

No. _____

**In the Supreme Court of Texas,
Austin, Texas**

In Re:
Shelley Luther,
Petitioner.

**Original Proceeding
Art. V, Section 3 of the Texas Constitution**

Emergency Petition for Writ of Habeas Corpus

Warren V. Norred, SBN 24045094
C. Chad Lampe, SBN 24045042
NORRED LAW, PLLC
515 East Border Street;
Arlington, Texas 76010
O: 817.704.3984; F: 817.524.6686
wnorred@norredlaw.com

Briscoe Cain, SBN: 24073602
FULTON STRAHAN LAW GROUP, PLLC
7676 Hillmont Street, Suite 191
Houston, TX 77040
O: 713.677.0109; F: 832.201.8847
Briscoe@FultonStrahan.com

I. IDENTITY OF PARTIES AND COUNSEL

A. Relators

Shelley Luther
7989 Belt Line Road #139-1C; Dallas, Texas

Counsel for Relators:

Warren V. Norred, SBN 24045094
C. Chad Lampe, SBN 24045042
NORRED LAW, PLLC
515 East Border Street;
Arlington, Texas 76010
O: 817.704.3984; F; 817.524.6686
wnorred@norredlaw.com

Briscoe Cain, SBN: 24073602
FULTON STRAHAN LAW GROUP, PLLC
7676 Hillmont Street, Suite 191
Houston, TX 77040
O: 713.677.0109; F:832.201.8847
Briscoe@FultonStrahan.com

B. Real Parties in Interest:

City of Dallas; % Chris Caso, chris.caso@dallascityhall.com
City of Dallas; 1500 Marilla, Suite 5EN; Dallas, Texas 75201
Office Phone: (214) 670-3301; Fax Number: (214) 670-0646

C. Respondent:

The Honorable Eric Moyé
14th District Court, Dallas Texas
George L. Allen, Sr. Courts Building,
600 Commerce St, Dallas, TX 75202

Dallas County Sheriff Marian Brown
West Tower Detention Facility:
111 West Commerce Street,
Dallas Texas 75202

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Relator Shelley Luther files this petition for writ of habeas corpus requesting relief from the trial court's Judgment of Contempt and Order of Commitment signed on May 5, 2020.

Relator seeks to be released from confinement, and will amend this petition with the entirety of the record at the earliest possible opportunity.

RECORD AND APPENDIX

Relator includes an appendix that includes the record as received from the court reporter, cited by page number in this habeas petition (e.g., R. ___ or Supp. R. ___). See TEX. R. APP. P. 52.7(a)(1). The appendix is attached to this petition and cited by tab (e.g., Apx. ___). Relator includes supplemental documents filed in the trial court's docket but not yet part of the formal record.

STATEMENT OF THE CASE

Underlying Proceeding:

City of Dallas v. S & B Hot Mess Enterprises d/b/a Salon A La Mode, Shelley Luther, Cause No. DC-20-06131 in the 14th Judicial District Court of Dallas County, Texas.

Nature of Case and Ruling at Issue:

This matter arises out a dispute between the city of Dallas and Shelley Luther, owner of Salon a la Mode. The city sought a temporary restraining order to prevent Luther from operating her legitimate business based on an emergency order issued by Dallas County and the city of Dallas. On April 30, the temporary restraining order was served on Luther, ordering her to cease and desist operations of her business. On May 5, a show-cause hearing was held before the 14th Judicial District Court and Luther was held in criminal and civil contempt for continuing to operate her business.

Deprivation of Liberty and Relief Sought:

Dallas County Sheriff Brown took Luther into custody on May 5, 2020 and confined her in the Lew Sterrett Justice Center, West Tower. Relator seeks unconditional release based on a faulty TRO which did not comply with TEX. R. CIV. PROC. 683, 684. Relator poses no “substantial danger of injury or adverse health impact” to the city as required by TEX. LOCAL GOV’T CODE § 54.016.

