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233-765358-25
MOTION TO STRIKE RESPONDENT'S ANSWER AND MOTION TO CONSOLIDATE

03.20.25

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233-765358-25

FILED
TARRANT COUNTY
3/20/2025 9:55 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 233-765358-25

IN THE 233RD DISTRICT COURT OF TARRANT COUNTY, TEXAS

IN RE: M.E.M., ET AL. **CHARLES DUSTIN MYERS, ** Petitioner, **MORGAN MICHELLE MYERS,** Respondent. 2025-03-30	MOTION TO STRIKE RESPONDENT'S ANSWER AND MOTION TO CONSOLIDATE

TO THE HONORABLE 233rd DISTRICT COURT:

Petitioner, CHARLES DUSTIN MYERS, respectfully submits this motion to strike Respondent's answer and motion to consolidate, and in support thereof, would show the court the following:

I. STATEMENT OF FACTS

1. On March 20, 2025, Respondent, MORGAN MICHELLE MYERS, filed an answer entering a general denial for the claims made against her and a motion to consolidate.

2. The response alleges that it was necessary for the Respondent to acquire the services of Cooper L. Carter.

3. The Respondent's answer and motion to consolidate were filed on Cooper Carter's behalf by Roderick D. Marx, a party not named in either this suit or the related divorce suit (322-744263-23).

4. Roderick D. Marx has filed all pleadings on Cooper Carter's behalf because Cooper Carter's electronic filing manager credentials are registered under the law farm Cantey and Hangar, LLP. See Exhibit 1.

5. Respondent's answer and motion to consolidate are an attempt to subvert the relief the children desperately need, and failed to argue as to how these pleadings are in the best interests of the children.

A. Sudden Activity after Months of Delay

6. Respondent's Answer asserts the existence of a prior divorce case (Cause No. 322-744263-23) involving the parties as a basis to delay or abate this Suit Affecting Parent-Child Relationship (SAPCR). However, that divorce case has been stalled for months with no meaningful action by Respondent or her alleged counsel. Respondent's counsel has failed to diligently prosecute the divorce matter, and a dormant case cannot justify stalling this separate SAPCR proceeding. In short, the children's issues should not be put on hold due to an unrelated divorce case that remains inactive.

B. SAPCR Suit Focus (Lack of Child-Related Response)

7. This SAPCR is focused on the welfare and best interests of the children, yet the Respondent's Original Answer is devoid of any substantive response regarding the children. Respondent merely states that the information required under Texas Family Code §§154.181(b) and 154.1815 "will be provided at a later date"and then enters a general denial. No specific

conservatorship, support, or visitation issues are addressed at all. By failing to engage with the core child-related allegations in the Petition, Respondent's Answer is irrelevant to the central issues of this proceeding and provides the Court with nothing of substance on the SAPCR matters.

8. Respondent's Answer claims that it was "necessary for Respondent to secure the services of COOPER L. CARTER, a licensed attorney, to prepare and defend this suit". Yet the pleading was filed under the letterhead of **Marx, Altman & Johnson** (Attorney Roderick D. Marx's firm) and is electronically signed by Cooper L. Carter as "Attorney for Respondent". This inconsistency creates confusion as to who represents Respondent in this case. Texas practice expects clarity in counsel of record (see Tex. R. Civ. P. 8 requiring designation of lead counsel), but here Respondent's Answer sends mixed signals by invoking Mr. Carter's name and services while being filed through Mr. Marx's firm. Such a contradiction in representation is procedurally improper and fails to clearly identify the attorney in charge of Respondent's case.

9. In addition to the above, there are irregularities in the manner Respondent's Answer was filed. Upon information and belief, the Answer was submitted via an Electronic Filing Manager (EFM) account registered to Cooper L. Carter under the law firm **Cantey & Hanger**, which is not the firm appearing on the pleading. In other words, the electronic filing credentials used do not match the law firm or attorney officially listed on the document. This raises serious concerns about the validity of the filing and compliance with Texas e-filing rules (see Tex. R. Civ. P. 21(f)). Filings must be made by the attorney of record under their proper account for transparency and proper notice. Using an EFM account associated with a different firm (Cantey & Hanger) for a pleading filed under Marx, Altman & Johnson's banner is a procedural anomaly that calls into question whether Respondent's Answer was filed in accordance with the required

procedures. Further, the email address COOPERCARTER@MAJADMIN.COM associated with the pleadings filed in this court is ***NOT*** registered under the EFM in which they were filed.

10. **Texas Rule of Civil Procedure 21(f) requires that electronic filings be made through an authorized EFM account corresponding to the attorney of record.** The use of an account registered under one firm (Cantey & Hanger) to file pleadings under a different firm's name (Marx, Altman & Johnson) constitutes a procedural violation, undermining the validity of the filing and raising concerns about whether the attorney of record actually authorized or executed the filing.

11. This discrepancy calls into question the **legitimacy of Respondent's Answer** and warrants immediate review by the Court. Given the attorney filing the document **did not use their own credentials under which the pleading was submitted**, yet claimed her individual services were necessary, renders the filing as **procedurally defective and should be struck from the record** *sua sponte.*

PRAYER FOR RELIEF

12. Petitioner respectfully requests that the Court strike Respondent's Original Answer and motion to consolidate in its entirety *sua sponte*. Petitioner further requests that Respondent be required to refile any answer or responsive pleading in compliance with all applicable procedural rules – including proper attorney-of-record designation and use of correct electronic filing credentials – and to ensure that any such pleading addresses the substantive SAPCR issues regarding the children. Petitioner also prays for such other and further relief, at law or in equity, to which he may be justly entitled.

13. **WHEREFORE, PREMISES CONSIDERED**, Petitioner respectfully requests that the Court strike Respondent's Original Answer and Motion to Consolidate in its entirety as

procedurally deficient. Petitioner further requests that Respondent be required to refile any answer or responsive pleading in compliance with all applicable procedural rules – including proper attorney-of-record designation and use of correct electronic filing credentials – and to ensure that any such pleading addresses the substantive SAPCR issues regarding the children. Petitioner also prays for such other and further relief, at law or in equity, to which he may be justly entitled.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
[redacted]
PRO-SE

M.1962

EXHIBIT 1
Improper EFM registration

M.1962

M.1963

Public Service Contact List

First Name
COOPER

Last Name
CARTER

Email Address

Firm Name

Search

Cooper Carter ccarter@canteyhanger.com

Rows per page: 10 1-1 of 1

M.1963

CERTIFICATE OF SERVICE

Pursuant to Rule 21 of the Texas Rules of Civil Procedure, Respondent, CHARLES DUSTIN MYERS, certifies that this Motion to Strike Respondent's Answer and Motion to Consolidate has been filed with the electronic filing manager and served on the parties of record on this 20th day of March 2025, including:

MORGAN MICHELLE MYERS, RESPONDENT

Via her email registered under the EFM: MORGANMW02@GMAIL.COM

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
[redacted]
PRO-SE

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Envelope ID: 98676933
Filing Code Description: Motion (No Fee)
Filing Description: Motion to Strike
Status as of 3/21/2025 8:47 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	3/20/2025 9:55:21 AM	SENT
CHARLES DMYERS		CHUCKDUSTIN12@GMAIL.COM	3/20/2025 9:55:21 AM	SENT
CHARLES MYERS		chuckdustin12@gmail.com	3/20/2025 9:55:21 AM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	3/20/2025 9:55:21 AM	SENT

M.1966

233-765358-25

EMERGENCY EX-PARTE MOTION TO DECLARE JUDGMENT VOID AB INITIO AND FOR IMMEDIATE RE-ENTRY

03.20.25

M.1966

233-765358-25

FILED
TARRANT COUNTY
3/20/2025 12:18 PM
THOMAS A. WILDER
DISTRICT CLERK

NO. 233-765358-25

IN THE 233RD DISTRICT COURT OF TARRANT COUNTY, TEXAS

IN RE: M.E.M., C.R.M,.
**CHARLES DUSTIN MYERS, **

Petitioner,

Vs.

MORGAN MICHELLE MYERS,

Respondent.

2025-03-20

EMERGENCY EX-PARTE MOTION TO DECLARE JUDGMENT VOID AB INITIO AND FOR IMMEDIATE RE-ENTRY

TO THE HONORABLE JUDGE OF THE 233rd DISTRICT COURT:

1. For the preceding twelve months and fourteen days, Petitioner has been unlawfully Barred from entering his residence and has been cut out of his children's lives. On March 6th, 2024, while walking M.E.M and C.R.M. to school, Respondent unlawfully locked the Petitioner out of the matrimonial home and called the Watauga police department who came to assist in the dispute. When on scene at [redacted], Respondent produced an agreed associate judge's report where consent had been withdrawn and used it as a means to bar the Petitioner's entry to the home. With an emergency hearing date set for March 14th, 2024, the Petitioner took the advice of the officers and stayed with his father temporarily in Flower Mound, Texas to avoid unnecessary conflict.

2. On March 14th, 2024, the Petitioner appeared in person and was served a reduced copy of the orders he was in court to challenge and from which he withdrew his consent from. Despite

this, the orders were rendered anyway, effectively barring the Petitioner from his own home and Children's lives despite his consent not being present at the time of rendition.

3. The orders in question, attached hereto as **EXHIBIT 1**, are facially void and lack legal effect. Despite this, they continue to cause ongoing and irreparable harm, as further detailed below. Accordingly, Petitioner respectfully requests that this Court issue a declaratory judgment formally recognizing the invalidity of these orders which will simultaneously provide long-overdue relief to the children in this matter. In support of this request, the Petitioner shows as follows:

I. STATEMENT OF FACTS

4. On page 1 of the orders, they read as follows: *"The parties have agreed to the terms of this order as evidenced by the signatures below."*

5. On the final page of the orders, the signatures of CHARLES DUSTIN MYERS and his previous attorney, DAN BACALIS, are not present on the document.

6. The Petitioner refused to sign the orders to which he did not consent to on March 14th, 2024.

7. The orders were rendered on March 26th, 2024, as an agreement between the parties despite consent not being present at the time of rendition.

8. The orders are void ab initio and have no legal effect.

II. ARGUMENT

A. An "Agreed" Order Without Actual Consent is Void Ab Initio

9. Texas law is unequivocal that a judgment purporting to rest on an agreement of the parties cannot be rendered or enforced if one of the parties did not genuinely consent at the time of rendition. The consent of all parties at the time the court renders judgment is a prerequisite for

a valid agreed order. As the Texas Supreme Court has stated, **a trial court cannot render a valid agreed judgment absent the consent of the parties at the time it is rendered**, and the agreement can be revoked at any time before judgment is rendered on the agreement. *S & A Restaurant Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex.1995). This is so because a trial court cannot render a valid agreed judgment absent the consent of the parties at the time it is rendered. *Padilla v. LaFrance*, 907 S.W.2d 454, 461 (Tex.1995).

10. In *S&A Restaurant Corp. v. Leal*, the Court reaffirmed that a party may revoke consent to a settlement at any time before judgment is rendered, and if a court nonetheless signs a judgment after consent has been revoked, "a judgment rendered after one party revokes his consent is **void**." This rule reflects a fundamental principle: **true consent** is the linchpin of any agreed order.

11. Here, Petitioner never consented to the order at the time they were entered. Indeed, his missing signature is a prima facie showing of this fact. Under these circumstances, it was **error for the Court to sign the order as an "agreed" judgment**, and the result is that the order is void ab initio. The Texas Supreme Court's decision in *Quintero v. Jim Walter Homes, Inc.*, 654 S.W.2d 442 (Tex. 1983) is directly on point. In *Quintero*, the Court held that when a trial court has knowledge that one party does not consent to a judgment, the court **"should refuse to sanction [the] agreement by making it the judgment of the court."** *Id.* By entering an order in the absence of Petitioner's consent, the agreed judgment in this case was not just voidable—it is **absolutely void from inception**. In legal effect, there never was a valid temporary order at all, because the requisite meeting of the minds was absent.

12. Texas courts of appeals have applied these principles in situations analogous to Petitioner's, particularly in family law cases. For example, in ***In re E.B.*, No. 12-17-00214-CV**

(Tex. App.—Tyler Oct. 18, 2017), the trial court had entered temporary orders incorporating a Rule 11 settlement agreement regarding conservatorship and possession of children. The father, however, had timely revoked his consent to that agreement. The Tyler Court of Appeals held that because the father withdrew consent before judgment, the agreed terms regarding conservatorship and possession were **void**. The appellate court unequivocally stated that the provisions of the temporary orders involving the children "**are void, and the trial court abused its discretion in entering temporary orders based on the [purported] Agreement**." The court conditionally granted mandamus and directed the trial judge to vacate those portions of the temporary order.

B. A Void Judgment is a Nullity and Can Be Challenged or Vacated at Any Time

13. Because the temporary orders were entered without jurisdiction (i.e. without consent jurisdiction conferred by the parties' agreement), the resulting "agreed" order is void. Under Texas law, a void judgment or order has no legal force or effect from the outset. It is "null" ab initio, and any person or court affected by it is entitled to treat it as a nullity. The Texas Supreme Court has explained that a void order is, in effect, no order at all: "[A] void judgment is a legal nullity . . . ." *Alanis v. Barclays Capital Real Estate Inc.*, No. 04-17-00069-CV (Tex. App. Mar. 27, 2017).

14. Such a judgment may be collaterally attacked and set aside at any time, as it is not subject to ordinary procedural bars. **Browning v. Placke**, 698 S.W.2d 362 (Tex. 1985) (per curiam), is instructive on this point. In *Browning*, the Supreme Court recognized that courts of equal jurisdiction have the authority to declare a judgment void when it suffers from a fundamental defect (such as lack of jurisdiction or lack of consent). Here, this is a direct fit with the present situation.

C. Respondent's most recent attempt to subvert the process

15. On March 20th, 2025, Respondent filed an original answer and motion to consolidate through COOPER L. CARTER, which was prepared by RODERICK MARX. These filings are a direct showing of the Respondent's game. She remains silent for months, and then at the first sign of her false narrative being under attack, she unleashes her attorney to file pleadings using the EFM Credentials of another individual not named in the suit – Roderick Marx – to prevent the relief duly entitled to Petitioner.

16. Petitioner reminds this court that Respondent's answer is clearly a boilerplate response template that doesn't even address the core issues raised in the SAPCR. The first lines of the Response claim that Respondent has no driver's license or social security number, which shows the rushed nature of her pleading in an attempt to defend the Respondent's false narrative she has procured through fraud.

17. Petitioner also points out that the Respondent wants to consolidate this matter with the divorce matter that is procedurally defunct, which would not be in the best interests of the children because it would move the matter back to the procedurally stalled case that hasn't bene prosecuted by the same attorney who is requesting consolidation. Such would defeat the entire purpose of this suit, and would cause undue delay and prejudice the children and Petitioner.

D. Request for immediate re-entry.

18. Given the orders in question are facially void, Petitioner requests an immediate notice to be filed and served on the parties of record so that he may return home to his children, residence, and place of business until this matter can be set for a hearing. Petitioner's unlawful exclusion from his residence creates further harm to the children each day it is left unaddressed.

19. Petitioner reiterates that his immediate return is in line with Texas Public Policy, nobody has argued against his relief sought, and this court has the discretion to issue temporary orders and dispense without the necessity of a bond or verified pleading pursuant to TEX. FAM. CODE. 105.001.

20. Preventing a father from accessing his home which is needed for financial stability will continue to cause monetary and emotional damage to the children until resolved.

PRAYER FOR EXPEDITED RELIEF

WHEREFORE, promises considered, Petitioner respectfully request of this court without delay:

1. To declare the orders attached as Exhibit 1 *void ab initio* and issue findings permitting the Petitioner to return home to [redacted] immediately for the orders lacking consent of all parties at the time of rendition and for not bearing the Petitioner's signature.
2. To serve on all parties of record confirmation that the orders are without legal effect.
3. Enforce the Texas Rules of Civil Procedure and prevent Cooper L. Carter from representing the Respondent in this matter until she can conform to electronic filing requirements and strike her pleadings outright.
4. Any further relief that the court deems just and equitable.
5. Given the extraordinary circumstances, set this motion for hearing at the earliest possible time, to be conducted via zoom if possible for judicial efficiency given the Petitioner's financial strain caused by this situation.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
[redacted]
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
PRO-SE

CERTIFICATE OF SERVICE

Pursuant to Rule 21 of the Texas Rules of Civil Procedure, Respondent, CHARLES DUSTIN MYERS, certifies that this EMERGENCY EX-PARTE MOTION TO DECLARE JUDGMENT VOID AB INITIO AND FOR IMMEDIATE RE-ENTRY has been filed with the electronic filing manager and served on the parties of record on this 20th day of March 2025, including:

MORGAN MICHELLE MYERS, RESPONDENT

Via her email registered under the EFM: MORGANMW02@GMAIL.COM

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
[redacted]
PRO-SE

M.1974

Automated Certificate of eService

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Filing Description:
Status as of 3/27/2024 7:40 AM CST

Associated Case Party: MORGANMICHELLEMYERS

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		morganmw02@gmail.com	3/26/2024 3:19:25 PM	SENT
Cooper L.Carter		coopercarter@majadmin.com	3/26/2024 3:19:25 PM	SENT

Associated Case Party: CHARLESDUSTINMYERS

Name	BarNumber	Email	TimestampSubmitted	Status
Daniel Bacalis		service@dbacalis.com	3/26/2024 3:19:25 PM	SENT
Tammy L.Johnson		tjohnson@dbacalis.com	3/26/2024 3:19:25 PM	SENT
Daniel R.Bacalis		dbacalis@dbacalis.com	3/26/2024 3:19:25 PM	SENT
CHARLES MYERS		chuckdustin12@gmail.com	3/26/2024 3:19:25 PM	SENT

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322-744263-23

COMPREHENSIVE LEGAL ANALYSIS IN SUPPORT OF DISMISSAL

04.04.25

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322-744263-23

FILED
TARRANT COUNTY
4/4/2025 9:12 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 322-744263-23

IN THE 322nd DISTRICT COURT OF TARRANT COUNTY, TEXAS

ITMOMO *(AITIO M.E.M., C.R.M., two children)* **MORGAN MICHELLE MYERS** Petitioner, **CHARLES DUSTIN MYERS,** Respondent. 2025-04-04	RESPONDENT'S COMPREHENSIVE LEGAL ANALYSIS IN FAVOR OF DISMISSAL

TO THE HONORABLE JUDGE OF THE 322ND DISTRICT COURT OF TARRANT COUNTY:

EXECUTIVE SUMMARY

This legal analysis examines the case of Charles Dustin Myers ("Respondent") against Morgan Michelle Myers ("Petitioner") and her attorney Cooper L. Carter. Based on thorough research of Texas law and the facts presented, there are multiple compelling legal grounds supporting the Respondent's entitlement to relief for his children and establishing attorney misconduct by Ms. Carter. This summary was prepared by CHARLES DUSTIN MYERS, who is of sound mind and attests to the validity of all claims, accusations, and statements herein as true to the best of his knowledge under penalty of perjury.

The analysis concludes that:

1. The divorce case should be dismissed for want of prosecution due to Petitioner's failure to advance the case for nearly a year
2. The current orders are void due to lack of consent and improper adoption by the referring court
3. The 322nd District Court never acquired continuing exclusive jurisdiction over the children
4. The new SAPCR was properly filed as an original proceeding and should not be consolidated, especially considering no motion to transfer has been filed.
5. Ms. Carter's pleadings should be stricken due to her failure to respond to a Rule 12 challenge
6. The children's best interests require immediate relief without further procedural delays

I. FACTUAL BACKGROUND

A. Procedural History

1. December 18, 2023: Divorce case filed in 322nd District Court with 60-day waiver.
2. February 6, 2024: Respondent filed emergency motion challenging basis for agreement.
3. March 14, 2024: Respondent’s motion was denied, basis for agreement became temporary orders.
4. April 8, 2024: Respondent sought relief in the Second Court of Appeals via Mandamus.
5. April 10, 2025: Respondent was denied mandamus, he moved for rehearing.

6. April 24, 2024: Cooper L. Carter filed Motion for Pre-Trial Conference.
7. May 13, 2024: Second Court of Appeals denied rehearing, Respondent appealed to the Texas Supreme Court.
8. June 2024: Texas Attorney General attempted to intervene.
9. September 2024: Supreme Court of Texas denied relief.
10. September 17, 2024: Respondent served a request for discovery and admissions on Petitioner .
11. September 20, 2024: Respondent filed Rule 12 motion challenging Carter's authority.
12. October 7, 2024: Respondent moved to recuse judges after the case continued to stall and un-opposed emergency relief remained unadjudicated.
13. November 7, 2024: Recusal denied.
14. December 4, 2024: Respondent removed case to Northern District of Texas.
15. December 6, 2024: Case remanded to state court, placing the obligation of Rule 237a of the Texas Rules of Civil Procedure on COOPER L. CARTER, which remains unsatisfied.
16. March 2025: Respondent filed new SAPCR in 233rd District Court seeking emergency relief for the children.
17. March 28, 2025: Respondent appeared for TRO hearing that was not heard due Cooper Carter’s improper interference.
18. April 2, 2025: Respondent pre-objected to consolidation.

19. April 4, 2025: Cooper L. Carter attempting to present consolidation motion without any reference to the objection, EX-PARTE, and without conferring with Respondent .

B. Harm to Children

1. Children subjected to psychological manipulation and medical neglect by Petitioner
2. Children left home alone at night without supervision
3. Children removed from Respondent's care and placed with elderly great-grandparents
4. Children being gaslighted by Petitioner into false belief that divorce is finalized
5. Eldest child's academic performance has plummeted
6. Children emotionally estranged from both parents
7. Respondent unlawfully locked out of family home on March 6, 2024
8. Respondent prevented from accessing home and caring for children
9. Respondent’s business has been significantly damaged due to Petitioner’s deception and the children’s financial future has been crippled

C. Attorney Misconduct

1. Cooper L. Carter has failed to prosecute the case since April 24, 2024.
2. No substantive action has been taken for approximately 11 months.
3. Failed to respond to discovery requests, resulting in deemed admissions.
4. Failed to comply with Rule 237a after federal remand.
5. Failed to respond to Rule 12 challenge to authority.

6. Several exhibits have been provided, conclusively establishing the claims herein without response.

7. Has not communicated or responded in any manner throughout the litigation.

8. E-filing account registered under prior employer's email address.

9. Not properly registered for e-filing notifications.

10. Has an individual not named in the suit file pleadings on her behalf.

11. Claims to have been retained in her individual capacity yet there are multiple people claiming to represent Petitioner in this matter.

12. Lacks current working phone number or email on file with State Bar.

13. Reappeared only to block emergency relief in new proceedings in violation of Due Process.

14. Never filed substantive response to any of Respondent's claims and continues to ask favors from the bench.

II. LEGAL ANALYSIS

A. Dismissal for Want of Prosecution

Legal Framework

1. Texas courts have authority to dismiss cases for want of prosecution under both Texas Rule of Civil Procedure 165a and the court's inherent power to manage its docket. The Texas Supreme Court recognized both bases for dismissal in *Villarreal v. San Antonio Truck & Equipment*, 994 S.W.2d 628 (Tex. 1999).

2. A party seeking affirmative relief has a duty to prosecute the case with due diligence. As stated in *In re Conner*, 458 S.W.3d 532 (Tex. 2015), "[t]he issue here is whether a trial court abuses its discretion by refusing to grant a motion to dismiss for want of prosecution in the face of unmitigated and unexplained delay. We hold that it does." *Id.*

3. In family law specifically, *In re Marriage of Buster*, 115 S.W.3d 141 (Tex. App.—Texarkana 2003) emphasized the importance of moving family law cases toward resolution and upheld dismissal after extended inactivity.

Application to Current Case

4. The facts strongly support dismissal for want of prosecution:

i. The divorce case has been pending for over 16 months

ii. Petitioner's attorney has failed to prosecute the case since April 24, 2024

iii. No substantive action taken for approximately 11 months

iv. No responses to discovery, no substantive pleadings, no trial settings

v. The only recent action was filing a Motion to Consolidate to block emergency relief

5. This extended inactivity is precisely the type of conduct that Texas courts have consistently held, which justifies dismissal for want of prosecution. The court should dismiss the dormant divorce case and allow the new SAPCR to proceed independently to address the children's urgent needs.

B. Void Orders Due to Lack of Consent

Legal Framework

6. The Texas Supreme Court established in *Burnaman v. Heaton*, 240 S.W.2d 288, 291 (Tex. 1951) that: "A valid consent judgment cannot be rendered by a court when consent of one of the parties 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."

7. The Court further held: "When a trial court has knowledge that one of the parties to a suit does not consent to a judgment, it is error to render a judgment purportedly by agreement; such a judgment is a nullity."

8. This principle was reaffirmed in *Padilla v. LaFrance*, 907 S.W.2d 454 (Tex. 1995), which confirmed that a trial court cannot render an agreed judgment after a party has withdrawn consent to a settlement.

Application to Current Case

9. The orders in this case are void under *Burnaman* and its progeny because:

i. The orders claim consent of all parties but only bear signatures of the Petitioner and counsel

ii. Respondent contends he never gave consent to the orders

iii. Respondent actively opposed the terms that locked him out of his home and separated him from the children

iv. The court was aware of the dispute regarding consent (Respondent filed an emergency motion challenging the basis for agreement)

10. Under Texas law, if Respondent did not consent to the orders at the time they were rendered, they are void ab initio. The court should declare these orders void and vacate them.

C. Associate Judge's Orders Never Properly Adopted

Legal Framework

11. Texas Family Code § 201.013(b) explicitly states: "Except as provided by Section 201.007 (Powers of Associate Judge), if a request for a de novo hearing before the referring court is not timely filed, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court **only on the referring court's signing the proposed order or judgment**."

12. This requirement is mandatory, not discretionary. Without the District Judge's signature, the Associate Judge's order remains merely a "proposed" order.

Application to Current Case

13. The orders in this case were issued by an Associate Judge but allegedly never properly adopted or signed by the referring District Court. Under Texas Family Code § 201.013(b), these orders never achieved the status of a final judgment of the court and have no legal effect as final orders.

14. This defect alone would be sufficient to challenge their validity, even without the consent issues. The court should declare these orders void or vacate them due to the lack of proper adoption by the referring court.

D. No Continuing Exclusive Jurisdiction (CEJ)

Legal Framework

15. Texas Family Code § 155.001(a) provides: "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."

16. Critically, § 155.001(d) states: "Unless a final order has been rendered by a court of continuing, exclusive jurisdiction, a subsequent suit shall be commenced as an original proceeding."

17. In *In re Burk*, 252 S.W.3d 736 (Tex. App.—Houston [14th Dist.] 2008), the court held that CEJ is established only upon rendition of a final order, and temporary orders do not establish CEJ.

Application to Current Case

18. No final order was ever rendered in the divorce case because:

i. The Associate Judge's orders were never properly signed by the referring District Court Judge (per § 201.013(b))

ii. The orders were void due to lack of consent (per *Burnaman v. Heaton*)

19. Without a final order, the 322nd District Court never acquired CEJ over the children. Therefore, under § 155.001(d), the Respondent's new SAPCR was properly "commenced as an original proceeding" in the 233rd District Court.

20. The motion to consolidate should be denied because the 322nd District Court does not have dominant jurisdiction over the children.

E. Exceptions to Dominant Jurisdiction

Legal Framework

21. Generally, when two suits involving the same subject matter are pending in different courts of equal jurisdiction, the court in which the suit was first filed has dominant jurisdiction. However, the Texas Supreme Court in *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 247 (Tex. 1988) recognized three exceptions to this rule:

i. Conduct by a party that estops them from asserting prior active jurisdiction

ii. Lack of persons to be joined if feasible

iii. Lack of intent to prosecute the first lawsuit

Application to Current Case

22. Even if the 322nd District Court had dominant jurisdiction (which it does not due to lack of CEJ), at least two exceptions to the first-filed rule apply:

Estoppel by Conduct:

i. Petitioner allowed the case to become completely dormant

ii. Failed to comply with Rule 237a's notice requirements after federal remand

iii. Effectively concealed the revival of the state case

iv. Represented through inaction that she had abandoned the case

Lack of Intent to Prosecute:

i. For nearly a year, Petitioner took no action to advance the divorce

ii. No discovery, no responses, no settings

iii. Only "revived" the divorce case as a strategic ploy to derail Respondent's emergency action

23. The 233rd District Court is the appropriate forum to hear the current disputes because that case was initiated specifically to address the children's urgent needs, free from the entanglements of the stalled divorce.

F. Attorney Misconduct - Rule 12 Challenge

Legal Framework

24. Texas Rule of Civil Procedure 12 provides that a party may file a sworn motion stating that they believe a suit is being prosecuted or defended without authority. The challenged attorney bears the burden of proving authority to act. If the attorney fails to show authority, the court "shall refuse to permit the attorney to appear in the cause and shall strike the pleadings if no person who is authorized to prosecute or defend appears."

25. These consequences are mandatory, not discretionary. The court has no choice but to bar the attorney and strike the pleadings upon failure to show authority.

