent-Child Relationship ("SAPCR") involving two minor children, M.E.M. and C.R.M., that was consolidated into a prior-filed divorce action (cause# 322-744263-23) on April 11, 2024.

**Respondent Judge:** The Respondent Judge is the Honorable Kenneth E. Newell, the District Judge of the 233rd District Court of Tarrant County, Texas. His office is located at 200 E. Weatherford St. 5th Floor Fort Worth, TX 76196-0227.

**Respondent's Challenged Actions:** The Respondent (through his Associate Judge) declined jurisdiction over an emergency SAPCR TRO only to then exercise jurisdiction by granting Real Party's consolidation motion *sua sponte* without addressing the Relator's objections.

**Statement of Jurisdiction**

This Petition for Writ of Mandamus is filed in the Second Court of Appeals, which has jurisdiction to issue writs of mandamus to District Judges within its district. See Tex. Gov't Code § 22.221(b). The respondent is the District Judge of the 233rd District Court of Tarrant County, which lies within the Second Court of Appeals District. Accordingly, this Court has jurisdiction over this original proceeding, and there are currently two related matters pending before this Honorable Court. Cause# 02-25-00166-CV, ("The Void-Order Mandamus"), and (Cause# No. 02-25-00164-CV ("The SAPCR/TRO Mandamus"). This is "The Consolidation Mandamus".

**Issue Presented**

- I. The Respondent clearly abused his discretion when he *sua sponte* granted Real Party's contested consolidation motion without notice, hearing, and in the face of an objection.

### Statement of Facts

“MR” in this section refers to the mandamus record.

“APP” refers to the relator’s appendix attached hereto.

1. On March 19, 2025, the Relator, (“Mr. Myers”) filed a cover letter addressed to District Clerk Tom Wilder, an application for emergency injunctive relief, and opened an original SAPCR in the 233<sup>rd</sup> district court to seek relief. (MR 1, MR 2, MR 3)
2. On March 20, 2025, RODERICK D. MARX filed an answer and MOTION TO CONSOLIDATE on behalf of COOPER L. CARTER. (MR 4, MR 4.5, MR 5, MR 5.4)
3. On March 20, 2025, Mr. Myers filed a MOTION TO STRIKE RESPONDENT’S ANSWER AND MOTION TO CONSOLIDATE with an attached exhibit showing Cooper Carter’s EFM registration is registered with Cantey Hangar. (MR. 6.2, MR. 6.8)
4. On March 21, 2025, Mr. Myers filed a verified RULE 12 MOTION TO SHOW AUTHORITY challenging the authority of COOPER L. CARTER to represent MORGAN MYERS. (MR. 7.2)
5. On March 24, 2025, Mr. Myers filed an EX-PARTE EMERGENCY TRO seeking emergency relief for himself and the minor children in this suit. (MR. 8, MR. 8.11)

6. On March 24, 2025, Mr. Myers filed an OBJECTION TO CONSOLIDATION. (MR. 9.1)
7. On March 26, 2025, Relator contacted the court coordinator, was told he may present the TRO, and notified the opposing counsel that he would present the motion at 9:00 A.M. on March 28, 2025. (MR. 12.9)
8. On March 27, 2025, Mr. Myers served a copy of the TRO and proposed order (MR. 12.19) to the opposing party and informed them of the relief being sought. (MR. 12.15)
9. On the evening of March 27, 2025, opposing counsel directly contacted the court coordinator to inform her of the intent to file a consolidation motion in the 322<sup>nd</sup> district court. (MR. 12.20)
10. On March 28, 2025, the court recognized Mr. Myers' objection. (MR. 12.25)
11. On March 28, 2025, Mr. Myers appeared before the coordinator to set a date for the full hearing on the TRO. (MR. 12.24)
12. Mr. Myers conferred with counsel and agreed to have the hearing on April 10, 2025. (MR. 12.26)
13. The coordinator memorialized this agreement by setting the date on the SAPCR Order. (MR. 12.29)
14. On April 1, Mr. Myers filed a PETITIONER'S STATEMENT with the court and provided a STATEMENT OF FACTS to the court. (MR. 10.2)

