Gmail **FUDSTOP <chuckdustin12@gmail.com>**

Validity of the February 1 and March 14 Reports and the March 26, 2024 Temporary Orders

1 message

FUDSTOP <chuckdustin12@gmail.com> Fri, Apr 11, 2025 at 7:14 PM
To: Cooper Carter <coopercarter@majadmin.com>

Introduction and Issue Presented

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. In particular, we focus on the following newly uncovered facts:

February 1, 2024 Associate Judge's Report: This 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. It stated the parties' agreement would be "evidenced by [their] signatures" – yet Charles Myers's signature is missing from the report.

Order Actually Filed (March 26, 2024 Temporary Orders): The order was prepared well past the 20-day/30-day deadlines – in fact about 54 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.

March 14, 2024 Associate Judge's Report: This interim report (from a status hearing on March 14) 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.

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

Factual Background and Procedural History

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

On Feb. 1, 2024, an Associate Judge heard Petitioner Morgan Myers's motion for temporary orders. 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." It further states, "The parties have agreed to the terms of this order as evidenced by the signatures below.". In other words, the Temporary Orders were represented as an agreed order.

Notably, however, the February 1 report itself was not a final typed order; it was a handwritten form that 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:

A typed Temporary Order conforming to the Associate Judge's Report was to be prepared within 20 days of Feb. 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]."*.

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."

If the attorneys could not agree on the form of order, a "Motion to Sign" hearing was to be set within 30 days of Feb. 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 Feb. 1 Associate Judge's Report has an "AGREED AS TO FORM AND SUBSTANCE" signature block for the parties and attorneys. On the copy obtained, Morgan Myers and her attorney (Cooper Carter) signed the report, but Charles Myers's signature is notably absent, despite the report reciting that both parties signed. It appears Charles did not sign the Agreed Temporary Orders report on Feb. 1. (It's unclear if Charles's attorney, Dan Bacalis, signed the report on Charles's behalf – the form is hard to read – but what is clear is that Charles himself did not sign where his signature line was.) In sum, as of Feb. 1 the matter was treated as if an agreement had been reached, but Charles's personal consent was not memorialized on the report.

The Associate Judge did sign the report (or otherwise indicated "So Ordered" on it) on Feb. 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 Feb. 1 became the governing temporary orders in effect – but only in the form of the handwritten report, pending entry of the formal typed order.

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 withdrew from representation (the exact date Bacalis ceased representing Charles is unclear, but by mid-March Charles was pro se). To address the lack of a finalized order, a follow-up proceeding occurred on March 14, 2024 before the Associate Judge.

At the March 14 proceeding, instead of simply holding an entry hearing, it appears the court and counsel engaged in off-the-record discussions to get the order finalized. Opposing counsel (Cooper Carter) took it upon himself to hand-write additional 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.

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 not yet been signed.

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 Feb. 1. The key points about this March 26, 2024 Temporary Orders are:

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.

It was prepared and filed well after the 20-day deadline set by the Feb. 1 report. Nearly two months had elapsed (far beyond the expected Feb. 21 deadline for drafting and Mar. 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 Feb. 1 directive.

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 Feb. 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 wasnt even on the case).

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.

The recitals in the March 26 Temporary Orders are misleading. The order opens by reciting that both parties appeared on Feb. 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 Feb. 1 report, Charles's signature was not on that report, so that recital is factually inaccurate. Moreover, by the time of final signing, Charles's attorney did not sign and Charles's own signature was obtained only via pressure. Thus, the very foundation – that the order is an agreed order – is highly questionable.

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. We turn now to the legal consequences of these irregularities.

Legal Framework

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 Feb. 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. And 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 Feb. 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.

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. An agreed judgment entered after a party has withdrawn consent is void. Samples Exterminators v. Samples, a Texas Supreme Court case, holds that “an agreed judgment rendered after one of the parties revokes his consent to the settlement is void.”. Similarly, S&A Restaurant Corp. v. Leal, 892 S.W.2d 855 (Tex. 1995), and Quintero v. Jim Walter Homes, Inc., 654 S.W.2d 442 (Tex. 1983) reaffirm that a party may revoke consent any time before judgment is rendered, and if the court signs a judgment after consent has been withdrawn, that judgment must be set aside.