Application to Current Case

26. Respondent filed a verified Rule 12 motion on September 20, 2024, challenging Cooper L. Carter's authority. Ms. Carter has not responded to this challenge for over 6 months. Additional facts supporting the Rule 12 challenge include:

i. Ms. Carter's e-filing account is registered under her prior employer's email address

ii. Ms. Carter has not meaningfully corresponded with Respondent during the litigation

iii. Ms. Carter is unreachable by phone or email

iv. Ms. Carter lacks a current working phone number or email on file with the State Bar

v. Ms. Carter has not produced any client authority or engagement agreement in 14 months

27. Under Rule 12, Ms. Carter's failure to respond to the challenge requires the court to refuse to permit her to appear in the case and strike all pleadings filed by her, including the Motion to Consolidate.

G. Additional Attorney Misconduct

Discovery Violations

28. Ms. Carter failed to respond to Requests for Admissions served on September 17, 2024, resulting in deemed admissions under Texas Rule of Civil Procedure 198. She made no effort to withdraw or amend these deemed admissions, effectively conceding critical facts against her client.

29. This constitutes a violation of her duties under Rules 193.2 and 193.5 to timely respond or amend discovery responses.

Rule 237a Violations

30. After federal remand on December 6, 2024, Ms. Carter failed to:

i. File the required certified copy of the remand order with the clerk

ii. Provide Respondent with mandatory written notice of the remand

31. This procedural violation prevents the case from moving forward properly and further demonstrates Ms. Carter's neglect of basic procedural duties.

Abuse of Process

31. Ms. Carter's sudden reappearance after nearly a year of inactivity solely to block emergency relief suggests improper purpose. Filing a Motion to Consolidate without addressing substantive issues appears designed to delay resolution rather than advance the case.

This conduct violates:

i. Rule 13 of Texas Rules of Civil Procedure (forbidding groundless filings brought in bad faith)

ii. Texas Disciplinary Rule 3.02 (prohibiting positions that unreasonably delay resolution)

H. Children's Best Interests

Legal Framework

32. Texas Family Code § 153.002 establishes: "The best interest of the child shall be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child."

This paramount standard must guide all decisions in cases involving children.

Application to Current Case

33. The children in this case are suffering ongoing harm:

i. Subjected to psychological manipulation and medical neglect

ii. Left home alone at night without supervision

iii. Removed from Respondent's care and placed with elderly great-grandparents

iv. Eldest child's academic performance has plummeted

v. Emotionally estranged from both parents

34. Every day that passes without corrective action leaves the children in an unstable, harmful environment. Consolidation would reward procedural stonewalling and cause further delay. The children's best interests require prompt resolution, which can only be achieved by denying consolidation, dismissing the dormant divorce case, and allowing the new SAPCR to proceed expeditiously.

III. CONCLUSION AND RELIEF REQUESTED

Based on the comprehensive legal analysis above, there are multiple independent grounds supporting the Respondent's entitlement to relief:

1. The divorce case should be dismissed for want of prosecution under Rule 165a and the court's inherent power.

2. The current orders are void due to lack of consent under *Burnaman v. Heaton.*

3. The Associate Judge's orders were never properly adopted under Texas Family Code § 201.013(b).
4. The 322nd District Court never acquired CEJ under Texas Family Code § 155.001.
5. Exceptions to dominant jurisdiction apply under *Wyatt v. Shaw Plumbing Co.*
6. Ms. Carter's pleadings should be stricken due to her failure to respond to a Rule 12 challenge.
7. Ms. Carter has engaged in multiple instances of misconduct warranting sanctions and referral to the State Bar.
8. The children's best interests require immediate relief without further procedural delays

Therefore, the Respondent is entitled to the following relief:

i. Denial of Petitioner's Motion to Consolidate.

ii. Declaration that the current orders are void and of no legal effect.

iii. Dismissal of the divorce action (Cause No. 322-744263-23) for want of prosecution.

iv. Striking of all pleadings filed by Cooper L. Carter due to her failure to show authority.

v. Permission for the new SAPCR to proceed in the 233rd District Court to address the children's urgent needs.

These remedies are supported by well-established Texas law and are necessary to protect the children's best interests, ensure procedural fairness, and maintain the integrity of the legal process. Without any opposition, the court has every ability to act.

IV. SUPPORTING CASE LAW AND STATUTES

A. Dismissal for Want of Prosecution

- *Villarreal v. San Antonio Truck & Equipment*, 994 S.W.2d 628 (Tex. 1999)
- *In re Conner, 458 S.W.3d 532 (Tex. 2015)*
- *In re Marriage of Buster*, 115 S.W.3d 141 (Tex. App.—Texarkana 2003)
- *Fox v. Wardy*, 234 S.W.3d 30 (Tex. App.—El Paso 2007)
- *Dueitt v. Artripe*, 217 S.W.3d 911 (Tex. App.—Dallas 2007)
- Texas Rule of Civil Procedure 165a

B. Void Orders Due to Lack of Consent

- *Burnaman v. Heaton*, 240 S.W.2d 288 (Tex. 1951)
- *Padilla v. LaFrance*, 907 S.W.2d 454 (Tex. 1995)
- *In the Interest of J.G., a Child* (Texas Fourth Court of Appeals, 2018)
- *St. Raphael Medical Clinic, Inc. v. Mint Medical Physician Staffing, LP* (2007)

C. Associate Judge's Orders

- Texas Family Code § 201.013
- *In re B.B.S.* (Texas Court of Appeals)

D. Continuing Exclusive Jurisdiction

- Texas Family Code § 155.001

- *In re Burk*, 252 S.W.3d 736 (Tex. App.—Houston [14th Dist.] 2008)
- *In re G.R.M.*, 45 S.W.3d 764 (Tex. App.—Fort Worth 2001)
- *In re C.G.*, 495 S.W.3d 40 (Tex. App.—Corpus Christi 2016)

E. Exceptions to Dominant Jurisdiction

- *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245 (Tex. 1988)
- *V.D. Anderson Co. v. Young*, 101 S.W.2d 798 (Tex. 1937)
- *Curtis v. Gibbs*, 511 S.W.2d 263 (Tex. 1974)

F. Attorney Misconduct

- Texas Rule of Civil Procedure 12
- Texas Rule of Civil Procedure 198 (Deemed Admissions)
- Texas Rule of Civil Procedure 237a (Remand Procedure)
- Texas Rule of Civil Procedure 13 (Groundless Pleadings)
- Texas Disciplinary Rule 3.02 (Delay of Litigation)
- *TransAmerica Corp. v. Braes Woods Condo Ass'n*

G. Children's Best Interests

- Texas Family Code § 153.002

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
817-546-3693
CHUCKDUSTIN12@GMAIL.COM
PRO-SE

CERTIFICATE OF SERVICE

Pursuant to Rule 21a of the Texas Rules of Civil Procedure, this request has been served on all parties of record on 04/03/2025 through their electronic filing manager registered email address.

This request has also been served on COOPER L. CARTER via her email COOPERCARTER@MAJADMIN.COM which is not registered with the EFM.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
817-546-3693
CHUCKDUSTIN12@GMAIL.COM
PRO-SE

Automated Certificate of eService

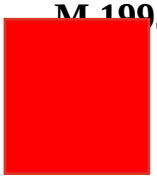
This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service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

Envelope ID: 99277864
Filing Code Description: No Fee Documents
Filing Description: COMPREHENSIVE CASE ANALYSIS IN SUPPORT OF DISMISSAL
Status as of 4/4/2025 2:40 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
CHARLES MYERS		chuckdustin12@gmail.com	4/4/2025 9:12:06 AM	SENT
Cooper L.Carter		coopercarter@majadmin.com	4/4/2025 9:12:06 AM	SENT
HOLLY HAYES		csd-filer-914@texasattorneygeneral.gov	4/4/2025 9:12:06 AM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/4/2025 9:12:06 AM	SENT

M.1995



233-765358-25

PETITIONER'S NOTICE

04.02.25

M.1995

233-765358-25

FILED
TARRANT COUNTY
4/2/2025 9:13 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 233-765358-25

IN THE 233RD DISTRICT COURT OF TARRANT COUNTY, TEXAS

IN RE: M.E.M., ET AL. **CHARLES DUSTIN MYERS, ** Petitioner, **MORGAN MICHELLE MYERS,** Respondent. 2025-04-02	PETITIONER'S NOTICE

TO THE HONORABLE COURT:

Petitioner, CHARLES DUSTIN MYERS, submits this notice to provide a different perspective into the current situation:

I. BEFORE AND AFTER

1. **This side-by-side comparison illustrates the 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.** It presents a clear, fact-based evaluation of how the familial environment, care structure, and overall wellbeing of the children have been significantly impacted. Each point demonstrates a substantial decline in stability, support, and morality—raising urgent concerns about the children's best interests, safety, and development under the current arrangement.

BEFORE **AFTER**

FATHER + MOTHER

• Father works from home / $134k per year	• Father removed from home $12k/ per year
• Mother works part time	• Mother works full time
• Father and Mother share in parenting	• Great grandparents / aunt care for children
• Father and Mother communicate	• Mother refuses to communicate w/ Father
• Father takes girls to dance class	• Mother takes girls out of dance class
• Father helps children with schoolwork	• Neither parent helps with schoolwork
• Father and Mother create a stable home	• Father is removed; Mother is never home

CHILDREN

• Have always at least one parent home	• Neither parent is home most of the time
• Medically cared for	• Medically neglected
• Frequent access to both parents	• Frequent access to neither parent
• Enjoy extracurriculars	• Taken out of extracurriculars
• Enjoy a stable household	• Introduced to chaotic routine
• Enjoy bedtime stories before bed (dad)	• No bedtime stories
• Are walked to school and back (dad)	• Picked up and dropped off by relatives.
• Exceptional in school	• Academic regression (eldest)
• Enjoy daily playtime (dad)	• They are stuck indoors and on screens.
• Enjoy frequent visits with their grandparents	• Grandparents become primary caretaker
• Receive help with schoolwork (dad)	• Attend school longer (tutoring)
• Strong parental guidance	• No parental guidance
• Secure financial future	• Destabilized financial future
• Moral upbringing and family values	• Immoral and damaging conduct (mom)

2. Now, a comparison between the claims initially raised by the parties:

II. INITIAL CLAIMS

MOTHER **FATHER**

• FAMILY VIOLENCE ALLEGATIONS	• FALSE CLAIMS OF VIOLENCE
• FINANCIALLY INDIGENT	• MOTHER CONVERTED $1,576 OF MARITAL ASSETS

• CLAIMS TO HAVE ACTIVE PROTECTIVE ORDER	• CLAIMS NO SUCH PROTECTIVE ORDER EXISTS
• CLAIMS CASE IS UNCONTESTED	• CLAIMS MOTHER IS LYING
• CLAIMS IRRECONCILABLE DIFFERENCES	• CLAIMS MOTHER WAS HAVING AN EXTRAMARITAL AFFAIR
• CLAIMS FATHER DOESN'T NEED HOME TO WORK	• CLAIMS THE HOME IS ESSENTIAL FOR WORK AND CHILDREN
• CLAIMS FEAR OF SAFETY FROM FATHER	• CLAIMS MOTHER FEARS ACCOUNTABILITY
• CLAIMS RESPONSIBILITY FOR MONTHLY FINANCES	• CLAIMS RESPONSIBILITY FOR MONTHLY FINANCES
• CLAIMS FATHER AGREES TO SETTLEMENT	• CLAIMS DURESS AND OPPOSES ANY SETTLEMENT OFFER

III. EVIDENCE EXCHANGED

3. Now, a comparison of the evidence provided to each party to support the initial claims made in the form of exhibits that can be found within the clerk's record, and that the opposing party has had in their possession for multiple months without raising any arguments or opposition:

MOTHER	**FATHER**
	• TXDPS Criminal Record showing no history of family violence.
	• Bank statements and texts showing conversion.
	• Shows contradicting statements on Mother's pleadings
	• Shows pictures of mother cohabiting with father while simultaneously seeking frivolous protective orders
	• Shows extensive financial damage from being barred from the family residence
	• Shows over 16,500 text messages exchanged between two individuals outside of the marriage in a one-year timespan.
	• Show's Mother's Facebook status boasting her one-year anniversary with her new boyfriend while the divorce is ongoing.

	• Shows communications with AIR BNB hosts showcasing the difficulty in working to full capacity outside of the home.
	• Shows photos and videos of the children with father throughout the holidays while mother is planning father's removal.
	• Shows untreated cavities in the youngest child's mouth from medical neglect.
	• Shows declining academic performance from oldest child.
	• Shows communications between himself and mother's grandparents showcasing an ability to put the children before the litigation.
	• Provided a comprehensive parenting plan supporting the children's best interest.
	• Provided video evidence of the children being left alone during the evening.
	• Provided financial receipts for rent payments, utilities, and other financial obligations as primary breadwinner.
	• Provided evidence that Mother is actively disposing of his personal belongings.
	• Provided evidence mother fabricated her claims of family violence and indigent financial status.
	• Provided evidence mother received help in preparing her initial pleadings filed with the court
	• Provided evidence mother is preparing her second wedding prior to finalizing the divorce

IV. MOTIVES

4. Based on the record, it conclusively establishes the motives of each parent regarding the relief sought:

MOTHER	FATHER
• Pursing extramarital affair	• Restore status quo of children / financial stability

V. ACTIONS

5. The motives can be established from the following actions derived from the clerk's record within the pleadings:

MOTHER	FATHER
• Fabricated a narrative of family violence.	• Spent time with the children over the holidays.
• Hired an attorney to defend herself, not represent the children's best interests.	• Hired an attorney to defend his children's best interests and terminated him when he failed.
• Only communicates with her extramarital partner.	• Can only communicate with the children via an online videogame chatroom.
• Convinces the children the divorce is final so her new relationship appears morally justifiable.	• Has relentlessly sought relief to restore the children's status quo.
• Has offered nothing of substance regarding the children.	• Has provided everything to the court regarding the children.
• Asked for sole use of the residency to pursue her new relationship.	• Asked for time to ensure the children are not affected by unnecessary, abrupt changes.
• Lied to the court to remove Father to pursue her new relationship.	• Forced to live in alternative housing during the pendency of the case, business income destroyed.

• Lied to the court and falsified her indigency, then sticks Father with the car payments she claimed to pay for.	• Financial strain leads to one of the vehicles being repossessed, credit score plummets.
• Sat dormant for months only to block emergency relief in a separate SAPCR suit.	• Opened a separate SAPCR suit to escape the procedurally defunct divorce to obtain relief for the children.

6. All the above can be established through the numerous exhibits that have been provided to the opposing side. After nearly twelve months of silence, there has been no objection, argument, opposition, or response offered for the exhibits given. More critically, there has been no response, opposition, or argument offered regarding the relief being sought from the Petitioner, which is simply to return to the residence that he was unlawfully removed from so that he can begin rebuilding the status quo of the children. Finally, we compare the benefits versus the detriments if granting relief to Petitioner:

VI. BENEFITS VERSUS DETRIMENTS OF GRANTING RELIEF

BENEFITS	**DETRIMENTS**
• Children will have a parent active in their daily life as opposed to none.	• The respondent will have to choose between her extramarital relationship or working towards the divorce.

• Children will have help with homework from home and help preparing for STAR Testing.	• The respondent will have to choose between co-habitation or reside in an alternate residence near-by.
• Children will have frequent and continuous access to both parents.	
• Financial damages can be repaired.	

VII. CONCLUSION

This situation is destructive, and truly a one-sided case. Respondent's prolonged silence, in fact, says everything. Without any arguments or opposition on record, it begs the question as to how this situation has been permitted to persist as long as it has. The only drawbacks of granting relief fall on the Respondent – and are minor inconveniences at best that can never outweigh the benefits that the children would reap if relief were to be granted. All the Petitioner asked for in the beginning was time. Now, time has been wasted, and we remain in the same spot. The point is – the Mother cannot just fabricate family violence to have Father removed from the home – especially when she knew and benefitted from his at-home business operations which have since been significantly damaged. Despite all the harm done, the Petitioner is confident that it can be repaired, the family can get back on track, and this process can be finalized without sacrificing the stability and well-being of the children that they have been accustomed to throughout their lives.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
817-546-3693
CHUCKDUSTIN12@GMAIL.COM

CERTIFICATE OF SERVICE

Petitioner certifies that pursuant to Rule 21a of the Texas Rules of Civil Procedure, this Notice of Comparison was served on all parties of record through their electronical filing manager email, including:

MORGAN MICHELLE MYERS (Respondent)

MORGANMW02@GMAIL.COM

This notice was also served on the following parties:

COOPERCARTER@MAJADMIN.COM

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
817-546-3693
CHUCKDUSTIN12@GMAIL.COM

Automated Certificate of eService

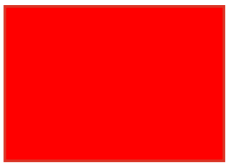
This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service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

Envelope ID: 99168475
Filing Code Description: Notice
Filing Description: Petitioner's Notice
Status as of 4/2/2025 3:00 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/2/2025 9:13:17 AM	SENT
CHARLES DMYERS		CHUCKDUSTIN12@GMAIL.COM	4/2/2025 9:13:17 AM	SENT
CHARLES MYERS		chuckdustin12@gmail.com	4/2/2025 9:13:17 AM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/2/2025 9:13:17 AM	SENT

M.2005



322744263-23

RESPONDENT'S NOTCE OF INTENT TO FILE PROHIBITION

04.07.25

M.2005

322-744263-23

FILED
TARRANT COUNTY
4/7/2025 1:57 PM
THOMAS A. WILDER
DISTRICT CLERK

NO. 322-744263-23

IN THE 322nd DISTRICT COURT OF TARRANT COUNTY, TEXAS

ITMOMO *(AITIO M.E.M., C.R.M., two children)* **MORGAN MICHELLE MYERS** Petitioner, **CHARLES DUSTIN MYERS,** Respondent. 2025-04-07	RESPONDENT'S NOTICE OF INTENT TO SEEK AN EXTRAORDINARY WRIT OF PROHIBITION

TO THE HONORABLE JAMES MUNFORD:

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

I. INTRODUCTION

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

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

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

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

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

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

II. LEGAL FRAMEWORK

A. Writ of Prohibition

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

Key characteristics of a writ of prohibition include:

1. **Limited Purpose Remedy**: A writ of prohibition is used to protect the subject matter of an appeal or to prohibit unlawful interference with enforcement of a superior court's judgment (*Sivley v. Sivley*, 972 S.W.2d 850, 863, Tex. App.—Tyler 1998).

2. **Preventive Nature**: The writ is designed to prevent future actions, not to remedy acts already completed. It can only be used to prevent what is about to be or could be done, not as a remedy for acts that are already completed (United States v. Hoffman, 71 U.S. 158, 1866). Here, Respondent seeks to use this writ as a means to prevent the court from causing further delays by setting opposing counsel’s improper motion to consolidate.

3. **Extraordinary Remedy**: Courts have characterized a writ of prohibition as a "drastic remedy" and the legal equivalent of an equitable injunction (*In re Lewis*, 223 S.W.3d 756, 761, Tex. App.—Texarkana 2007). This is a drastic circumstance. The Respondent has

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

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

III. STATEMENT OF FACTS

5. On January 24, 2025, after more than 11 months of inaction, Petitioner filed a Motion to Dismiss for Want of Prosecution in this court. The divorce case has had no substantive action from Petitioner since April 2024, a legal ghost ship drifting without direction or purpose. That motion wasn't attempted to be set for hearing until **September of 2024,** only after the Respondent exhausted all efforts seeking relief throughout the Texas Judiciary without any participation from the opposing side.

6. On March 19, 2025, driven by mounting concerns about the children's welfare and learning that the 322nd District Court did not have continuous, exclusive jurisdiction over the children in this matter, Petitioner filed a new SAPCR in the 233rd District Court (Cause No. 233-765358-25) seeking emergency relief for the children. The very next day, March 20, 2025, Ms. Carter suddenly reappeared like a character presumed missing in the second act, filing an answer to the SAPCR petition in this Court and thereby submitting to this Court's jurisdiction by filing a response rather than a motion to abate.

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

8. On March 25, 2025, Respondent filed an Objection to Consolidation and an Ex-Parte Emergency Motion for TRO in the 233rd. Two days later, on March 27, 2025, Respondent contacted the court coordinator, requested a date and time to present the motion, and served the documents to the opposing party with the intent to present on March 28, 2025, at 9:00 A.M. before the Associate Judge of this Court. On that fateful morning of March 28, 2025, Respondent drove to the courthouse, paid for parking, met with the coordinator, communicated with opposing counsel, and secured a hearing date of April 10, 2025 agreed by the parties. Respondent then proceeded to the Associate Judge's courtroom to present the TRO.

9. Before Respondent could present his case—before he could speak a single word about his children's welfare—he was told that Ms. Carter would be filing a motion to consolidate in the 322nd District Court, that his motion was improperly before the 233rd court, and the Associate Judge refused to hear the motion. It was a curious thing, this refusal. Ms. Carter wasn't even present in the courtroom, yet her words carried more weight than Respondent's physical presence, his properly filed papers, and most importantly, the urgent needs of his children. She stopped the proceedings with nothing more than word of mouth for the incorrect motion. A true showcasing of disregard for the process, and the children.

10. On April 2, 2025, Respondent filed a Pre-Objection to Motion to Consolidate in the 322nd District Court. Ms. Carter's motion to consolidate wasn't filed with the 322nd District Court until April 3, 2025, six days after she used its mere possibility to prevent the 233rd Court

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

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

12. Throughout this period of procedural maneuvering, the children have been subjected to psychological manipulation and medical neglect. They have been removed from Petitioner's care and placed with elderly great-grandparents on a daily basis, and are being gaslighted into a false belief that the divorce is finalized. Respondent's eldest child's academic performance has plummeted, and both children have become emotionally estranged from both parents. Respondent has suffered approximately $110,500 in verifiable financial damages due to being locked out of his home and business, and it grows each day. But the financial toll pales in comparison to the emotional cost of watching Respondent's children suffer while the courts exchange procedurally incorrect volleys over his head.

IV. THE PROHIBITION PREDICAMENT

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

A. The Procedural Parade Must Follow Its Proper Order

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

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

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

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

B. The Discretion Dilemma

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

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

C. Opposing Counsel's Conduct

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

20. She abandoned the divorce case for nearly a year, filing nothing since April 2024, only to suddenly reappear when Respondent sought emergency relief for the children—like a firefighter who ignores a smoldering house for months, only to rush in when someone else calls for help.

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

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

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

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

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

V. MORAL FIBER

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

27. It has been stated that the true measure of a society is found in how it treats its most vulnerable members. By that measure, the procedural labyrinth that has prevented the 233rd Court from hearing Respondent’s emergency motion, and now threatens to compound the error by having this Court act prematurely, speaks volumes about how far we have strayed from the ideal of justice.

28. Respondent provide this notice not out of anger or vindictiveness, but out of that quiet, bewildered astonishment that settles in a person's bones when they've witnessed the law being twisted into shapes that would make a carnival contortionist blush with envy. Respondent followed the rules. He honored the procedures. He placed his faith in a system that promised justice would flow like water, clear and unobstructed, to those who seek it properly.

29. Behind every case number, behind every filing, behind every procedural rule, there are real children with real lives that continue whether the courts act or not. Time doesn't stop for them while adults sort out procedural disagreements. They grow, they hurt, they form memories and impressions that will shape them for a lifetime.

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

VI. CONCLUSION AND PRAYER

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

a. Recognize that it lacks jurisdiction to hear a motion to consolidate until a motion to transfer has been filed in the 233rd Court and granted;

b. Take judicial notice that Petitioner submitted to the 233rd Court's jurisdiction by answering the SAPCR petition;

c. Acknowledge the improper procedural sequence attempted by Petitioner's counsel in filing a motion to consolidate without first filing a motion to transfer;

d. Consider that proceeding with a hearing on the consolidation motion would only compound the procedural irregularities and further delay relief for the children;

e. Recognize that the 233rd Court has the power and jurisdiction to address the emergency concerns raised in my TRO motion, which remains unopposed on the record.

f. Using the court's own inherent power, dismiss the divorce outright for failure to prosecute given the circumstances of this case.

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

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

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

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
PRO-SE

CERTIFICATE OF SERVICE

Respondent, CHARLES DUSTIN MYERS, certifies that, pursuant to Rule 21a of the Texas Rules of Civil Procedure that:

A copy of this NOTICE has been served to MORGAN MICHELLE MYERS through her EFM registered under MORGANMW02@GMAIL.COM

A copy of this NOTICE has been provided to COOPER L. CARTER through her email COOPERCARTER@MAJADMIN.COM

A copy of this NOTICE has been served to HOLLY HAYES through her EFM registered email address: CSD-FILER914@TEXAS.OAG.GOV

Served on: 04/07/2025

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
817-546-3693
CHUCKDUSTIN12@GMAIL.COM
PRO-SE

Automated Certificate of eService

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Envelope ID: 99359862
Filing Code Description: Notice
Filing Description: Notice of Intent to Seek Writ of Prohibition
Status as of 4/7/2025 4:31 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
CHARLES MYERS		chuckdustin12@gmail.com	4/7/2025 1:57:58 PM	SENT
Cooper L.Carter		coopercarter@majadmin.com	4/7/2025 1:57:58 PM	SENT
HOLLY HAYES		csd-filer-914@texasattorneygeneral.gov	4/7/2025 1:57:58 PM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/7/2025 1:57:58 PM	SENT

M.2019

322-744263-23

RESPONDENT'S NOTICE OF NEW INFORMATION

04.04.25

M.2019

322-744263-23

FILED
TARRANT COUNTY
4/4/2025 11:58 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 322-744263-23

IN THE 322nd DISTRICT COURT OF TARRANT COUNTY, TEXAS

ITMOMO *(AITIO M.E.M., C.R.M., two children)* **MORGAN MICHELLE MYERS** Petitioner, **CHARLES DUSTIN MYERS,** Respondent. 2025-04-04	RESPONDENT'S NOTICE OF NEW INFORMATION

TO THE HONORABLE COURT:

Respondent, CHARLES DUSTIN MYERS, submits this notice of new information, and reiterates the absurdity of this case through the following facts conclusively established by the record:

1. There has been no effort by the opposing party to prosecute this matter since April 24, 2024.
2. There is conclusive evidence supporting this suit was brought in bad faith by MORGAN MICHELLE MYERS, Petitioner
3. There is conclusive evidence supporting this suit has been litigated in bad faith by COOPER L. CARTER.
4. There are no valid orders in effect which has been the case for the cases' entirety.

5. The current orders, despite bearing the Associate Judge's signature, are *void* **and of no legal effect**.
6. The Respondent has suffered now over $110,500 in verifiable damages due to being unlawfully locked out of his residence on March 6, 2024.
7. The Respondent cannot find alternative housing while being barred from being able to work.
8. The Petitioner knows this to be true but instead sabotaged the Respondent's ability to provide for the children for the purpose of pursuing an extramarital relationship that began prior to the commencement of these proceedings.
9. The Petitioner is now ***ENGAGED*** to ***DAMEN KAZLAUSKAS,*** who proposed to Petitioner in the presence of the children.
10. There is no child support set up for the children.
11. Petitioner continues to dispose of Respondent's personal belongings.
12. Despite her authority being in question, and despite her failure to prosecute, COOPER L. CARTER unilaterally interrupted emergency proceedings on March 28, 2025, claiming that the case would be consolidated the following week without being present in the courtroom.
13. The 233rd district court blatantly denied the Respondent due process in the face of COOPER L. CARTER's false promise.
14. COOPER L. CARTER doesn't know the law, because you cannot consolidate a SAPCR with a divorce matter unless the suit is transferred according to the TEXAS FAMILY CODE.

15. The court, at this point, is choosing to not grant relief despite having no reason to do so.
16. This litigation has no possible means to an end, and it should be dismissed outright so that the SAPCR may continue.
17. There has been no filed opposition, objection, or arguments made against the Respondent's position in ***either suit.***
18. The Petitioner has wasted everyone's time, caused significant damage, and remains hidden in fear of being held accountable.
19. The Petitioner prioritized an extramarital affair over prosecuting the divorce, and the children and Respondent have been significantly harmed.