15. On April 2, Mr. Myers filed a PETITIONER’S NOTICE to “provide a different perspective into the current situation.” and “stark differences in the children’s quality of life, parental involvement, and household stability before and after the removal of the Father from the family home.” (MR. 11.2)
16. On April 3, 2025, RODERICK D. MARX filed a MOTION TO CONSOLIDATE in the 322<sup>nd</sup> District Court. (MR 13.2, MR 13.3)
17. On April 11, 2025, Relator filed a PETITION FOR WRIT OF MANDAMUS in the Second Court of Appeals seeking relief from being unable to present his emergency TRO on March 28, 2025. (APP 4)
18. On April 10, 2025, Respondent granted Real Party’s MOTION TO CONSOLIDATE sua-sponte and without addressing Relator’s objections, without notice, and without holding a hearing. (APP. 1.1)
19. On April 12, 2025, Respondent’s mandamus under #02-25-00164-CV was denied per curiam with no substantive explanation. (APP 4)
20. On April 15, 2025, Respondent’s mandamus under #02-25-00166-CV was denied per curiam with no substantive explanation. (APP 3)

## A Dragon in Triplicate

“I filed a dragon in triplicate. (02-25-00164-CV, 02-25-00166-CV, .....)  
 Stamped it with a notary seal made of toast.  
 The clerk blinked Morse code at me, each dot a denial, each dash a delay.  
 I whispered back: "Due process, maybe...?" (MR 12.25)  
 She shrugged.  
 Per curiam.

I wore a tie made of subpoenas, each one ignored like a bedtime story read to no one.  
 Shoes made of unserved motions, my footsteps echoing through halls where justice used  
 to live. I approached the bench riding a unicycle of hearsay. The judge levitated, the  
 record evaporated, and Real Party’s counsel dissolved into a fog of alleged  
 representation. I asked, “Do you even have authority?” (MR 7.2)  
 The fog replied: Per curiam. (APP 3) (APP 4)

The bailiff offered me a lemon — bright yellow, bitter as the day;  
 they took my children without a hearing. I objected. (MR 9.2)  
 He smiled like he’d heard that line before.  
 Per curiam. (APP 3) (APP 4)

I cried out, "But I never agreed!" (MR 15.1)  
 The courtroom answered in silence.  
 The Temporary Orders danced across the floor, signed in invisible ink.  
 They spoke in tongues: "As evidenced by the signatures below..." There were none. But  
 the judge still nodded.  
 Per curiam. (APP 3) (APP 4)

M.E.M. drew a picture of our house. Said: “Daddy, when are you coming home?”  
 C.R.M. left his shoes by the door — still waiting. I filed my heart as Exhibit A. (MR 1.1)  
 They struck it. Hearsay. I tried again. (MR 8.19)  
 Filed their laughter, their drawings, their birthdays I missed.  
 The clerk stapled it to a stack of motions never read. (MR 3)  
 Per curiam. (APP 3) (APP 4)

Somewhere, a gavel bangs.  
 But not for me.  
 Not for them.  
 Just another ghost echo in a court that doesn’t listen, doesn’t look, doesn’t feel.  
 But still I file.  
 Still I write.  
 Still I fight.  
 For them.  
 Per curiam.”

– *Relator Charles Dustin Myers*

## ARGUMENT

### **A. Mandamus Standard**

Mandamus relief is warranted when the trial court clearly abused its discretion, and the Relator (“Mr. Myers”), has no adequate appellate remedy. *In re Coppola*, 535 S.W.3d 506, 508 (Tex. 2017) (orig. proceeding) (per curiam). “A trial court clearly abuses its discretion if ‘it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law’ [or if it clearly fails] to analyze or apply the law correctly .” *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 2006) (orig. proceeding) (quoting *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985), disapproved of on other grounds by *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204 (Tex. 2009)). In any event, as shown in the next section, appeal is no remedy at all under these urgent circumstances.

