

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-169

WAYNE WHITMAN AND DIANE WHITMAN

versus

JEFFREY DIRECTOR

IN RE JEFFREY DIRECTOR

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE MICHAEL P. MENTZ, DIVISION "F", No. 869-761

TRUE COPY

July 17, 2026



MORGAN NAQUIN
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, Jude G. Gravois, Scott U. Schlegel, and Timothy S.
Marcel

WRIT GRANTED IN PART, DENIED IN PART JUDGMENT RENDERED

In this writ application, relator, Jeffrey Director ("Director"), requests supervisory review of multiple orders issued by the trial court in an action for emergency temporary custody and sole custody of his five children brought by their maternal grandparents, Wayne Whitman and Diane Whitman ("Whitmans"). For reasons which follow, we grant in part and deny in part this writ application.

FACTS AND PROCEDURAL HISTORY

Mr. Director and his wife, Leigh Whitman Director, were married for approximately ten years before her death on January 11, 2025. Their adopted children, E.D., B.D., O.D., and R.D. were aged seven,

five, four, and three years respectively, at the time of their mother's death. The youngest, C.D., also adopted, was just over two months old.

On October 20, 2025, the Whitmans filed a Petition for Joint Custody or Alternatively Visitation. In this first petition, the Whitmans requested joint legal custody with Mr. Director and for one of the Whitmans to be named as domiciliary parent "pursuant to Louisiana Civil Code Article 133." An order was issued scheduling their first petition for domestic commissioner hearing on January 7, 2025. The record before us reflects that the hearing set for January 7, 2025 was continued without date, and no hearing has been conducted on the Whitmans' first petition.

On December 15, 2025, the Whitmans filed a Petition for Temporary Emergency Custody Pursuant to Louisiana Code of Civil Procedure Article 3945 and Request for Civil Warrant. This was the Whitmans' second legal filing for custody of the children. In this Second Petition, the Whitmans requested sole legal custody of the five Director children and the *ex parte* issuance of an emergency order of temporary custody. In this Second Petition, the Whitmans alleged, according to information they obtained from Deanna Lyon and Tina-Marie Alvarenga that Mr. Director was sexually, physically, emotionally, and medically abusing the minor children. Included in the Second Petition is a request for a court-ordered forensic sexual abuse examination at the Audrey Hepburn CARE Center at Children's Hospital for the oldest four children. Supporting their request for these items of relief, paragraph "8" of the Whitmans Second Petition states that "[I]t is in the best interest of the minor children that Petitioners be awarded sole legal custody of the minor children ..." based "[u]pon information and belief" that Mr. Director "has engaged in sexually exploitive behavior with the children." Additionally, the Whitmans averred that Mr. Director's physical abuse, medical abuse, endangerment because of intoxication, and emotional abuse created immediate and irreparable harm to his children, all of which required issuance of an emergency *ex parte* order of temporary sole custody.

While the Whitmans verified the Second Petition, the substance of their allegations are based solely upon affidavits executed by Deanna Lyon and Tina-Marie Alvarenga, who were former nannies in the Director household. In the Second Petition, the Whitman's reference the affidavits of Ms. Lyon and Ms. Alvarenga to allege that Mr. Director "has engaged in a pattern of medical abuse and neglect, often ignoring the advice of the children's pediatrician, Dr. Claire Neumann, and subjecting the children to unnecessary invasive and traumatizing medical treatment." Again, referring to the affidavit declarations, the Whitmans further alleged in their Petition that Mr. Director "has engaged in a persistent pattern of physical abuse, intimidation, severe emotional abuse and manipulation."

In an order issued December 15, 2025, the Domestic Commissioner granted the Whitmans application for emergency temporary custody of the five children *ex parte* but conferred Mr. Director specific periods of unsupervised visitation pending a hearing scheduled for January 7, 2026.¹

On December 18, 2025, Mr. Director filed an objection and *ex parte* motion to vacate commissioner's order as well as an answer and reconventional demand to the Whitmans' Second Petition on the following day. The request to vacate the *ex parte* order in favor of the Whitmans was denied; a hearing was scheduled on the Whitmans' Second Petition as well as Mr. Director's reconventional demand for January 9, 2026.²

The hearing on the Whitmans' Second Petition was conducted over two days. On January 9, 2026, the district court received testimony from Deanna Lyon and Dr. Claire Neumann. Testifying on the second day, January 12, 2026, were Wayne Whitman, Michele Colombo,

¹ The request for a civil warrant was denied.

² The parties jointly requested the domestic commissioner hearing scheduled for January 7, 2026 be rescheduled to January 9, 2026 before the district court.

Amanda Bowers, Bailey Davis, Candace Macaluso, Diane Whitman, and Jeffrey Director.³

After testimony concluded on January 12, 2026, the district court ordered three of the children to undergo a forensic examination by the Audrey Hepburn CARE Center with specific instructions to the Whitmans as to information they were to provide hospital staff. The district court stated that it would reconvene following receipt of the forensic examination reports to ascertain if additional evidence is necessary or warranted. Additional admonishments and instructions were issued concerning transfers of physical custody between Mr. Director and the Whitmans. Finally, the district court ruled that “[a]ll prior orders of the Court are continuing at this time.” We note from the record that the December 15, 2025 emergency temporary custody order was the only prior order for custody of the children at that time and that the transcripts reflect that no future court hearing date was scheduled for the case.