Therefore, this case should be dismissed as a matter of law. Every day causes more irreparable harm, and this court has every ability and reason to rectify this situation immediately. Respondent already has the solution and has been the only party in this matter seeking relief. It is simply unacceptable to permit this to continue.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
PRO-SE

CERTIFICATE OF SERVICE

Respondent, CHARLES DUSTIN MYERS, certifies that, pursuant to Rule 21a of the Texas Rules of Civil Procedure that:

A copy of this NOTICE has been served to MORGAN MICHELLE MYERS through her EFM registered under MORGANMW02@GMAIL.COM

A copy of this NOTICE has been provided to COOPER L. CARTER through her email COOPERCARTER@MAJADMIN.COM

A copy of this NOTICE has been served to HOLLY HAYES through her EFM registered email address: CSD-FILER914@TEXAS.OAG.GOV

Served on: 04/04/2025

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
817-546-3693
CHUCKDUSTIN12@GMAIL.COM
PRO-SE

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Filing Description: Notice
Status as of 4/4/2025 3:32 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
CHARLES MYERS		chuckdustin12@gmail.com	4/4/2025 11:58:22 AM	SENT
Cooper L.Carter		coopercarter@majadmin.com	4/4/2025 11:58:22 AM	SENT
HOLLY HAYES		csd-filer-914@texasattorneygeneral.gov	4/4/2025 11:58:22 AM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/4/2025 11:58:22 AM	SENT

M.2025

02-25-00164-CV

MANDAMUS

04.10.25

M.2025

M.2026

No.02-25-00164-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

On Petition for Writ of Mandamus

to the 233rd Judicial District Court, Tarrant County

Cause Number 233-765358-25

Hon. Kate Stone Presiding

PETITION FOR WRIT OF MANDAMUS

Respectfully submitted by:

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

Emergency Relief Requested

Identity of Parties and Counsel

Relator

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

Respondent

Hon. Kate Stone
Associate Judge of the 233rd District Court,
Tarrant County, Texas
200 E. Weatherford St. 5th Floor
Fort Worth, TX 76196-0227
adwierzbicki@tarrantcountytx.gov
817-884-1197

Real Party in Interest

Morgan Michelle Myers
[redacted]
Morganmw02@gmail.com
817-235-5189

Counsel for Real Party in Interest

Cooper L. Carter
Marx, Altman & Johnson
2905 Lackland Road
Fort Worth, TX 76116;
(817) 926-6211
coopercarter@majadmin.com

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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., in which Relator filed an emergency ex parte application for temporary restraining order ("TRO") in the 233rd District Court of Tarrant County, Texas. The underlying SAPCR (Cause No. 233-765358-25) was a new proceeding initiated by Relator on March 19, 2025, and was answered on March 20, 2025. There is a related divorce matter (322-744263-23) that has not been prosecuted since April 24, 2024, and no final orders have been rendered. Relator seeks declaratory and injunctive relief preventing the Real Party in Interest from barring Relator's from accessing his home, business, and children until valid orders are rendered that reflect the children's best interests.

Respondent Judge: The Respondent Judge, Kate Stone, is the presiding Associate Judge of the 233rd District Court of Tarrant County, Texas. Her office is located at 200 E. Weatherford St. 5th Floor Fort Worth, TX 76196-0227.

Respondent's Challenged Actions and inaction: The trial court refused to hear an emergency motion before it on March 28, 2025, and used out-of-court statements made by the opposing counsel regarding a *forward looking* consolidation motion that *would be filed* at a later date, and denied to hear the motion after a full hearing date was agreed upon by both parties for April 10, 2025.

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 associate judges within its district. **See** Tex. Gov't Code § 22.221(c) as amended by H.B. No. 1480. Respondent is the Associate 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.

Issues Presented

B. Are the March 14, 2024, temporary orders rendered by an Associate Judge *void ab initio* because they explicitly state that all parties agree to the terms of the order yet only contain the signatures of the opposing party and were never properly adopted by the referring court?

C. Did the Respondent abuse her discretion by failing to perform a clear ministerial duty when she refused to consider and rule on Relator's properly filed ex parte emergency Application for TRO?

D. Did the Respondent further abuse her discretion un-setting the matter for a hearing, and favoring a forward-looking consolidation motion as the grounds for denying to hear the emergency TRO before a transfer was filed?

E. The Relator has been left without an adequate remedy for an appeal because no order resulted from the Respondent judge’s refusal to act on Relator’s emergency TRO.

F. Did the Respondent clearly abuse her discretion by excluding any exhibits related to the emergency TRO?

Statement of Facts

"*MR*" in this section refers to the mandamus record.

"*APP*" refers to the relator's appendix.

"*SUPP*" refers to the supplemental appendix filed concurrently with this petition.

1. On March 14, 2024, temporary orders were rendered as an agreed judgement despite the consent of all parties not being present at the time of rendition. ***APP 2***
2. The temporary orders claim that all parties consent to the terms of the orders. ***APP 2.1***
3. The temporary orders are missing the Relator's signature because he did not consent to the orders. ***APP 2.38***
4. On March 19, 2025, Relator opened an original SAPCR in the 233rd district court to seek relief from ongoing damage to the status quo and children's livelihood caused by these orders and filed an IFP statement. ***MR 1***
5. On March 20, 2025, the SAPCR was answered, and claimed COOPER L. CARTER had been retained in her individual capacity to represent real party in interest, yet the pleading was filed by a party not named in the suit, RODERICK D. MARX on behalf of COOPER L. CARTER. ***MR 3, MR 3.4***
6. On March 20, 2025, a motion to consolidate was filed by RODERICK D. MARX on behalf of COOPER L. CARTER. ***MR 4, MR 4.3***

7. On March 20, 2025, Relator filed a MOTION TO STRIKE RESPONDENT'S ANSWER AND MOTION TO CONSOLIDATE on the grounds that they were filed by a non-party and vague. ***MR 5***
8. On March 21, 2025, Relator filed a verified RULE 12 MOTION TO SHOW AUTHORITY due to COOPER L. CARTER'S inactivity in the divorce matter for over 11 months and to clear up the ambiguity surrounding RODERICK D. MARX. ***MR 6***
9. COOPER L. CARTER uses RODERICK D. MARX for filing pleadings because her EFM account is registered under her prior employer's email address. ***MR 5.7***
10. On March 24, 2025, Relator filed an EX-PARTE EMERGENCY TRO seeking emergency relief for the minor children in this suit, who have been subjected to psychological manipulation, gaslighting, declining academic performance, and medical neglect. ***MR 7***
11. 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. ***SUPP 2.9***
12. On March 27, 2025, Relator served a copy of the TRO, exhibits, and proposed order to the opposing party, and informed them of the relief being sought. ***SUPP 2.18***

13. On the evening of March 27, 2025, opposing counsel bypassed communicating with Relator and directly contacted the court coordinator informing them of her intent to file a consolidation motion in the 322nd district court. ***SUPP 2.19***
14. On March 28, 2025, the relator drove to court, paid for parking, met with the coordinator, contacted the opposing party and provided available hearing dates. ***SUPP 2.24***
15. When the Relator went before the Respondent Judge to present the emergency TRO, Relator was denied the ability to Present the motion, and no order or ruling was given, and the agreed upon date for April 10, 2025, was un-set by the Respondent judge without hearing the motion. ***SUPP 2.27***
16. On April 1, 2025, Relator filed a PETITIONER'S STATEMENT to document facts Regarding COOPER L. CARTER'S bad faith litigation and to reiterate his legal position. ***MR 8***
17. On April 7, 2025, Relator filed a NOTICE OF INTENT TO FILE MANDAMUS and EMERGENCY STAY with the 233rd District Court.***MR 9***
18. On April 8, 2025, Relator filed a NOTICE OF INCLUSION to include the email correspondence and other relevant materials relevant to this Mandamus petition. ***SUPP 2.1***

19. On April 9, 2025, Relator received a rejection letter regarding the NOTICE OF INCLUSION and was prevented from including the crucial exhibits. ***SUPP 1.1***

20. On April 9, 2025, when contacting the clerk for the reason for the rejection, she stated that “Each court/Judge is different in what they will or will not accept into a case. For our court you can reach out to our coordinator Angie on how to submit those exhibits to the court, but we are unable to accept any exhibits into the case.” ***SUPP 1.1***

ARGUMENT

A. Mandamus Standard

Mandamus relief is not merely appropriate but *imperative* in this case because the trial court's inaction and the continued enforcement of a void order constitute a clear abuse of discretion for which Relator has no adequate remedy at law. The Texas Supreme Court has consistently and unequivocally held that to obtain mandamus relief, a Relator must show (1) the trial court clearly abused its discretion or violated a duty imposed by law, and (2) there is no adequate remedy by appeal. *In re Bass*, 113 S.W.3d 735, 738 (Tex. 2003) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992).

Texas jurisprudence firmly establishes that mandamus will lie to correct a void order, even without a traditional showing of inadequate appellate remedy. As the Supreme Court of Texas definitively stated in *Urbish v. 127th Judicial Dist. Court*, 708 S.W.2d 429, 431 (Tex. 1986) (orig. proceeding), mandamus will issue to correct a void order, i.e., an order the trial court had no power or jurisdiction to render. The Court has further emphasized in *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding) that if an order is void, the Relator need not show he lacks an adequate appellate remedy, and mandamus relief is appropriate. This principle was recently reaffirmed in *In re J.R.*, No. 02-21-00060-CV, 2021 WL 1421440 (Tex. App.—Fort Worth Apr. 15, 2021, orig. proceeding), where the

court explicitly stated: "A trial court abuses its discretion if it enters a void order, and mandamus will issue to remedy the void order regardless of whether the relator has an adequate remedy by appeal."

B. The temporary orders rendered on March 14, 2024, are void ab initio

A fundamental and inviolable principle in Texas jurisprudence is that a judgment based on a settlement requires the consent of both parties at the time it is rendered by the court. The Texas Supreme Court's seminal decision in *Burnaman v. Heaton*, 240 S.W.2d 288, 291 (1951) established the bedrock principle that a party is free to withdraw their consent to a settlement at any time before the judgment is rendered. The Court's language was unambiguous and leaves no room for interpretation: "A valid consent judgment cannot be rendered by a court when consent of one of the parties thereto is wanting. It is not sufficient that a party's consent may at one time have been given; consent must exist at the very moment the court undertakes to make the agreement the judgment of the court." *Id.* This principle has been consistently reaffirmed, as in *Carter v. Carter*, 535 S.W.2d 215 (Tex. Civ. App. 1976), which emphasized that "the law seems to be clear that a consent judgment cannot be rendered by a trial court when consent of one of the parties is lacking, even though that consent may have been previously given."

In the present case, the only orders rendered by any court were rendered as consent judgments but lack the signatures of all parties. The orders themselves

explicitly state "As evidenced by the signatures below, all parties agree to the terms of this order" on page 1, ***APP 2.1***, and later page 38 states "APPROVED AND CONSENTED TO AS TO BOTH FORM AND SUBSTANCE" yet crucially lacks the signature of the Relator and his prior counsel. ***APP 2.38***. The Court must recognize that the absence of the Relator's signature is not a mere technical deficiency but a fatal jurisdictional flaw that renders the orders void ab initio. Because his signature was required to effectuate consent, and the orders themselves acknowledge this requirement, the orders are unquestionably void.

C. Outright refusing to hear the emergency TRO is a clear abuse of discretion

It is well-settled and beyond legitimate dispute that a trial court has a ministerial duty to consider and rule on motions that have been properly filed and brought to the court's attention. The Texas Court of Appeals has emphatically stated, "When a motion is properly filed and pending before the trial court, the act of giving consideration to and ruling upon that motion is a ministerial act, and mandamus may issue to compel the trial judge to act." *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.- San Antonio 1997, orig. proceeding). To establish an abuse of discretion for refusal to rule, the relator must show: (1) the trial court had a legal duty to perform a nondiscretionary act, (2) the relator requested performance of that act, and (3) the trial court failed or refused to do so.

In re Shredder Co., L.L.C., 225 S.W.3d 676, 679 (Tex. App.—El Paso 2006, orig. proceeding).

Here, the Relator properly filed his emergency TRO application in the 233rd District Court, meticulously followed all procedural requirements, and appeared at the scheduled time to present at 9:00 A.M. on March 28, 2025. ***SUPP 2.11*** The Court must recognize that the court's refusal to even consider the application—based solely on an opposing counsel's unverified, informal representation about a future filing in another court—constitutes a clear and inexcusable failure to perform a ministerial duty – especially when no response or opposition to the TRO was filed by the opposing party and that same party was permitted to interfere with the proceedings without being present in the courtroom. ***SUPP 2.19***

The refusal is particularly troubling because 1) The TRO application involved un-opposed allegations of immediate harm to children, which courts are obligated to address promptly; 2) the refusal was due to a *forward looking* consolidation motion; 3) even if a motion to consolidate had been filed, it would not automatically divest the 233rd Court of jurisdiction until actually granted; and 4) the proper procedure would have been a motion to transfer, not consolidation. *See* Tex. Fam. Code § 6.407. This misapplication of the law resulted in the refusal to hear a properly filed motion to favor a procedurally improper motion that hadn’t even been filed yet.

In *In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proc.), the court held that mandamus is appropriate when a trial court refuses to rule on a properly filed motion and the relator has no adequate remedy by appeal. That is precisely the situation here. The 233rd Court's refusal to even consider Relator's emergency TRO application has left him with no forum to address his urgent concerns about the children's welfare, as the case before the 322nd has been procedurally abandoned and Relator has been seeking relief from facially void temporary orders to no avail since March 14, 2024, without any opposition from the opposing counsel. ***SUPP 3.2***

D. Improper consolidation does not justify the refusal to act

The 233rd Court’s refusal to act was based on a fundamentally flawed legal premise: that the 322nd District Court had continuing exclusive jurisdiction over the children. Under Texas Family Code § 155.001, a court acquires continuing exclusive jurisdiction over children only when it renders a “final order” in a SAPCR. It is undisputed that the 322nd Court never rendered any final order regarding the children. Without a final order, the 322nd Court never acquired continuing, exclusive jurisdiction over the children. Therefore, the 233rd Court was entirely within its authority to hear and rule on Relator’s emergency TRO application pursuant to § 155.001.

Moreover, even if the 322nd Court had continuing exclusive jurisdiction (which it does not), the proper procedure would have been a motion to transfer under the Family Code, not consolidation. Consolidation is appropriate for related cases within the same court, not for transferring jurisdiction between courts. By refusing to act based on an anticipated consolidation motion, the 233rd Court fundamentally misapplied the law, as consolidation cannot be effectuated prior to the transfer of the action. Tex. Fam. Code § 6.407.

Rather, opposing counsel could have filed a plea in abatement but instead chose to Respond to the SAPCR after not prosecuting the divorce case since April 24, 2024.

E. Relator has been left with no adequate remedy by an appeal

Because the 233rd District Court outright refused to hear the emergency TRO before it and the appearance before the court produced no order, the Relator has been left without an adequate remedy for an appeal. The Texas Supreme Court has recognized that mandamus relief is appropriate when "a party's ability to present a viable claim or defense is vitiated or severely compromised." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004). That is precisely the situation here. The Relator has diligently sought relief in a one-sided case to no avail, and the 233rd SAPCR was opened to escape the abandoned divorce suit that hasn't been prosecuted since April 24th, 2024, and has no valid orders in effect.

F. Refusal to accept relevant exhibits central to the emergency TRO

On April 9th, 2025, Relator attempted to file a NOTICE OF INCLUSION with the trial court, which included critical exhibits related to the emergency TRO. The Judge refused outright to permit Relator to include any exhibits related to the TRO in the rejection comments. ***SUPP 2.13, 2.16*** When contacting the clerk's office, no substantive response was received from the court coordinator. The returned comment stated: "Judge’s request. Please resubmit without the attached exhibits" without citing any legal authority, statute, rule, or local procedure justifying this rejection. ***SUPP 1.1.***

This rejection by the clerk constitutes a clear violation of the Texas Rules of Civil Procedure. Rule 21(f)(11) states: "The clerk may not refuse to file a document that fails to conform with this rule." Instead, the rule provides that the clerk "may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format." Here, the clerk provided no specific error to be corrected, and no legal basis for the rejection outside of “we are unable to accept any exhibits into the case”. ***SUPP 1.1*** By doing so, the Relator has been deprived of essential privileges to make a record pursuant to Tex. Const Art. 1, § 19.

Moreover, Rule 59 of the Texas Rules of Civil Procedure states: “Notes, accounts, bonds, mortgages, records, and all other written instruments,

constituting, in whole or in part, the claim sued on, or the matter set up in defense, may be made a part of the pleadings by copies thereof, or the originals, being attached or filed and referred to as such, or by copying the same in the body of the pleading in aid and explanation of the allegations in the petition or answer made in reference to said instruments and shall be deemed a part thereof for all purposes." The request to remove the exhibits specifically for the emergency TRO without any statutory backing raises suspicion that the trial court is actively trying to prevent the record from being properly established.

Finally, by rejecting exhibits central to Relator's emergency TRO application without legal justification, the clerk has effectively denied Relator the ability to make a complete record and present all relevant evidence to this court, thereby impairing Relator's due process rights. The rejected exhibits have been served on the opposing party and will be included in the supplemental record pursuant to Tex. R. App. P. § 52.7(b).

CONCLUSION AND PRAYER

Relator has been seeking relief for his children for over a year while the opposing party has failed to prosecute their case. They obtained orders by falsely claiming consent and then abandoned their case. There have been no filed responses to any relief sought by the Relator, no objections filed, and if the Relator had not opened the SAPCR to seek relief for his Children, there was no indication

that the real party in interest ever intended to move the dormant divorce proceeding towards final trial. There are no valid, legally binding orders in effect, yet they have been used to control the Relator's livelihood and have destroyed the children's status quo. The opposing counsel only resurfaced at the 11th hour in a separate proceeding for the sole purpose of interfering with the relief sought by the Relator without even being present in the courtroom. ***SUPP 2.19***

WHEREFORE, PREMISES CONSIDERED, Relator Charles Dustin Myers respectfully prays that this Court:

1. Issue a writ of mandamus directing Respondent, the Honorable Kate Stone, Associate Judge of the 233rd District Court of Tarrant County, Texas, to hear and rule on Relator's Emergency Application for Temporary Restraining Order at the earliest practical date;

2. Grant the emergency temporary relief requested in Relator's separate Emergency Motion under TRAP 52.10, filed concurrently with this petition because the orders are facially void;

3. Take judicial notice that Relator has been unlawfully barred from his matrimonial residence and children under these void orders for over a year while the real party in interest has remained completely silent;

4. Take judicial notice that no filed responses, objections, or any substantive information has been provided by the opposing party throughout these proceedings;

5. Take judicial notice that crucial elements of the claims were prohibited from being made a part of the official court record and will be supplemented.

6. Grant such other and further relief, both general and special, at law and in equity, to which Relator may be justly entitled.

Respectfully submitted,

/s/ Charles Dustin Myers
Charles Dustin Myers, Pro Se
[redacted]
Email: chuckdustin12@gmail.com
Phone: 817-546-3693
PRO-SE RELATOR

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 **2899 words**.

CERTIFICATE OF SERVICE

Relator certifies that on April 10, 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. Kate Stone J.D.
Associate Judge, 233rd District Court
Tarrant County Family Law Center
200 E. Weatherford St.
Fort Worth, TX 76196
Via electronic submission to the court coordinator
Via email: ADWierzbicki@tarrantcountytx.gov

Morgan Michelle Myers
Real Party in Interest
VIA the EFM at:
MORGANMW02@GMAIL.COM

Cooper L. Carter
Marx, Altman & Johnson
2905 Lackland Road
Fort Worth, TX 76116
Via email: 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

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

Original Proceeding Arising Out of

the 233rd Judicial District Court of Tarrant

County, Texas

Cause Number 233-765358-25

Hon. Kate Stone Presiding

RELATOR'S APPENDIX

Respectfully submitted by:

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

NAME **TAB**

STATE OF TEXAS COUNTY OF TARRANT

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

Charles Dustin Myers
Relator CDM

AMBER RIGGS
Notary Public - State of Florida
Commission # 341198
Expires on December 16, 2026

State of Florida

County of Bay County

This foregoing instrument was acknowledged before me by means of online notarization, this 04/10/2025 by Charles Dustin Myers.

Amber Riggs

Amber Riggs
Notarized remotely online using communication technology via Proof.

Automated Certificate of eService

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

Envelope ID: 99524439
Filing Code Description: Original Proceeding Petition
Filing Description: PETITION FOR WRIT OF MANDAMUS AND RELATOR'S APPENDIX - VERIFIED
Status as of 4/10/2025 3:05 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kate Stone		adwierzbicki@tarrantcountytx.gov	4/10/2025 2:37:09 PM	SENT
COOPER LCARTER		COOPERCARTER@MAJADMIN.COM	4/10/2025 2:37:09 PM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/10/2025 2:37:09 PM	SENT
CHARLES MYERS		CHUCKDUSTIN12@GMAIL.COM	4/10/2025 2:37:09 PM	SENT

M.2053

233-765358-25

ORIGINAL
SAPCR

03.18.25

M.2053

M.2054

FILED
TARRANT COUNTY
3/18/2025 3:25 AM
THOMAS A. WILDER
DISTRICT CLERK

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.

Cause Number: 233-765358-25
(The Clerk's office will fill in the Cause Number and Court Number when you file this form.)

In the Interest of the following Minor Child(ren):
(Print the initials of each child.)

1. M.E.M,
2. C.R.M.,
3.
4.
5.

In the 322nd Court Number

☒ District Court
☐ County Court at Law of:

TARRANT County, Texas

Petition in Suit Affecting the Parent-Child Relationship

My name is: CHARLES DUSTIN MYERS
First Middle Last.

I am the **Petitioner,** the person asking the Court to make orders about the child or children named below.

My driver's license was issued in (state) TEXAS. The last three numbers of my driver's license number are: 6 0 8.
Or ☐ I do not have a driver's license.

The last three numbers of my social security number are: 9 6 3.
Or ☐ I do not have a social security number.

I am: (Check one.)

☐ not related to the child(ren).
☒ related to the child(ren). I am the child(ren)'s: FATHER
Write your relationship to the child(ren).

1. Discovery Level

The discovery level in this case, if needed, is Level 2.

2. Child(ren)

I ask the Court to make orders about the following child(ren):

	Child's name		County and State where child lives now
1.	M.E.M.	[redacted]	TARRANT/TEXAS
2.	C.R.M.		TARRANT/TEXAS
3.			
4.			
5.			

M.2054

3. Standing

The law allows me to file this case because I am: **(Check one.)**

- ☐ the mother of the child(ren).
- ☒ the "legal father" of the child(ren). An Acknowledgment of Paternity form has been signed and filed with the Vital Statistics Unit for each child. A copy of each Acknowledgment of Paternity is attached to this Petition.
- ☐ a person who has had actual care, control, and possession of the child(ren) for at least 6 months ending not more than 90 days before the date this Petition is filed with the Court. I am not a foster parent.
- ☐ a person who lived with the child(ren) and the child(ren)'s parent, guardian, or managing conservator for at least 6 months ending not more than 90 days before the date this Petition is filed with the Court, and the child(ren)'s parent, guardian, or managing conservator is now dead.
- ☐ the grandparent, great-grandparent, sister, brother, aunt, uncle, niece, or nephew of the child(ren) and: **(Check the box below that applies to your case.)**
  - ☐ both parents are dead.
  - ☐ both parents, the surviving parent, or managing conservator agree to me filing this case.
  - ☐ the child(ren)'s present circumstances will significantly impair *(harm)* the child(ren)'s physical health or emotional development.
- ☐ other: _____

(Read the law about standing in Texas Family Code Sections 102.003, 102.004 and 102.006)

Note: If you are the mother or biological father of the child/ren and an Acknowledgment of Paternity form has not been signed and filed for each child, you may need to file a paternity case instead of a Suit Affecting the Parent-Child Relationship (SAPCR) case. Get information about filing a paternity case at www.TexasLawHelp.org.

4. Jurisdiction

There are no court orders about any of the child(ren). No other Court has continuing jurisdiction over this case or the child(ren).

Texas has authority to decide this case because: **(Check one.)**

- ☒ The children live in Texas now and have lived in Texas for at least the past 6 months or since birth.
- ☐ The children do not live in Texas now, but they have been gone from Texas less than 6 months. The children had lived in Texas for at least 6 months before they moved. A parent or person acting as a parent continues to live in Texas.

Important: Talk to a lawyer if neither of the above applies.

Note: If there is already a court order about any of the children, you may need to file a modification case instead of a Suit Affecting the Parent-Child Relationship (SAPCR) case. Get information about filing a modification case at www.TexasLawHelp.org.

Note: There may be one or more Respondents. Read the SAPCR instructions at www.TexasLawHelp.org for information about who must be listed as a Respondent and given legal notice of the case.

5. Respondent(s)

Respondent A

Respondent A's name is: MORGAN MICHELLE MYERS.
PRINT the full name of Respondent A.

Respondent A is: (Check one.)

- [x] the mother of the child(ren).
- [ ] the legal father of the following child(ren): _____.
- [ ] an alleged father of the following child(ren): _____.
- [ ] other: _____.
  Write Respondent A's relationship to the child(ren).

Legal Notice: (Check one.)

- [x] I will have a sheriff, constable, or process server give a copy of this Petition to Respondent A here:

  6641 ANNE COURT, WATAUGA, TEXAS 76148.
  PRINT Street Address City State Zip

  If this is a work address, name of business: _____.

  I ask the clerk to issue a Citation of Service (the form necessary to provide legal notice to my spouse by "Official Service of Process"). I understand that I will need to **pay the fee** (or file a Statement of Inability to Afford Payment of Court Costs form o show the Court that I am unable to pay the fee) and **arrange for service**.

- [ ] I think Respondent A will sign a Waiver of Service. Do not send a sheriff, constable, or process server to serve Respondent A with this Petition at this time.

- [ ] I cannot find this Respondent. I ask that this Respondent be served by publication.

Respondent B

- [x] Check this box if there are no other Respondents and skip to section 6.

Respondent B's name is: D.
PRINT the full name of Respondent B.

Respondent B is: (Check one.)

- [ ] the mother of the child(ren).
- [ ] the legal father of the following child(ren): _____.
- [ ] an alleged father of the following child(ren): _____.
- [ ] other: _____.
  Write Respondent B's relationship to the child(ren).

Legal Notice: (Check one.)

- [ ] I will have a sheriff, constable, or process server give a copy of this Petition to Respondent B here:

  _____.
  PRINT Street Address City State Zip

  If this is a work address, name of business: _____.

  I ask the clerk to issue a Citation of Service (the form necessary to provide legal notice to my spouse by "Official Service of Process"). I understand that I will need to **pay the fee** (or file a Statement of Inability to Afford Payment of Court Costs to show the Court that I am unable to pay the fee) and **arrange for service**.

- [ ] I think Respondent B will sign a Waiver of Service. Do not send a sheriff, constable, or process server to serve Respondent B with this Petition at this time.

- [ ] I cannot find this Respondent. I ask that this Respondent be served by publication.

Respondent C ☐ Check this box if there are no other Respondents and skip to section 6.

Respondent C's name is: _____.
PRINT the full name of Respondent C.

Respondent C is: (Check one.)

☐ the mother of the child(ren).

☐ the legal father of the following child(ren): _____.

☐ an alleged father of the following child(ren):
_____.

☐ other: _____.
Write Respondent C's relationship to the child(ren).

Legal Notice: (Check one.)

☐ I will have a sheriff, constable, or process server give a copy of this *Petition* to Respondent C here:

_____.
PRINT Street Address City State Zip

If this is a work address, name of business: _____.

I ask the clerk to issue a Citation of Service (the form necessary to provide legal notice to my spouse by "Official Service of Process"). I understand that I will need to **pay the fee** (or file a Statement of Inability to Afford Payment of Court Costs form to show the Court that I am unable to pay the fee) and **arrange for service**.

☐ I think Respondent C will sign a Waiver of Service. Do not send a sheriff, constable, or process server to serve Respondent C with this Petition at this time.

☐ I cannot find this Respondent. I ask that this Respondent be served by publication.

Respondent D ☐ Check this box if there are no other Respondents and skip to page 5 section 6.

Respondent D's name is: _____.
PRINT the full name of Respondent D.

Respondent D is: (Check one.)

☐ the mother of the child(ren).

☐ the legal father of the following child(ren): _____.

☐ an alleged father of the following child(ren):
_____.

☐ other: _____.
Write Respondent D's relationship to the child(ren).

Legal Notice: (Check one.)

☐ I will have a sheriff, constable, or process server give a copy of this Petition to Respondent D here:

_____.
PRINT Street Address City State Zip

If this is a work address, name of business: _____.

I ask the clerk to issue a Citation of Service (the form necessary to provide legal notice to my spouse by "Official Service of Process"). I understand that I will need to **pay the fee** (or file a Statement of Inability to Afford Payment of Court Costs form to show the Court that I am unable to pay the fee) and **arrange for service**.

☐ I think Respondent D will sign a Waiver of Service. Do not send a sheriff, constable, or process server to serve Respondent D with this Petition at this time.

☐ I cannot find this Respondent. I ask that this Respondent be served by publication.

6. Out-of-State Respondent(s)

Note: You must complete and attach the Exhibit: Out-of-State Party Declaration if you or a Respondent does not live in Texas.

(Check one.)

■ Everyone involved in this case lives in Texas.

☐ The following Respondent does not live in Texas: _____
Print the FULL name of the Out-of-State Respondent.

(Check all that apply for the Out-of-State Respondent.)

☐ The Respondent agrees that a Texas court can make orders in this case and will file a written response with the court.

☐ The children live in Texas because of the Respondent's actions.

☐ The Respondent has lived in Texas with the children.

☐ The Respondent has lived in Texas and provided prenatal expenses or support for the children.

☐ The Respondent had sexual intercourse in Texas, and the children may have been conceived by that act of intercourse.