### **B. Consolidation and EX-Parte Procedure**

Texas Rule of Civil Procedure 174(a) permits consolidation of actions that involve common questions of law or fact. (APP 6.1) See also *Lone Star Ford, Inc. v. McCormick*, 838 S.W.2d 734, 737 (Tex. App.-Houston [1st Dist.] 1992, writ denied). A trial court cannot arbitrarily consolidate cases in a manner that prejudices one of the parties. Even when consolidation is permissible in principle, the court must balance judicial convenience against any risk of unfair prejudice or



confusion, and it must respect the parties' right to be heard on the issue. *Crestway Care Ctr., Inc. v. Berchermann*, 945 S.W.2d 872, 874 (Tex. App.—San Antonio 1997, orig. proceeding) (en banc). Consolidation decisions are reviewed for abuse of discretion, and “a trial court may abuse its discretion by ... consolidating cases when the consolidation results in prejudice to the complaining party.” (citing *Lone Star Ford*, 838 S.W.2d at 738)

In other words, when deciding whether to consolidate, the trial court must balance the judicial economy and convenience that may be gained by the consolidation against the risk of an unfair outcome because of prejudice. See *Dal-Briar*, 833 S.W.2d at 615. Even if the cases share common questions of law and fact, an abuse of discretion may be found if the consolidation results in prejudice to the complaining party. *Lone Star Ford, Inc.*, 838 S.W.2d at 738.

Here, that is precisely what occurred. Mr. Myers has three concurrent mandamuses now before this court, and cause number 02-25-00164-CV, (“the TRO/SAPCR mandamus”) sought emergency relief in March 2025. (MR 8.2) The court's procedural handling of his Application for Temporary Restraining Order (TRO) was highly irregular and violated the letter and spirit of Texas procedural rules.

Texas Rule of Civil Procedure 680 provides that no TRO shall be granted without notice to the adverse party unless specific facts show immediate

irreparable injury will occur before notice can be given. Even when an ex parte TRO is justified, TRCP 680 requires the order to be narrowly time-limited (14 days) and promptly set for hearing on a temporary injunction. (APP 7) Here, Mr. Myers followed the rules by giving notice to the opposing party and coordinating with the Court for a presentation of his TRO. (MR 12.1-12.9) Tarrant County Local Rule 4.01(11)(e) (likewise requires a party seeking ex parte relief to certify to the Court the efforts made to notify the opposing side or explain why notice should not be given. Mr. Myers never received a response from the opposing side.

Notably, on March 27, 2025, the Court (through its coordinator) insisted that Mr. Myers appear in person to present the TRO and inform opposing counsel of the scheduled time. The coordinator wrote:

“This order needs to be presented in person. Likewise, you need to inform opposing counsel of the date and time you intend to present this order to the court.” (MR 12.9)

Mr. Myers promptly complied. He emailed Ms. Allison on March 27 confirming that he had informed the opposing counsel of the intended presentation at 9:00 a.m. the following day and that he would update both the Court and opposing party if anything changed. (MR 12.9)

After receiving no response from either the opposing counsel or real party in interest, Mr. Myers served the documents he intended to present to the court. (MR 12.19) Rather than corresponding with Mr. Myers directly, the opposing counsel contacted the court coordinator, where she stated via email:

“I have received communication from opposing party who is pro se that he will be walking through an Emergency TRO. Our office has a hearing scheduled for tomorrow morning in Parker County and is unable to attend. However, I will be available by cell phone regarding this matter if the Judge would like to speak to me regarding the Emergency TRO. Please contact our office to patch me in for any calls that Judge would like to have.” (MR 12.20)

and most critically, the opposing counsel went on to say:

“Additionally, this case already is pending in the 322nd for a divorce proceeding regarding property and children matters. We will be consolidating the case and walking it through the 322nd for signature next week.” (MR 12.20)

The following morning, Mr. Myers made an appearance, as confirmed by the coordinator.

“Mr. Myers appeared before me to schedule the hearing for the TRO; my apologies I did not realize this was that same case. We can go ahead and set the TRO with us, but most likely the case will be transferred prior to the hearing date and the case needs to be transferred prior to that date. Mr. Myers will be emailing with dates available for the hearing.” (MR 12.24)

This was followed by the following email:

“Additionally, since there is an objection to the consolidation, y’all will need to reach out to request how to proceed with the 322nd as I am unsure of their procedures.” (MR 12.25)