On February 23, 2026, Mr. Director filed a Motion to Vacate Sole Custody Order to Wayne and Diane Whitman and Rule for Contempt for Whitmans Providing Verbal Information to the CARE Center. In his motion, Mr. Director averred that reports issued by the Audrey Hepburn CARE Center of its forensic evaluations conclude that none of the children were sexually abused.⁴ Mr. Director asserted that the sole basis for the temporary award of sole custody to the Whitmans were allegations of sexual abuse, which have been conclusively refuted, and requested the children be returned to his custody. Additionally, Mr. Director alleged the Whitmans’ orally provided information to Audrey Hepburn CARE Center staff in violation of the district court’s orders. The district court scheduled Mr. Director’s motion for hearing on March 6, 2026.⁵

³ The transcript of witness testimony from proceedings on January 12, 2026 is contained in the record lodged in case 26-CA-232.

⁴ The assertion contained in Mr. Director’s motion is confirmed by the Audrey Hepburn CARE Center reports filed under seal in the record of 26-CA-232.

⁵ The proposed order scheduling Mr. Director’s rule for contempt against the Whitmans was stricken through.

On or about March 4, 2026, Mr. Director filed a Petition for Writ of Habeas Corpus and Request of Expedited Return Date, With Incorporated Memorandum. Mr. Director's filing asserted that the *ex parte* emergency order granting the Whitmans temporary sole custody expired by operation of law on January 30, 2026. His pleading further asserted that the evidence presented at the hearing on the Whitmans' Second Petition failed to prove immediate and irreparable harm, and the trial court issued no judgment with that finding. Consequently, Mr. Director argued, the Whitmans continued physical custody of the children was a derogation of his parental rights. The district court struck through the proposed order granting the writ of habeas corpus and inserted an order for Mr. Director to show cause on March 6, 2026 why his motion should be granted.

The parties appeared before the district court again on March 6, 2026. On that date, the district court denied Mr. Director's motion to vacate the sole custody order and application for a writ of habeas corpus. Instead, the district court issued a signed Interim Custody Judgment awarding Mr. Director and Wayne Whitman joint legal custody of the children and designated Mr. Whitman as domiciliary parent. The trial court further ordered the parties to participate in a full custody evaluation, enroll in Our Family Wizard, and attend co-parenting classes. The Interim Custody Judgment further provides for a schedule of physical custody of the children with exchanges to occur at the Jefferson Parish Sheriff's Office. Preceding its orders in the judgment, the district court states the interim custody order is issued "pursuant to Article 133", and states the ruling is "[b]ased on the testimony and evidence from the first day of trial, reports of the court-ordered evaluations by Audrey Hepburn Child Care Center (sic), Article 134 factors, as well as Article 136 factors."

Mr. Director filed a timely writ application from the district court's interlocutory Interim Consent Judgment, and the court's denials of his petition for habeas corpus and motion to vacate the emergency temporary custody order.

In the writ application before us, Mr. Director assigns seven errors as follows:

- (1) The trial court committed legal error by failing to render the statutorily required determination under La. C.C.P. art. 3945 at the contradictory hearing and by maintaining an *ex parte* custody order beyond the statutory period, rendering such order – and all rulings derived therefrom – null and without legal effect.
- (2) The trial court committed legal error by exceeding the limited scope of La. C.C.P. art. 3945 and improperly converting an expedited emergency proceeding into a broader custody adjudication without conducting a procedurally proper custody hearing.
- (3) The trial court committed legal error by reviewing and relying upon unadmitted and inadmissible evidence—including sealed medical records and interview materials—outside the presence of counsel and without affording a meaningful opportunity to object, confront, and challenge such evidence.
- (4) The trial court committed legal error and abused its discretion by conducting a fragmented and procedurally defective proceeding, including holding the matter open, ordering and relying upon post-hearing evidence, and rendering judgment based on a disjointed and evolving evidentiary record.
- (5) The trial court committed legal error by denying Defendant’s Motion to Vacate the *ex parte* custody order and related rulings, where such orders had expired by operation of law and were rendered without compliance with La. C.C.P. art. 3945.
- (6) The trial court committed legal error by denying habeas corpus relief where Defendant’s custody rights were restrained in the absence of a valid and enforceable custody

order, thereby permitting the continued unlawful deprivation of custody.

(7) The trial court erred in awarding custody to non-parents where the record does not support a finding of substantial harm as required by La. C.C. art. 133.

We consider these assignments of error in our discussion below, beginning with assignment of error number 7.

DISCUSSION

The fundamental rights of a parent to companionship, care, custody, and management of his child are liberty interests protected by the Due Process Clause of the Fourteenth Amendment. *Cook v. Sullivan*, 2020-01471 (La. 9/30/21), 330 So.3d 152, 158, *rehearing denied* 2020-1471 (La. 12/7/21), 347 So.3d 863. In a child custody dispute between a parent and a non-parent, the parent's rights to custody are superior unless the parent forfeits those rights because of unfitness or inability. *Id.* (citing *Jones v. Coleman*, 44,543 (La. App. 2 Cir. 7/15/09), 18 So.3d 153, 159). Any consideration of the best interest of the child must be balanced with those fundamental parental rights. *Id.*

We begin this analysis with a review of the pleading on which emergency temporary custody of the children was granted *ex parte* to their maternal grandparents and the later judgment awarding interim custody to Mr. Director and Mr. Whitman jointly. In order to determine the nature of an action, courts must look to the allegations and prayer of the petition. *Soignet v. Louisiana Ta Comm'n*, 2026-0048, p. 8 (La. App. 1 Cir. 6/18/26), --- So.3d ---; *see also Gislair v. Matamoor, Inc.*, 537 So.2d 876 (La. App. 5 Cir. 1/18/1989), *writ denied*, 541 So.2d 901 (La. 1989).

