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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 23-0067

IN THE TEXAS SUPREME COURT

CHRISTINE LENORE STARY, *Petitioner*,

V.

BRADY NEAL ETHRIDGE, *Respondent*.

On Petition for Review from the
First District Court of Appeals at Houston
No. 01-21-00101-CV

PETITIONER'S BRIEF ON THE MERITS

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

The following is a list of all parties and all counsel who have appeared in this matter:

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ABBREVIATIONS AND RECORD REFERENCES

Abbreviations:

1. Petitioner C.L.S. will be referred to as **"Mother."**
2. Respondent B.N.E. will be referred to as **"Father."**

Record References:

1. The appendix filed with this brief will be referred to as "App." and will be cited by tab and page number as appropriate. **App.____:____.**
2. The Reporter's Record will be referred to as "RR" and will be cited by volume and page number as appropriate. **RR ___:____.**
3. The Clerk's Record will be referred to as "CR" and will be cited by page number as appropriate. **CR ____.**
4. The Supplemental Clerk's Record will be referred to as "Supp CR" and will be cited by page number as appropriate. **Supp CR ____.**
5. The Majority Opinion of the Court of Appeals will be cited by page number as appropriate: **Majority Opinion ____.**
6. The Dissenting Opinion of the Court of Appeals will be cited by page number as appropriate: **Dissenting Opinion ____.**

STATEMENT OF THE CASE

Nature of the Underlying Case:	This case involves a final lifetime protective order that prevents a mother from having any meaningful relationship with her children forever.
Proceedings in Trial Court:	Father filed an application for a protective order against Mother on behalf of himself and the three children he has with Mother, C.M.E., O.P.E., and G.B.E. CR 4. Father abandoned his request for a protective order for himself at trial and only proceeded with requesting a protective order on behalf of the three children. RR 2:12. The trial lasted about an hour and the only witness against Mother was Father, who never personally witnessed any of the alleged incidents. RR.
Trial Court's Disposition:	The Trial Court ordered a lifetime protective order for all three children for the duration of their lives against Mother, ordered Mother to pay attorney's fees, and ordered Mother to submit to a psychological evaluation through the Harris Center for Mental Health and attend an online course for domestic violence. CR 82.
Court of Appeals' Disposition:	The First District Court of Appeals issued a Majority Opinion and a Dissent on December 16, 2022, with Chief Justice Radack and Justice Countiss issuing the majority opinion and Justice Farris issuing the dissent. App. 4; App. 5. The Majority Opinion upheld the lifetime protective order while the Dissent found it violated Mother's constitutional rights by terminating her parental rights without a clear and convincing burden. App. 4; App. 5. The citation for the court of

appeals opinion is *Stary v. Ethridge*, ____ S.W.3d ____, No. 01-21-00101-CV, 2022 WL 17684334 (Tex. App. – Houston [1st Dist.], December 15, 2022).

STATEMENT REGARDING ORAL ARGUMENT

Petitioner requests oral argument in this matter. Oral argument would significantly assist this Court in its decision-making process because this case presents unique constitutional issues. Petitioner believes oral argument would aid this Court in understanding the issues involved and provide the opportunity to pose appropriate questions to counsel so that these important issues may be fully explored.

STATEMENT OF JURISDICTION

The Texas Supreme Court has jurisdiction over this appeal because the court of appeals has committed errors of law of such importance to the state's jurisprudence that it should be corrected. Tex. Gov't Code § 22.001(a).

ISSUES PRESENTED

Issue No. 1: The Trial Court abused its discretion and violated Mother's constitutional rights when it ordered a lifetime protective order for her children, constituting a de facto termination of her parental rights without due process protections.

Issue No. 2: The Trial Court abused its discretion and violated Mother's constitutional rights when it ordered a lifetime protective order without proper due process considerations based on a felony charge that had not been adjudicated.

Issue No. 3: The Trial Court abused its discretion in ordering a lifetime protective order against mother when the evidence was both legally and factually insufficient to prove that Mother committed family violence and is likely to commit family violence in the future.

Issue No. 4: The Trial Court abused its discretion when it excluded evidence of Father's history of domestic violence and denied Mother's trial counsel the ability to make an offer of proof.