Mr. Myers then promptly provided dates at 9:59 a.m. on March 28, 2025, (MR 12.26) the hearing was agreed to be set for April 10, 2025. (MR 12.29) Despite following the correct procedure, Mr. Myers was not permitted to present his emergency TRO, and was denied the opportunity to be heard outright because of the consolidation motion that *would be filed* the following week. (MR 12.20)

In short, Mr. Myers, acting *pro se*, did exactly what the rules required and what the Court directed: he gave notice and appeared in person as instructed. The

threshold matters should have come second to the best interests of the children. See Tex. Fam. Code 153.002. (APP 5)

That statement – “*I did not realize this was that same case*” (MR 12.24) – is a stunning acknowledgment of a procedural lapse. It indicates that the Court failed to connect the dots that Mr. Myers’ new case concerning the child was related to the ongoing divorce case. As a result, instead of promptly hearing Mr. Myers TRO on its merits, the Court stalled and immediately contemplated moving the case away, leaving Mr. Myers’ emergency request in limbo. The only individuals who followed proper procedure here were the undersigned and the court coordinator, non-licensed individuals. (MR 12.24)

In summary, the procedure leading up to Respondent’s abuse of discretion was an abuse of discretion itself, warranting the “TRO/SAPCR Mandamus” that was denied *per curiam* without any substance. (APP 4)

It was made very clear by the 233<sup>rd</sup> court that the consolidation motion filed by the opposing party on March 20, 2025, was filed in the incorrect court. (MR 5) (MR 12.17) This was used against Mr. Myers at the 11<sup>th</sup> hour to prevent the TRO hearing, as shown above. The *forward-looking* consolidation motion that was used to justify denying Mr. Myers his day in court was filed by RODERICK D. MARX, a non-party in either the SAPCR suit or the divorce matter on April 3, 2025. (MR 13.5) see also (MR 7.18)

Shortly thereafter, the opposing counsel emailed Mr. Myers stating:

“This is to inform you that I will be walking through the attached Motion for Consolidation and Proposed Order tomorrow morning at 9:00 a.m. in the 322nd for signature.” (MR 12.31)

Mr. Myers promptly replied, stating:

“I’ve already objected.  
You have no legal authority to do so until you address my objection filed and served to you.” (MR 12.32)

This procedural gamesmanship is the exact reason why the undersigned opened a new SAPCR, as it has left the divorce to languish outside of one-sided attempts to pursue relief, as clearly pointed out in his pleadings. There has been no meaningful discussion on the merits of this matter with the opposing side and no attempt to prosecute outside of the latest stunt to block emergency relief. (MR 1.1) From there, Mr. Myers filed a NOTICE OF INTENT TO SEEK MANDAMUS RELIEF in the 233<sup>rd</sup> (MR 14) and began preparing his first mandamus brief, which was submitted to this court on April 10, 2024.

**I. The Respondent clearly abused his discretion he *sua sponte* granted Real Party’s contested consolidation motion without notice and hearing to the parties.**

### C. ABUSE OF DISCRETION

Immediately after submitting his first mandamus petition, Mr. Myers was served with an ORDER GRANTING CONSOLIDATION. (MR 15) This motion, which was used as a barrier to relief, was granted *sua sponte* by the same court who just declined to hear an emergency TRO before it.

The record leaves no doubt that Respondent's decision to consolidate the cases without notice or a hearing was a gross departure from the fair administration of justice. It is difficult to imagine a more textbook abuse of discretion: a contested motion was granted *sua sponte*, with no opportunity for the opposing party to be heard. This is not a close call or a minor procedural wrinkle. The facts speak for themselves – equity, due process, and basic procedural fairness were all denied in one fell swoop. The only question is whether they will continue to be ignored.

Texas courts have held that a trial court clearly abuses its discretion by granting a contested motion *sua sponte* without providing notice or a hearing. In *D.A. Buckner Constr., Inc. v. Hobson*, for example, the trial judge entered an order (imposing sanctions) even though the affected party had no notice or opportunity to be heard. The court of appeals declared that order *void* and emphatically stated: “Respondent's order was without notice or hearing. Under these circumstances, the trial court's order is void, and mandamus will lie to vacate such an order.” Such is the case here. Therefore, the law should apply equally.