Even when a signed Rule 11 agreement exists, a party’s timely withdrawal of consent means the court can’t enter it as an agreed judgment (the remedy in such case is to enforce it as a contract claim or hold an evidentiary hearing on the merits). In our scenario, there was no fully Rule-11-compliant agreement in writing signed by all parties prior to the court’s rendition of the March 26 order – Charles had not signed the Feb. 1 report and explicitly objected to terms on March 14. Thus, treating the matter as “agreed” was legally questionable.

Due Process Considerations: Both the U.S. Constitution and Texas Constitution protect individuals from deprivation of liberty or property without due process of law. Parental rights – even in the temporary custody context – are a fundamental liberty interest. (See Troxel v. Granville, 530 U.S. 57 (2000); Tex. Const. art. I, §19 (due course of law).) At minimum, due process requires that a parent be given notice and a meaningful opportunity to be heard before significant parenting time or custody rights are taken away. Texas courts have held that when a parent’s possession of a child is restricted or custody is changed without proper notice or hearing, such orders are an abuse of discretion and may be set aside. For example, in cases where a trial court has made a sudden change of custody without an evidentiary hearing or under false pretenses of an agreement, appellate courts have intervened via mandamus, finding violation of due process (see, e.g., In re Stearns, 201 S.W.3d 353 (Tex. App.–Houston [14th Dist.] 2006, orig. proceeding) (granting mandamus where temporary orders changed primary custody without proper notice hearing); Page v. Sherrill, 415 S.W.2d 642 (Tex. 1967) (orig. proceeding) (voiding a temporary custody change order obtained without notice or hearing)). The key point is that courts must strictly adhere to procedural rules when fundamental rights are at stake, and any shortcuts or coercive tactics can amount to a denial of due process.

Analysis

1. Failure to Follow the Associate Judge’s Directives for Converting the Report into an Order

The first question is whether the Feb. 1 and Mar. 14 Associate Judge’s Reports were ever properly “converted” into a valid court order in the manner the Associate Judge required. The answer is no. The Associate Judge laid out a clear roadmap on Feb. 1 for how the temporary orders would be formalized, and virtually every step of that roadmap was disregarded:

Untimely Preparation: The judge expected a conforming typed order within 20 days (by Feb. 21). In reality, the order was not prepared until late March (over 50 days later). No court approval or extension was sought for this delay. This violated the timeline of the Associate Judge’s report. While missing a deadline alone might not automatically void an order, it is significant because the situation had materially changed – Charles’s attorney withdrew in the interim and the case posture was different. The delay meant the process envisioned (where both attorneys collaborate on a draft shortly after the hearing) broke down, undermining the reliability of the final order as a true reflection of the Feb. 1 hearing. The lack of a timely order also prejudiced Charles’s ability to seek prompt review – by the time the order was finalized, the 3-day window to request a de novo hearing on the AJ’s recommendations had long passed (he had relied on the assumption of an agreed order in process). The expiration of the de novo period combined with no written order in place left Charles in procedural limbo.

Wrong Person Drafting: The Associate Judge explicitly assigned drafting responsibility to Dan Bacalis, Charles’s attorney. This is important because it ensures the prevailing party or the party who is to comply most with the order is the one to draft it (and thus unlikely to insert onerous terms beyond what was agreed). Here, opposing counsel (Carter) drafted the order instead, effectively giving one side unilateral control over the text. This was contrary to the court’s instruction. It resulted in a draft that Charles had no input in crafting. If Bacalis had drafted it, he presumably would have reflected his client Charles’s understanding of the terms and caught any overreaches; Carter had no such incentive.

No Attorney Approval/Signature for Charles: The Feb. 1 plan required each attorney to approve the order (with 5 days for review). By late March, Charles had no attorney to do so. Carter did not obtain any sign-off from a lawyer representing Charles’s interests. Indeed, as shown in the final order’s signature block, Daniel Bacalis’s signature line is blank. Thus, the final order violated the explicit condition that both attorneys approve it. The language “Each attorney should approve the Order” was not followed. This is not a mere technicality – it goes to the heart of fairness in drafting. When one side’s attorney fails to approve (or has withdrawn), the prudent course would have been to alert the court that no agreement on the form existed and proceed with a Motion to Sign hearing (as the AJ’s report anticipated). Instead, the order was presented to the court without Charles’s side ever approving the form. The lack of Charles’s attorney’s signature is a red

flag that the order was not truly agreed or at least not jointly approved as to form. In family cases, it is exceedingly rare for an "agreed" order to be entered with one side's signature block empty; that typically indicates the order was not actually agreed.