While styled "Petition for Temporary Emergency Custody Pursuant to Louisiana Code of Civil Procedure Article 3945 and Request for Civil Warrant," the Whitmans' action was for sole custody of the children. Their request for an *ex parte* order for emergency

temporary custody under Article 3945 was incidental to their action for sole custody under Louisiana Civil Code Article 133. The order issued scheduling a hearing on the Second Petition for January 9, 2026 instructed Mr. Director to appear and show cause why the Whitmans should not be awarded sole custody of the children.⁶

This Court has previously articulated a two-prong test for deprivation of a parent's paramount right to custody under Article 133. *See Tracie F. v. Francisco D.*, 15-224 (La App. 5 Cir. 9/21/15), 174 So.3d 781, *rehearing denied, writ granted* 184 So.3d 20, 2015-1812 (La. 11/16/15), *affirmed but criticized* 188 So.3d 231, 2015-1812 (La. 3/15/16); *Ferrand v. Ferrand*, 18-618 (La. App. 5 Cir. 12/6/19), 287 So. 3d 150, 160, *writ denied*, 2020-0138 (La. 3/9/20), 291 So. 3d 216. Under the first prong of this test, the non-parent petitioner must prove by clear and convincing evidence that substantial harm will be caused to the child if custody is not changed to a non-parent. *Id.* If the non-parent meets that initial evidentiary burden, the non-parent must then prove that a custody award to a non-parent is in the best interest of the child. *Id.* Thus, courts are to engage in a best interest of the child analysis under Louisiana Civil Code Article 134 only after finding clear and convincing evidence that substantial harm will be caused by maintaining custody of a child with the parent. *Cook v. Sullivan*, 53,741 (La. App. 2 Cir. 11/18/2020), 307 So.3d 1121, *writ granted* 2020-1471 (La. 2/17/21), 310 So.3d 559, *aff'd* 20-1471 (La. 9/30/21), 330 So.3d 152. This substantial harm test is applicable in all cases where a non-parent is seeking either joint or sole legal custody. *Black v. Sims*, 08-1465 (La. App. 3 Cir. 6/10/09), 12 So.3d 1140.⁷ The 'clear and convincing' standard requires a

⁶ The order also directed Mr. Director to show cause why the emergency temporary order of custody should not be extended. However, for reasons discussed herein, the maximum extension allowable by law for such orders is fifteen days following the expiration of the initial thirty-day effective period.

⁷ We observe that Louisiana courts have permitted awards of joint custody to a parent and non-parent without a demonstration of substantial harm under unique situations. Those include where the parent, who was the child's adoptive mother and also the biological grandmother, and non-parents, the child's biological mother and father, lived as a family unit with the child over a considerable period of time. *McCormick v. Rider*, 2009-2584 (La. 2/10/10), 27 So.3d 277. Another situation was where the non-parent fulfilled the role of primary parent for the first six years of the children's lives, which included extended periods of the parent's absence. *Ferrand v. Ferrand*, 287 So. 3d 150. And another was where the parent and non-parent had previously entered into a stipulated judgment for joint custody. *Tracie F. v. Francisco D.*, 2015-1812 (La.

party to prove the existence of a contested fact is highly probable, or much more probable than its non-existence. *State in Interest of A.L.D.*, 2018-1271 (La. 1/30/19), 263 So.3d 860, 863; *State v. Alexander*, 22-12, p. 15 (La. App. 5 Cir. 6/21/23), 367 So.3d 867, 880, *writ denied*, 2023-01017 (La. 11/8/23), 373 So.3d 46.

The Interim Custody Judgment awarding joint legal custody in this case was expressly based on a best interest of the child determination. We find two legal errors in the district court's ruling. First, the district court's ruling fails to address the requisite initial determination that the Whitmans satisfied their burden of proving substantial harm by clear and convincing evidence. Second, in awarding Mr. Director joint custody, the district court could not have found he caused his children substantial harm. If the district court had in fact found the Whitmans proved that any award of custody to Mr. Director would result in substantial harm to the children, Article 133 prohibits any award of custody to him. Article 133 is a divestiture of parental custody provision in our law.

On review, an appellate court may set aside a trial court's findings of fact only if those findings were manifestly erroneous or clearly wrong. *Kinnett v. Kinnett*, 2020-01334 (La. 10/10/21), 332 So.3d 1149, 1154. However, this standard yields to a *de novo* appellate review where the trial court commits legal error that interdicts the fact-finding process. *Hicks v. USAA General Indemnity Co.*, 2021-00840 (La. 3/25/22), 339 So.3d 1106, 1115. A legal error occurs when a trial court applies incorrect principles of law, and such errors are prejudicial. *Evans v. Lungrin*, 1997-0541 (La. 26/98), 708 So.2d 731, 735. Generally, when the trial court makes errors that are prejudicial, such that they materially affect the outcome of the trial and deprive a party of substantial rights, and if the record is otherwise complete, the appellate

3/15/16), 188 So.3d 231; *In re J.E.T.*, 2016-0384 (La. App. 1 Cir. 10/31/16), 211 So.3d 575. However, in its recent decision applying Louisiana Civil Code Article 133, the Louisiana Supreme Court reaffirmed the substantial harm test for divesting a parent from custodial rights in favor of a non-parent. *Cook v. Sullivan*, 2020-01471 (La. 9/30/21), 330 So.3d 152. In *Cook*, the Supreme Court stated that a best interest of the child analysis under Article 134 is proper only after the court finds substantial harm under Article 133. *Id.*, at 158.

court is to conduct its own *de novo* review of the record. *Melerne v. Tom's Marine & Salvage, LLC*, 2020-00571 (La. 3/24/21), 315 So.3d 806, 822.