## D. NO ADEQUATE REMEDY

In determining whether an appeal is an adequate remedy, courts have weighed the benefits over the detriments. *In re BP Prods. N. Am., Inc.*, 244 S.W.3d 840, 845 (Tex.2008) (orig.proceeding). A party establishes that no adequate appellate remedy exists by showing it is in real danger of losing its substantial rights. *Perry v. Del Rio*, 66 S.W.3d 239, 257 (Tex.2001) (orig.proceeding). As repeatedly stated throughout these proceedings, Relator has been deprived of the most fundamental rights one can have: the right to possess and protect his home, and the right to care for, maintain contact with, and make decisions regarding his minor children. These rights are not abstract — they are protected by the U.S. Constitution, the Texas Constitution, and longstanding precedent.

## E. ONGOING AND IRREPARABLE HARM

The Texas Supreme Court has repeatedly reaffirmed that “a parent’s rights to the care, custody, and control of their children are constitutional in nature and must be afforded heightened protection.” *In re C.J.C.*, 603 S.W.3d 804, 809 (Tex. 2020). Likewise, property rights — including the right to remain in and possess one’s home — are protected under Article I, Section 19 of the Texas Constitution and the Fourteenth Amendment to the U.S. Constitution. See also *University of Tex. Med. Branch v. Than*, 901 S.W.2d 926, 930 (Tex. 1995)

When such rights are denied without valid order, hearing, or opportunity to be heard — as occurred here — the violation is not merely procedural: it is a constitutional injury, and one that warrants immediate mandamus relief. For all reasons incorporated herein, Mandamus should be issued, as deprivation is ongoing, and will occur until justice is rightfully served.

Relator has clearly established the Respondent's consolidation was both procedurally improper, and prejudicial. For all reasons incorporated herein, the court should uphold Texas precedent, and issue mandamus relief to restore justice to these proceedings.

### **CONCLUSION**

With a prima facie showing of systemic abuse laid bare across the trilogy of mandamus petitions now before this Court, it is no longer credible to characterize the lower court's conduct as isolated error. Two of the three heads of this procedural dragon—embodied by the 233rd, the 322nd, and this very Court—have already rendered per curiam denials, offering no explanation in the face of documented, unrebutted misconduct. The record in each petition stands unopposed. No adversary response has been filed. No evidentiary challenge has been made. The silence against Relator's claims is not merely strategic—it is telling. A dangerous precedent is being forged in silence. This court must act.



**PRAYER**


WHEREFORE, PREMISES CONSIDERED, Relator CHARLES DUSTIN MYERS respectfully prays that this Honorable Court:

1. Issue a writ of mandamus compelling the Hon. Kenneth Newell, Judge of the 233rd District Court, to vacate the April 2025 consolidation order, as it was entered sua sponte on a contested motion;
2. Take judicial notice of the procedural irregularities and record-supported adversity faced by Relator throughout these proceedings, including the refusal to hear his emergency TRO while simultaneously granting relief to the opposing party;
3. Grant all other relief to which Relator may be justly entitled, at law or in equity, in light of the extraordinary circumstances and ongoing deprivation of due process.

Relator has before this Court three petitions for writ of mandamus. Two have already been denied per curiam without explanation—perhaps the result of routine disregard for pro se filings. But on rehearing, this Court is urged to evaluate this petition in conjunction with its sister mandamuses to fully grasp the depth of systemic abuse, procedural evasion, and judicial inconsistency present in the courts below.

Individually, each mandamus reveals a failure of process. Together, they form a “Dragon in Triplicate” — a coordinated denial of justice across courts that were sworn to protect it.

Respectfully submitted,

/s/ Charles Dustin Myers  
CHARLES DUSTIN MYERS  
  
817-546-3693  
[CHUCKDUSTIN12@GMAIL.COM](mailto:CHUCKDUSTIN12@GMAIL.COM)

**Certification (TRAP 52.3(j))**

Relator, Charles Dustin Myers, certifies that he has reviewed this petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/ Charles Dustin Myers  
CHARLES DUSTIN MYERS  
PRO-SE RELATOR

**Certificate of Compliance (TRAP 9.4(i)(3))**

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), Relator certifies  
that this document contains **3231 words**.