Relator Luther is a Texas resident of Pilot Point, Texas in Denton County. She owns and operates a cosmetology salon business in the city of Dallas. Shelley Luther owns S&B Hot Mess Enterprises, LLC d/b/a Salon A La Mode located at 7989 Belt Line Road #139-1C in Dallas, Texas, for which she has a valid license issued by the State of Texas.¹ Salon A La Mode re-opened on April 23, 2020.

The order issued by County Judge Clay Jenkins on or about April 23, 2020 (“Jenkins Order”) (CR. 103) requires that Ms. Luther simply not open her salon, even though she has obtained a certificate of operation for the salon and has a lease to pay, and stylists who are depending on her operation in order to pay their bills and pay for food.

The county order was adopted by reference by the city of Dallas Mayor Johnson in his order issued on March 30, 2020 (“Johnson Order”) (CR 36). Further, her business was foreclosed from operating by order of the State of Texas in GA-16 on April 17 (CR 61) and GA-18 (CR 136) on April 27. These orders declared Relator’s beauty salon non-essential and refused to let her operate. Neither the city of Dallas nor Dallas County nor the State of Texas are providing funds to pay the businesses’ obligations or releasing the relators from their

¹ TAB 1, Declaration of Shelley Luther. TAB 1 contains all the declarations referenced herein.

contractual obligations or otherwise replacing the lost income.

Luther has made contracts with stylists who expect to have chairs open for them to use when the Salon is open, and she is obligated to provide those spaces, just as she is obligated to pay for her leased space. Any interference in those contracts will impoverish her to no good cause. Salon A La Mode is essential to its customers and owners who use their income to buy groceries and pay their bills.

On April 24, 2020, Relator having reached a financial tipping point where she could no longer pay her mortgage or her business rent, determined to exercise her right to operate her business in a manner that complied with all the guidelines suggested for businesses by the Centers for Disease Control. The stylists and technicians operating within her business wore masks covering their nose and mouth, all high-touch surfaces were sanitized regularly, public access items like magazines and drink stations were removed, and patrons were seated at least six feet apart. There is no evidence that her business posed any greater risk to the public than businesses being allowed to operate, such as movie theaters, daycares, and home improvement stores.

The City of Dallas issued her a citation on April 24 (CR 152) which appears to claim that the business is violating an unknown code. The Dallas Department of Code Compliance also dropped off a document with the title "COVID-19 NOTICE

OF VIOLATION” which appears to be a demand to cease all activities.

On April 27, 2020, City of Dallas executive assistant city attorney issued another cease and desist letter (CR 169).

Ms. Luther feared for her personal safety and that of her business. The Jenkins Order and the Johnson Order from Dallas County and City, respectively, interfere with her livelihood and snuff out her income, but do not eliminate her debts. Moreover, these orders appear to be without legal basis, as the Texas Legislature has not defined her actions as criminal. Lastly and perhaps most importantly, these orders assume that her operation is not worth the potential risk, while many other organizations are operating in Dallas and not policed at all for social distancing. Walmart is fully functional with people purchasing all manner of non-essential items. Laundromats in Dallas are full of business-as-usual crowding in far less sanitary conditions for substantial periods of time, but neither the County nor City has any time to police these genuinely dangerous conditions.

Lastly, Ms. Luther notes that dog owners in Dallas can drop off their dogs for grooming, and wait in crowded areas while their dogs are groomed, but Ms. Luther is not allowed to have a very limited number of clients tended to by people who have a thousand hours in proper sterile and safe operations.

On April 28, 2020, Judge Eric Moyé of the 14th Judicial District Court in

Dallas County issued a temporary restraining order that Ms. Luther must cease and desist all operations of her business immediately (CR 171). The TRO was served on her on or about April 29, 2020. (CR 193.) No bond was ordered by the court as part of the TRO. Relator continued her operations in the same safe and sanitary manner as before.