Applying the foregoing to the case presented, we find the district court applied incorrect principles of law which prejudiced Mr. Director and deprived him of substantive rights. Louisiana law provides that custody of a child may be awarded to a non-parent where an award of either joint or sole custody to either parent would result in substantial harm to the child. La. C.C. art. 133. In such cases, courts shall award custody to a person who is able to provide an adequate and stable environment, with preference given to a person with whom the child has been residing. *Id.*

Having found the district court legally erred in its award of interim joint legal custody to Mr. Director and Wayne Whitman, a *de novo* review of the record before us is required. Our review begins with the transcribed witness testimonies of Deanna Lyon and Dr. Claire Neumann on January 9, 2026, followed by the transcribed testimonies of Wayne Whitman, Michele Colombo, Amanda Bowers, Bailey Davis, Candace Macaluso, Diane Whitman, and Jeffrey Director from January 12, 2026.

Deanna Lyon worked as a nanny to the Director children from May 2025 until November 2025. Throughout her tenure in the Director household, Ms. Lyon maintained regular communication with the Whitmans knowing of conflicts between them and Mr. Director. She described conversations in which Ms. Whitman spoke disparagingly of Mr. Director and disapprovingly of his parenting, beginning shortly after she started working in the Director household. Ms. Lyon explained that “Ms. Whitman just wanted to be part of her grandchildren’s life (sic) and help in taking care of them.” Ms. Lyon also testified that while the Whitmans were welcome in the Director home, they did not allow Mr. Director into their residence. As part of her compensation for services, Ms. Lyon resided rent-free in an apartment managed by Mr. Director and owned by the Whitmans. After Mr. Director discharged her, and the Whitmans removed Mr.

Director as the complex manager, the Whitmans permitted Ms. Lyon to continue residing rent-free in the apartment.

A significant portion of Ms. Lyon's testimony was her own disapproval of Mr. Director's parenting. She testified to have specific concerns about the health and safety of Mr. Director's eldest daughter, B.D., and sons R.D. and O.D. She recounted incidents involving B.D., who was then five years old, which Ms. Lyon characterized as "little displays of sexual behavior." Based on those behaviors, along with redness and swelling to B.D.'s genital area, and observations when she delivered medication for B.D. to Mr. Director's bedroom one evening during family movie night, Ms. Lyon testified to believing B.D. was being sexually abused by her father. Ms. Lyon further testified to believing that two other children, R.D. and O.D., both boys, were being physically harmed from enemas administered by Mr. Director, stating "in my professional experience, this is the first time I've ever seen children be administered enemas." She also recounted observing Mr. Director drinking a beer and consuming "some kind of clear liquid in a cup" during a 2025 Halloween party, then recklessly driving she and the children home afterwards.

The other witness who testified at the January 9, 2026 hearing was Dr. Claire Neumann. Dr. Neumann testified that she had treated each Director child since their adoption. All five children, according to Dr. Neumann, were born with drugs in their systems and exposed to Hepatitis C by their birth mothers. In addition to her regular pediatric examinations, Dr. Neumann testified to frequently receiving calls from Mr. Director for guidance on his children's health issues. She described R.D. and O.D. as being delayed in their toilet training and having medical conditions for which enemas were part of the treatment regimen she recommended.

Dr. Neumann also testified that she examined B.D. in the fall of 2025 for vaginal issues. B.D., according to Dr. Neumann, had a minor condition that makes little girls predisposed to irritation from tight clothing. She testified to not observing any bruising or other physical signs of sexual assault. Dr. Neumann explained that behaviors which

Ms. Lyon characterized as “little displays of sexual behavior” are common for girls of B.D.’s age and developmental stage. She opined that Mr. Director’s care of his children has always been appropriate.

The first witness to testify when the hearing resumed on January 12, 2026 was Wayne Whitman. He began by describing his financial success as a petroleum engineer and entrepreneur in the oil industry. Mr. Whitman also related the extensive medical treatment he obtained for Leigh’s cystic fibrosis, which included multi-organ transplants. Mr. Whitman further testified extensively to the financial support he provided the Director family during his daughter’s life.

A significant portion of Mr. Whitman’s testimony was concerning the effect his daughter’s relationship with Mr. Director had on his family. He recounted the discord during the early stages of their relationship, particularly the conflict arising from his intense disapproval over their living together before marriage. Mr. Whitman, testifying to the conflict existing at that time, recalled “Leigh called me to inform that we’re (he and Ms. Whitman) were not allowed back into their home that we own until we go get mental help.” In his testimony, he also stated, “[w]hen you grow up with your child and fight for her life and it’s really distressing when someone takes her and pulls her away from you.” While testifying the relationship mended, and financially supporting the adoption of all five children, Mr. Whitman recalled being particularly angry with Mr. Director when Leigh, near death, told him, “Jeff needs a new wife, and he needs a better mother to raise these children.”

After Leigh’s passing, Mr. Whitman testified to taking control of the Whitman Family Foundation, which included terminating Mr. Director’s involvement with the organization. Conflict also arose concerning Leigh’s estate which led to litigation between Mr. Director and the Whitmans that was on-going at the time of the hearing. He described Mr. Director as “prideful” and “self-centered.”

Until December 15, 2024, when he and Ms. Whitman were awarded emergency temporary custody, Mr. Whitman testified that he “probably saw the children every day.” As to the allegation of abuse or

neglect of the children, the only first-hand observations Mr. Whitman offered was observing Mr. Director “pick up one of the little boys and put him on the toilet seat in a manner which I do not think is appropriate.” He went on to testify that the child fears the toilet in his home.

The next three witnesses who testified were three individuals who provided babysitting services for the Director family at various times.