/s/ Charles Dustin Myers

CHARLES DUSTIN MYERS  
PRO-SE RELATOR

**CERTIFICATE OF SERVICE**

Relator certifies that on April 16, 2025, a true and correct copy of the foregoing Petition for Writ of Mandamus was served on all parties and counsel of record as follows:

**Hon. Kenneth Newell**

District Judge, 233rd District Court  
Tarrant County Family Law Center  
200 E. Weatherford St. 5<sup>th</sup> Floor  
Fort Worth, TX 76196

Via electronic submission to the court coordinator

Via email: [ADWierzbicki@tarrantcountytexas.gov](mailto:ADWierzbicki@tarrantcountytexas.gov)

**Morgan Michelle Myers**

Real Party in Interest

VIA the EFM at:

[MORGANMW02@GMAIL.COM](mailto:MORGANMW02@GMAIL.COM)

**Cooper L. Carter**

Marx, Altman & Johnson  
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Fort Worth, TX 76116

Via email: [coopercarter@majadmin.com](mailto:coopercarter@majadmin.com)

/s/ Charles Dustin Myers

Charles Dustin Myers,  
Pro Se Relator

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

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

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IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

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Original Proceeding Arising Out of  
the 233<sup>rd</sup> Judicial District Court of Tarrant  
County, Texas

Cause Number 233-765358-25

Hon. Kenneth E. Newell Presiding

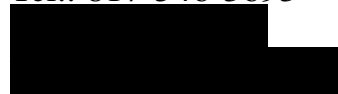
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RELATOR'S APPENDIX

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Respectfully submitted by:

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



AFFIDAVIT VERIFYING RELATOR’S APPENDIX

APP#	NAME
1 .....	ORDER GRANTING CONSOLIDATION (233 <sup>rd</sup> )
2 .....	ORDER GRANTING CONSOLIDATION (322 <sup>nd</sup> )
3 .....	DENIAL PER-CURIAM (No. 02-25-00166-CV)
4 .....	DENIAL PER-CURIAM (No. 02-25-00164-CV)
5 .....	Tex. Fam. Code § 153.002
6 .....	Tex. R. Civ. P. § 174(a)
7 .....	Tex. R. Civ. P. § 680

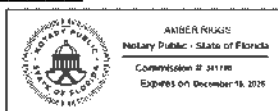
**AFFIDAVIT CERTIFYING RELATOR'S APPENDIX**

BEFORE ME, the undersigned authority, personally appeared **Charles Dustin Myers**, who, being duly sworn by me, stated upon oath as follows:

1. **My name is Charles Dustin Myers.** I am over the age of eighteen, competent to make this affidavit, and I am the Relator in the above-captioned cause. I have personal knowledge of the facts stated herein, and each is true and correct.
2. I am familiar with the documents included in Relator's Appendix submitted in support of the Petition for Writ of Mandamus filed in the Second Court of Appeals at Fort Worth, Texas, arising from cause number 233-765358-25 in the 233rd District Court of Tarrant County, Texas and hereby certify that each of the documents contained in Relator's Appendix is a true and correct copy of the original document under penalty of perjury.
3. The Appendix is submitted in accordance with Texas Rule of Appellate Procedure 52.3(k)(1)(A) and is tendered as a proper record of the matters complained of in the mandamus proceeding.

FURTHER AFFIANT SAYETH NOT.

*Charles Dustin Myers*  
/s/ Charles Dustin Myers  
**Charles Dustin Myers**  
Relator



State of Florida County of  
Bay County

This foregoing instrument was acknowledged before me by means of online notarization, this 04/16/2025 by Charles Dustin Myers.

*Amber Riggs*  
Amber Riggs

Notarized remotely online using communication technology via Proof.

**CERTIFICATE OF SERVICE**

Relator certifies that on April 16, 2025, a true and correct copy of the foregoing Petition for Writ of Mandamus was served on all parties and counsel of record as follows:

**Hon. Kenneth Newell**

District Judge, 233rd District Court  
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Via electronic submission to the court coordinator

Via email: [ADWierzbicki@tarrantcountytexas.gov](mailto:ADWierzbicki@tarrantcountytexas.gov)

**Morgan Michelle Myers**

Real Party in Interest

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/s/ Charles Dustin Myers

Charles Dustin Myers,  
Pro Se Relator



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