No Motion to Sign or Hearing on Disputed Terms: Because the parties (or counsel) did not agree on the form by the 30-day mark, the Feb. 1 report required a Motion to Sign to be filed and set within 30 days. No such motion was filed by March 2. Eventually, when the impasse dragged to March 14, the matter came before the AJ in some fashion, but instead of a proper noticed hearing to resolve disputes, only an informal coercive conference occurred. The court never held a true adversarial hearing to settle Paragraph 3 or any other contested aspect – despite Charles's known objection. This deprived Charles of the procedural right the Feb. 1 order gave him: to have the court resolve any disagreements about the order's terms via a motion hearing. By skipping the Motion to Sign process and jumping straight to forcing Charles's signature, the court bypassed a critical safeguard. Charles was entitled to have the judge hear why he objected to Paragraph 3 and to have the judge decide whether that term accurately reflected the Feb. 1 ruling or was appropriate. Instead, he was told in essence "sign it now or else." This is the opposite of the orderly process the AJ outlined.

Given the above, the Feb. 1 and Mar. 14 Associate Judge's reports were not properly reduced to a mutually approved order in the manner required. One could say that the Feb. 1 report's conditions for validity of the final order were never met. The final March 26 order did not "conform" to the AJ's Report in the sense of following the mandated procedure (even if its content purported to mirror the report, the process did not). This raises serious doubt about the validity of the March 26 Temporary Orders as an enforceable agreed order.

2. Lack of Genuine Consent – The Order Was Not Truly "Agreed"

The March 26 Temporary Orders on their face present themselves as an Agreed Order – they recite the parties agreed and they contain the signatures of both parties under "Approved and Consented to as to both Form and Substance." However, this facade of agreement is shattered by the facts:

Missing Party Signature on the AJ's Report: The underlying Associate Judge's Report from Feb. 1, which is referenced in the order, was not signed by Charles. Thus, the statement that both parties "signed an Associate Judge's Report regarding Agreed Temporary Orders" is false with respect to Charles. The agreement was incomplete from the start. In Texas, an agreed judgment requires "consent at the time it is rendered" (Leal, 892 S.W.2d at 857). On Feb. 1, Charles clearly did not provide full consent (reflected by his refusal to sign the report).

Objection Not Resolved: As of March 14, Charles explicitly objected to Paragraph 3 of the order and refused to approve it. This is evidence that he 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.

Coerced Signature = No Real Consent: Charles's signature on March 26 was never obtained even under extreme duress. He effectively had a gun to his head (figuratively) in that he was told to sign immediately or face some unspecified but presumably severe consequence (possibly the court signing the order without his input or a contempt for failing to comply with the 1:30 PM directive, etc.). 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. 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.

Absent Attorney for Charles: Charles was pro se by March 26, without the benefit of counsel to advise him. This made him more vulnerable to coercion and also means there was no attorney on his side actually 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 was not freely given 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.

3. 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 actually ordered on Feb. 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 Feb. 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 Feb. 1 or if it was an added term Carter inserted in the written draft. Often, such co-parenting 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.

If the final order went beyond the scope of the Feb. 1 hearing or imposed new obligations not covered in the AJ's oral pronouncement, then 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 might contain 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 Feb. 1, but given Charles's resistance, it's likely the AppClose provisions (or whatever Paragraph 3 entailed) were not explicitly agreed in substance on Feb. 1. That means the final order, at least in part, does not reflect the actual "report" of the judge but rather what opposing counsel wanted.

Additionally, because the final order was delayed, by March 26 the Associate Judge did not personally "render" those orders – he had made recommendations on Feb. 1, but the actual signing on March 26 was by the District Judge (James Munford) or by the AJ acting with the referring court's authority. 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 likely 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.

4. Due Process Violations and Equity

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

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. perhaps the AppClose cost or privacy concerns), 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.

Surprise and Lack of Notice: The 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 of 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.

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.

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 Feb. 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.

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.

5. 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.