Michelle Colombo testified that she and her daughter, Cassidy, worked in the Director’s home during the COVID period. At Leigh’s funeral, she recounted witnessing Diane Whitman placing the infant child, C.D., in the casket with Leigh’s corpse against Mr. Director’s expressed wishes. She testified about a meeting at El Gato Negro restaurant two weeks after Leigh’s passing in which Ms. Whitman asked her not to help Mr. Director with the children overnight. During her time in the Director home, she never had concerns about the children’s health, safety, or welfare in Mr. Director’s care.

Amanda Bowers testified that she worked as a babysitter for the Directors from 2019 until 2022, but continued spending time with the family during her school breaks. Ms. Bowers described behaviors of the children that would require physical restraint at times. She recounted assisting Mr. Director with childcare on the night before Leigh’s funeral. On the day of the funeral, Ms. Bowers recalled that Ms. Whitman insisted she bring the children to the graveside service in the cemetery, which was contrary to directions expressed by Mr. Director.

Bailey Davis testified that she worked full-time for the Director family as a full-time babysitter from August 2023 until January 2025. She described working “hand-in-hand” with Mr. Director in caring for the children. Ms. Davis recalled the Whitmans spent considerable time caring for the youngest child, C.D., particularly after Leigh became ill. At no time did she observe B.D. display any sexual behavior or Mr. Director behave inappropriately with any of his children.

The next witness to testify was Candace Macaluso, a friend of Leigh Whitman Director since childhood and godmother to B.D. Ms. Macaluso testified that she saw the children with Mr. Director

frequently, the most recent time being December 14, 2025 – the day before the children were removed by the *ex parte* emergency temporary custody order. She described the children as doing well. Ms. Macaluso also attended the dinner meeting at El Gato Negro after Leigh’s passing. She too was asked by Ms. Whitman to stop helping Mr. Director with his children.

Diane Whitman’s testimony consisted primarily of her negative opinions of Mr. Director. In response to being asked why she filed for emergency custody, Ms. Whitman testified, “[a]lot of people have been talking about B.D. ... which we didn’t know about until Deanna Lyon.” She testified that Mr. Director’s abuse of the children was going on for years before Leigh’s death. Ms. Whitman testified to personally observing one of the little boys being made to sit on the toilet for forty-five minutes by Mr. Director. She also opined that enemas are causing “irreputable damage to the little boy’s body.” Aside from that personal observation, Ms. Whitman testified to statements made to her by some of the children after gaining custody in December 2015. Ms. Whitman testified that B.D. reported showering with Mr. Director. She acknowledged referring to Mr. Director as a “stiff necked Jew,” adding “I do not respect him being a father.”

The final witness on January 12, 2026 was Jeffrey Director. A considerable portion of his testimony was spent discussing acrimony between he and the Whitmans, his financial decisions after the household lost his wife’s income, and his removal from Whitman family businesses. Those decisions included moving from the “four million dollar” house across the street from the Whitmans to a smaller residence.

Mr. Director testified that all his children were born drug exposed, and that his son, E.D., was diagnosed with fetal alcohol syndrome. He explained that his four oldest children had shown challenging behaviors, noting that toilet training two of his sons had been especially difficult. Mr. Director testified to collaborating with physicians for strategies to address the children’s difficulties. While admitting to administering enemas when needed for constipation, he denied doing so

daily as Ms. Lyon charged. He testified to following recommendations from Dr. Neumann and a gastroenterology specialist, Dr. Zweiner, in addressing the children's health conditions.

In response to the Ms. Lyon's allegations of intoxication at the 2025 Halloween party, Mr. Director admitted to having one "Moscow Mule" alcoholic beverage but denied being impaired while driving his family and Ms. Lyon back to his home. He also denied ever taking a bath with any of his children; Mr. Director did testify that he put all the children in the shower at the same time when his wife was ill. As to the events described by Ms. Lyon on that movie night, Mr. Director testified that B.D. was in his bedroom watching television when he went into his bathroom to take a shower and he did answer the bedroom door wearing a towel when Ms. Lyon delivered the dose of Melatonin. Mr. Director further testified to bringing B.D. for an examination by Dr. Neumann because of vaginal itching for which a topical cream was prescribed. Finally, he did acknowledge that spanking was a disciplinary measure used at times by he and Leigh.

On *de novo* review of the evidence presented at the hearings on the Whitmans' Petition, we find that the Whitmans failed to meet their burden of proving a substantial risk of harm by clear and convincing evidence. The allegations of abuse made by the Whitmans and Ms. Lyon are constituted of insubstantial speculation. Ms. Lyon's courtroom testimony of her uncorroborated personal observations and opinions were slanted by clear bias for the Whitmans and animus toward Mr. Director. Compared with her courtroom testimony, most allegations in Ms. Lyon's affidavit are strikingly exaggerated, and in many instances, just false. Particularly noteworthy are her affidavit statements of frequent, on-going consultation with the children's pediatrician about her abuse concerns. Dr. Neumann's testimony directly contradicted those claims, testifying that she never had a conversation with Ms. Lyon about the four oldest Director children.

The Whitmans themselves did not offer testimony of firsthand observations of Mr. Director abusing his children despite claiming to have visited the Director residence almost daily. Rather, their

testimony regarding abuse allegations were opinions formed by Ms. Lyon's reported presumptions from the Director household. Illustrating the lack of factual support for their accusations of abuse is Ms. Whitman's testimony that, without describing any specific observed incident, Mr. Director had been abusing the children even before Leigh Whitman Director's death.