☐ The child was born in Texas and the Respondent registered with the paternity registry maintained by the Texas Vital Statistics Unit or signed an Acknowledgment of Paternity filed with the Texas Vital Statistics Unit.

☐ The Respondent will be personally served with citation in Texas.

7. Conservatorship (Custody)

I ask the court to make conservatorship (custody) orders naming:(Check a, b, c, d, or e.)

a. ■ Mother and Father Joint Managing Conservators of the child(ren) with:
(If you checked a, check a-1, a-2, or a-3.)

a-1. ■ Father having the exclusive right to designate the primary residence of the child(ren) within the following geographic area: (Check one box below.)

☐ this county. ■ this county or in counties adjacent to this county.

☐ Texas. ☐ anywhere. ☐ other _____.

a-2. ☐ Mother having the exclusive right to designate the primary residence of the child(ren) within the following geographic area: (Check one box below.)

☐ this county. ☐ this county or county adjacent to this county.

☐ Texas. ☐ anywhere. ☐ other: _____.

a-3. ☐ Neither parent having the exclusive right to designate the primary residence of the children but both parents ordered not to remove the children's primary residence from the following specific geographic area: (Check one box below.)

☐ this school district: _____ ☐ this county.

☐ this county or county adjacent to this county. ☐ other: _____.

b. ☐ Mother Sole Managing Conservator of the child(ren).

c. ☐ Father Sole Managing Conservator of the child(ren).

d. ☐ _____ Nonparent Sole Managing Conservator of the child(ren).

e. ☐ _____ and _____ Nonparent Joint Managing Conservators of the child(ren).

8. Child(ren)'s Passports (Check only if applicable.)

☒ I ask the Court to order that I have the exclusive right to apply for and renew passports for the child(ren).

9. Possession and Access (Visitation)

I ask the court to make possession and access (visitation) orders as follows: (Check a, b, c, d or e.)

a. ☐ Father should have "standard visitation." (See Texas Family Code Chapter 153, Subchapter F.)

b. ☐ Mother should have "standard visitation." (See Texas Family Code Chapter 153, Subchapter F.)

c. ☒ "Standard visitation" would be unworkable or inappropriate. Possession and access to the children should be as follows:

Due to the past year of ongoing harm and deprivation, Petitioner requests access to the children be worked out between Petitioner and Respondent due to the family's unique circumstances.

d. ☐ One or more of the children is under age 3. Until the child turns 3, possession should be as follows:

After the child turns 3, possession should be as checked above.

e. ☐ I am concerned about the safety of the children with: ☐ Father ☐ Mother

Therefore, I ask that: (If you checked **e,** check all that apply below.)

e-1. ☐ exchanges of the children be supervised, or in the alternative, be in a public place

e-2. ☐ that parent's possession of the children be limited to day visits

e-3. ☐ that parent's possession of the children be supervised

e-4. ☐ that parent have no right to possession or access to the children

e-5. ☐ that parent be ordered not to use alcohol or illegal drugs 24 hours prior to or during possession of the children.

e-6. ☐ that parent's possession and access to the children be restricted as follows:

(Check only if applicable.)

☐ I am concerned that the other parent may take the child(ren) to another country and refuse to return them. I ask the Court to determine if there is a risk of international kidnapping by the other parent and to take such measures as are necessary to protect the child(ren).

10. Child Support and Medical Support

I ask the court to make appropriate orders for the support of the child(ren), including regular child support, medical support and dental support and, if supported by the evidence, retroactive child support.

11. Protective Order Statement

Note: You **must** provide information about any protective order or pending application for protective order involving a party in this case or a child of a party. This includes information about any: 1) family violence protective order, (2) sexual assault, sexual abuse, trafficking or stalking protective order and/or (3) emergency protective order issued after an arrest.

A "party" includes you (the Petitioner) and anyone listed as a Respondent in this Petition.

You **must also** attach to this Petition a copy of any protective order (even if it's expired) in which one party or a child of a party was the applicant or victim and another party was the respondent or defendant.

If your petition does not accurately reflect whether there is a protective order, the Court may require you to file an amended petition.

(Check the appropriate boxes. Fill in the requested information, if applicable.)

11A. No Protective Order

☒ I do not have a protective order and I have not asked for one.

☐ No one has a protective order against me or asked for one.

11B. Pending Protective Order

☐ I filed paperwork at the courthouse asking for a protective order, but a judge has not decided if I should get it. I asked for a protective order against _____.

I asked for a protective order on _____ (Date Filed) in _____ (County) County, _____ (State).

The cause number of the protective order case is _____.

If I get a protective order, I will file a copy of it before any hearings in this case.

☒ The Respondent filed paperwork asking for a protective order, but a judge has not decided if the Respondent will get it. The Respondent asked for a protective order on 2023-12-14 (Date Filed) in TARRANT (County) County, TEXAS (State).

The Respondent asked for a protective order against CHARLES DUSTIN MYERS.

The cause number of the protective order case is 322-744263-23.

If the Respondent gets a protective order, I will file a copy of it before any hearings in this case.

11C. Protective Order in Place

☐ I have a protective order. The protective order is against _____.

I got the protective order on _____ (Date of Order) in _____ (County) County, _____ (State).

The cause number for the protective order is _____.

Either I have attached a copy of the protective order to this petition or I will file a copy of it with the court before any hearings in this case.

☐ A Respondent in this case has a protective order.

The protective order is against _____.

The protective order was made on _____ (Date of Order) in _____ (County) County, _____ (State).

The cause number for the protective order is _____.

Either I have attached a copy of the protective order to this petition or I will file a copy of it with the court before any hearings in this case.

12. Family Information (Check only if applicable.)

☐ I believe the children or I will be harassed, abused, seriously harmed, or injured if I am required to give the Respondent(s) the information checked below for myself and the children: (Check the boxes below to tell the judge which information you want to be kept confidential.)

☐ home address, ☐ mailing address, ☐ employer, ☐ work address,
☐ home phone no., ☐ work phone no. ☐ social security no., ☐ driver's license no.,
☐ email address.

I ask the Court to Order that I not have to give this information or notice of changes in this information to the Respondents. I also ask the Court to keep this information confidential.

13. Children's Property (Check one.)

☒ The children do not own any property of significant value in their own name.
☐ The children own the following property of significant value in their own name:

_____.

14. Health Insurance Availability for Children

The children: (Check all that apply.)

☐ have **private health insurance**.
Name of insurance company: _____
Policy number: _____ Cost of premium: $ _____
Name of person who pays for insurance: _____
The insurance policy ☐ is ☐ is not available through the parent's work.

☐ have health insurance through **Medicaid**.

☐ have health insurance through **C.H.I.P**. Cost of premium (if any): _____

☒ **do not** have health insurance.

If the children do not have private health insurance also complete the following:

Private health insurance ☐ is ☒ is not available to Father at a reasonable cost.

Private health insurance ☐ is ☒ is not available to Mother at a reasonable cost.

15. Dental Insurance Availability for Children

The child(ren): (Check one.)

☐ have **private dental insurance**.

Name of insurance company: _____

Policy number: _____ Cost of premium: $ _____

Name of person who pays for insurance: _____

The insurance policy ☐ is ☐ is not available through the parent's work.

■ **do not** have dental insurance.

If the children do not have private dental insurance also complete the following:

Private dental insurance ☐ is ■ is not available to Father at a reasonable cost.

Private dental insurance ☐ is ■ is not available to Mother at a reasonable cost.

16. Public Benefits

The children: (Check all that apply.)

☐ have Medicaid now **or** had in the past.

■ get TANF (Temporary Assistance for Needy Families) now **or** got it in the past.

Note: If your children have ever received Medicaid or TANF, you MUST send a copy of this Petition to the Office of the Attorney General Child Support Division. You MUST also sign the "Certificate of Service to the Office of the Attorney General" below.

17. Request for Judgment

I ask that citation and notice be issued as required by law and that the Court make the orders I have asked for in this Petition and any other orders to which I am entitled. I ask for general relief.

Respectfully,

→ /s/ Charles Dustin Myers — Petitioner's Signature

03/18/2025 — Date

CHARLES DUSTIN MYERS — Petitioner's Name (Print)

(817 456 3693 — Phone

6641 ANNE COURT, WATAUGA, TEXAS 76148 — Mailing Address / City / State / Zip

Email Address: CHUCKDUSTIN12@GMAIL.COM Fax (if available) _____

Warning: Each Respondent will get a copy of this form. If you are concerned about a Respondent learning your address, call the Hope Line at 800-374-4673(HOPE) for free advice before filing this form with the court.

I understand that I must notify the Court and each Respondent's attorney (or the Respondent if the Respondent does not have an attorney) in writing if my mailing address or email address changes during these proceedings. If I don't, any notices about this case will be sent to me at the mailing address or email address on this form.

18. Certificate of Service to the Office of the Attorney General (OAG)

Sign below **only** if your child(ren) receive (or have received) Medicaid or TANF. This tells the judge that you will deliver a copy of this Petition to the Office of the Attorney General Child Support Division as required by law. Get contact information for the Office of the Attorney General Child Support Office in the county where this case will be filed at https://www.texasattorneygeneral.gov/apps/cs_locations/. Bring proof of delivery with you to court.

I certify that a true copy of this Petition was served on the Office of the Attorney General Child Support Division* in person, by certified and first-class mail, by commercial delivery service, by fax, by email, or through the electronic file manager on this date.

→/s/ Charles Dustin Myers — Petitioner's Signature

03/18/2025 — Date

Note: For Information about how to file an answer go to www.TexasLawHelp.org

For a referral to a lawyer call your local lawyer referral service or the State Bar of Texas Lawyer Referral Information Service at 800-252-9690.

For information about free and low-cost legal help in your county go to www.TexasLawHelp.org or call the Legal Aid office serving your area:

Legal Aid of Northwest Texas 888-529-5277 (serves Dallas / Fort Worth area & Northwest Texas)

Lone Star Legal Aid 800-733-8394 (serves Houston area & East Texas)

Texas Rio Grande Legal Aid 888-988-9996 (serves Austin / San Antonio area, El Paso area & South Texas)

If you have been the victim of family violence, or if at any time you feel unsafe, get help by calling the:

National Domestic Violence Hotline at 800-799-SAFE (7233) or

Texas Advocacy Project Hope Line at 800-374-HOPE (4673) or

Advocates for Victims of Crime (AVOICE): at 888-343-4414.

Automated Certificate of eService

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

Envelope ID: 98573077
Filing Code Description: Petition
Filing Description: ORIGINAL PETITION FOR SAPCR
Status as of 3/19/2025 11:21 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	3/18/2025 10:42:43 AM	NOT SENT
COOPER LCARTER		COOPERCARTER@MAJADMIN.COM	3/18/2025 10:42:43 AM	NOT SENT
CHARLES DMYERS		CHUCKDUSTIN12@GMAIL.COM	3/18/2025 10:42:43 AM	NOT SENT

M.2065

233-765358-25

PETITIONER'S NOTICE OF INTENT TO FILE MANDAMUS

04.07.25

M.2065

233-765358-25

FILED
TARRANT COUNTY
4/7/2025 3:46 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 233-765358-25

IN THE 233RD DISTRICT COURT OF TARRANT COUNTY, TEXAS

IN RE: M.E.M., ET AL.
**CHARLES DUSTIN MYERS, **

Petitioner,

MORGAN MICHELLE MYERS,

Respondent.

2025-04-07

PETITIONER'S NOTICE OF INTENT TO FILE MANDAMUS AND EMERGENCY STAY

TO THE HONORABLE JUDGE OF SAID COURT:

I. INTRODUCTION

There comes a time in the journey of life when a man finds himself standing in the same muddy footprints he left as a child, gazing up at the same towering courthouse steps, and feeling that same sinking sensation in his chest. It's a peculiar thing, this cycle of disappointment—to have lived it once as a bewildered child and then again as a rule-abiding adult. The faces change, the dates on the calendar advance, but the feeling remains as familiar as an old, worn book.

Petitioner comes before this Court not with anger burning in his chest, nor with vindictiveness poisoning his pen, but rather with that quiet, heavy disappointment that settles in a person's bones when they've done everything by

the book only to find the book itself has been shelved away, forgotten by those sworn to read from it.

Petitioner followed the rules. He honored the procedures. He placed his faith in a system that promised justice would flow like water, clear and unobstructed, to those who seek it properly. He lived under the façade of facially void orders, and sustained extraordinary damages that were all caused intentionally by one person: **the Respondent**, who has sat in complete silence as this breakdown has continued to occur.

Yet here stands Petitioner, a father twice removed—once from his home and once from his children—knocking on the courthouse door with papers properly filed, only to be told that the door shall remain closed because someone else might, at some future date, file papers at another door entirely. If this strikes the Court as a curious interpretation of justice, then we find ourselves in rare agreement.

Mark Twain once observed that "the difference between the almost right word and the right word is really a large matter—it's the difference between the lightning bug and the lightning." In matters of law and children's welfare, the difference between almost justice and actual justice is equally vast—it's the difference between children thriving and children suffering, between a father's presence and his absence, between following the law and merely gesturing toward it.

The Petitioner is now in an extraordinary circumstance. On one hand, he must seek mandamus relief respectfully compelling this Court to fulfill its

ministerial duty to hear and rule on Petitioner's properly filed emergency TRO, which this Court refused to hear on March 28, 2025. The refusal came not from any defect in the filing itself, but solely from representations made by opposing counsel regarding a future filing in another court which she abandoned—a procedural sleight of hand that has left children in distress and a father without an adequate remedy for an appeal.

On the other hand, the Petitioner must prohibit the 322nd District Court from setting a matter for a hearing that cannot bear a valid result through a concurrent Writ of Prohibition. The proper procedure wasn't followed, and cannot be overlooked in the face of an emergency.

In essence, a procedurally improper forward-looking consolidation motion to be filed in a different court was used to block a properly filed emergency TRO before this court. The court cannot rule on a case not before it, and mandamus is the proper remedy here if this court refuses to act. Given the extraordinary circumstances of this matter, and given there has been no response or opposition to the relief being requested, the court should **grant the emergency TRO immediately through a written order delivered to all the parties via the electronic filing manager**, set the matter for a hearing 14 days from the signing of the order, and require a written response from the opposing party no later than 7 days prior to the hearing.

Despite the circumstances of this case, Petitioner feels that settlement will and could be a possibility in the future, but the priority remains to rebuild the status quo of the children that has been destroyed and regain the ability to provide for his children financially while damages are assessed and attended to. Petitioner is at the very least entitled to this immediate relief. He is not asking this court for anything more than what it has the discretion to do and what the law demands that it must do given the circumstances. This intent to file mandamus is filed out of respect and serves as a notice to all parties of record of my position on this matter.

Such absurdity should end with an order from this court in Petitioner's favor, and in support thereof, he shows the following unopposed facts:

II. STATEMENT OF FACTS

1. On January 24, 2025, after more than 11 months of inaction, Petitioner filed a Motion to Dismiss for Want of Prosecution. The divorce case no substantive action from Respondent since April 2024, a legal ghost ship drifting without direction or purpose. That motion wasn't attempted to be set for hearing until **September of 2024,** only after the Petitioner exhausted all efforts seeking relief throughout the Texas Judiciary without any participation from the opposing side.

2. On March 19, 2025, driven by mounting concerns about the children's welfare and learning that the 322nd District Court did not have continuous, exclusive jurisdiction over the children in this matter, Petitioner filed a new

SAPCR in this Court (Cause No. 233-765358-25) seeking emergency relief for the children. The very next day, March 20, 2025, Ms. Carter suddenly reappeared like a character presumed missing in the second act, filing an answer to the SAPCR petition in this Court and thereby submitting to this Court's jurisdiction by filing a response rather than a motion to abate.

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

4. On March 25, 2025, Petitioner filed an Objection to Consolidation and an Ex-Parte Emergency Motion for TRO. Two days later, on March 27, 2025, Petitioner contacted the court coordinator, requested a date and time to present the motion, and served the documents to the opposing party with the intent to present on March 28, 2025, at 9:00 A.M. before the Associate Judge of this Court. On that fateful morning of March 28, 2025, Petitioner drove to the courthouse, paid for parking, met with the coordinator, communicated with opposing counsel, and secured a hearing date of April 10, 2025. Petitioner then proceeded to the Associate Judge's courtroom to present the TRO.

5. Before Petitioner could present his case—before he could speak a single word about his children's welfare—he was told that Ms. Carter would be filing a motion to consolidate in the 322nd District Court, that his motion was improperly before the court, and that the Associate Judge refused to hear the motion. It was a

curious thing, this refusal. Ms. Carter wasn't even present in the courtroom, yet her words carried more weight than Petitioner's physical presence, his properly filed papers, and most importantly, the urgent needs of his children. She stopped the proceedings with nothing more than word of mouth for the incorrect motion. A true showcasing of disregard for the process, and the children.

6. On April 2, 2025, Petitioner filed a Pre-Objection to Motion to Consolidate in the 322nd District Court. Ms. Carter's motion to consolidate wasn't filed with the 322nd District Court until April 3, 2025—six days after she used its mere possibility to prevent this Court from hearing Petitioner's emergency motion. Her motion disregarded Petitioner's pre-objection entirely, as if it were invisible ink on the page.

7. On April 4, 2025, unable to acquire a ruling due to Petitioner's objection, Ms. Carter attempted to set the motion for a hearing before the 322nd District Court. That same day, Petitioner filed a Pre-Objection to Motion to Transfer in this Court, given that a motion to transfer must come before any attempt at consolidation. Ms. Carter, who had been so urgently concerned about consolidation when it served to block Petitioner's emergency hearing, suddenly claimed to be unavailable until late April—causing significant delays that could have been avoided had this Court simply heard the motion before it on March 28, 2025.

8. Throughout this period of procedural maneuvering, the children have been subjected to psychological manipulation and medical neglect. They have been removed from Petitioner's care and placed with elderly great-grandparents on a daily basis, and are being gaslighted into a false belief that the divorce is finalized. Petitioner's eldest child's academic performance has plummeted, and both children have become emotionally estranged from both parents. Petitioner has suffered approximately $110,500 in verifiable financial damages due to being locked out of his home and business, and it grows each day. But the financial toll pales in comparison to the emotional cost of watching Petitioner's children suffer while the courts exchange procedurally incorrect volleys over his head.

III. ARGUMENT

A. The Court's Ministerial Duty

9. It is well-established Texas law that a trial court has a ministerial duty—not a discretionary duty—to consider and rule upon motions properly filed and pending before it. In re Sheppard, 193 S.W.3d 181, 183 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding); In re Chavez, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding). The Texas Supreme Court has consistently held that while a court has discretion in how it rules on a motion, it has no discretion to refuse to rule at all. In re Blakeney, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding) ("When a motion is properly filed and pending before a trial court, the act of considering and ruling upon that

motion is a ministerial act, and mandamus may issue to compel the trial judge to act.").

10. This principle is not merely a procedural nicety but a fundamental cornerstone of our judicial system. When a court refuses to hear a properly filed motion, it effectively denies access to justice itself. As the Texas courts have repeatedly emphasized, "A trial court's refusal to rule on a pending motion within a reasonable amount of time constitutes a clear abuse of discretion." In re Bonds, 57 S.W.3d 456, 457 (Tex. App.—San Antonio 2001, orig. proceeding). This abuse is magnified exponentially when the motion concerns the welfare of children and seeks emergency relief.

11. The Court's refusal to hear Petitioner's properly filed emergency TRO on March 28, 2025, constitutes a clear failure to perform a ministerial duty. This failure is particularly concerning given that:

a) The motion was properly filed and noticed for hearing and the parties agreed on a date and time set for April 10th, 2025;

b) Petitioner communicated with court staff, physically appeared at the courthouse ready to present the motion and was told he could present his motion;

c) The motion concerned the immediate welfare of children; and

d) The refusal was based solely on representations about a future filing in another court that had not yet occurred.

B. Clear Abuse of Discretion

12. A writ of mandamus is appropriate when a trial court clearly abuses its discretion and there is no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004); *Walker v. Packer, 827 S.W.2d 833, 840 (Tex. 1992).* An abuse if discretion is clearly established from point one below, and supported by points two through eight:

> i. First, it refused to perform its ministerial duty to hear and rule on a properly filed motion based solely on representations about a future filing in another court. It's as if a doctor refused to treat a bleeding patient because another doctor might, at some future date, claim the patient should be treated at a different hospital.
>
> ii. Second, it failed to recognize that by answering the SAPCR petition in this Court, Respondent submitted to this Court's jurisdiction and should have instead filed a motion to abate or should have moved to transfer the case. The law doesn't allow for half-measures of jurisdiction.
>
> iii. Third, it failed to recognize that this Court maintained jurisdiction until any transfer was completed pursuant to Texas Family Code § 155.005(d) as no final order has been rendered in the 322nd District Court. Jurisdiction isn't a hot potato to be

dropped at the first mention of another court—it's a solemn responsibility that remains until properly transferred.

iv. Fourth, it failed to recognize that the proper procedure for consolidation of cases in different courts requires a motion to transfer to be filed and granted before any motion to consolidate can be considered, pursuant to Texas Family Code §§ 155.201 and 6.407. The law provides a sequence, a proper order of operations, that cannot be reversed or circumvented without creating procedural delay, which is what the emergency TRO sought to prevent from occurring.

v. Fifth, it allowed opposing counsel to circumvent proper legal procedure by influencing this Court's decision without being present and without having filed any response to the emergency TRO properly before this Court. It's as if the referee in a football game made a call based on what someone in the parking lot said might happen in the fourth quarter when she had the rules of the game mixed up.

vi. Sixth, it failed to consider that the purported "agreed" orders in the divorce case are void for lack of consent under *Burnaman v. Heaton*, 240 S.W.2d 288, 291 (Tex. 1951). A void order is no order at all—it's a legal nullity, as insubstantial as a

shadow on the wall. No court has continuous, exclusive jurisdiction over the children in this matter.

vii. Seventh, it failed to recognize that the Associate Judge's orders in the divorce case were never properly adopted by the referring District Court as required by Texas Family Code § 201.013(b). An unadopted order is like an unsigned check—it may look official, but it carries no legal weight, yet it has been used to bar the Petitioner from his residence, business, and children, and impose a disruptive and chaotic schedule upon the children.

viii. Eighth, and perhaps most troublingly, it disregarded the children's best interests in favor of procedural considerations, contrary to Texas Family Code § 153.002 and has languished for over a year due to the opposition's failure to prosecute.

12. The law is clear that in matters involving children, their welfare must be the court's primary consideration—not procedural niceties, not docket management, and certainly not the convenience of opposing counsel.

C. No Adequate Remedy by Appeal

13. When Justice Delayed Is Justice Denied Petitioner has no adequate remedy by appeal for reasons that should stir the conscience of any court: The emergency nature of the injunctive relief sought requires immediate action, as

Petitioner's children are suffering immediate and ongoing harm while procedural issues remain unresolved. *In re Texas Dep't of Family & Protective Servs.*, 255 S.W.3d 613, 615 (Tex. 2008) (granting emergency relief where children's welfare was at immediate risk). Petitioner's children are being alienated from him, causing long-term psychological damage that cannot be undone by a favorable ruling months or years in the future. *In re Scheller*, 325 S.W.3d 640, 643 (Tex. 2010) (recognizing that interference with the parent-child relationship can constitute irreparable harm).

14. The improper procedural maneuvers by opposing counsel are causing significant delays that cannot be remedied through the normal appellate process. Each day that passes is another day the children suffer, another day their academic performance declines, another day they become more emotionally estranged in a situation that the law should've prevented from existing to begin with.

15. Temporary orders in family law cases are generally not appealable, leaving Petitioner in a procedural trap with no exit. Waiting for a final judgment to appeal would allow the improper procedural tactics to succeed, causing irreparable harm to Petitioner and his children.

16. Void orders are being enforced against Petitioner, causing ongoing harm that cannot be adequately remedied by appeal. *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000). Petitioner is caught in a procedural echo chamber

with no effective remedy, as both courts have effectively denied him access to the judicial system. *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008).

D. Opposing Counsel's Contradictory Behavior

17. Cooper L. Carter's contradictory behavior warrants particular attention, like a character in a novel whose actions never quite align with their words: She zealously defended her client by filing an answer to the SAPCR in this Court, thereby submitting to this Court's jurisdiction, only to then influence this Court to refuse to hear Petitioner's properly filed motion by representing that she would file a motion to consolidate in the 322nd Court, which would be moot by statute.

18. She had abandoned the divorce case for nearly a year, filing nothing since April 24, 2024, only to suddenly reappear precisely when I sought emergency relief for the children—like a firefighter who ignores a smoldering house for months, only to rush in when someone else calls for help. She failed to respond to a Rule 12 motion challenging her authority to represent the Respondent, her silence speaking volumes about the nature of her representation. She subsequently filed an improper motion to consolidate in the 322nd Court without first filing the required motion to transfer, putting the procedural cart before the horse. She is now claiming unavailability until late April in the 322nd Court, creating unnecessary delay after using the urgency of consolidation to block Petitioner's emergency hearing.

19. This pattern demonstrates a tactical attempt to manipulate both courts' dockets to prevent me from obtaining a timely hearing on Petitioner's properly filed emergency motion. It's a shell game played with the children's welfare as the prize. This Court should not allow itself to be used as an instrument in such procedural gamesmanship, particularly when it involves a failure to perform a ministerial duty required by law and when children's welfare is at stake.

IV. CONCLUSION

This Court's refusal to hear Petitioner's properly filed motion constitutes a failure to perform a ministerial duty for which there is no adequate remedy by appeal. The proper legal procedure requires a motion to transfer to be filed and granted before any motion to consolidate can be considered, and by answering the SAPCR petition in this Court, Respondent submitted to this Court's jurisdiction.

The children who are the subject of this proceeding are suffering immediate and ongoing harm while procedural issues remain unresolved. Each day that passes without addressing the emergency concerns raised in Petitioner's TRO is a day of certain damage to the children's psychological well-being and development.

Petitioner once heard it said that the true measure of a society is found in how it treats its most vulnerable members. By that measure, the procedural labyrinth that has prevented this Court from hearing Petitioner's emergency

motion speaks volumes about how far we have strayed from the ideal of justice. The children— innocent, vulnerable, and deserving of the Court's protection— have instead become collateral damage in a game of procedural chess.

Petitioner provides this petition not out of anger or vindictiveness, but out of that quiet, heavy disappointment that settles in a person's bones when they've done everything by the book only to find the book itself has been shelved away. Petitioner followed the rules. He reiterates that he honored the procedures. He placed his faith in a system that promised justice would flow like water, clear and unobstructed, to those who seek it properly.

Petitioner asks this Court to remember that behind every case number, behind every filing, behind every procedural rule, there are often real children with real lives that continue whether the courts act or not. Time doesn't stop for them while adults sort out procedural disagreements. They grow, they hurt, they form memories and impressions that will shape them for a lifetime.

As Mark Twain might have observed, the difference between justice served and justice delayed is the difference between a father's presence and his absence, between children thriving and children suffering, between following the law and merely gesturing toward it.

V. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully requests that this Court correct its error sua sponte, recognize the seriousness of

this situation, and grant relief without delay given the extraordinary circumstances of this case. Petitioner specifically requests that this Court:

i. Immediately grant the attached proposed order requesting an emergency TRO preventing the Respondent from barring Petitioner's access to the matrimonial home located at [redacted] pursuant to Texas Family Code § 105.001(b) and serve the order on all parties of record through the EFM pursuant to rule 21a of the Texas Rules of Civil Procedure;

ii. Have the parties confer with the court coordinator to set this matter for a hearing within 14 days from the signing of the order, and require Respondent's written response no later than 7 days before the hearing;

iii. Take judicial notice that this Court has personal jurisdiction over the respondent to issue a TRO given her response to the original SAPCR;

iv. Take judicial notice that no opposition to the requested relief appears on record;

v. Grant such other and further relief as the Court deems just and necessary to protect the best interests of the children, under § 153.002 and aid the parties in satisfying Texas State policy under § 153.001.

Petitioner emphasizes that this request is urgent and narrowly tailored to avoid further procedural delay that places the children at risk.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
PRO-SE

CERTIFICATE OF SERVICE

Respondent, CHARLES DUSTIN MYERS, certifies that, pursuant to Rule 21a of the Texas Rules of Civil Procedure that:

A copy of this NOTICE has been served to MORGAN MICHELLE MYERS through her EFM registered under MORGANMW02@GMAIL.COM

A copy of this NOTICE has been provided to COOPER L. CARTER through her email COOPERCARTER@MAJADMIN.COM

A copy of this NOTICE has been served to HOLLY HAYES through her EFM registered email address: CSD-FILER914@TEXAS.OAG.GOV

Served on: 04/07/2025

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
817-546-3693
CHUCKDUSTIN12@GMAIL.COM
PRO-SE

Automated Certificate of eService

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

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Filing Code Description: Notice
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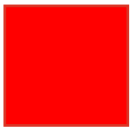
Status as of 4/7/2025 2:57 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/7/2025 12:05:40 PM	SENT
CHARLES DMYERS		CHUCKDUSTIN12@GMAIL.COM	4/7/2025 12:05:40 PM	SENT
CHARLES MYERS		chuckdustin12@gmail.com	4/7/2025 12:05:40 PM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/7/2025 12:05:40 PM	SENT

M.2084



233-765358-25

PETITIONER'S PRE-OBJECTION TO TRANSFER

04.04.25

M.2084

233-765358-25

FILED
TARRANT COUNTY
4/4/2025 9:25 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 233-765358-25

IN THE 233RD DISTRICT COURT OF TARRANT COUNTY, TEXAS

IN RE: M.E.M., ET AL.
**CHARLES DUSTIN MYERS, **

Petitioner,

MORGAN MICHELLE MYERS,

Respondent.