On April 30, 2020, the city of Dallas moved for Relator to be held in Contempt of Court. A contempt hearing was held on May 5, 2020, in the 14th Judicial District Court, Judge Eric Moyé presiding. Relator was foreclosed from questioning the city's witnesses about the protective measures in place to prevent the spread of COVID-19 when said witnesses inspected her salon.

Judge Moyé recessed the hearing in order to observe Governor Greg Abbott's televised announcement that he would be allowing the operation of salons like Relator's business beginning on Friday, May 8, 2020.

Judge Moyé held Relator in civil and criminal contempt of court, ordering her confinement to two 7-day sentences to be served concurrently. He also ordered her to pay \$500 in fines for civil contempt and \$500 in fines for criminal contempt for each day she operates her business from April 29, 2020 through May 7, 2020. (Tab 2, p. 528-531.)

STATEMENT OF JURISDICTION

Jurisdiction is appropriate in this Court because the Supreme Court has appellate jurisdiction conferred on it by the Texas Constitution:

Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. *The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction.*

Texas Constitution, article v, section 3(a).

As explained in *Ex parte Williams*, 690 S.W.2d 243 (Tex. 1985), the Texas legislature in section 22.002(e) of the Texas Government Code confers original jurisdiction on the Texas Supreme Court to issue a writ of habeas corpus when a person has been confined based on a contempt order from a district court.

Sec. 15. The supreme court or a justice of the supreme court, either in termtime or vacation, *may issue a writ of habeas corpus when a person is restrained in his liberty by virtue of an order, process, or commitment issued by a court or judge on account of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case.* Pending the hearing of an application for a writ of habeas corpus, the supreme court or a justice of the supreme court may admit to bail a person to whom the writ of habeas corpus may be so granted.

TEX. GOV'T CODE § 22.002(e) (emphasis added)

ISSUES PRESENTED

1. Is Judge Eric Moye's temporary restraining order under which the contempt order was issued a valid order according to TEX. R. CIV. PRO. 683?
2. Is Judge Eric Moye's temporary restraining order under which the contempt order was issued a valid order according to TEX. R. CIV. PRO. 684 when no bond was issued supporting it?

ARGUMENT

Response to Issue 1: Judge Eric Moye’s temporary restraining order under which the contempt order was issued is not a valid order according to Rule 683 because it does not describe with specificity the reasons why Ms. Luther was enjoined.

Courts have consistently held that the requirements of TEX. R. CIV. P. 683 and 684 are mandatory and the failure to comply with either rule renders an order void. *See Lancaster v. Lancaster*, 155 Tex. 528, 536, 291 S.W.2d 303, 308 (Tex. 1956) (Explaining that “Rule 684, Texas Rules of Civil Procedure, specifically requires the giving of an injunction bond, prior to the issuance of an injunction.”); *Interfirst Bank San Felipe, N.A. v. Paz Constr. Co.*, 715 S.W.2d 640, 641 (Tex. 1986, per curium) (“The requirements of Rule 683 are mandatory and must be strictly followed.

When a temporary injunction order does not adhere to the requirements of Rule 683 the injunction order is subject to being declared void and dissolved.”); *Qwest Communs. Corp. v. AT&T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000) (explaining that the “procedural requirements [of Rule 683 and 684] are mandatory, and an order granting a temporary injunction that does not meet them is subject to being declared void.”)

Rule 683 requires that every restraining order shall set forth the reasons for its issuance. Courts have concluded that “[T]he obvious purpose of [Rule 683] is

to adequately inform a party of what he is enjoined from doing *and the reason why he is so enjoined.*" *El Tacaso, Inc. v. Jireh Star, Inc.*, 356 S.W.3d 740, 744 (Tex. App.—Dallas 2011, no pet.) (quoting *Schulz v. Schulz*, 478 S.W.2d 239, 244-45 (Tex. Civ. App.—Dallas 1972, no writ)) (emphasis added).