Contradicting the opinion testimony offered by the Whitmans and Ms. Lyon was evidence offered by the children's pediatrician, Dr. Claire Neumann. In her testimony, Dr. Neumann testified that B.D.'s behaviors claimed to be attributable to sexual abuse by Mr. Director were in fact caused by vaginitis she treated. She explained that displays of "sexual behavior" described by Ms. Lyon were common behaviors of a little girl at B.D.'s childhood developmental state. Mr. Director's administration of enemas to two of his sons was based on recommendations by their treating physicians. One occasion on which Mr. Director had a single alcoholic beverage was characterized as a substance abuse problem which compromised the safety of his children. Furthermore, aside from the Whitmans and Ms. Lyon, no other witness having regular contact with the Director family testified to having any concern about Mr. Director's care for his children.

Though we have found that the Whitmans failed to carry their evidentiary burden, we also find that conferring any custodial rights to the Whitmans under a best interest of the child analysis to be an abuse of discretion. The Whitmans' vitriolic testimonies about Mr. Director are replete in the record and suggest the children's best interest would not be served with an award of custody to the Whitmans. Provisions in the Interim Custody Judgment requiring use of Our Family Wizard and custody transfers at the Jefferson Parish Sheriff's Office appear to be mitigation efforts for addressing the high conflict co-parenting dynamic created by the award of joint custody.

While the Whitmans provided significant financial support to the Director family while Leigh was alive, the testimonial evidence reflects their role in providing routine, direct care for the four eldest children was *de minimis*. Joint custody rights are significant, ranging from

standing to make academic, health care, and religious decisions, to opposing the parent's choice to relocate under Louisiana Revised Statute 9:355.1. Conferring joint custody to Wayne Whitman in this case, under current conditions, is a gross infringement of Mr. Director's parental rights over his children.

On *de novo* review, we find the Whitmans failed to meet their evidentiary burden of proving that any award of custody to Mr. Director would result in substantial harm to the children. That is the threshold test which must be satisfied to confer any custodial rights to a non-parent. *Ferrand v. Ferrand*, 287 So.3d 150. Further, we do not find the evidence supported the district court's award of joint custody to Wayne Whitman under even a best interest of the child analysis. As such, we conclude that the district court abused its discretion in conferring Wayne Whitman joint legal custody of the Director children in its March 6, 2026 Interim Custody Judgment.

Next, we turn to the assigned error concerning the district court's denial of Mr. Director's motion to vacate order of temporary custody. Louisiana Code of Civil Procedure Article 3945, which authorizes a court to grant emergency temporary custody, in pertinent part states:

A. The injunctive relief afforded either party to an action for divorce or other proceeding which includes a provision for the temporary custody of a minor child shall be governed by the additional provisions of this Article.

C. An ex parte order of temporary custody shall:

(1) Expire by operation of law within thirty days of signing of the order; however, the order may be extended for good cause shown at any time before its expiration for one period not exceeding fifteen days.

D. The rule to show cause why the respondent should not be awarded the custody, joint custody, or visitation of the child shall be assigned for hearing not more than thirty days after signing of the ex parte order of temporary custody.

E. Any ex parte order not in compliance with the provisions of this Article is not enforceable, and is null and void.

Article 3945 contemplates the trial court commencing a hearing on the pleading requesting custody or visitation within thirty days from the date the emergency temporary custody order is issued. Thereafter, the court must complete the hearing and render its judgment no later than forty-five days from issuance of the temporary order. Under no circumstances is the emergency temporary custody order valid and legally enforceable after forty-five days. *Raymond v. Raymond*, 25-498 (La. App. 5 Cir. 10/24/25), 426 So.3d 81, 84.

On January 12, 2026, the district court extended the emergency temporary custody order issued on December 15, 2025. However, when the temporary order expired on January 30, 2025, the district court had not ruled on the Whitmans' request for sole custody prayed for in their Petition. Ostensibly, the Interim Custody Judgment supplanted the emergency temporary custody order on March 6, 2026. Nevertheless, that later interim judgment did not render Mr. Director's motion to vacate moot. The emergency temporary custody order was null and void by operation of law as of January 30, 2026. Accordingly, we find the district court abused its discretion in denying Mr. Director's motion to vacate.

Having found the district court abused its discretion in granting joint custodial rights to Wayne Whitman in the Interim Custody Judgment and for failing to vacate the emergency temporary custody order in favor of the Whitmans, Mr. Director's writ application is granted as to those actions of the district court. Because our ruling will vacate all orders conferring any custodial rights to Wayne Whitman or Diane Whitman in deprivation of Jeffrey Director's custodial rights, we pretermitt discussion and ruling on the remaining assignments of error, specifically the assignment of error raised from the denial of his petition for writ of Habeas Corpus, in this writ application.

CONCLUSION

For the foregoing reasons, the writ application of Jeffrey Director is granted in part, and denied in part. The Interim Custody Judgment rendered on March 6, 2026 is reversed and judgment is rendered in favor of Jeffrey Director and against Wayne Whitman and Diane Whitman, dismissing their Petition for Temporary Emergency Custody Pursuant to Louisiana Code of Civil Procedure Article 3945 and Request for Civil Warrant, with prejudice. All orders issued incidental to the custody orders contained in the March 6, 2026 Interim Custody Judgment are vacated. The judgment rendered on March 16, 2026 denying the Motion to Vacate Sole Custody Order and Rule for Contempt filed by Jeffrey Director is reversed and judgment is rendered in favor of Jeffrey Director and against Wayne Whitman and Diane Whitman vacating the emergency order of temporary custody issued on December 15, 2026 effective January 30, 2026. Judgment is further rendered in favor of Jeffrey Director and against Wayne Whitman and Diane Whitman, assessing all costs of the proceedings in the matter before the 24th Judicial District Court entitled “Wayne Whitman and Diane Whitman versus Jeffrey S. Director”, case number 869-761, to Wayne Whitman and Diane Whitman. The writ application is denied as to the trial court’s March 16, 2026 judgment denying Jeffrey Whitman’s petition for writ of Habeas Corpus, and the request by Jeffrey Director for an award of attorney’s fees.