2025-04-04

PETITIONER'S PRE-OBJECTION TO MOTION TO TRANSFER

TO THE HONORABLE COURT:

Petitioner, CHARLES DUSTIN MYERS, PRE-OBJECTS to any motion to transfer filed on behalf of COOPER L. CARTER in this matter, and in support thereof, shows the following:

I. INTRODUCTION

1. On March 28, 2025, Petitioner set a properly filed motion to be heard in front of the associate Judge.

2. Petitioner was denied an opportunity to be heard due to the ***claim*** that COOPER L. CARTER would be filing a motion to consolidate in the 322nd District Court of Tarrant County as justification for the denial of due process.

3. On April 2nd, 2025, Petitioner filed a PRE-OBJECTION laying out the legal reasons why COOPER L. CARTER's consolidation motion was improper, and premature.

4. COOPER L. CARTER cannot move to consolidate this matter with the divorce suit pending before the 322nd District Court because the Texas Family Code 6.407(b) explicitly states:

> "On the transfer of the proceedings, the court with jurisdiction of the suit for dissolution of a marriage shall consolidate the two causes of action."

5. Therefore, COOPER L. CARTER's motion to consolidate is procedurally improper, and was used as a tool to interfere with emergency proceedings where no answer was provided.

6. The court cannot refuse to hear a properly filed motion before it and give deference to an improperly filed motion notwithstanding COOPER L. CARTER's misconduct and failure to prosecute the divorce suit.

II. CONCLUSION

7. For these reasons, Petitioner respectfully OBJECTS to any motion to transfer filed on behalf of COOPER L. CARTER.

8. Furthermore, before any motion to transfer is to be set by COOPER L. CARTER, her authority pursuant to Rule 12 should be resolved by citing COOPER L. CARTER to appear and prove her authority to represent the Respondent in this matter.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
PRO-SE

CERTIFICATE OF SERVICE

Pursuant to rule 21a of the Texas Rules of Civil Procedure, this PRE-OBJECTION to motion to transfer was served on all parties of record via their EFM email registered with re:Search Texas on 04/04/2025.

And also to COOPER L. CARTER via COOPERCARTER@MAJADMIN.COM

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MERS
CHUCKDUSTIN12@GMAIL.COM
817-546-3693
PRO-SE

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Status as of 4/4/2025 12:58 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/4/2025 9:25:44 AM	SENT
CHARLES DMYERS		CHUCKDUSTIN12@GMAIL.COM	4/4/2025 9:25:44 AM	SENT
CHARLES MYERS		chuckdustin12@gmail.com	4/4/2025 9:25:44 AM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/4/2025 9:25:44 AM	SENT

M.2088

322-744623-23

DOMINANT JURISDICTION

ANALYSIS

04.15.25

M.2088

322-744263-23

FILED
TARRANT COUNTY
4/15/2025 10:38 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 322-744263-23

IN THE 322nd DISTRICT COURT OF TARRANT COUNTY, TEXAS

ITMOMO
(AITIO M.E.M., C.R.M., two children)
MORGAN MICHELLE MYERS

Petitioner,

CHARLES DUSTIN MYERS,

Respondent.

2025-04-15

DOMINANT JURISDICTION ANALYSIS

TO THE HONORABLE COURT:

Under Texas law, the doctrine of dominant jurisdiction dictates that when two suits involving the same parties and subject matter are filed in courts of concurrent jurisdiction, the court where the suit was first filed typically acquires exclusive control. However, this presumption can be overcome by showing that the first suit was initiated in bad faith or for the purpose of delay. Texas courts, following the rule established in *Wyatt v. Shaw Plumbing Co.*, recognize exceptions where the first suit was filed merely to establish procedural priority, in anticipation of subsequent litigation, or to stall the opposing party's legitimate claims. These principles provide a vital check against strategic abuse of court processes and ensure jurisdictional fairness when forum manipulation is evident.

This analysis looks into the circumstances surrounding this matter, and is presented in a good-faith effort to provide insight to the court.

Dominant Jurisdiction Analysis with Bad Faith Focus

I. Legal Framework for Dominant Jurisdiction

A. General Principles

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.

B. 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.

When this exception applies, the second court may proceed with its case despite the pendency of the first-filed suit.

II. Evidence of Bad Faith in the Initial Suit

A. Chronology Demonstrating Premeditated Legal Strategy

1. **Pre-Filing Coordination with Dan Branthoover (December 14-17, 2023)**
    - Morgan exchanged 92 text messages with Dan Branthoover on December 14, 2023
    - Dan persuaded Charles to allow Morgan to bring children to his residence under false pretenses
    - While at Dan's residence, Morgan prepared divorce papers with his assistance
    - Dan purchased a second phone for Morgan and pepper spray mace
2. **Financial Misconduct Prior to Filing (December 15-16, 2023)**
    - Morgan transferred $1,576 from joint account to Dan's PayPal account
    - When confronted, Dan falsely claimed Morgan transferred money to her own account
    - Morgan then claimed to be indigent in her divorce filing despite having just transferred these funds
3. **False Claims in Initial Filings (December 18-22, 2023)**
    - Morgan filed for divorce on December 18, 2023, claiming to be indigent
    - She falsely claimed an active protection order already existed

- She falsely claimed family violence had occurred during the marriage to waive the 60-day waiting period
- She falsely claimed financial responsibility for bills that Charles paid
- Despite claiming an active protective order already existed, she filed for another one on December 22, 2023

B. Misrepresentations to the Court

1. **False Allegations of Family Violence**
    - No evidence of family violence was ever presented
    - Morgan claimed family violence occurred on December 18, 2023, which was demonstrably false
    - These allegations were strategically included to waive the 60-day waiting period for divorce
2. **False Financial Affidavits**
    - Morgan claimed indigent status immediately after transferring $1,576 from joint account
    - She misrepresented financial responsibilities, claiming to make both car payments
    - She falsely claimed to have no money despite the recent transfer
3. **Fabricated Protective Order Status**
    - Morgan's grandmother served an eviction notice claiming a protective order had been filed when none existed

- Initial divorce filing claimed an active protective order existed when none did
- These misrepresentations were designed to prejudice the court against Charles

C. Procedural Manipulation

1. **Strategic Delays and Attorney Changes**
    - At the January 22, 2024 hearing, Morgan appeared without counsel
    - She hired Cooper L. Carter on the spot in the courtroom lobby to cause further delay
    - This tactic successfully delayed the case until February 1, further prejudicing Charles
2. **Self-Help Tactics Outside Legal Process**
    - On March 6, 2024, Morgan illegally locked Charles outside the home
    - This occurred after Charles had filed notice with the court that he would not leave until after the hearing
    - This demonstrated willingness to circumvent legal process
3. **Systematic Non-Prosecution**
    - After securing favorable temporary orders, Morgan's counsel ceased prosecuting the case
    - Last action in the divorce matter was April 24, 2024, nearly one year ago

- This pattern suggests the initial filing was not intended to resolve the dispute but to secure tactical advantages

III. Application of Bad Faith Exception to Current Case

A. Legal Analysis

The facts of this case align precisely with the bad faith exception outlined in *Wyatt v. Shaw Plumbing Co.* The initial divorce filing shows clear evidence of being:

1. **A mere pretext to establish priority**: The coordinated preparation of documents with Dan Branthoover before any legitimate attempt at reconciliation or mediation demonstrates the filing was pretextual.
2. **Filed in anticipation of potential action by Charles**: The timing of the filing after Charles discovered evidence of an affair suggests anticipatory filing to gain tactical advantage.
3. **For the purpose of delay**: The systematic non-prosecution of the case for nearly a year after securing favorable temporary orders demonstrates the purpose was not resolution but delay.
4. **In bad faith**: The numerous false statements in court filings, including claims about protective orders, family violence, and financial status, constitute clear bad faith.

B. Case Law Support

1. **In re Henry**, 274 S.W.3d 185, 193 (Tex. App.—Houston [1st Dist.] 2008, pet. denied)

- Court held that "filing a lawsuit for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation, is sanctionable conduct."
- The pattern of behavior in the initial divorce filing aligns with this standard.

2. **Perry v. Del Rio**, 66 S.W.3d 239, 252 (Tex. 2001)
    - The Texas Supreme Court recognized that "the first-filed rule should not be applied inflexibly or when doing so would reward gamesmanship or ill motive."
    - Morgan's coordinated preparation of divorce filings while misleading Charles about her intentions constitutes precisely the kind of gamesmanship courts should not reward.
3. **Gonzalez v. Reliant Energy, Inc.**, 159 S.W.3d 615, 622 (Tex. 2005)
    - Court held that dominant jurisdiction does not apply when the first suit is filed "in anticipation of the second suit and in an effort to subvert the second action."
    - The timing and coordination with Dan Branthoover suggest the divorce was filed in anticipation of potential action by Charles after discovering the affair.

C. Family Law Context

In family law matters, courts have been particularly vigilant about bad faith filings due to their impact on children and families:

1. **In re Marriage of Allen**, 593 S.W.3d 133, 137 (Tex. 2019)

- The Texas Supreme Court emphasized that in family law matters, courts must be particularly vigilant about procedural gamesmanship that affects children's welfare.
- The false allegations of family violence and protective orders directly implicate this concern.

2. **In re Sims**, 88 S.W.3d 297, 303-04 (Tex. App.—San Antonio 2002, orig. proceeding)
    - Court held that in SAPCR cases, the best interest of the child can override strict application of dominant jurisdiction.
    - The systematic non-prosecution of the case has prevented resolution, contrary to the children's best interests.

IV. Implications for Current Proceedings

A. Legal Consequences of Bad Faith Finding

If the court determines the initial divorce filing was made in bad faith, several significant legal consequences follow:

1. **Dominant Jurisdiction Defeated**: The 233rd District Court would not be bound by the dominant jurisdiction of the 322nd District Court where the divorce was filed.
2. **Consolidation Order Invalidated**: The consolidation order would be invalid not only for procedural defects but also because it erroneously applied dominant jurisdiction principles to a bad faith filing.
3. **Independent Proceeding Permitted**: Charles's SAPCR filing in the 233rd District Court could proceed independently, unaffected by the prior divorce filing.

4. **Potential for Sanctions**: The court could consider sanctions against Morgan and/or her counsel for the bad faith filing and misrepresentations to the court.

B. Strategic Approach for Rehearing Motion

In the motion for rehearing, the bad faith analysis should be presented as an independent, alternative ground for mandamus relief:

1. **Primary Argument**: The consolidation order should be vacated due to procedural defects (lack of notice, hearing, proper transfer).
2. **Alternative Argument**: Even if procedurally proper, consolidation was improper because the first-filed suit's dominant jurisdiction was defeated by bad faith.
3. **Relief Requested**: The court should:
    - Vacate the consolidation order
    - Recognize the 233rd District Court's authority to proceed independently with the SAPCR
    - Order the trial court to hear Charles's emergency TRO on its merits

V. Conclusion

The doctrine of dominant jurisdiction is not an absolute rule but a principle of judicial efficiency that yields when its application would reward bad faith or procedural gamesmanship. The extensive evidence of coordination before filing, false statements in court documents, and systematic non-prosecution after securing favorable orders demonstrates that the initial divorce filing was made in bad faith.

Under Texas law, this bad faith defeats any claim of dominant jurisdiction by the 322nd District Court. Consequently, the consolidation order was not only procedurally defective but substantively erroneous in its application of dominant jurisdiction principles. The Court of Appeals should grant rehearing and issue mandamus relief to prevent the trial court from rewarding this bad faith through improper consolidation.

CERTIFICATE OF SERVICE

Relator certifies that on April 15, 2025, a true and correct copy of the foregoing DOMINANT JURISDICTION ANALYSIS was served on all parties and counsel of record as follows:

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

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

Holly Hayes

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Fort Worth, TX 76103-2308
817-459-6878
CSD-Legal-914@oag.texas.gov
TEXAS O.A.G.

Automated Certificate of eService

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Filing Code Description: No Fee Documents
Filing Description: Dominant Jurisdiction Analysis
Status as of 4/15/2025 12:58 PM CST

Case Contacts

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HOLLY HAYES		csd-filer-914@texasattorneygeneral.gov	4/15/2025 10:38:48 AM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/15/2025 10:38:48 AM	SENT

M.2101

02-25-00164-CV

MANDAMUS RECORD

04.10.25

M.2101

M.2102

No._____-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

Original Proceeding Arising Out of

the 233rd Judicial District Court of Tarrant

County, Texas

Cause Number 233-765358-25

Hon. Associate Judge Kate Stone Presiding

MANDAMUS RECORD

Respectfully submitted by:

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

M.2102

AFFIDAVIT VERIFYING MANDAMUS RECORD

MR # **DATE**

MR1 IFP STATEMENT 03/19/2025

MR2 TEMPORARY ORDERS (322-744263-23) 03/14/2024

MR3 RESP. ORIGINAL ANSWER 03/20/2025

MR4 MOTION TO CONSOLIDATE.....03/20/2025

MR5 MOTION TO STRIKE RESP'S ANSWER / CONSOL 03/20/2025

MR6 RULE 12 MOTION TO SHOW AUTHORITY 03/21/2025

MR7 EMERGENCY TRO AND ORDER SETTING HEARING 03/24/2025

MR8 PETITIONER'S STATEMENT 04/01/2025

MR9 NOTICE OF INTENT TO FILE MANDAMUS 04/07/2025

STATE OF TEXAS

COUNTY OF TARRANT

AFFIDAVIT VERIFYING MANDAMUS RECORD

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

1. My name is **Charles Dustin Myers**. I am the Relator in the above-captioned proceeding and am competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

2. This affidavit is submitted in support of the **Mandamus Record**, filed pursuant to **Texas Rule of Appellate Procedure 52.7(a)**.

3. The documents contained in the Mandamus Record are true and correct copies of pleadings, motions, transcripts, and other materials that were **filed in the underlying proceeding** before the **233rd District Court of Tarrant County, Texas**, in Cause No. **233-765358-25**.

4. Each document included has been accurately reproduced from the court's file or my personal file maintained in the regular course of

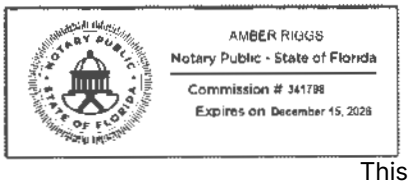
litigation, and to the best of my knowledge, has not been altered in any way.

5. Each document is a true and accurate copy under penalty of perjury.

FURTHER AFFIANT SAYETH NOT.

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 04/10/2025 by Charles Dustin Myers.

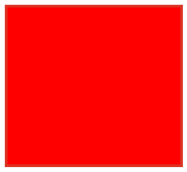
Amber Riggs

___ Personally Known OR ___ Produced Identification

Type of Identification Produced _____DRIVER LICENSE

Notarized remotely online using communication technology via Proof.

M.2106



02-25-00166-CV

EMERGENCY STAY

04.15.25

M.2106

M.2107

No. 02-25-00166-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

Original Proceeding arising from

the 322nd Judicial District Court, Tarrant County

Cause Number 322-744263-23

Hon. Jeff Kaitcer Presiding

EMERGENCY MOTION TO STAY PROCEEDINGS

Respectfully submitted by:

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

M.2107

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.

---

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 16th, 2024's "kick-out" order (MR 6.1) and March 14th, 2024's one-sided consent judgement. (MR. 17.38)

---

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 322nd 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 322nd 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 322nd 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
[redacted]
817-546-3693
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@tarrantcountytx.gov

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

COUNSEL FOR REAL PARTY IN INTEREST

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INTERVENOR

Holly Hayes

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817-459-6878
CSD-Legal-914@oag.texas.gov
TEXAS O.A.G.

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

Case Contacts

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MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/15/2025 8:13:34 AM	SENT
COOPER L.CARTER		COOPERCARTER@MAJADMIN.COM	4/15/2025 8:13:34 AM	SENT
JEFF NKAITCER		LKBaker@tarrantcountytx.gov	4/15/2025 8:13:34 AM	SENT

M.2124

02-25-00171-CV

MANDAMUS CONSOLIDATION

04.16.25

M.2124

M.2125

No._____-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

Original Proceeding Arising from

the 233rd Judicial District Court, Tarrant County

Cause Number 233-765358-25

Hon. Kenneth E. Newell Presiding

PETITION FOR WRIT OF MANDAMUS

Respectfully submitted by:

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

ORAL ARGUMENT REQUESTED

Emergency Relief Requested before 04/24/2025

M.2125

Identity of Parties and Counsel

Relator

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

Respondent

Hon. Kenneth E. Newell
District Judge of the 233rd District Court,
Tarrant County, Texas
200 E. Weatherford St. 5th Floor
Fort Worth, TX 76196-0227
adwierzbicki@tarrantcountytx.gov
817-884-1794

Real Party in Interest

Morgan Michelle Myers
[redacted]
Morganmw02@gmail.com
817-235-5189

Counsel for Real Party in Interest

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Statutes

Local Rules

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 233rd 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 322nd 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 322nd 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. Berchelmann*, 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 usure 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 came 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 233rd 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 11th 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 233rd (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
[redacted]
817-546-3693
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. 5th Floor
Fort Worth, TX 76196
Via electronic submission to the court coordinator
Via email: ADWierzbicki@tarrantcountytx.gov

Morgan Michelle Myers
Real Party in Interest
VIA the EFM at:
MORGANMW02@GMAIL.COM

Cooper L. Carter
Marx, Altman & Johnson
2905 Lackland Road
Fort Worth, TX 76116
Via email: 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

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

Original Proceeding Arising Out of

the 233rd Judicial District Court of Tarrant

County, Texas

Cause Number 233-765358-25

Hon. Kenneth E. Newell Presiding

RELATOR'S APPENDIX

Respectfully submitted by:

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

AFFIDAVIT VERIFYING RELATOR'S APPENDIX

APP# NAME

 M.2152

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

AMBER RIGGS
Notary Public - State of Florida
Commission # 341188
Expires on December 16, 2026

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
Notarized remotely online using communication technology via Proof.

 M.2152

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. 5th Floor
Fort Worth, TX 76196
Via electronic submission to the court coordinator
Via email: ADWierzbicki@tarrantcountytx.gov

Morgan Michelle Myers
Real Party in Interest
VIA the EFM at:
MORGANMW02@GMAIL.COM

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

/s/ Charles Dustin Myers
Charles Dustin Myers,
Pro Se Relator

Automated Certificate of eService

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

Envelope ID: 99721652
Filing Code Description: Affidavit of Indigence (TRAP 20.1(c),(2))
Filing Description: IFP
Status as of 4/16/2025 10:05 AM CST

Case Contacts

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MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/16/2025 7:49:45 AM	SENT

M.2155

02-25-00164-CV

EN BANC SAPCR

04.22.25

M.2155

M.2156

No. 02-25-00164-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

On Petition for Writ of Mandamus

to the 233rd Judicial District Court, Tarrant County

Cause Number 233-765358-25

Hon. Kate Stone Presiding

MOTION FOR EN BANC RECONSIDERATION

Respectfully submitted by:

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

ORAL ARGUMENT REQUESTED

M.2156

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ISSUES PRESENTED FOR RECONSIDERATION

Rehearing Issue No. 1:

According to the Texas Supreme Court, mandamus may issue to compel a judge to perform a ministerial act. The panel erred by overlooking that the trial court had a legal duty to act, that a demand for performance was made, and that the court refused to rule.

Rehearing Issue No. 2:

The panel erred by overlooking that the burden for mandamus was satisfied. The mandamus and supplemental records establish a prima facie showing that an emergency TRO was properly filed, a date and time to present the motion was secured, opposing counsel participated in scheduling the full hearing, and the trial court declined to proceed, resulting in no ruling or order.

TO THE HONORABLE SECOND COURT OF APPEALS:

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

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

This motion serves as the third filed reconsideration motion and addresses the panel’s denial of Cause No. 02-25-00164-CV (attached as Tab A), referred to as the “**SAPCR**” mandamus. It is respectfully submitted that the panel’s *per curiam* dismissal overlooked substantial, uncontested factual inaccuracies and manifest procedural deficiencies meticulously substantiated within the mandamus and supplemental mandamus records. Such judicial oversight necessitates comprehensive *en banc* scrutiny to preserve jurisprudential coherence and fidelity to established precedents of Texas law.

Relator welcomes a response from the Real Party or Respondent if such would provide meaningful insight into the situation.

STATEMENT OF FACTS

On March 19, 2025, Relator filed a SAPCR as an original proceeding in the 233rd District Court of Tarrant County which was subsequently answered by counsel for Real Party in Interest the following day. (MR 3). An emergency TRO was later filed on March 24, 2025, in the 233rd District Court of Tarrant County. (MR 7, MR 7.26) The trial court was asked to perform a ministerial duty when a date and time was secured to present the motion. (SUPP 2.11, SUPP 2.24, SUPP 2.26). The undersigned appeared on March 28, 2025, and it is undeniable that the full hearing was set for April 10, 2025, at 9:30a.m. The judge refused to hear the motion. Accordingly, no appealable order was issued.

SUMMARY OF ARGUMENT

It is clear that the trial court below had a ministerial duty to act and refused to do so. When a trial court fails to rule on a motion that is properly filed and brought to its attention, the abuse of discretion is established as a matter of law. This aligns with longstanding mandamus jurisprudence, which requires only three elements to establish a clear abuse of discretion: the existence of a legal duty to act, a clear request for that action, and the court's failure or refusal to do so. *In re Shredder Co., L.L.C.*, 225 S.W.3d 676, 679 (Tex. App.- El Paso 2006, orig. proceeding); *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979). All three elements are present here.

ARGUMENT AND AUTHORITY

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

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

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

Further, the subject matter of this case—three concurrently pending mandamus proceedings, all arising from distinct but interconnected abuses of discretion—constitutes an extraordinary circumstance. Each petition was denied *per curiam* by the same panel despite a clearly established record of procedural violations and judicial inaction. The *en banc* court should examine and correct the

panel's cursory denials to ensure that this Court's precedent does not inadvertently endorse or perpetuate abuses of discretion that have been thoroughly documented across the mandamus and supplemental records without any opposition.

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

"When a motion is properly filed and pending before the trial court, the act of giving consideration to and ruling upon that motion is a ministerial act, and mandamus may issue to compel the trial judge to act." *Safety-Kleen Corp. v. Garcia*, 945 S.W.2d 268, 269 (Tex. App.- San Antonio 1997, orig. proceeding). However, the Relator must demonstrate that the trial court abused its discretion by failing or refusing to perform a ministerial act.

A. The trial court abused its discretion by failing to rule on a properly filed motion after being asked to act.

To establish an abuse of discretion, the Relator must show that the trial court received a properly filed motion, was made aware of it, and was asked to rule—whether through direct correspondence or other documents drawing the court's attention to the matter**.** *See* In re Villarreal, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding).

Here, the email correspondence between the court coordinator of the 233rd District Court, counsel for Real Party, and the undersigned found in SUPP 2.17-2.22 clearly demonstrates that: 1) a motion was filed and properly before the court

without objection; 2) the undersigned appeared in person at a designated time and requested the court rule on his motion with a full trial setting secured for April 10, 2025; 3) the court refused to rule on the motion.

Therefore, the trial court clearly abused its discretion by refusing to perform a ministerial act after being properly asked to rule on a pending motion, which is well supported in the verified supplemental mandamus record. When a motion has been properly filed and brought to the attention of the trial court, the act of considering and ruling upon the motion is ministerial in nature, and mandamus may issue to compel the trial court to act. See *In re Layton*, 257 S.W.3d 794, 795 (Tex. App.— Amarillo 2008, orig. proceeding).

B. By refusing to act, the Relator was left without an adequate remedy for an appeal.

By refusing to rule, no order was issued. This left the undersigned without an adequate remedy by appeal and thus satisfies the standard for mandamus relief. See *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004). In other words, there is no adequate remedy at law for a trial court's failure to rule because "[f]undamental requirements of due process mandate an opportunity to be heard." *See In re Christensen*, 39 S.W.3d 250, 251 (Tex. App.—Amarillo 2000, orig. proceeding). Here, those fundamental requirements were not satisfied, resulting in these proceedings.

CONCLUSION AND PRAYER

Considering the facts incorporated herein, the *en banc* court should revisit the denial issued by the panel on April 11, 2025. (attached as Tab 1) It remains undisputed that an emergency motion was before the trial court (MR 7) the trial court was asked to rule on that motion, and the trial court refused to do so.

The undersigned, CHARLES DUSTIN MYERS, therefore, respectfully prays that this Court grant *en banc* reconsideration, withdraw or vacate the panel's *per curiam* denial, and remand this cause back to the 233rd District Court of Tarrant County for further proceedings consistent with law and justice. In doing so, the undersigned asks this Court to consider not only the record in this case, but the totality of the circumstances presented across all three pending *en banc* motions—each evidencing distinct but interlocking abuses of discretion that have left him without an adequate appellate remedy. The Triplicate of per curiam denials should be reconsidered. Relator holds deep respect for the judiciary, the judges of this Court, and all parties involved, and trusts that neither his zealous advocacy nor his self-represented status detracts from the merits of the arguments presented.

Respectfully submitted,

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

CERTIFICATE OF COMPLIANCE

I certify that the number of words in this motion (excluding any caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, issues presented, signature, proof of service, certificate of conference and certificate of compliance) is **1,307**.

M.2167

A

M.2167

M.2168

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

No. 02-25-00164-CV

IN RE CHARLES DUSTIN MYERS, Relator

Original Proceeding
233rd District Court of Tarrant County, Texas
Trial Court No. 233-765358-25

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

M.2168

MEMORANDUM OPINION

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

Per Curiam

Delivered: April 11, 2025

CERTIFICATE OF SERVICE

Relator CHARLES DUSTIN MYERS certifies that on April 22, 2025, a true and correct copy of the foregoing MOTION FOR EN BANC RECONSIDERATION was served on all parties and counsel of record as follows:

Respondent

Hon. Kate Stone J.D.

Associate Judge, 233rd District Court

Tarrant County Family Law Center

200 E. Weatherford St.

Fort Worth, TX 76196

817-884-1197

Via electronic submission to the court coordinator

Via email: ADWierzbicki@tarrantcountytx.gov

Real Party in Interest

Morgan Michelle Myers

MORGANMW02@GMAIL.COM

Counsel for Real Party in Interest

Cooper L. Carter

Marx, Altman & Johnson

2905 Lackland Road

Fort Worth, TX 76116

Via email: coopercarter@majadmin.com

/s/ Charles Dustin Myers

Charles Dustin Myers

PRO-SE RELATOR

SERVED: 04/22/2025

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Filing Description: Motion for EN BANC Reconsideration - "The Third Head" - "SAPCR Mandamus"
Status as of 4/22/2025 1:27 PM CST

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M.2172

322-744623-23

PROCEDURAL IRREGULARITIES WITH TEMPORARY ORDERS

04.15.25

M.2172

M.2173

322-744263-23

FILED
TARRANT COUNTY
4/15/2025 10:06 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 322-744263-23

IN THE 322nd DISTRICT COURT OF TARRANT COUNTY,

TEXAS

ITMOMO
MORGAN MICHELLE MYERS
AITIO M.E.M., C.R.M., two children
Petitioner,

CHARLES DUSTIN MYERS,

Respondent.

2025-04-13

PROCEDURAL IRREGULARITIES IN TEMPORARY ORDERS

ANALYSIS

A Legal Research Paper Examining the Validity of Temporary Orders Signed on March 26, 2024

Prepared for Court Submission

April 14, 2025

M.2173

ABSTRACT

This research paper examines whether the Temporary Orders signed on March 14, 2024, in Cause No. 322-744263-23 (322nd District Court, Tarrant County) are facially void or legally invalid due to procedural irregularities. The analysis focuses on how the Associate Judge's Reports from February 1, 2024, and March 14, 2024, were processed, highlighting significant deviations from required legal procedures. The paper evaluates these irregularities against the framework of Texas Family Code provisions, Texas Rules of Civil Procedure, and relevant case law. Particular attention is given to issues of consent, due process violations, and the legal consequences of these procedural failures. The research concludes with an assessment of potential remedies, including mandamus relief and other direct attacks to vacate the orders.

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I. INTRODUCTION AND ISSUE PRESENTED

A. Overview of the Case

This report examines whether the Temporary Orders signed on March 26, 2024, in Cause No. 322-744263-23 (322nd District Court, Tarrant County) are facially void or legally invalid. Evidence indicates serious procedural irregularities in how the Associate Judge's Reports from February 1, 2024, and March 14, 2024, were handled.