Because of this, “the order itself must contain the reasons for its issuance.” *In re Chaumette*, 456 S.W.3d 299, 305 (Tex. App.—Houston [1st Dist.] 2014). “Even if a sound reason for granting relief appears elsewhere in the record, the Texas Supreme Court has stated in the strongest terms the rule must be followed.” *Reliant Hosp. Partners, LLC v. Cornerstone Healthcare Group Holdings, Inc.*, 374 S.W.3d 488, 495 (Tex. App.—Dallas 2012, pet. denied). Therefore, the “explanation must include specific reasons and not merely conclusory statements.” *Kotz v. Imperial Capital Bank*, 319 S.W.3d 54, 56-57 (Tex. App.—San Antonio 2010, no pet.).

Other than stating that Realtor is “in violation of State of Texas, Dallas County, and/or City of Dallas emergency regulations related to the COVID-19 pandemic”, the Order fails to comply with Rule 683 because it merely provides conclusory statement and not any specific reasons for its issuance.

Because the order fails to include the specific reasons for its issuance, it lacks the specificity required by Rule 683 and is void.

Response to Issue 2: The TRO was void under Rule 684 because the City of Dallas failed to post a bond to enforce a temporary restraining order; the City’s immunity regarding bonds is for security only.

In its Plaintiff’s Response to Defendants’ Motion to Reconsider and Dissolve Temporary Restraining Order the City asserted that it need not post a bond under TEX. CIV. PRAC. REM. CODE § 6.002 and its charter. The trial court agreed with the City and issued its order without requiring the City to post a bond.

“[U]nder Rule 684 a bond is specifically required as a condition precedent to the issuance of a temporary injunction, and the failure of the applicant to file such a bond renders the injunction void *ab initio*.” *Goodwin v. Goodwin*, 456 S.W.2d 885, 885 (Tex. 1970). Entitled “APPLICANT’S BOND,” Rule 684 of the Texas Rules of Civil Procedure mandates that a bond be set and posted, stating:

In the order granting *any* temporary restraining order or temporary injunction, *the court shall fix the amount of security to be given by the applicant*. Before the issuance of the temporary restraining order or temporary injunction *the applicant shall execute and file with the clerk a bond to the adverse party*, with two or more good and sufficient sureties, to be approved by the clerk, in the sum fixed by the judge, conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part.

TEX. R. CIV. P. 684 (emphasis added). The execution of a bond by an applicant is a condition precedent to the issuance of a restraining order or injunction. *See Lancaster v. Lancaster*, 155 Tex. 528, 536, 291 S.W.2d 303, 308 (Tex. 1956).

The Order does not reflect that the court set a bond; instead, the Order in Paragraph six, states, “*No bond is necessary to be posted by Plaintiff: City of Dallas.*” (Tab 1), apparently accepting the City’s assertion that a City of Dallas charter provision can except it from Rule 684, though Rule 684 does not provide for such exception. In doing so, the trial court has attempted to waive the bond requirement of Rule 684.

The facts of this Case are similar to that of *Beeler v. Hanchey*. In *Beeler*, the Court of Appeals seated in Beaumont, held a trial court's temporary injunction order void for failing to comply with the mandatory requirements of Rule 884. *Beeler v. Hanchey*, No. 09-14-00038-CV, 2014 Tex. App. LEXIS 6436, at *11 (Tex. App.—Beaumont June 12, 2014). In arriving at its conclusion the court of appeals noted that:

The order does not reflect that the trial court set a bond; instead, the order, in paragraph six, recites that the bond requirement was "waived." However, the record before us does not support a finding that the bond requirement was waived. Before the trial court rendered its order, the Beelers, through a letter from their attorney, objected to Hanchey's proposed order because "the proposed order contains no bond requirement." The letter further advised the trial court that "the proposed order incorrectly stated that a bond has been waived. Ginger Beeler and Don Beeler, Jr. [*10] have *not waived* the

applicant's bond." The Beelers's attorney also mentioned that the trial court had not set a bond during the hearing, and nothing in the record of the hearing reflects that the bond requirement in Rule 684 was waived. We conclude the record shows the trial court failed to follow the law when it failed to fix a bond requirement as required by Rule 684.