WRIT GRANTED IN PART, DENIED IN PART
JUDGMENT RENDERED

Gretna, Louisiana, this 17th day of July, 2026.

TSM
SMC
FHW
JGG

**Fifth Circuit Court of Appeal
State of Louisiana**

NO. 26-C-169

WAYNE WHITMAN AND DIANE WHITMAN

versus

JEFFREY DIRECTOR

SCHLEGEL, J., DISSENTS WITH REASONS

I respectfully dissent.

The custody judgment dated March 6, 2026 is an interim judgment (the “Interim Custody Judgment”). And it was issued after the parties appeared before the trial court for a hearing on January 9 and January 12, 2026. A full custody trial will take place after the court-ordered custody evaluations are complete.

During the two-day hearing, the trial court heard the testimony of the parties and several witnesses and received numerous exhibits. Additionally, the trial court ordered that forensic examinations take place at the Audrey Hepburn CARE Center (“Hepburn CARE Center”) following the hearing.

After considering the testimony and evidence, including the reports from the Hepburn CARE Center, the trial court gave oral reasons for the Interim Custody Judgment on March 6 and concluded:

MS. CARTER: With respect to your ruling, this is clearly a Judgment related to parent versus non-parent. Are you finding Jeffrey Director to currently cause -- causing --

THE COURT: There has been substantial harm --

MS. CARTER: -- substantial harm to --

THE COURT: -- and I think there’s --

MS. CARTER: --the children?

THE COURT: -- a potential for future substantial harm. All right.

The trial court also stated:

There will be no physical discipline of the children by either party in this – let me go on further to say, this is based on the concerns that were brought about and testified to, not only by Ms. Lyon, but admitted to by Mr. Director, as well as hearing it from the children themselves in the -- their own statements, which include Mr. Director showering naked with his daughter, using excessive -- excessive use of enemas, not following doctor's instructions in the medical records as to how to address that situation, having the children take melatonin on a nightly basis, putting hot sauce into children's mouths, and striking the children with wooden spoons, leaving marks.

Mr. Director also admitted to times when most of his children, including his daughter, would jump on him and do "some type of thrusting or humping and all that."

Thus, I would find that the trial court's factual determinations were not manifestly erroneous. The trial court, acting as the finder of fact, is in the best position to evaluate witness testimony to determine its reliability and/or credibility. *Tanwar v. Tanwar*, 25-142 (La. App. 5 Cir. 5/22/25), 415 So.3d 470, 484.

Furthermore, in most custody cases, the trial court's rulings are based heavily on its factual findings, and each child custody case must be viewed in light of its particular set of facts and circumstances, with the paramount goal of reaching a decision that is in the best interest of the child. *Tanwar*, 415 So.3d at 478. Thus, its determination is entitled to great weight. *Id.* Appellate courts will not disturb a trial court's custody award absent manifest error or an abuse of discretion. *Id.* This Court should review the trial court's factual findings in a child custody determination for manifest error. *Id.*

Although the majority opinion recognizes this legal standard, it finds that the trial court applied incorrect principles of law that prejudiced Mr. Director and

deprived him of substantive rights. This finding allows the majority to engage in a *de novo* review of the record. Specifically, the majority finds:

First, the district court's ruling fails to address the requisite initial determination that the Whitmans satisfied their burden of proving substantial harm by clear and convincing evidence. Second, in awarding Mr. Director joint custody, the district court could not have found he caused his children substantial harm. If the district court had in fact found the Whitmans proved that any award of custody to Mr. Director would result in substantial harm to the children, Article 133 prohibits any award of custody to him. Article 133 is a divestiture of parental custody provision in our law.

Respectfully, the majority is incorrect on both counts.

The Interim Custody Judgment reads “[h]aving considered all of the evidence submitted in conjunction with this matter it hereby enters the following Interim Custody Order pursuant to Civil Code Article 133.” And the trial court specifically stated in its oral reasons that “[t]his Judgment -- Interim Judgment is being made pursuant to Article 133 of the Civil Code, . . .” Furthermore, as noted above, although the trial court did not expressly recite the words “clear and convincing evidence,” it expressly found that substantial harm had occurred and that there was a potential for future substantial harm. The record therefore does not support the majority's conclusion that the trial court failed to make Article 133's threshold substantial harm determination. Nor does the absence of an express recitation of the applicable burden establish that the trial court applied an incorrect burden of proof or committed legal error.

As to the majority's second finding and suggestion that any award of custody to Mr. Director would violate Article 133, I believe this is also error. La. C.C. art. 133 states:

If an award of joint custody **or** of sole custody to either parent would result in substantial harm to the child, the court shall award custody to another person with whom the child has been living in a wholesome and stable environment, or otherwise to any other person able to provide an adequate and stable environment.

(Emphasis added).

Article 133 refers in the disjunctive to “an award of joint custody or of sole custody” and does not necessarily require the complete divestiture of parental custody upon a finding that substantial harm would occur if the children were to remain in sole custody. In some cases, including the present matter, a trial court may determine that sole custody would result in substantial harm but that a structured joint custody arrangement would still serve the children’s best interest. The Louisiana Supreme Court agreed with this interpretation of Article 133 in the case of *McCormic v. Rider*, 09-2584 (La. 2/12/10), 27 So.3d 277.