The case involves a family law matter between Morgan Myers (Petitioner) and Charles Myers (Respondent). The procedural history reveals a concerning pattern of deviations from standard legal practice and explicit judicial directives. Of particular concern are the following newly uncovered facts:

The February 1, 2024, Associate Judge's Report required a typed Temporary Orders conforming to the report to be prepared by attorney Dan Bacalis within 20 days, approved by both attorneys within 5 days, and set for entry ("motion to sign") within 30 days if no agreement.

The order filed (March 26, 2024 Temporary Orders) was prepared well past the 20-day/30-day deadlines – in fact about 44 days later – and by Cooper L. Carter (opposing counsel) instead of Dan Bacalis. It was not reviewed or approved by Charles's attorney (Bacalis had ceased representing Charles by then), and Charles was pressured to sign it immediately on March 26, 2024, under threat of adverse action, rather than being given the 5-day review period the Associate Judge had ordered and the parties actually *had* agreed to.

The March 14, 2024, Associate Judge's Report contains handwritten directives written by opposing counsel, not the judge, including a coercive ultimatum that final orders must be presented by 1:30 PM that same day. The report notes that Charles objected to the form of the proposed order and refused to approve Paragraph 3 – evidencing that no true agreement on all terms existed.

B. Issue Presented

This research paper addresses the following central question: Do these procedural failures – including non-compliance with the Associate Judge's instructions, lack of required signatures/approvals, and coerced "consent" – render the February 1 and March 14 reports never properly converted into a valid court order, and thus make the March 26, 2024, Temporary Orders facially void or otherwise invalid?

The analysis will address the governing law (Texas Family Code provisions, Texas Rules of Civil Procedure, and case law) and analyze potential due process violations. The paper will also discuss remedies, including whether mandamus relief or other direct attacks are appropriate to vacate the orders.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. February 1, 2024 – Associate Judge's Hearing and Report

On February 1, 2024, an Associate Judge never heard Petitioner Morgan Myers's motion for temporary orders. The purpose of the setting was for Petitioner to produce evidence of her family violence claims. According to the Associate Judge's Report for Temporary Orders signed that day, both parties appeared with counsel. The report recites that Petitioner (Morgan) and Respondent (Charles) "signed an Associate Judge's Report regarding Agreed Temporary Orders." In other words, the Associate Judge's Report for Temporary Orders was represented as an agreed order.

Notably, however, the February 1 report itself was not a final typed order; it was a handwritten form that Dan Bacalis, not the Associate Judge, completed. Crucially, at the end of the hearing the Associate Judge did not enter a final written order but instead set out a procedure to finalize one:

1. A typed Temporary Order conforming to the Associate Judge's Report was to be prepared within 20 days of February 1, 2024. The report explicitly says: *"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]."*

2. Each attorney was to approve the order, with 5 days for review. The report states: *"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."* Thus, both Morgan's and Charles's attorneys were required to sign off as to form; the parties' signatures on the final typed version were not strictly required by this instruction (since it says parties "do not need to approve"), but the initial report itself contemplated an agreed order and included signature lines for the parties as evidence of their agreement. In practice, for an agreed family order it is standard that both parties and counsel sign "Approved as to Form and Substance."

3. If the attorneys could not agree on the form of order, a "Motion to Sign" hearing was to be set within 30 days of February 1. The report directs: *"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."* This meant by approximately March 2, 2024, any dispute about the order's wording or contents should be brought to the court for resolution.

Finally, the February 1 Associate Judge's Report has an "AGREED AS TO FORM AND SUBSTANCE" signature block for the parties and attorneys.

The Associate Judge did sign the report on February 1, making the report effective as an interim order of the court. Under Texas Family Code § 201.013, a signed Associate Judge's proposed order is in full force and effect pending any request for a de novo hearing by the referring court. No request for a de novo hearing was filed by either party within the 3-working-day window (Tex. Fam. Code § 201.015(a)). Therefore, the Associate Judge's rulings of February 1 became the governing temporary orders in effect – but only in the form of the handwritten report, pending entry of the formal typed order.

B. March 14, 2024 – Attempt to Finalize Order and Second AJ's Report

By early March 2024, no agreed typed order had been submitted or signed. Dan Bacalis (Charles's attorney) did not prepare the order within 20 days, nor was a Motion to

Sign filed within 30 days. In fact, during this period Charles's counsel was terminated from representation just four days after the associate judge's report was signed on February 1. To address the basis for any agreement being fraudulent, Charles promptly filed an emergency motion to reconsider evidence and vacate any agreement, which was eventually set for March 14 due to Cooper Carter's availability.

At the March 14 proceeding, instead of simply holding an entry hearing, the court and counsel engaged in off-the-record discussions to get the order finalized. Opposing counsel (Cooper Carter) took it upon herself to hand-write the directives on a new Associate Judge's Report form. These handwritten notes (penned by Carter, not the judge) included a coercive instruction that Charles must sign the final order by 1:30 PM that same day (March 14).

Essentially, Charles was given an ultimatum to immediately acquiesce to the written order's terms. The March 14 report also documented that Charles objected to the form of the order and specifically did not approve Paragraph 3 (a provision in the draft order). In other words, as of March 14 there was not a full meeting of the minds – Charles had an unresolved objection to at least one substantive term. Despite this, the pressure was on to finalize the order that day, and the purpose of being there was for an entire different purpose.

Importantly, the handwritten March 14 notes were not written by the judge and were not traditional judicial findings or rulings – they were more in the nature of instructions and a deadline apparently dictated by opposing counsel. There is no indication the Associate Judge held an evidentiary hearing on March 14 or made independent findings; instead, it appears the goal was simply to force execution of the previously "agreed" temporary order that had essentially been nullified by Dan Bacalis' departure from the case.

C. March 26, 2024 – Filing of the Temporary Orders and Circumstances of Signing

On March 26, 2024, a typed "Temporary Orders" document was finally filed with the District Clerk. This document, which spans numerous pages, purports to memorialize the

temporary conservatorship, possession, and injunction terms that were discussed back on February 1. The key points about this March 26, 2024 Temporary Orders are:

1. It was drafted by Cooper L. Carter, counsel for Morgan (as evidenced by the signature block indicating Carter's authorship and by the fact that Bacalis was no longer involved). This violated the Associate Judge's explicit instruction that Dan Bacalis would prepare the order. In effect, opposing counsel unilaterally drafted the order.

2. It was prepared and filed well after the 20-day deadline set by the February 1 report. Nearly two months had elapsed (far beyond the expected February 21 deadline for drafting and March 2 deadline for a motion to sign). No extension or modification of the Associate Judge's timeline was on record. Thus, the order was untimely under the terms of the February 1 directive.

3. Critically, the order was not reviewed or approved by Charles Myers's attorney. By the time the order was drafted in late March, Charles had no attorney of record (Bacalis did not sign the order and had withdrawn). The February 1 report's procedure – requiring each attorney to approve within 5 days – became impossible to follow, since Charles had no counsel to review the draft. Carter did not seek approval from any attorney on Charles's side. In fact, the signature block shows Dan Bacalis's signature line blank (he did not sign off because he wasn't even on the case).

4. The March 26 order was presented to Charles for his signature on extremely short notice (apparently on the same day). Charles did not sign the order. He was essentially confronted with the final order and told to sign immediately (recall the March 14 "1:30 PM deadline" threat) or face adverse consequences (the implication being the judge would sign it without his consent or possibly hold him in contempt or consider him uncooperative). Feeling coerced and with no counsel to advise him, Charles signed "Approved and Consented to as to Form and Substance" on March 26, 2024 – but this signature was not truly voluntary. It was done under protest to avoid an even worse outcome. It is telling that Charles

had explicitly refused to approve the same order's Paragraph 3 on March 14, yet by March 26 he capitulated and signed – a strong indicator of coercion rather than genuine agreement.

5. The recitals in the March 26 Temporary Orders are misleading. The order opens by reciting that both parties appeared on February 1 and "signed an Associate Judge's Report regarding Agreed Temporary Orders", and that *"The parties have agreed to the terms of this order as evidenced by the signatures below."* While Morgan and her counsel indeed signed the report, Charles's signature was not on that report, so that recital is factually inaccurate. Thus, the very foundation – that the order is an agreed order – is incorrect.

In summary, the March 26, 2024, Temporary Orders were entered following a process in which the Associate Judge's explicit procedures were not observed, one party's counsel was no longer involved to approve the order, and the other party's consent was effectively forced.

III. LEGAL FRAMEWORK

A. Authority of Associate Judges and Requirements for Temporary Orders

Associate Judge's Orders and Reports (Texas Family Code Ch. 201)

In Texas family law cases, an associate judge may hear temporary orders matters and issue a report or even render an order, but certain procedures apply. Under Tex. Family Code § 201.011, an associate judge's report must be in writing and in the form directed by the referring court. The associate judge can include a proposed order in the report. After the hearing, notice of the substance of the report must be given to the parties (which can be done in open court, as happened on February 1).

Crucially, parties have a right to request a de novo hearing before the referring District Judge within a short window (generally 3 working days for temporary orders in SAPCR cases) after receiving notice of the associate judge's report. See Tex. Fam. Code § 201.015(a). If no timely de novo hearing is requested, the associate judge's proposed

order may be adopted and enforced as an order of the district court. In fact, pending any de novo request, the associate judge's proposed order is in full effect as an order of the court (Tex. Fam. Code § 201.013(a)). This legal mechanism is intended to give immediate effect to temporary rulings, while allowing a quick review by the district judge if a party is dissatisfied.

An associate judge has authority to "render and sign... a temporary order" in a SAPCR or divorce case. Tex. Fam. Code § 201.007(a)(14)(C) expressly so provides. The associate judge can also sign a final order if it is agreed in writing by all parties as to both form and substance. In other words, the statute recognizes that a true agreed order (with all parties signing off) can be signed by the associate judge and will carry the same weight as if the district judge signed it. For contested matters, typically the associate judge issues a report and proposed order for the district judge to sign, unless no party objects (in which case the associate judge's order often effectively becomes final after the de novo period).

Requirements for Temporary Orders (Tex. Family Code § 105.001)

Section 105.001 of the Family Code governs temporary orders in suits affecting the parent-child relationship. It broadly allows a court to make temporary orders for the safety and welfare of the child (e.g., conservatorship, support, restraining certain behavior, etc.). However, it also imposes certain procedural safeguards. For example, except in emergencies, temporary orders (like those appointing conservators or ordering support) can only be issued after notice and a hearing.

Notably, a temporary order that excludes a parent from possession of or access to a child (as happened here, since Charles was forced out of the home and effectively had limited access) cannot be rendered without a verified pleading or affidavit showing the requisite facts (essentially a showing of immediate danger to the child). This is to ensure a parent is not denied access without due process and evidentiary support. In our case, the initial February 1 hearing was tied to a protective order application, so there likely were affidavits/pleadings on file – but whether evidence was presented is disputed. Regardless, the overarching principle is that due process must be afforded in temporary orders.

B. Agreed Orders and Rule 11

Texas strongly favors parties resolving issues by agreement, but any agreement touching a pending lawsuit must satisfy Rule 11, Texas Rules of Civil Procedure to be enforceable. Rule 11 requires agreements to be either (1) in writing, signed by the parties or their attorneys, and filed with the court, or (2) made on the record in open court. An "Agreed Temporary Order" is essentially a Rule 11 agreement on the interim issues, incorporated into a court order. If one party does not actually consent or withdraws consent before the court renders the order, then there is no valid agreement to support an agreed order.

Texas case law is clear that a court cannot render a valid agreed judgment or order without the genuine consent of both parties at the time of rendition. If a party revokes consent or never consented in the first place, the agreed judgment is improper. As the Texas Supreme Court has held in *Burnaman v. Heaton*, 240 S.W.2d 288 (Tex. 1951), a judgment purporting to be a consent judgment, but actually rendered without consent, is void. Similarly, in *S&A Restaurant Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995), the court confirmed that a party may revoke consent any time before judgment is rendered.

C. Relevant Statutory Provisions and Case Law

The legal analysis in this paper draws upon the following key statutory provisions and case law:

- **Texas Family Code § 201.007(a)(14)(C)**: Authorizes associate judges to render and sign temporary orders.
- **Texas Family Code § 201.011**: Requirements for associate judge's reports.
- **Texas Family Code § 201.013**: Effect of associate judge's report pending de novo hearing.
- **Texas Family Code § 201.015(a)**: Time frame for requesting de novo hearing.

- **Texas Family Code § 105.001**: Requirements for temporary orders in SAPCR cases.
- **Texas Rules of Civil Procedure, Rule 11**: Requirements for enforceable agreements.
- **Texas Rules of Civil Procedure, Rule 305**: Procedure for submission of proposed judgments.

Key cases that inform this analysis include:

- **Burnaman v. Heaton**, 240 S.W.2d 288 (Tex. 1951): A judgment purporting to be a consent judgment but rendered without consent is void.
- **S&A Restaurant Corp. v. Leal**, 892 S.W.2d 855, 857 (Tex. 1995): Party may revoke consent any time before judgment rendered.
- **In re Stephanie Lee**, 411 S.W.3d 445, 450 (Tex. 2013): Court must enforce valid agreements but has no discretion to impose an agreement if not statutorily compliant or if no genuine agreement exists.
- **Page v. Sherrill**, 415 S.W.2d 642 (Tex. 1967): Mandamus granted where temporary custody order issued without notice and hearing violated due process.
- **In re Stearns**, 202 S.W.3d 414 (Tex. App.–Houston [14th Dist.] 2006, orig. proceeding): Mandamus relief where trial court's temporary orders effectively changed custody without proper notice/evidence.
- **In re C.J.C.**, 603 S.W.3d 804 (Tex. 2020): Reaffirming the fundamental right of a fit parent and that any order infringing that right must have compelling justification.
- **In re Southwestern Bell Tel. Co.**, 35 S.W.3d 602, 605 (Tex. 2000): If an order is void, mandamus relief is available without showing inadequate remedy by appeal.

- **O'Neil v. Blake**, 86 S.W.3d 538, 541 (Tex. App.–Dallas 2002, no pet.): Consent judgment valid only if parties consent at time of rendition; trial court should not enter agreed order if one party's attorney did not sign it and party objected.

IV. ANALYSIS OF PROCEDURAL IRREGULARITIES

A. Failure to Follow Associate Judge's Explicit Procedures

The February 1, 2024 Associate Judge's Report established a clear procedure for finalizing the Temporary Orders. This procedure was not followed in several critical respects:

1. **Preparation by Wrong Attorney**: The Associate Judge explicitly directed that Dan Bacalis (Charles's attorney) would prepare the typed order within 20 days. Instead, Cooper L. Carter (Morgan's attorney) prepared the order. This is a direct contravention of the court's instruction. The court's designation of a specific attorney to draft the order was not a mere suggestion but a directive. When a court specifies which attorney will draft an order, it is typically to ensure fairness and balance in the drafting process. By having opposing counsel draft the order instead, the court's intent was undermined, and the resulting document may reflect a bias toward Morgan's interests.

2. **Missed Deadlines**: The Associate Judge set clear deadlines: 20 days for preparation of the typed order (approximately February 21, 2024) and 30 days for a Motion to Sign if agreement could not be reached (approximately March 2, 2024). The final order was not prepared until March 26, 2024 – approximately 54 days after the February 1 hearing. This delay of nearly two months exceeds both deadlines by a substantial margin. No extension of these deadlines appears in the record. The court's timeline was not merely advisory; it was a binding directive that established the parameters for finalizing the order. The failure to adhere to these deadlines constitutes a procedural irregularity that calls into question the validity of the resulting order.

3. **No Attorney Approval**: The Associate Judge directed that each attorney should approve the order, with a 5-day review period. By the time the order was prepared, Charles no longer had counsel of record. Dan Bacalis had withdrawn from representation and did not sign the final order. This means the order was never reviewed or approved by an attorney representing Charles's interests, as explicitly required by the Associate Judge. The requirement for attorney approval serves an important purpose: ensuring that the written order accurately reflects what was agreed or ordered at the hearing. Without this safeguard, there is no assurance that the final document faithfully represents the court's rulings or any agreement between the parties.

4. **No Motion to Sign Hearing**: The Associate Judge directed that if agreement could not be reached on the form of the order, a Motion to Sign should be filed and set within 30 days. No such motion was filed, despite the fact that Charles objected to at least one provision (Paragraph 3) of the proposed order on March 14, 2024. Instead of following this procedure for resolving disagreements, opposing counsel and the court apparently attempted to force Charles's acquiescence through coercive means. The Motion to Sign procedure is designed to provide a formal mechanism for resolving disputes about the form of an order. By bypassing this process, the court denied Charles the opportunity to present his objections in a proper procedural context.

These procedural failures are not mere technicalities. They represent significant deviations from the court's own directives and from standard legal practice. The Associate Judge's instructions were designed to ensure a fair and orderly process for finalizing the Temporary Orders. By disregarding these instructions, the parties and the court undermined the integrity of the process and cast doubt on the validity of the resulting order.

B. Lack of Valid Consent to Support an "Agreed" Order

The March 26, 2024 Temporary Orders purport to be an "Agreed" order, as evidenced by the recitals and the signature blocks. However, several factors indicate that there was no valid consent to support an agreed order:

1. Missing Signatures

The March 26, 2024 Associate Judge's Report recites that both parties "signed an Associate Judge's Report regarding Agreed Temporary Orders" and that "The parties have agreed to the terms of this order as evidenced by the signatures below." However, Charles Myers's signature is notably absent from the report. This discrepancy between the recital and the actual signatures calls into question whether Charles ever agreed to the terms in the first place.

The absence of Charles's signature on the report is particularly significant because the report itself states that the parties' agreement would be "evidenced by [their] signatures." Without Charles's signature, there is no evidence of his agreement as contemplated by the report itself. This creates a fundamental inconsistency: the document claims to be based on an agreement evidenced by signatures, yet one party's signature is missing.

2. Objection Not Resolved

As of March 14, 2024, Charles explicitly objected to Paragraph 3 of the order and refused to approve it. This is documented in the March 14 Associate Judge's Report. This objection is clear evidence that Charles had not consented to all terms of the would-be agreed order. When a party voices an objection to the form or substance of a judgment before it is signed, the proper course is for the court to refrain from entering it as an agreed judgment.

In family cases, either party can revoke consent to an agreement any time before the judge signs the order. Charles's conduct on March 14 amounted to either a non-consent or revocation of any prior tentative consent regarding that disputed term. Therefore, at that point, the matter ceased to be fully agreed. Under Texas law, the judge could only proceed by either obtaining a new agreement or by treating it as a contested

matter. Forcing the party to sign under threat is not a valid option. If consent is withdrawn, the court cannot render an agreed order – doing so is an abuse of discretion and the order will be void because one party's consent was lacking at rendition.

3. Coerced Signature = No Real Consent

Charles's signature on February 1 was obtained under duress. He was effectively given an ultimatum: sign immediately or face some unspecified but presumably severe consequence. Consent obtained through coercion, threats, or duress is not valid consent.

In contract law, an agreement signed under duress can be voided. In judgment law, a party's forced assent is no assent at all – it is akin to no agreement. Here, Charles did not willingly approve the order's substance; he relented to pressure from his own counsel. This calls into question the voluntariness of the agreed order. Texas courts have noted that agreed judgments are essentially contracts approved by the court. Just as a contract signed under duress is voidable, an agreed judgment signed under duress should not be given effect. The integrity of the judicial process is undermined if one party is bullied into signing a judgment.

4. Absent Attorney for Charles

Charles was pro se by March 14, without the benefit of counsel to advise him. This made him more vulnerable to coercion and means there was no attorney on his side agreeing to the order's terms. Morgan's attorney drafted it and of course agreed to it; Charles had no attorney to negotiate or ensure fairness. The disparity in representation and the rushed nature of the signing further indicate the "agreement" was one-sided. Essentially, the March 26 document was Morgan (through her attorney) agreeing with herself and getting Charles's signature as a formality. That is not a true meeting of minds.

Under these circumstances, the March 26 Temporary Orders cannot be considered a valid agreed order. It was a unilateral order imposed on Charles with a veneer of consent. In Texas, when a judgment is recited as agreed but in fact one party did not consent, the remedy is typically to set it aside. For instance, in *Samples Exterminators*, the Texas Supreme Court held the agreed judgment void when one party's

consent was lacking. Likewise, in divorce cases, if one party withdraws consent to a mediated settlement, the trial court cannot enter it as a judgment (see *Burnaman v. Heaton*, 240 S.W.2d 288 (Tex. 1951) – a decades-old case still often cited for the proposition that a judge has no authority to impose an agreement on a party who has repudiated it prior to judgment). Here, Charles's actions are tantamount to having never truly consented or having repudiated any earlier tentative consent.

In sum, the final Temporary Orders are built on a false premise of party consent. On their face, they recite an agreement and show signatures, but the surrounding record shows Charles's signature and his attorney's signature is missing. This kind of discrepancy is something an appellate court or any reviewing court would look at with great concern. Facially, the order proclaims an agreement that did not actually exist – that is a strong indicator of invalidity. A judgment that misstates the existence of an agreement is at least voidable, if not void, because the court's authority to render that particular agreed judgment was never triggered by an actual agreement of the parties.

C. Non-Conformance to the Court's Actual Rulings – Possible Substantive Variances

Another question is whether the March 26 order fails to conform to what the Associate Judge ordered on February 1. If the final written order includes provisions that were never agreed to or never ruled on by the judge, it is improper. Charles's objection to Paragraph 3 suggests he believed that portion of the order was not agreed or not ordered on February 1. Indeed, reviewing the text of the Temporary Orders, Paragraph 3 (and related provisions) deals with the parents using the "AppClose" program for communication and sharing information. It is unclear if this specific requirement was discussed on February 1 or if it was an added term Carter inserted in the written draft. Often, such app requirements are agreed to by parties or ordered by judges to facilitate communication. If Charles objected, perhaps he felt it was beyond what was decided at the hearing.

Furthermore, initially, the Feb 1 report gave Charles access to the family residence until March 1, 2024 and took the children out of their own home. On the March 26 report, the dates suddenly shifted, actually creating a window where nobody would be

inside the home. Perhaps most egregious, is that on March 6th, 2024, prior to this hearing being held, Mother locked Father out of the family residence.

Since the final order went beyond the scope of the February 1 hearing and imposed new obligations not covered in the AJ's oral pronouncement, the proper course would have been to litigate those terms (or at least for the judge to confirm both sides agreed). By unilaterally adding it and forcing Charles's signature, the order contains terms to which there was never a true assent or judicial determination. In Texas, a written judgment must conform to the court's oral rendition (or the parties' agreement). When it does not, that portion of the judgment is subject to being set aside or reformed. Here, we lack a transcript of February 1, but given Charles's resistance and the blatant differences in the two reports, there is no agreement. That means the final order, at least in part, does not reflect the actual "report" of the judge but rather what opposing counsel wanted, which is highly prejudicial.

Additionally, because the final order was delayed, by March 26 the Associate Judge did not personally "render" those orders – he had made recommendations on February 1, but the actual signing on March 26 was by the Associate Judge. If the District Judge signed it believing it was agreed, when in fact it was not, then the District Judge was essentially misled. The district court has authority to enter temporary orders after an AJ's hearing, but if it's contested, the district court should know it's contested. Here, labeling it "Agreed" circumvented any further hearing by the district court. That implicates due process again – Charles never had a de novo hearing because it was never presented as a contested matter; the "agreed" label short-circuited his ability to get the referring court to hear his side.

In conclusion on this point, the content of the March 26 order exceeds or deviates from what was legitimately agreed or ordered on the record, making those portions of the order unauthorized. An order that a court had no power to make (because the party didn't consent and no evidence was taken on that issue) is invalid. At the very least, it's an abuse of discretion to include terms not supported by the hearing. This is another reason the order is vulnerable to attack.

D. Due Process Violations and Equity

Beyond the technical rule violations, the manner in which these temporary orders were obtained raises serious due process concerns:

1. No Meaningful Opportunity to be Heard on Disputed Terms

Charles was not afforded a real chance to argue against Paragraph 3 or any other disputed provision. The March 14 "hearing" was a farce in terms of due process – instead of an impartial judge considering his objection, he got an opposing counsel's ultimatum. The next step should have been a hearing before the district judge (since the AJ process had broken down into disagreement). By never allowing Charles a forum to voice why he objected (e.g., the changed dates, incorrect mailing address, etc.), the court denied him the basic hearing on that issue. Temporary orders, while expedited, still require that each party can present their case on any point of contention. This did not happen.

2. Surprise and Lack of Notice

The attempted final order was pushed through on March 26 without prior notice to Charles of an "entry" setting. Typically, when an order is to be entered, especially if the form isn't agreed, the party is entitled to notice when the judge will sign it and what version is being submitted. Here, Charles was ambushed with a sign-now scenario. That is arguably a violation of local rules or at least the spirit of Rule 305, Texas Rules of Civil Procedure, which contemplates notice to all parties of the presentation of a judgment for signing if not all parties have approved it. In *Page v. Sherrill*, the Texas Supreme Court voided a temporary custody change that was done ex parte without notice. While our case was not ex parte (Charles was physically present), the lack of formal notice and rushing is analogous to a notice failure. Due process requires notice reasonably calculated to inform the person of the action and an opportunity to respond. Charles's "opportunity" to respond was truncated to mere minutes under threat.

3. Bias and Irregularity

Having opposing counsel write the judge's orders (handwritten on the report) is irregular. It creates an appearance that the neutral arbiter (the judge) abdicated decision-making to one side's lawyer. The result is not a product of a court's reasoned decision or mutual consent, but essentially the wish list of one party imposed as an order. Courts have inherent authority to sign orders, but they should draft or carefully review them – not just sign whatever one lawyer puts in front of them without the other's approval. If the March 14 report notes were indeed by Carter, the Associate Judge should not have relied on those as if they were the AJ's own findings. This informality undermines confidence that the order was the result of a fair process.

4. Infringement on Parental Rights without Due Course

The temporary orders severely restricted Charles's rights (requiring him to leave the marital home, giving Mother primary custody, supervising exchanges, etc.). Such significant deprivations, even temporarily, demand scrupulous adherence to procedure. By cutting procedural corners, the court potentially violated Charles's constitutional right to due process. The Texas Family Code's requirement of affidavits for excluding a parent (Fam. Code §105.001(c)) is one manifestation of due process protection. If those requirements were not strictly met or if the evidence was lacking (Charles alleges no evidence was presented on February 1 to justify kicking him out and giving mom full custody), that initial order itself was problematic. Compounding that with an improper finalization process makes it worse. Essentially, Charles and his children were subject to a significant custody determination without the full protections of a proper adversarial hearing or a proper agreed resolution – a hybrid worst-of-both: no hearing, and no genuine agreement. Such a result is fundamentally unfair. When taken into consideration that Charles needed the family home to operate his usual course of business, this makes even less sense and raises eyebrows as to how the mother was able to get away with such conduct.

Equity and good conscience would call for such an order to be set aside. Courts have the power to vacate interlocutory orders that were improvidently granted or that

resulted from procedural irregularity. Here, the temporary orders process was tainted start to finish – from the lack of evidence at the outset (if Charles's earlier contentions are correct), to the failure to follow the AJ's procedures, to the coercion in obtaining signatures. There is a strong argument that Charles was denied due process, and thus the order is voidable on that independent basis. In some circumstances, a due process violation can render an order void (for example, an order issued without notice or jurisdiction is void). While Charles was present in the case (so jurisdiction over him existed), the manner of depriving him of rights without a fair hearing could be deemed void as a violation of constitutional due process. This is especially true if we analogize to cases where a court had jurisdiction but acted in a way that violated a party's constitutional rights – courts have not hesitated to grant mandamus or other relief in such scenarios because the usual deference to trial court discretion does not extend to ignoring fundamental rights.

E. Are the March 26, 2024 Temporary Orders Facially Void?

Considering all the above, we assess whether the final Temporary Orders can be deemed facially void (void on their face) or at least voidable and subject to being vacated.

An order is "void" (as opposed to merely voidable) if the court that rendered it lacked jurisdiction or authority or if it violates a fundamental jurisdictional requirement. Typically, errors in following procedure make an order voidable (to be corrected on direct appeal or by motion), not outright void. However, Texas law provides that agreed judgments entered without consent are void because the court had "no power to render" an agreed judgment absent an actual agreement. In this case, the 322nd District Court had subject matter jurisdiction over the divorce/child case and personal jurisdiction over the parties, so jurisdiction in the traditional sense is not at issue. But did the court have authority to render the particular order it rendered? That is questionable, because the court believed it was entering an agreed temporary order – an act that is only authorized if all parties truly agreed. Since Charles's consent was not valid, the court's act of signing an agreed order was beyond its lawful authority (it could have held a contested hearing or sent it back to the AJ, but it could not force an agreement). Thus, one could argue the

order is void ab initio for lack of the required consent. The face of the order proclaims that consent, but the supporting record contradicts it.