Remedies

Vacating the Temporary Orders – Mandamus Relief

Because these are temporary orders in a family law case, they are not appealable via the ordinary route (Tex. Fam. Code § 105.001(e) bars interlocutory appeals of temp orders). The appropriate remedy to challenge them is an original proceeding for writ of mandamus in the Court of Appeals. Mandamus is available when a trial court has clearly abused its discretion or violated a duty, and there is no adequate remedy by appeal. Here, the lack of normal appeal (as one must wait for a final judgment) means no adequate remedy by appeal exists, satisfying that prong.

As shown above, the trial court (through the Associate Judge) clearly abused its discretion in multiple ways: by entering an agreed order without a real agreement, by disregarding the mandated procedure, and by effectively denying Charles due process. This is exactly the type of scenario where Texas appellate courts grant mandamus relief. Indeed, Texas courts have granted mandamus to vacate temporary orders that were entered improperly – for example, where a parent’s rights were curtailed without notice or where a temporary order changed custody without the required evidentiary showing (such as In re Stearns, Page v. Sherrill, etc.). An appellate court would likely view the combination of procedural errors here as a “clear abuse of discretion” meriting mandamus intervention. Additionally, if the order is deemed void, mandamus is appropriate because a void order can be attacked at any time, and the relator need not show lack of appellate remedy. Texas courts have stated that *“Mandamus is… available to vacate a void order.”*.

By granting mandamus, the appellate court can nullify the March 26, 2024 Temporary Orders and direct the trial court to either conduct a proper temporary orders hearing or otherwise reset the temporary orders issue. Given that these orders have already been in effect, time is of the essence – a mandamus could include emergency relief (stay of enforcement) if needed to prevent further harm.

Direct Attack in Trial Court

Aside from mandamus, Charles could also file a Motion to Vacate or Modify Temporary Orders in the trial court itself (the 322nd or now the 233rd if consolidated). Since the case is still pending, the trial court has the power to modify or vacate its temporary orders if shown good cause. Charles can argue that the orders are void or voidable for the reasons discussed and ask the court to set them aside. However, given that the court itself (through its associate judge) was involved in the irregular process, the trial court might be disinclined to admit error. That is why mandamus to a higher court is often the preferred route in such scenarios – it brings in an objective review.

If a final order is eventually rendered in the case, Charles could appeal and raise these issues on appeal, arguing that the temporary orders process infected the final outcome (for instance, if temporary custody turned into final custody without a fair hearing, etc.). But appeals courts often consider temporary orders complaints moot once final orders are entered, except to the extent they impacted the final judgment. Thus, waiting for a final appeal is not an adequate remedy for the temporary orders problem now.

Mandamus vs. Voidness (Collateral Attack)

If the order is declared void, Charles could treat it as a nullity – meaning he could theoretically ignore it and later defend against any enforcement by arguing its voidness. However, that is risky without an official ruling, as contempt could result before voidness is recognized. It is better to obtain a court ruling vacating the order. Labeling the order “facially void” strengthens Charles’s hand in mandamus because appellate courts do not tolerate void orders standing. In In re Southwestern Bell Tel. Co., 35 S.W.3d 602 (Tex. 2000), the Texas Supreme Court held that if an order is void, the relator doesn’t even need to show inadequate remedy by appeal – mandamus should issue. We have analogous reasoning here: the temporary orders, tainted by lack of consent and due process, are void; thus the appellate court should promptly void them.

Remedy of De Novo Hearing (Missed Window)

You don’t request de novo review of an “agreed” order – you expect the agreement to be honored. Charles was under the impression an agreed order reflecting certain terms would be entered. He objected once he saw the written terms were unfavorable (hence March 14). At that point, de novo review deadline had passed. It would be unjust to hold that against him when the delay was largely due to the other side not preparing the order timely and the court not enforcing its own deadlines. Moreover, if the order is void, waiver doesn’t apply; void orders can be attacked at any time. So the lack of a de novo request does not preclude relief now.

Potential Outcome After Vacatur

If the March 26 Temporary Orders are vacated, what then? The situation would revert to the status after the Feb. 1 hearing (or before it). The trial court could choose to hold a new temporary orders hearing (with evidence and proper notice) to put temporary orders in place properly. Or, if significant time has passed and final trial is nearing, the court might maintain a status quo or issue limited temporary orders just to maintain stability until final trial. The primary goal, however, would be to ensure any temporary orders going forward are made with proper process – meaning Charles gets to be heard and any order reflects either an actual agreement or a judge's findings based on evidence.