In *McCormic*, the unmarried biological parents of a child lived as a family unit with the paternal grandmother of the child. When the child was less than a year old, the grandmother adopted the child. Some four years later, the mother and father ended their relationship. The living arrangement between the mother, grandmother, and child continued. A year later, the mother and father filed a petition for custody of the child, alleging that the grandmother was in ill health and unable to properly care for the child. The trial court awarded all three parties (father, mother, and grandmother) joint custody of the child. The court of appeal reversed and rendered judgment in favor of the grandmother. The Louisiana Supreme Court, however, reversed the court of appeal and reinstated the findings of the trial court. The Supreme Court recognized that “[i]n the instant case, the district court made a factual finding that allowing the grandmother to retain sole custody would be detrimental to the child. However, the court also recognized that the child would benefit from being part of a family unit that included the mother, father, and grandmother.” *Id.* at 279. The Supreme Court further held:

Based on our review, we conclude that the tripartite custody arrangement fashioned by the district court comports with the best interest of the child. While we agree that an award of sole custody to the grandmother would be detrimental to the child, we believe the joint custody arrangement, with the mother designated as domiciliary parent, will alleviate any concerns in this regard. This joint custody arrangement will further benefit the child by keeping intact the family unit in which he has lived for virtually his entire

life. Under similar circumstances, courts have approved joint custody arrangements between parents and nonparents. *See, e.g., Whitman v. Williams*, 08–1133 (La.App. 3 Cir. 2/4/09), 6 So.3d 852; *Smith v. Tierney*, 04–2482 (La.App. 1 Cir. 2/16/05), 906 So.2d 586.

Id. at 279-80.

The case of *Bernard v. Bernard*, 18-1149 (La. App. 1 Cir. 2/12/19), 272 So.3d 561, held similarly. In this case, the First Circuit analyzed the requirements of Article 133, and after finding that sole custody to the father would cause substantial harm to the child, granted the father and grandmother joint custody because it was in the best interest of the child. *See also Black v. Simms*, 08-1465 (La. App. 3 Cir. 6/10/09), 12 So.3d 1140, 1142 (“[E]ven though a court may determine that an award of sole custody to a parent would result in substantial harm, the parent is not precluded from being considered in a joint custody award with a non-parent.”)

These cases, which recognize the benefit of keeping the family unit intact, are similar to this case. By all accounts, the Whitmans played an active role in their grandchildren’s lives and had a close relationship with their grandchildren while their daughter was alive. They even lived across the street from their daughter, Mr. Director, and their grandchildren. It was only after the mother, Leigh Director, died that Mr. Director cut off communication with the grandparents.

The reports from the Hepburn CARE Center recommended that it was in the best interest of the children to maintain the presence of their surviving parent, as well as their maternal grandparents, and members of their mother’s extended family, on a regular and ongoing basis. The reports recognized that the children are likely still grieving the loss of their mother, and that to deny them significant time with the grandparents would be an additional and unnecessary loss for the children.

The *McCormic* and *Bernard* cases recognize the value in a continuing family unit that includes parents and grandparents. Under the circumstances, I would find that the trial court did not abuse its discretion by finding that joint custody with Mr. Whitman and Mr. Director is in the best interest of the children. The dynamics of this family are complex.

Finally, the majority opinion maintains that the trial court erred in denying Mr. Director's *ex parte* motion to vacate commissioner's order of temporary custody. The majority found that on January 12, 2026, the trial court extended the *ex parte* order of temporary sole custody issued on December 15, 2025 in favor of the Whitmans. The majority concludes that when the trial court had not ruled on the Whitmans' request for sole custody by January 30, 2026, the temporary custody order expired on January 30, 2026, by operation of law in accordance with La. C.C.P. art. 3945. The majority further concludes that the Interim Custody Judgment of March 6, 2026, "ostensibly" supplanted the emergency temporary custody order.

I agree with the majority that Article 3945 did not permit the December 15, 2025 *ex parte* order to remain enforceable beyond the statutory period. *See Varner v. Varner*, 22-1166 (La. App. 1 Cir. 2/24/23), 361 So.3d 528, 531. But that is not what happened here.

The Interim Custody Judgment of March 6, 2026, which is the judgment being challenged, is not an extension of the December 15, 2025 *ex parte* order of temporary sole custody. Instead, it is a new, interim judgment that was issued after the trial court considered extensive testimony and evidence during a hearing that commenced within the 30-day period required by Article 3945.

Moreover, it granted Mr. Director joint custody, a determination issued only after the trial court found that there had been substantial harm to the children while in his sole custody and that there was a potential for substantial future harm. The

trial court then determined that joint custody was in the best interest of the children.

At most, the expiration of the December 15, 2025 *ex parte* order would mean that no enforceable *ex parte* custody order remained in effect from January 30 to March 6, 2026. The expiration of that order, however, does not determine the validity of the March 6, 2026 Interim Custody Judgment. Otherwise, there would have been no reason for the majority to conduct an analysis under La. C.C. art. 133.

Finally, it is important to note that this is an interim judgment with a full custody trial to follow. And this court should not disturb the trial court's temporary custody award at this stage of the litigation. The trial court is in the best position to weigh credibility and determine the best interest of the children. Having found no abuse of discretion, I would affirm the trial court and order it to set a status conference to select a trial date.

Accordingly, I respectfully dissent.

SUS

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **07/17/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink, reading "Curtis B. Pursell", is written over a horizontal line.

CURTIS B. PURSELL
CLERK OF COURT

26-C-169

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Michael P. Mentz (DISTRICT JUDGE)
Marc D. Winsberg (Respondent) Kayla L. Martynenko (Relator)

MAILED

Taylor A. Lanson (Respondent)
Attorney at law
650 Poydras Street
Suite 2050
New Orleans, LA 70130