When determining facial voidness, courts normally look at the judgment roll or the order itself and related documents. Here, the face of the order contains an internal inconsistency: it says both parties agreed and evidenced by signatures, but one attorney's signature is missing and we know one party's signature was coerced. Admittedly, coercion is an extrinsic fact (not evident solely from the document). However, the absence of Charles's attorney's approval is evident from the order itself – any reader can see one side's attorney did not sign. That is a facial defect in an "agreed" order. One could say the order is void on its face because it recites a non-existent agreement and because it was entered in violation of the statute that requires all parties' written agreement for an associate judge to sign a final order. (Although a temporary order doesn't require written agreement of all parties to be signed by an AJ, in this case the order explicitly relies on supposed agreement.)

Even if a court hesitates to label it "void," it is unquestionably voidable for abuse of discretion and should be vacated on a direct attack. The trial court's failure to follow its own procedures and the statutory framework is a clear abuse of discretion. Few scenarios fit the definition of an abuse of discretion more squarely than a judge signing an order that one party's attorney never approved and that one party objected to and only signed under threat. The integrity of the order is so compromised that it cannot be allowed to stand.

V. REMEDIES

A. Vacating the Temporary Orders – Mandamus Relief

Because these are temporary orders in a family law case, they are not appealable by ordinary means. Texas law is clear that temporary orders in family cases cannot be challenged by interlocutory appeal. See Tex. Fam. Code § 105.001(e) ("Temporary orders rendered under this section are not subject to interlocutory appeal."). Instead, the proper vehicle for challenging such orders is a petition for writ of mandamus. Mandamus is an

extraordinary remedy that will issue only when (1) the trial court clearly abused its discretion and (2) there is no adequate remedy by appeal.

In this case, both elements for mandamus relief are present:

1. **Clear Abuse of Discretion**: As detailed above, the trial court clearly abused its discretion by:
    - Failing to follow the Associate Judge's explicit procedures for finalizing the order
    - Entering an "agreed" order without valid consent from both parties
    - Allowing procedural irregularities that violated due process
    - Permitting coercion to obtain a party's signature
2. **No Adequate Remedy by Appeal**: Since temporary orders are not appealable, Charles has no adequate remedy by appeal. He would have to wait until a final decree is entered to challenge these orders on appeal, by which time the harm from the improper temporary orders would be irreparable. The children's living arrangements, Charles's access to them, and other important matters would be governed by invalid orders for months or even years while the case proceeds to final judgment.

Texas courts have consistently granted mandamus relief in family law cases where temporary orders were entered improperly. For example, in *In re Stearns*, 202 S.W.3d 414 (Tex. App.–Houston [14th Dist.] 2006, orig. proceeding), the court granted mandamus relief where the trial court's temporary orders effectively changed custody without proper notice or evidence. Similarly, in *Page v. Sherrill*, 415 S.W.2d 642 (Tex. 1967), the Texas Supreme Court granted mandamus relief where a temporary custody order was issued without notice and hearing, violating due process.

If the order is truly void (as opposed to merely voidable), mandamus relief is even more appropriate. As the Texas Supreme Court held in *In re Southwestern Bell Tel. Co.*,

35 S.W.3d 602, 605 (Tex. 2000), if an order is void, mandamus relief is available without showing inadequate remedy by appeal.

B. Alternative Remedies

In addition to mandamus relief, Charles might consider the following alternative remedies:

1. **Motion to Vacate or Set Aside**: Charles could file a motion in the trial court asking the judge to vacate or set aside the temporary orders based on the procedural irregularities and lack of valid consent. While this approach has the advantage of giving the trial court an opportunity to correct its own error, it may be less effective if the trial court is unwilling to acknowledge the problems with the order.

2. **Motion for Reconsideration or New Trial**: Charles could file a motion for reconsideration or new trial on the temporary orders. This would allow him to present evidence of the procedural irregularities and coercion. However, there is no guarantee that the trial court would grant such a motion, and the time for filing may have already expired.

3. **Motion for Further Temporary Orders**: Charles could file a motion for further temporary orders, essentially asking the court to revisit the custody and possession arrangements. This would not directly challenge the validity of the existing orders but could provide an opportunity to modify them. The disadvantage is that it would not address the underlying procedural problems.

Of these alternatives, mandamus relief is likely the most appropriate and effective remedy given the nature of the procedural irregularities and the fact that temporary orders are not appealable. A petition for writ of mandamus would allow an appellate court to review the process by which the temporary orders were obtained and, if appropriate, to vacate them and direct the trial court to conduct proper proceedings.

VI. CONCLUSION

The procedural irregularities surrounding the March 26, 2024 Temporary Orders in Cause No. 322-744263-23 raise serious questions about their validity. The evidence demonstrates multiple significant deviations from proper legal procedure, including:

1. Failure to follow the Associate Judge's explicit instructions regarding who would prepare the order, the timeline for preparation, and the requirement for attorney approval;

2. Lack of valid consent to support an "agreed" order, as evidenced by Charles's missing signature on the February 1 report, his explicit objection to Paragraph 3 on March 14, the coerced nature of his signature on March 26, and the absence of his attorney's approval;

3. Potential non-conformance between the final written order and what was actually ordered or agreed to at the February 1 hearing;

4. Due process violations, including the denial of a meaningful opportunity to be heard on disputed terms, lack of proper notice, irregularities in the process, and significant infringement on parental rights without proper procedural safeguards.

These procedural failures are not mere technicalities. They strike at the heart of the judicial process and the fundamental fairness that must characterize court proceedings. When a court order purports to be based on the agreement of the parties, but one party's consent was obtained through coercion or was never actually given, the integrity of the judicial system is compromised.

The March 26, 2024 Temporary Orders are, at minimum, voidable due to the clear abuse of discretion in their entry. There is a strong argument that they are void on their face because they recite an agreement that did not exist and because the court lacked authority to enter an agreed order without genuine consent from both parties.

Given the non-appealable nature of temporary orders in family cases, mandamus relief is the appropriate remedy. Charles should consider filing a petition for writ of mandamus asking the appellate court to vacate the temporary orders and direct the trial

court to conduct proper proceedings, either by holding a contested hearing on the temporary orders or by ensuring that any agreed order truly reflects the voluntary agreement of both parties.

The procedural history of this case serves as a cautionary tale about the importance of adhering to proper legal procedures, especially in family law cases where the rights of parents and the welfare of children are at stake. Courts and attorneys must be vigilant in ensuring that agreed orders truly reflect agreement, that parties' due process rights are respected, and that the integrity of the judicial process is maintained.

VII. REFERENCES

Burnaman v. Heaton, 240 S.W.2d 288 (Tex. 1951).

In re C.J.C., 603 S.W.3d 804 (Tex. 2020).

In re Southwestern Bell Tel. Co., 35 S.W.3d 602 (Tex. 2000).

In re Stearns, 202 S.W.3d 414 (Tex. App.–Houston [14th Dist.] 2006, orig. proceeding).

In re Stephanie Lee, 411 S.W.3d 445 (Tex. 2013).

O'Neil v. Blake, 86 S.W.3d 538 (Tex. App.–Dallas 2002, no pet.).

Page v. Sherrill, 415 S.W.2d 642 (Tex. 1967).

S&A Restaurant Corp. v. Leal, 892 S.W.2d 855 (Tex. 1995).

Texas Family Code § 105.001.

Texas Family Code § 201.007.

Texas Family Code § 201.011.

Texas Family Code § 201.013.

Texas Family Code § 201.015.

Texas Rules of Civil Procedure, Rule 11.

M.2200

Texas Rules of Civil Procedure, Rule 305.

M.2200

CERTIFICATE OF SERVICE

Relator certifies that on April 15, 2025, a true and correct copy of the foregoing PRROCEDURAL IRREGULARITIES was served on all parties and counsel of record as follows:

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02-25-00171-CV

EN BANC
CONSOLIDATION

04.22.25

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No. 02-25-00171-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

On Petition for Writ of Mandamus

to the 233rd Judicial District Court, Tarrant County

Cause Number 233-765358-25

Hon. Kenneth E. Newell Presiding

MOTION FOR EN BANC RECONSIDERATION

Respectfully submitted by:

Charles Dustin Myers
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M.2204

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ISSUES PRESENTED FOR RECONSIDERATION

Rehearing Issue No. 1:

The Texas Supreme Court has held that consolidation constitutes an abuse of discretion when it prejudices a party or misjudges the relatedness of actions. The panel erred by denying mandamus relief and allowing to stand a sua sponte consolidation order that prejudiced Relator by delaying urgent child custody proceedings, eliminating strategic advantages, pre-empted appellate review, generated further procedural confusion.

Rehearing Issue No. 2:

When the record demonstrates that separate proceedings are necessary to prevent manifest injustice, the trial court has a duty to avoid consolidation. The panel erred by overlooking the manifest injustice resulting from the trial court's sua sponte consolidation, which violated due process by ignoring a pending Rule 12 motion and written objection, and introduced further procedural irregularities into already strained litigation.

TO THE HONORABLE SECOND COURT OF APPEALS:

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

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

This motion serves as the second filed reconsideration motion and addresses the panel’s denial of Cause No. 02-25-00171-CV (attached as Tab 1), referred to as the **“Consolidation”** mandamus.

SUMMARY OF ARGUMENT

This motion satisfies the stringent standards for en banc reconsideration under Tex. R. App. P. 41.2(c) because the panel’s denial conflicts with controlling precedent and overlooks critical facts in the mandamus record. The trial court abused its discretion by sua sponte consolidating Relator’s SAPCR with a stalled divorce case on April 11, 2025, without notice, hearing, or consideration of Relator’s objection and pending Rule 12 motion. This consolidation prejudiced Relator by delaying urgent child custody and support resolutions, eliminating strategic advantages, pre-empted appellate review, and caused further procedural confusion, violating Tex. R. Civ. P. 174(a) and Tex. Fam. Code § 153 .002. The

panel's denial conflicts with *Womack v. Berry*, 291 S.W.2d 677 (Tex. 1956), *Dal-Briar Corp. v. Baskette*, 833 S.W.2d 612 (Tex. App.—El Paso 1992), and *Lone Star Ford, Inc. v. McCormick*, 838 S.W.2d 734 (Tex. App.—Houston [1st Dist.] 1992), which emphasize that consolidation must not prejudice a party. En banc review is essential to ensure uniformity in family law and protect the children's best interests.

ARGUMENT AND AUTHORITY

I. En banc reconsideration is warranted under Rule 41.2(c) due to extraordinary circumstances and the need for uniformity.

En banc reconsideration is appropriate when a panel's decision conflicts with controlling authority or involves an issue of exceptional importance. Tex. R. App. P. 41.2(c); *In re Marriage of Harrison, 507 S.W.3d 259, 260 (Tex. App.—[14th Dist.] April 26, 2016, order) as corrected* May 10, 2016 (Frost, J., dissenting to partial grant of en banc reconsideration). This matter meets both criteria.

The panel's per curiam denial on April 17, 2025, conflicts with Texas Supreme Court precedent requiring trial courts to exercise discretion within guiding rules and principles. Womack v. Berry, 291 S.W.2d 677, 683 (Tex. 1956) (mandamus appropriate to correct clear abuse of discretion in trial management). The consolidation delays critical child custody and support determinations, undermining Tex. Fam. Code § 153.002, which mandates that "the best interest of

the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child". Allowing trial courts to consolidate cases sua sponte without addressing objections or pending motions sets a dangerous precedent in family law, where procedural fairness is paramount. En banc review is necessary to maintain uniformity and protect the children's welfare.

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

The panel's denial fails to recognize the trial court's abuse of discretion and the resulting prejudice, as evidenced by the mandamus record and established Texas law.

A. The trial court abused its discretion by consolidating without sound legal basis.

Tex. R. Civ. P. 174(a) permits consolidation only when cases share common questions of law or fact and when it does not prejudice any party. The trial court's sua sponte consolidation of Relator's SAPCR with an unprosecuted divorce case lacks a sound legal basis and contravenes this rule. In *Dal-Briar Corp. v. Baskette*, 833 S.W.2d 612, 615 (Tex. App.—El Paso 1992, no writ), the court held that consolidation constitutes an abuse of discretion if it prejudices a party, such as by delaying urgent proceedings or creating procedural confusion. Here, the

consolidation delays time-sensitive child custody and support decisions, directly undermining Tex. Fam. Code § 153.002. For example, the SAPCR's unresolved custody issues, critical to the children's stability, are stalled by the divorce case's procedural complexities, causing ongoing harm to their welfare.

Furthermore, in *Lone Star Ford, Inc. v. McCormick*, 838 S.W.2d 734, 737 (Tex. App.—Houston [1st Dist.] 1992, writ denied), the court affirmed that while trial courts have broad discretion to consolidate cases with common issues, such discretion is abused if consolidation results in prejudice to a party. In that case, the court found no abuse because the appellant failed to demonstrate prejudice, noting, "Appellant failed to demonstrate how it was prejudiced as a result of consolidation." *Id.* at 738. In contrast, here, the consolidation has caused significant prejudice by delaying urgent child custody and support resolutions, which are time-sensitive and critical to the children's welfare under Tex. Fam. Code § 153.002. This delay distinguishes the present case from *Lone Star Ford* and underscores the trial court's abuse of discretion, as the issues still remain unadjudicated.

Moreover, *Womack v. Berry*, 291 S.W.2d at 683, establishes that mandamus relief is appropriate when a trial court abuses its discretion to a party's detriment, such as through improper trial management. Although *Womack* addressed separate trials, its principle applies analogously to consolidation decisions that prejudice a

party. The trial court's failure to demonstrate common questions justifying consolidation, coupled with its disregard for the prejudice caused by delay, constitutes a clear abuse of discretion. See also *Guar. Fed. Sav. Bank v. Horseshoe Operating Co*., 793 S.W.2d 652, 658 (Tex. 1990) (trial court discretion in consolidation is not unbounded). The panel's denial overlooks these precedents, allowing an unsupported consolidation to stand.

B. The sua sponte consolidation resulted in prejudice and violated due process.

The trial court's consolidation order, issued without notice or hearing, violated Relator's due process rights by ignoring a pending Tex. R. Civ. P. 12 motion challenging the Real Party's counsel's authority and Relator's objection to consolidation. (MR 7, MR 9) In *Crestway Care Center, Inc. v. Berchelmann*, 945 S.W.2d 872, 873 (Tex. App.—San Antonio 1997, orig. proceeding), the court emphasized that significant procedural actions, like consolidation, require clarity and proper documentation to ensure fair review. Here, the trial court's failure to provide notice or a hearing—despite Relator's objection (MR 9.1, MR 12.32) and pending Rule 12 motion (MR 7)—created procedural irregularities. Moreover, Tex. R. Civ. P. 12 requires an attorney to demonstrate authority when challenged, and the trial court's failure to resolve this motion risks validating actions by potentially unauthorized counsel, creating a procedural quagmire.

This consolidation action prejudiced Relator in four critical ways: (1) delaying urgent child custody and support resolutions that remain unopposed, causing further harm to the children's welfare; (2) eliminating strategic advantages in the SAPCR court; (3) causing procedural confusion by merging distinct legal issues; and (4) thwarted Relator's attempt at seeking mandamus relief. These impacts mirror the prejudice in *Dal-Briar Corp. v. Baskette*, where consolidation harmed a party's ability to pursue timely relief. The Real Party's counsel's failure to respond to this appeal further underscores the procedural irregularities. By upholding the trial court's order, the panel's denial conflicts with these authorities and fails to address the manifest injustice inflicted on Relator and the affected children.

These impacts mirror the prejudice in *Dal-Briar Corp. v. Baskette*, where consolidation harmed a party's ability to pursue timely relief, and contrast with *Lone Star Ford*, where no prejudice was found. The Real Party's counsel's non-participation at the trial court level further underscores the procedural irregularities, as it leaves the Rule 12 challenge unaddressed. By upholding the trial court's order, the panel's denial conflicts with these authorities and fails to address the manifest injustice inflicted on the Relator and the affected children, who remain left without an adequate remedy for an appeal.

CONCLUSION AND PRAYER

The trial court's sua sponte consolidation order of April 11, 2025, is not merely erroneous—it is procedurally indefensible. By consolidating Relator's SAPCR with a stalled divorce case without notice, hearing, or resolution of a pending Rule 12 motion and objection, the court flouted due process and Texas Family Code § 153.002's mandate to prioritize children's best interests. The pending Rule 12 motion challenged the Real Party's counsel's authority, yet the court and Real Party proceeded as if no question existed, risking the validity of every subsequent action. This illogic is akin to building a house on a contested foundation, inviting collapse.

Relator prays that this Court grant *en banc* reconsideration, withdraw or otherwise vacate the panel's denial, and issue mandamus relief compelling the Respondent to vacate the consolidation order. Such relief will restore procedural fairness, protect constitutional rights, and ensure the children's best interests are not sacrificed to judicial expediency.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS (pro-se Relator)
[redacted]
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CERTIFICATE OF COMPLIANCE

I certify that the number of words in this motion (excluding any caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, issues presented, signature, proof of service, certificate of conference and certificate of compliance) is **1,427**.

CERTIFICATE OF SERVICE

Relator CHARLES DUSTIN MYERS certifies that on April 21, 2025, a true and correct copy of the foregoing MOTION FOR EN BANC RECONSIDERATION was served on all parties and counsel of record as follows:

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/s/ Charles Dustin Myers

Charles Dustin Myers

PRO-SE RELATOR

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322-744263-23

OBJECTION TO TRIAL SETTING AND REQUEST TO STAY PROCEEDINGS -

04.23.25

M.2218

322-744263-23

FILED
TARRANT COUNTY
4/23/2025 11:13 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 322-744263-23

IN THE 322nd DISTRICT COURT OF TARRANT COUNTY, TEXAS

ITMOMO
(AITIO M.E.M., C.R.M., two children)
MORGAN MICHELLE MYERS

Petitioner,

CHARLES DUSTIN MYERS,

Respondent.

2025-04-23

Objection to Trial Setting and Request for Stay of Proceedings

TO THE HONORABLE COURT:

The undersigned, Charles Dustin Myers, respectfully objects to any attempt to set the above referenced matter for any trial setting, and in support of this objection, shows the following:

Three concurrent mandamuses

There are currently three pending mandamus petitions awaiting resolution in the Second Court of Appeals seeking redress from recent actions taken by COOPER L. CARTER, counsel for Petitioner, to thwart emergency TRO proceedings in the 233rd District Court of Tarrant county.

In sum, these mandamus petitions address the following alleged errors:

1. Void orders; (this case) 02-25-00166-CV
2. Improper consolidation; 02-25-00171-CV
3. Refusal to rule. 02-25-00164-CV

Current issues

Currently, there are several issues that remain unaddressed that need to be resolved:

1. The entire case foundation is fraudulent due to Petitioner's pleadings.
2. The undersigned has sought relief from this situation since March 14, 2024, when the original orders issued on January 16, 2024, which removed the undersigned from his home without the required findings, were leveraged into a settlement agreement that was not consented to by all of the parties and did not serve the best interests of the children.
3. COOPER L. CARTER's authority remains in question, and her inactivity combined with the ambiguity surrounding her representation must be addressed.
4. The undersigned has been forced to live in transient housing and incur extraordinary damages to his business operations due to the Petitioners fraudulent allegations which were never supported by evidence.
5. The children in this matter continue to suffer ongoing and irreparable harm from being separated from their father unjustifiably.
6. There is no child support set up for the children.

Informal service

Furthermore, the court continues to issue notices informally through the court coordinator, which is improper.

Pursuant to Texas Rules of Civil Procedure Rule 21a, service of a notice via email directly, rather than through the electronic filing manager (EFM), does not constitute proper

service if the email address is on file with the EFM. Texas courts have consistently held that electronic service must be made through the EFM when the recipient's email address is registered there. The undersigned's email is registered with the EFM.

Conclusion

Because the undersigned has an email on file with the EFM, there is no court order requiring alternative service, and there is no agreement waiving formal service, any notice of court proceedings not in compliance with rule 21a of the Texas Rules of Civil Procedure is improper.

Furthermore, because there are several issues that remain unaddressed, such as COOPER CARTER'S authority, the ongoing mandamus proceedings, the ongoing irreparable harm to the children, and the facially void orders which have caused detrimental effects to the undersigned, the risk of these issues creating future delays remains high.

The undersigned is prepared to challenge any adverse actions taken against him in the face of these issues and will seek relief until this matter is resolved in accordance with the principles of fairness and justice. The undersigned requests that the court stay all future proceedings until the above matters are resolved.

Respectfully submitted,

/s/ Charles Dustin Myers
CHARLES DUSTIN MYERS
CHUCKDUSTIN12@GMAIL.COM
[redacted]
817-546-3693

M.2222

Automated Certificate of eService

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

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
CHARLES MYERS		chuckdustin12@gmail.com	4/23/2025 11:13:18 AM	SENT
Cooper L.Carter		coopercarter@majadmin.com	4/23/2025 11:13:18 AM	SENT

M.2222

M.2223

02-25-00171-CV

MANDAMUS CONSOLIDATION

04.16.25

M.2223

M.2224

No.02-25-00171-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

Original Proceeding Arising from

the 233rd Judicial District Court, Tarrant County

Cause Number 233-765358-25

Hon. Kenneth E. Newell Presiding

PETITION FOR WRIT OF MANDAMUS

Respectfully submitted by:

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

ORAL ARGUMENT REQUESTED

Emergency Relief Requested before 04/24/2025

M.2224

Identity of Parties and Counsel

Relator

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

Respondent

Hon. Kenneth E. Newell
District Judge of the 233rd District Court,
Tarrant County, Texas
200 E. Weatherford St. 5th Floor
Fort Worth, TX 76196-0227
adwierzbicki@tarrantcountytx.gov
817-884-1794

Real Party in Interest

Morgan Michelle Myers
[redacted]
Morganmw02@gmail.com
817-235-5189

Counsel for Real Party in Interest

Cooper L. Carter
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2905 Lackland Road
Fort Worth, TX 76116;
(817) 926-6211
coopercarter@majadmin.com

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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 233rd 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 322nd 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 322nd 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. Berchelmann*, 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 usure 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 came 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 233rd 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 11th 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 233rd (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
[redacted]
817-546-3693
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. 5th Floor
Fort Worth, TX 76196
Via electronic submission to the court coordinator
Via email: ADWierzbicki@tarrantcountytx.gov

Morgan Michelle Myers
Real Party in Interest
VIA the EFM at:
MORGANMW02@GMAIL.COM

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

/s/ Charles Dustin Myers
Charles Dustin Myers,
Pro Se Relator

M.2249

No._____-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

Original Proceeding Arising Out of

the 233rd Judicial District Court of Tarrant

County, Texas

Cause Number 233-765358-25

Hon. Kenneth E. Newell Presiding

RELATOR'S APPENDIX

Respectfully submitted by:

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

M.2249

AFFIDAVIT VERIFYING RELATOR'S APPENDIX

APP# NAME

 M.2251

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

AMBER RIGGS
Notary Public - State of Florida
Commission # 341118
Expires on December 16, 2026

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
Notarized remotely online using communication technology via Proof.

 M.2251

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. 5th Floor
Fort Worth, TX 76196
Via electronic submission to the court coordinator
Via email: ADWierzbicki@tarrantcountytx.gov

Morgan Michelle Myers
Real Party in Interest
VIA the EFM at:
MORGANMW02@GMAIL.COM

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

/s/ Charles Dustin Myers
Charles Dustin Myers,
Pro Se Relator

M.2253

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Filing Description: IFP
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Case Contacts

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MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/16/2025 7:49:45 AM	SENT

M.2253

M.2254

02-25-00171-CV

MANDAMUS RECORD

04.16.25

M.2254

M.2255

NOTICE! THIS DOCUMENT CONTAINS SENSITIVE DATA!

No._____-CV

IN THE

SECOND JUDICIAL DISTRICT COURT OF APPEALS

AT FORT WORTH, TEXAS

IN RE: CHARLES DUSTIN MYERS, *RELATOR*.

Original Proceeding Arising Out of

the 233rd Judicial District Court of Tarrant

County, Texas

Cause Number 233-765358-25

Hon. Kenneth E. Newell Presiding

MANDAMUS RECORD

Respectfully submitted by:

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

M.2255

MANDAMUS RECORD INDEX

MR# NAME

STATE OF TEXAS

COUNTY OF TARRANT

AFFIDAVIT VERIFYING MANDAMUS RECORD

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

1. My name is **Charles Dustin Myers**. I am the Relator in the above-captioned proceeding and am competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

2. This affidavit is submitted in support of the **Mandamus Record**, filed pursuant to **Texas Rule of Appellate Procedure 52.7(a)**.

3. The documents contained in the Mandamus Record are true and correct copies of pleadings, motions, transcripts, and other materials that were **filed in the underlying proceeding** before the **233rd District Court of Tarrant County, Texas**, in Cause No. **233-765358-25**.

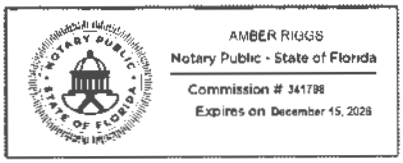
4. Each document included has been accurately reproduced from the court's file or my personal file maintained in the regular course of

litigation, and to the best of my knowledge, has not been altered in any way.

5. Each document is a true and accurate copy under penalty of perjury.

FURTHER AFFIANT SAYETH NOT.

/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

___ Personally Known OR ___ Produced Identification Type of Identification Produced _____

Notarized remotely online using communication technology via Proof.

M.2259

233-765358-25

SAPCR COVER LETTER

03.18.25

M.2259

322-744263-23

FILED
TARRANT COUNTY
4/15/2025 10:28 AM
THOMAS A. WILDER
DISTRICT CLERK

Date: March 18, 2025
Via E-File

Thomas A. Wilder, District Clerk
Tarrant County District Courts
200 E. Weatherford St.
Fort Worth, Texas 76196

Re: Original Petition in Suit Affecting Parent-Child Relationship ("SAPCR") – Request to File as Separate Case and Set Immediate Hearing (In the Interest of [M.M.] and [C.M.], minor children; *related to* Cause No. 322-744263-23, In re Marriage of Myers)

Dear Mr. Wilder and Honorable Court:

Please accept for filing the enclosed **Original SAPCR** concerning the above-referenced children. This SAPCR is **intentionally filed as a new, separate case**, rather than under the existing divorce cause, due to unique procedural defects in that divorce proceeding that have left the children in legal and physical limbo. **Immediate intervention** is required to protect the children's best interests. Below, I outline the compelling reasons – supported by law and the record – why this SAPCR **must proceed separately** and be set for an **emergency hearing** at once, instead of being merged into the stalled divorce case.

A. Failure of Opposing Party to Prosecute

1. The divorce Petitioner has wholly failed to prosecute the divorce, leaving it in procedural limbo. Over a year has passed with no meaningful activity toward a final resolution. Notably, after the divorce case was removed to federal court and later remanded, Petitioner **never filed the required certified Order of Remand or gave notice of remand** as mandated by Texas Rule of Civil Procedure 237a. Rule 237a obligates the removing party to promptly file the federal remand order with the state clerk and notify all parties, after which any defendant has 15 days to answer. Petitioner's **omission** of this required step has left the state court record incomplete and the case procedurally suspended. Indeed, due to Petitioner's inaction (and her

counsel's apparent inability to e-file; see Point 8 below), **no remand notice was ever filed**, so the divorce court has not resumed jurisdiction in any practical sense.

2. In addition, Petitioner has **ignored the Texas Supreme Court's time standards** for timely disposition of cases. A divorce case is expected to be resolved within 12 months, yet Petitioner has made no effort to advance it. She has not set a trial or even a status conference; she has allowed critical deadlines to lapse. This lack of diligence violates the duty to prosecute one's claims and warrants dismissal for want of prosecution. In fact, Respondent has been forced to file a Motion to Dismiss for Want of Prosecution (pending before the Court) detailing Petitioner's complete failure to move the case forward. This also remains un-responded to. Petitioner's inaction has left the family with **no active forum** to address urgent child-related issues. Therefore, a **separate SAPCR** is necessary to provide a functioning vehicle for relief. The **children cannot wait** for the Petitioner's indifference or strategic delay to abate.

B. Failure to Oppose Any Relief (Legal Concession)

3. Throughout the divorce case, Petitioner has **not opposed or responded to any of Respondent's filings**, motions, or claims for relief. She and her counsel have remained silent in the face of serious allegations and requests, effectively **conceding the merits** of those issues under Texas law. Respondent has raised grave claims of **fraud, perjury, deception, and child neglect** against Petitioner in his pleadings, yet Petitioner's counsel has **filed no response or defense** to these claims. Respondent also served discovery and Requests for Admissions which went **completely unanswered**, resulting in deemed admissions. He even filed a motion to compel discovery, which Petitioner again **did not oppose**, though unfortunately no hearing has yet been held. Moreover, when Respondent moved for other interim relief (including return to the family home and expanded access to the children), Petitioner filed no opposition. By her

inaction, Petitioner has implicitly **admitted the validity** of Respondent's factual assertions and the justness of his requests.