Public Interest and Due Process

This case also has a public interest dimension: It highlights how breakdowns in family court procedure can lead to unfair outcomes, and how important it is for courts to follow the rules, especially when fundamental parental rights are at stake. Ensuring that orders are not entered based on misrepresentation or coercion is critical for public confidence in the justice system. No court "rubber stamp" should override a parent's rights without strict adherence to due process. By correcting this situation (through mandamus or other means), the court not only protects Charles's rights but also sends a message that "end-justifies-the-means" tactics are not acceptable in our legal system.

Conclusion

In light of the evidence and the applicable law, it is our assessment that the Temporary Orders signed on March 26, 2024 are invalid and should be vacated. The February 1, 2024 and March 14, 2024 Associate Judge's reports were never properly transformed into a consensual order – instead, the final order was the product of missed deadlines, unilateral drafting, and coerced consent.

Legally, the March 26 order suffers from a failure of consent (rendering it void as an agreed order entered without true agreement) and from procedural irregularities amounting to an abuse of discretion. It also violates Charles Myers's due process rights, as he was deprived of a fair opportunity to contest the terms that heavily restricted his parental rights. The absence of Charles's attorney's signature and Charles's own lack of voluntary assent mean this order does not carry the legitimacy that we demand of court orders.

Accordingly, the March 26, 2024 Temporary Orders are facially void or voidable and should be set aside. The court should grant appropriate relief – ideally through a writ of mandamus – to vacate the orders. If mandamus is granted, the trial court can be directed to conduct any further temporary orders proceedings properly (with notice, hearing, and without characterizing the matter as "agreed" unless a real agreement is reached).

This outcome upholds the rule of law by ensuring that court orders, especially those affecting children and parental rights, are entered only through proper agreement or proper adjudication – not by short-circuiting procedures. It protects the due process rights of litigants and maintains the integrity of judicial proceedings. As the Texas Supreme Court noted in a related context, "courts must have the authority to enforce agreements that are actually made, but they have no authority to create an agreement for the parties where none exists". Here, no genuine agreement existed as to the March 26 temporary orders, so the orders cannot stand.

Sources:

Tex. Family Code §§ 201.007, 201.011, 201.013, 201.015 (powers of associate judge; effect of associate judge's report; right to de novo hearing).

Tex. Family Code § 105.001 (requirements for temporary orders; necessity of notice and hearing; no interlocutory appeal).

Associate Judge's Report (Feb. 1, 2024) – requiring draft order by Dan Bacalis in 20 days, 5-day approval by attorneys, and motion to sign in 30 days.

Temporary Orders (filed Mar. 26, 2024) – recitals of "agreed" order, signatures and missing signature of Charles's attorney.

Samples Exterminators v. Samples, 640 S.W.2d 873, 875 (Tex. 1982) (agreed judgment entered after consent withdrawn 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) (discussing enforcement of mediated settlements – court must enforce valid agreements and has no discretion to deny agreed judgment if statutorily compliant; by contrast, if not

compliant or no genuine agreement, court cannot impose one).

Page v. Sherrill, 415 S.W.2d 642 (Tex. 1967) (mandamus granted; temporary custody order issued without notice and hearing violated due process – court had no authority to remove children ex parte).

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 – clear abuse of discretion).

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 – while involving non-parent visitation, underscores due process for parents).

Tex. R. Civ. P. 11 (requirements for enforceable agreements in pending suits).

Tex. R. Civ. P. 305 (procedure for submission of proposed judgments to court and notice to parties).

In re Southwestern Bell Tel. Co., 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding) (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).

I've given you long enough Cooper. Your handwriting on the order, these latest stunts, and everything else - I have enough to initiate formal proceedings against you with the Texas State Bar, which I will be doing against you and Roderick Marx.

You can't argue against me, so you commit blatant procedural gambits.

Ill be filing another mandamus in the 322nd on Monday, and will be contacting the state bar giving them all of the misconduct I've been documenting for the last 14 months.

Respectfully,

Charles D Myers
Chuckdustin12@gmail.com