Beeler v. Hanchey, No. 09-14-00038-CV, 2014 Tex. App. LEXIS 6436, at *9 (Tex. App.—Beaumont June 12, 2014).

The question of whether a temporary restraining order is void because the trial court expressly waived a bond and none was posted was answered by the Texas Supreme Court in *Ex Parte Leshler*. *Ex parte Leshler*, 651 S.W.2d 734, 735 (Tex. 1983) (“The issue before us is whether the temporary restraining order was void because the court expressly waived a bond and none was posted.”). In that case, this Court granted the writ of habeas corpus and ordered the release of the Realtor. *Id.* Citing its decision in *Lancaster v. Lancaster*, this Court wrote:

Lancaster is the controlling authority in this instance and it mandates that the facial validity of an injunction will be contingent on compliance by the court and moving party with the prerequisites of Rule 684. The rule is clear and specific in its requirements for the issuance of a temporary injunction.

In the order granting any temporary restraining order or temporary injunction, the court shall fix the amount of security to be given by the applicant. Before the issuance of the temporary restraining order or temporary injunction the applicant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by the clerk, in the sum fixed by the judge (Emphasis added).

Tex.R.Civ.P. 684. We held in *Lancaster* that the provisions of Rule 684 are mandatory and an order of injunction issued without a bond is void on its face.

Ex parte Lesher, 651 S.W.2d 734, 736 (Tex. 1983). The Order is therefore facially invalid because it fails to comply with Rule 684. Because we have no record of a bond being filed, it is as there never was a restraining order for Realtor to have violated. *See Cowan v. Ham*, No. B14-93-00305-CV, 1994 Tex. App. LEXIS 2894, at *22 (Tex. App.—Houston [14th Dist.] Dec. 1, 1994).

Nor does the history of these laws provide for any imagined relief that was missed in error. Art. 2072, Revised Statutes, 1925, superseded Art. 768 and provides only that "security for *costs* shall not be required of the State or any incorporated city or town in any action, suit or proceeding, . . ." leaving out the exemption from bond in injunctions. *Cone v. Lubbock*, 431 S.W.2d 639, 645 (Tex. Civ. App.—Amarillo 1968).

PRAYER & CONCLUSION

For these reasons, Luther asks the Court to declare the temporary restraining order void, declare the contempt judgment and order of commitment void, and issue a writ of habeas corpus ordering his unconditional release. Luther requests all other appropriate relief to which he is entitled.

Respectfully submitted,

By: /s/Warren V. Norred

Warren V. Norred, SBN 24045094
C. Chad Lampe, SBN 24045042
NORRED LAW, PLLC
515 East Border Street; Arl., Texas 76010
O: 817.704.3984; F: 817.524.6686
wnorred@norredlaw.com

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Houston, TX 77040
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Briscoe@FultonStrahan.com

ATTORNEY FOR RELATOR

CERTIFICATIONS

CERTIFICATE OF SUPPORT

Pursuant to Tex. R. App. P. 52.3(j), I certify that I have reviewed this Petition and concluded that every factual statement in the Petition is supported by competent evidence included in the Mandamus Record submitted by the City.

/s/Warren V. Norred
Warren V. Norred

CERTIFICATE OF SERVICE

In accordance with Tex. R. App. Pro. 9.5(e), the undersigned hereby certifies that a true and correct copy of the foregoing Petition for Writ of Injunction has been sent by e-service, on this the 6th day of May, 2020 to Respondents through the fax numbers and emails provided in the listing of Respondents.

/s/Warren V. Norred
Warren V. Norred

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that, pursuant to Tex. R. App. Pro. 9.4(i)(2)(D), the number of words in this document are 3035, based upon the word counter of MS Word.

/s/Warren V. Norred
Warren V. Norred

TABS

- 1 - Transcript of TRO Hearing
- 2 - Transcript of Contempt Hearing
- 3 - Contempt Order
- 4 - Clerk's Record
- 5 - Additional filings in the Docket with Supporting Declaration