4. Texas law is clear that a party who fails to respond to motions or claims effectively **waives any objection and accepts the movant's evidence as true**. For example, in the summary judgment context, if a nonmovant files no response, the court may accept the movant's asserted facts as uncontroverted and render judgment if entitlement is shown; issues not timely raised in a written response are waived; see **Tex. R. Civ. P. 166a(c)**. The same principle applies here: Petitioner's total failure to contest Respondent's filings is tantamount to a **legal concession** of those matters. In other words, failure to make timely and specific objections results in waiver of the objections. See *Clark v. Trailways, Inc.*, 774 S.W.2d 644, 647 (Tex. 1989), cert. denied, 493 U.S. 1074, 110 S.Ct. 1122, 107 L.Ed.2d 1028 (1990); *Hartford Accident and Indem. Co. v. McCardell*, 369 S.W.2d 331, 335 (Tex. 1963); *Srite v. Owens-Illinois, Inc.*, 870 S.W.2d 556, 565 (Tex.App. — Houston [1st Dist.] 1993), revised on other grounds, 897 S.W.2d 765). Courts have recognized that a party's failure to respond indicates a belief that the motion has merit.

5. Petitioner's silence speaks volumes. She has never disputed that Respondent should be allowed to return home or see his children – in fact, she has **not opposed any relief requested**. This silence should be treated as acquiescence. Accordingly, there is no reason to keep the children waiting in the paralytic divorce case when **no one is even arguing against** the relief Respondent seeks in this SAPCR. The SAPCR can and should proceed on the uncontroverted facts in Respondent's filings.

C. Best Interests of the Children Demand Immediate Action

6. Every day that passes with the children separated from their father is a day of irreparable harm. The undisputed evidence is that the children are suffering due to Respondent's forced absence from the home. In the months since he was excluded, the children's well-being has precipitously declined: they have fallen behind in school, missed critical medical and dental appointments, and have been emotionally traumatized by the sudden and prolonged separation from their father. No party—not even Petitioner—has asserted that the children would be anything but better off if their father could return to care for them. No one has argued against Respondent's return to the home or his involvement in the children's daily life. It is axiomatic that the best interest of the children is the paramount concern in any case affecting the parent-child relationship. See **Tex. Fam. Code § 153.002 (mandating that "[t]he best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child")**; *Lenz v. Lenz*, 79 S.W.3d 10, 14 (Tex. 2002) (emphasizing that courts must place "predominant emphasis" on what best serves the children's welfare, particularly focusing on stability, emotional and educational needs, and maintaining frequent contact with fit parents).

7. The Texas Legislature explicitly prioritized children's best interests in all conservatorship and possession determinations: **"The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child." Tex. Fam. Code § 153.002.** Texas Supreme Court jurisprudence confirms and expands upon this legislative directive, instructing courts to consider stability, educational continuity, emotional health, and ongoing relationships with fit parents in their best-interest analysis. **See *Lenz*, 79 S.W.3d at 14–15 (holding courts must evaluate what**

will best serve the child's overall welfare, ensuring a stable and emotionally supportive environment and maintaining meaningful and frequent parental contact).

8. Here, it is unquestionably in the children's best interests to have their loving father back in their daily lives without further delay. Texas public policy explicitly states that children should have frequent and continuing contact with parents who have demonstrated the ability to act in their best interest. **See Tex. Fam. Code § 153.001(a) (declaring the public policy of Texas to ensure frequent contact and shared duties between parents and children following separation); *Lenz,* 79 S.W.3d at 14–15 (affirming that Texas policy favors maintaining frequent and meaningful parental involvement in a child's life).**

9. Respondent has demonstrated throughout these proceedings that he is a caring, fit parent whose presence provides the children with stability, support for their education and health, and emotional security. By contrast, the children's current situation—living apart from Respondent for no substantiated reason—is destabilizing and harmful. Texas courts recognize the urgency of child custody matters and have repeatedly underscored **that "justice demands a speedy resolution of child custody and child support issues." *In re Tex. Dep't of Fam. & Protective Servs.*, 210 S.W.3d 609, 613 (Tex. 2006) (orig. proceeding) (quoting *Proffer v. Yates*, 734 S.W.2d 673, 674 (Tex. 1987)).** Simply put, the children's needs cannot wait on procedural formalities or a dormant divorce case. Their welfare requires this SAPCR to be heard immediately so that orders can be promptly put in place to reunite them with their father and address their academic, emotional, and medical needs. No statute or rule forbids initiating a separate SAPCR when it is necessary to protect children's best interests. Indeed, Tex. Fam. Code § 153.002 and the overarching equitable duty of the Court compel swift action here. Respondent is ready, willing, and able to resume caring for his children, and no party has objected to him

doing so. Therefore, the Court must accept this SAPCR and schedule an immediate hearing to serve the children's best interests without further delay. See Lenz, 79 S.W.3d at 14–15 (holding courts must prioritize swift judicial actions in custody matters, protecting the best interests of children).

D. Fraud and Perjury Render the Prior Orders Void

10. The orders entered in the divorce case that currently keep Respondent out of the home and away from the children were obtained through **fraud, misrepresentation, and even perjury**. Because those orders were procured by wrongful means, they are **void ab initio** and cannot be permitted to stand in the way of this SAPCR. Texas law does not tolerate court orders obtained by trickery or false pretenses. Notably, the temporary orders in the divorce (signed January 16, 2024 and later on March 14, 2024) were presented to the Court as "agreed" orders, yet **Respondent never agreed to them** and never signed them. In fact, Respondent had expressly opposed the relief in those orders. The "agreement" was a fiction created by Petitioner's counsel. The record reflects that Petitioner's counsel drafted and submitted those orders **without Respondent's consent or signature**, and which reference a hearing not found on the docket. This is a textbook example of a **fraud on the court**. A judgment or order entered as "agreed" when one party actually objected is void. The Texas Supreme Court's holding in *Burnaman v. Heaton* is directly on point: when a trial court knows a party does not consent to a purported agreed judgment, it must refuse to sign it; any judgment rendered under such circumstances "**is void**." *Burnaman v. Heaton*, 240 S.W.2d 288, 291 (Tex. 1951).

11. Here, the court was misled – it was never disclosed that Respondent vehemently disagreed. **Without such consent the judgment is void**. The law will not give effect to a "party's consent" that was never actually given. Moreover, the way those orders were obtained

was rife with material falsehoods. In her filings, Petitioner **knowingly made false statements** to the Court to justify excluding Respondent from the home. For example, in her Application for Protective Order and supporting affidavit, Petitioner grossly misrepresented the facts, painting Respondent as a danger without evidence. She alleged incidents that never occurred or twisted mundane events into false claims of "family violence." These misrepresentations were later exposed, and Petitioner has never attempted to prove them in any evidentiary hearing. Petitioner's intent was plainly to deceive the Court into granting her sole occupancy of the home and custody of the children. Indeed, Respondent's pending Motion to Dismiss details how Petitioner **"knowingly made and presented fraudulent claims to the Court regarding Respondent's property, with the intent to deprive him of his interest in his home"**, and how she acted with intent that *"these false claims be given the same legal effect as valid court orders, misleading the Court and causing Respondent to be wrongfully deprived of his home and livelihood."*

12. These strong findings, which stand uncontroverted, show that the prior orders were procured by **fraud and deception**. Under longstanding Texas precedent, any order obtained by **extrinsic fraud** (fraud that effectively prevents a fair presentation of the case) is void and a nullity. See *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751–52 (Tex. 2003) (judgment obtained by fraud can be set aside; only extrinsic fraud – such as keeping a party away from court or concealing critical facts – justifies relief).

13. Here, Petitioner's fraud was extrinsic in that it **kept Respondent from participating fully** (the "agreed" order ploy) and **kept the Court from learning the true facts**. A litigant who lies to gain advantage in a court order **subverts the process**; the resulting order lacks integrity and is void.

14. In sum, the prior temporary orders that ousted Respondent were **built on a foundation of fraud**. They should carry no weight and pose no obstacle to granting relief in this new SAPCR. This Court not only has the authority to declare such orders void, it has a duty to do so in order to prevent manifest injusticec. See *Burnaman*, 240 S.W.2d at 291. By proceeding with a fresh SAPCR, the Court can consider the issues regarding the children *de novo*, on truthful evidence, untainted by the false premises of the earlier orders. Equity regards as done that which ought to have been done – the Court should restore Respondent, CHARLES DUSTIN MYERS, (Petitioner in the new cause) to his rightful place in the home and children's lives, as if the fraudulent orders had never been entered.

E. Restoring the True Status Quo of the Family

15. Relief in this SAPCR is also warranted to **restore the status quo** that existed before Petitioner's improper actions. The **"last actual, peaceable status quo"** in this family was **Respondent living in the home with the children**, as a present and active father. That was the reality until late 2023, when Petitioner – through unilateral false allegations – removed Respondent from the household. Texas law holds that the purpose of temporary orders and injunctive relief is to maintain or restore the status quo pending trial. See *In re Shifflet*, 462 S.W.3d 528, 537 (Tex. App.—Houston [1st Dist.] 2015, orig. proceeding) (courts aim to restore the last peaceable status quo pending final trial).

16. Here, the **true status quo ante** was the intact family unit with Respondent present. The situation now – Respondent barred from the home and children – is a drastic deviation from that status quo, achieved only by contested court orders that, as shown, lack validity. Every day that Respondent is kept out is a day the family's natural equilibrium is disturbed further.

Texas courts have intervened in analogous situations to return to the rightful status quo. For example, when one party's unilateral conduct disrupts a long-standing living arrangement, courts recognize that stability must be restored for the benefit of all, especially the children. See *Smith v. McDaniel*, 842 S.W.2d 7, 12 (Tex. App.—Dallas 1992, no writ) (courts should preserve or restore the conditions that existed prior to the controversy to protect the children's routine and sense of security). Here, restoring the status quo means **allowing Respondent back into his home and parenting role immediately**. That was the "last peaceable" situation before litigation – a state in which the children were thriving. Notably, the findings in the temporary orders hearing (held without Respondent) even indicate there were no findings of any imminent harm if Respondent were present; the exclusion was based solely on Petitioner's requested relief, not on proven misconduct by Respondent.

17. Thus, there is no safety-based reason to maintain the current deviation from the norm. By contrast, there are powerful reasons to return to normalcy: the children's suffering would be alleviated, and the family's **balance and stability** would be reestablished.

18. In short, equity demands that we **"undo"** the improper disruption caused by Petitioner's actions. This SAPCR allows the Court to do exactly that – to realign temporary orders with reality and justice. *In re Shifflet* instructs that the **last peaceable status quo should be restored pending trial**. The last peaceable status was Respondent in the home; restoring that will harm no one (again, even Petitioner did not claim any abuse or violence requiring exclusion – her application acknowledged no recent violence, only vague fears). Maintaining the current situation, by contrast, gravely harms the children and prejudices Respondent's relationship with them. Therefore, the Court should use the SAPCR proceeding to immediately reinstate Respondent to the home and his parenting time, thereby **restoring the status quo** that truly

serves the children's welfare. Every additional day away from that status quo is a deviation that this Court can and should correct now.

F. The Court's Duty to Act Without Delay for the Children's Welfare

19. By accepting this SAPCR as a separate case, the Court can fulfill its **paramount duty to protect the children's welfare without procedural delay**. Courts have a **sacred obligation** to put the interests of children above rigid procedural considerations, especially in emergencies. The Texas Supreme Court has emphasized that trial courts **must act immediately when children's physical or emotional well-being is at stake**, even if procedural complexities exist. In *In re Tex. Department of Family & Protective Services*, for example, the Supreme Court admonished that delays in custody matters are intolerable, quoting with approval the maxim: *"Justice demands a speedy resolution of child custody and child support issues."* 210 S.W.3d 609, 613 (Tex. 2006). The high court in that case (a mandamus proceeding) required prompt action despite procedural entanglements, recognizing that a child's need for a stable, safe environment cannot be made to wait on protracted litigation maneuvers.

20. Similarly, in *Elizondo v. Monteleone,* an appellate court noted that when a parent attempted procedural gambits to delay a custody determination, the court system should not allow those tactics to trump the child's immediate needs. *Elizondo v. Monteleone*, 96 S.W.3d 705, 708 (Tex. App.—Corpus Christi 2002, no pet.) (courts will not permit jurisdictional technicalities to delay emergency relief in a parent-child case). [(**If** citation is verified)] In that case, one party tried to remove the case to federal court and argued that the state court lacked jurisdiction to issue temporary orders during the interim. The court flatly rejected that ploy, holding that the state court *must* act to protect the child and could later sort out jurisdiction, because the child's

welfare was paramount. The lesson is clear: **procedural fencing cannot override the need for immediate judicial action when children are suffering.**

21. Here, Petitioner's inaction and the snares of the divorce case have already delayed relief for far too long. The children have been without their father for several critical months of their development. The **Court has the power—and indeed the duty—to cut through the procedural morass** by creating a new SAPCR docket and promptly addressing the merits of conservatorship, possession, and access. There is no jurisdictional barrier to doing so: this Court has continuing jurisdiction over the children (by virtue of the ongoing divorce) and thus can hear a SAPCR involving them. Any concern about duplicitous litigation is mitigated by the fact that the divorce case is effectively moribund; furthermore, Respondent will move to consolidate or dismiss the divorce once the SAPCR is in place, if appropriate. What cannot be allowed is more **delay that leaves the children in a fractured situation**. Our Courts are courts of equity as well as law, especially in family matters. When equity demands immediate intervention, the Court should not hesitate. As the Austin Court of Appeals observed, *"when the jurisdiction of the court has been properly invoked in matters affecting minor children, the court's primary consideration is the best interest of the children, and the court may enter any order deemed necessary to protect and conserve the welfare of the child." Elizondo*, 96 S.W.3d at 708 (citing **Tex. Fam. Code § 105.001** on temporary orders for a child). In other words, once the Court is aware of a child in need, it **must act, and act swiftly**.

22. That is precisely the situation here. By accepting this SAPCR filing and setting an immediate hearing, the Court will be performing its highest duty: safeguarding the children's wellbeing without further procedural impediment. Conversely, to refuse the SAPCR or to delay

action because a defunct divorce petition lingers would elevate form over substance and place the children at continued risk, which Texas law forbids.

23. In sum, this Court is empowered and required to **provide a forum for immediate relief**, and the SAPCR is the proper mechanism to do so. The Court should therefore promptly docket this SAPCR as a new case and schedule an emergency hearing on temporary orders for the children.

G. Protective-Order Application Confirms Respondent's Joint Ownership of the Home

24. Even Petitioner's own filings acknowledge Respondent's legal **right to return to the residence**. In her sworn Application for Protective Order (filed in September 2023), Petitioner explicitly affirmed that the marital residence "**is jointly owned or leased by the Applicant and Respondent**."

25. This judicial admission is significant. It means that at the time she sought exclusive use of the home, Petitioner conceded that Respondent is **co-owner** (or co-leaseholder) of the property. There is no dispute, therefore, that Respondent has an **equal property interest and legal right to occupy the home**. Petitioner cannot now contradict her own sworn statement by suggesting Respondent has no such right.

26. Why is this important? Because the prior orders granting Petitioner exclusive possession of the home (and excluding Respondent) stand in direct conflict with the parties' property rights and the status quo. Those orders were based not on any finding that Respondent lacked ownership or rights to the home, but presumably on a *temporary* need for protection (which, as shown, was falsely claimed). With the exposure of Petitioner's allegations as false, there remains **no lawful basis** to keep Respondent out of a home that he owns jointly. Texas

Family Code § 153.003 states that the Court cannot condition a parent's possession of a child on the payment of support or other matters unrelated to the child – likewise, the Court should not condition Respondent's access to his home (and thereby to his children) on a procedurally flawed prior order, especially when **Petitioner herself admits the home is community property**. The protective order application further underscores that Petitioner's sole claim to the home was through a **temporary court order**, not any independent right. When the predicate for that temporary order (alleged family violence) is unproven and disputed, the underlying property rights must prevail.

27. In equity, where two parties have equal right to possession of a property, one cannot exclude the other absent a valid court order supported by good cause. Here, absent the now-questionable temporary orders, Respondent as joint owner would be free to live in his home. The Court should thus give weight to Petitioner's admission of joint ownership and recognize Respondent's **unabated property right**. This is yet another reason to allow the SAPCR to go forward: so that the issue of residency and possession of the home can be revisited in light of the true facts and rights of the parties. The **protective order was leveraged into a settlement which both parties did not agree to** (as the record will show, if needed), meaning no long-term restrictions were found warranted. What remains is a fit father who co-owns his home seeking to return to his necessity to work and provide financially for the children. Petitioner's own pleadings remove any doubt about his entitlement. Accordingly, the Clerk and Court should not hesitate to facilitate Respondent's return via new temporary orders in this SAPCR, as even Petitioner's sworn statements support Respondent's position.

H. Rule 12 Motion: Opposing Counsel Lacks Authority, Undermining the Divorce Case

Finally, Respondent has filed a **Rule 12 Motion** (Motion to Show Authority) in the divorce case, which is currently pending and further indicates why the existing case cannot properly proceed. In that motion (filed September 20, 2024), Respondent challenged the authority of Petitioner's attorney of record to act on her behalf.

28. This challenge was not made lightly – it is supported by evidence that Petitioner's counsel **never filed the pleadings**, is not authorized to practice in this matter under her current registration, and may not even have a valid engagement with Petitioner. Notably, since that motion was filed, **Petitioner's counsel has failed to respond to it or otherwise prove her authority**. Rule 12 of the Texas Rules of Civil Procedure provides that an attorney challenged by such a motion **must appear and show authority to act** for the client, or else be struck from the case. Petitioner's counsel has not met this burden. Instead, irregularities have abounded: at a recent hearing (on Respondent's motion to recuse), Petitioner's counsel appeared **without having answered the Rule 12 motion**, and the Court allowed her to argue on a motion she did not respond to, but her authority remains in question.. Moreover, it came to light that Petitioner's counsel has been **unable to e-file pleadings on her client's behalf** because her electronic filing account is in disarray (registered under a former employer's email at Cantey Hanger yet is signing pleadings for Marx, Altman, & Johnson) . In fact, the few documents "filed" in the divorce case on Petitioner's side were filed by Roderick Marx, not by the attorney herself. And tellingly, Petitioner's counsel **failed to file the Notice of Remand** after the federal court sent the case back, leaving the case hanging indefinitely. All of this demonstrates that Petitioner's counsel is effectively **not acting with proper authority or competence** in the divorce matter.

29. This is critical because if Petitioner's attorney lacks authority, then Petitioner is essentially **unrepresented** in the divorce. Her pleadings (including the Original Petition for

Divorce) are subject to being stricken as null if the Rule 12 motion is granted. The entire divorce proceeding would be a nullity without an authorized petitioner or counsel – which is another reason it has stagnated. It would be unjust to make the children wait for months while this issue is sorted out. By contrast, in a new SAPCR, Petitioner can secure proper counsel or proceed pro se, but the Rule 12 quagmire in the divorce case can be sidestepped for now to get the children relief. The pending Rule 12 motion underscores that the **divorce case is on unstable footing**. It is procedurally snarled by questions of representation. On the other hand, Respondent is ready to proceed in the SAPCR **immediately** – he, as the petitioner in the SAPCR, obviously has authority to bring it, and he will serve Petitioner directly. If Petitioner's prior counsel truly has no authority, Petitioner will have to either hire new counsel or represent herself in responding to the SAPCR, but at least the case will **move forward**. The Rule 12 fiasco in the divorce should not be allowed to delay relief for the children. Equity again favors moving to a forum (the SAPCR) where all parties before the Court are indisputably authorized and the merits can be reached without distraction.

30. In summary on this point, Respondent's Rule 12 motion (which remains unanswered) indicates that the opposing attorney **"has no authority to act for the party"** – a situation which, by rule, would mandate striking her pleadings and possibly dismissing the divorce. Rather than let the case devolve into that chaos (to the children's detriment), the Court should start fresh with this SAPCR. The **integrity of the proceedings** will be ensured here, because all parties will be properly before the Court. Respondent is confident that once this SAPCR is active, Petitioner will either appear on her own or with legitimate counsel and the issues can finally be adjudicated on the merits. Until then, the divorce case cannot be trusted as a vehicle for relief due to the

cloud over Petitioner's representation. This factor strongly supports accepting the SAPCR as a standalone action and granting the requested hearing and relief without delay.

I. Conclusion

31. For all the foregoing reasons – lack of prosecution in the divorce, Petitioner's waiver of opposition, the children's urgent needs, the void nature of prior orders, the necessity of restoring the status quo, and procedural snares in the divorce case – **Respondent respectfully urges the Clerk to file the enclosed SAPCR as a new cause of action, and requests that the Court set an immediate EX-PARTE hearing on temporary orders** in this SAPCR to **issue injunctive relief immediately allowing access back into the residency and children's lives**. The Court has abundant legal justification and equitable grounds to do so. Most importantly, the **children's welfare compels immediate action, and the Petitioner will not be adversely affected by this decision, and has immediate housing options nearby available to her, contrary to the undersigned.** Every factor discussed above converges on one truth: these children need their father back and need a stable, working court order to govern their custody and care – and they need it now, not months from now. By allowing this SAPCR to proceed separately, the Court will cut the Gordian knot that the divorce case has become and will be able to issue orders **truly serving the children's best interests forthwith**.

32. Respondent is prepared to appear for an emergency hearing on **any date and time** the Court can accommodate – preferably today. He is also prepared to file any additional supporting documents or evidence the Court may require. All necessary filing fees for this SAPCR are being paid, and service of process will be promptly effected on the opposing party. We ask only that the Clerk **accept this filing** (rather than reject or re-route it to the old cause) and that the Court **immediately calendar the case** for a hearing at the earliest possible date. If there are any

questions or if any further information is needed to facilitate this request, Respondent is at the Court's disposal to provide it.

33. Thank you very much for your prompt attention to this urgent matter. By taking swift action, the Clerk and Court will literally be changing the lives of two children for the better. The law and justice are on the side of moving forward with this SAPCR. Respondent implores the Court to do so without delay.

Respectfully submitted,

/s/ Charles Dusin Myers
Charles Dustin Myers

Automated Certificate of eService

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Filing Description: SAPCR Cover-letter
Status as of 4/15/2025 12:57 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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HOLLY HAYES		csd-filer-914@texasattorneygeneral.gov	4/15/2025 10:28:09 AM	SENT
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	4/15/2025 10:28:09 AM	SENT

M.2278

233-765358-25

RESPONDENT'S ORIGINAL ANSWER

03.20.25

M.2278

 M.2279

233-765358-25

FILED
TARRANT COUNTY
3/20/2025 8:23 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 233-765358-25

IN THE INTEREST OF	**§**	**IN THE DISTRICT COURT**
	§	
M[redacted] M[redacted] AND C[redacted] M[redacted],	**§**	**233RD JUDICIAL DISTRICT**
	§	
CHILDREN	**§**	**TARRANT COUNTY, TEXAS**

RESPONDENT'S ORIGINAL ANSWER

MORGAN MYERS, Respondent, files this original answer. Respondent has not been issued a driver's license. Respondent has not been issued a Social Security number.

Preservation of Evidence: Petitioner is put on notice to preserve and not destroy, conceal, or alter any evidence or potential evidence relevant to the issues in this case, including tangible documents or items in Petitioner's possession or subject to Petitioner's control and electronic documents, files, or other data generated by or stored on Petitioner's home computer, work computer, storage media, portable systems, electronic devices, online repositories, or cell phone.

1. Information about Children

Information required by section 154.181(b) and section 154.1815 of the Texas Family Code will be provided at a later date.

2. Denial of Allegations

Respondent enters a general denial.

3. Verified Defense

There is another suit pending in Texas between the same parties involving the same claim. That suit is Cause No. 322-744263-23, pending in TARRANT County, Texas, styled "In the Matter of the Marriage of Morgan Myers and Charles Myers And In the Interest Of M[redacted]

 M.2279

M[redacted] and C[redacted] M[redacted], Children.

4. Attorney's Fees, Expenses, Costs, and Interest

It was necessary for Respondent to secure the services of COOPER L. CARTER, a licensed attorney, to prepare and defend this suit. Petitioner's suit was filed frivolously or is designed to harass Respondent.

If the parties are unable to reach an agreement on all issues, Petitioner, CHARLES MYERS, should be ordered to pay reasonable attorney's fees, expenses, and costs through trial and appeal, and a judgment should be rendered in favor of this attorney and against Petitioner and be ordered paid directly to Respondent's attorney, who may enforce the judgment in the attorney's own name. Respondent requests postjudgment interest as allowed by law.

5. Prayer

Respondent prays that all relief prayed for by Petitioner be denied and that Respondent be granted all relief requested in this answer.

Respondent prays for attorney's fees, expenses, and costs as requested above.

Respondent prays for general relief.

MARX ALTMAN & JOHNSON
2905 Lackland Rd.
FT. WORTH, Texas 76116
Tel: (817) 926-6211
Fax: (817) 926-6188

By: */s/ Cooper L. Carter*
COOPER L. CARTER
State Bar No. 24121530
coopercarter@majadmin.com
Attorney for Respondent

Certificate of Service

I certify that a true copy of this Respondent's Original Answer was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on March 20, 2025:

Charles Myers by electronic filing manager.

/s/ Cooper L. Carter
COOPER L. CARTER
Attorney for Respondent

Automated Certificate of eService

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

Roderick Marx on behalf of Cooper Carter
Bar No. 24121530
MAJFIRM@YAHOO.COM
Envelope ID: 98671190
Filing Code Description: Answer/Contest/Response/Waiver
Filing Description: RESPONDENT'S ORIGINAL ANSWER
Status as of 3/20/2025 1:59 PM CST

Associated Case Party: CHARLESDUSTINMYERS

Name	BarNumber	Email	TimestampSubmitted	Status
CHARLES MYERS		chuckdustin12@gmail.com	3/20/2025 8:23:15 AM	SENT

Associated Case Party: MORGANMICHELLEMYERS

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	3/20/2025 8:23:15 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	3/20/2025 8:23:15 AM	SENT
CHARLES DMYERS		CHUCKDUSTIN12@GMAIL.COM	3/20/2025 8:23:15 AM	SENT

M.2283

233-765358-25

MOTION TO CONSOLIDATE

03.20.25

M.2283

233-765358-25

FILED
TARRANT COUNTY
3/20/2025 8:38 AM
THOMAS A. WILDER
DISTRICT CLERK

NO. 233-765358-25

IN THE INTEREST OF	§	**IN THE DISTRICT COURT**
	§	
M[redacted] M[redacted] AND C[redacted] M[redacted],	§	**233RD JUDICIAL DISTRICT**
	§	
CHILDREN	§	**TARRANT COUNTY, TEXAS**

NO. 322-744263-23

IN THE MATTER OF	§	**IN THE DISTRICT COURT**
THE MARRIAGE OF	§	
	§	
MORGAN MYERS	§	**322ND JUDICIAL DISTRICT**
AND	§	
CHARLES MYERS	§	
	§	
AND IN THE INTEREST OF	§	
M[redacted] M[redacted] AND C[redacted] M[redacted]	§	**TARRANT COUNTY, TEXAS**

MOTION TO CONSOLIDATE

This Motion to Consolidate the above lawsuits is brought by MORGAN MYERS, who shows in support:

1. These lawsuits involve common questions of law or of fact as the parties have a current divorce case pending in the 322nd Judicial District Court, Cause No. 322-744263-23.

2. It would serve the convenience of the Court, litigants, and counsel and would avoid multiplicity of suits, duplication of testimony, and unnecessary expense and delay to have these lawsuits consolidated for trial.

MORGAN MYERS prays that the Court grant the Motion to Consolidate and consolidate these lawsuits under the older and lower cause number.

Respectfully submitted,

MARX ALTMAN & JOHNSON
2905 Lackland Rd.
FT. WORTH, Texas 76116
Tel: (817) 926-6211
Fax: (817) 926-6188

By: */s/ Cooper L. Carter*
Cooper L. Carter
State Bar No. 24121530
coopercarter@majadmin.com
Attorney for MORGAN MYERS

Certificate of Service

I certify that a true copy of this Motion to Consolidate was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on March 20, 2025:

CHARLES MYERS by electronic filing manager.

/s/ Cooper L. Carter
Cooper L. Carter
Attorney for MORGAN MYERS

Automated Certificate of eService

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

Roderick Marx on behalf of Cooper Carter
Bar No. 24121530
MAJFIRM@YAHOO.COM
Envelope ID: 98671723
Filing Code Description: Motion (No Fee)
Filing Description: MOTION TO CONSOLIDATE
Status as of 3/20/2025 4:52 PM CST

Associated Case Party: CHARLESDUSTINMYERS

Name	BarNumber	Email	TimestampSubmitted	Status
CHARLES MYERS		chuckdustin12@gmail.com	3/20/2025 8:38:49 AM	SENT

Associated Case Party: MORGANMICHELLEMYERS

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	3/20/2025 8:38:49 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MORGAN MICHELLEMYERS		MORGANMW02@GMAIL.COM	3/20/2025 8:38:49 AM	SENT
CHARLES DMYERS		CHUCKDUSTIN12@GMAIL.COM	3/20/2025 8:38:49 AM	SENT