I.
REASONS FOR REVIEW

The State of Texas takes protecting the constitutional rights of parents very seriously. Our legislature has rightfully set a high burden for the termination of parental rights under Chapter 161 of the Texas Family Code. In contested cases, we do not terminate parental rights without a lengthy trial that occurs after many months of discovery and without proof by clear and convincing evidence that termination is justified. Parents who have their children removed by Child Protective Services are typically given a year or more to complete court-ordered services and regain custody of their children. Further, Parents who have their rights terminated generally are not restricted from having contact or a relationship with their children after they become adults.

Similarly, when it comes to protecting the rights of people accused of a crime, the accused is given numerous constitutional protections to ensure he or she is not wrongfully convicted. A criminal defendant would never be convicted of a crime without the opportunity for discovery, without the protections of the fifth amendment, and without evidence of guilt sufficient to meet the extremely high burden of beyond a reasonable doubt.

Unfortunately, the Court of Appeals' opinion in this case has stripped parents of their constitutional rights, creating an easy end-around for terminating parental

rights when someone has been merely ***accused*** of a felony. Now, a parent's rights can be terminated ***for life*** after a short hearing, with only fourteen to twenty days' notice, without any opportunity for discovery, without the benefit of fifth amendment protections, and with evidence only by a "preponderance of the evidence" standard. As Justice Farris rightfully found in her dissent, "[t]he indefinite duration of this order prohibiting contact between a parent and her children effectively terminated [Mother's] parental rights and deprived her of the fundamental liberty interests in the care, custody and control of her children" without the due process required heightened standard of proof of clear and convincing evidence. Dissent at 1-2.

No other case in Texas has addressed the issue of the constitutionality of a lifetime protective order under Section 85.025 of the Texas Family Code, but the Fifth Circuit recently addressed a legislature's ability to restrict constitutional rights with a civil protective order. *See United States of America v. Rahimi*; 59 F.4th 163 (5th Cir. 2023) (holding it unconstitutional to restrict the right to bear arms of someone against whom there is a *civil* protective order).

Here, a civil protective order statute has been used to restrict a different constitutional right – the constitutional right to the care, custody and control of our children. Surely protecting one's constitutional parental rights is at least as important as protecting the constitutional right to bear arms. Although the *Rahimi* case could

be overturned by the United States Supreme Court, the rationale of the Fifth Circuit as to this issue is instructive.

This Court must step in to protect the constitutional rights of Texas parents. When three justices on one panel can diverge so drastically over the issue of the constitutionality of the protective order statute as applied in this case, this Court must weigh in to protect the constitutional rights of parents faced with de facto terminations through protective order lawsuits.

II.
STATEMENT OF FACTS

Mother and Father entered into an Agreed Final Decree of Divorce on May 25, 2018, that included provisions for conservatorship, a 50/50 possession schedule, and support for their three minor children, C.M.E. (age 15 at time of the protective order trial, age 18 at the time of this filing), O.P.E. (age 12 at the time of the protective order trial, age 15 at the time of this filing), and G.B.E (age 10 at the time of the protective order trial, age 13 at the time of this filing). App. 1; CR 14; RR 6: 3-62.

On March 5, 2020, an incident occurred in which the Houston Police Department was dispatched to Mother's home. RR 2:17-18; 3:22-36. One of the children, G.B.E., was taken to Texas Children's Hospital and made an outcry that Mother assaulted him. RR 2:38-40. Mother was charged with Injury to a Child under

the age of 15, and at the time of trial, a related criminal case was pending. RR 3:65-66. Father filed an Application for Protective Order for himself and the children on March 12, 2020 with a request for a Temporary Ex Parte Protective Order. CR 3. The Temporary Ex Parte Protective Order was granted on March 17, 2020. CR 64.

On September 29, 2020, Father's Application for Protective Order was heard by the 280th Judicial District Court by Zoom due to the Covid-19 Pandemic. RR 2. Mother appeared with counsel and participated in the hearing. RR 2:5. Father abandoned his request for a protective order for himself and only proceeded on his request on behalf of the children. RR 2:12. Father testified about the incident on March 5, 2020, even though he was not present for the incident in question. RR 2:17-20, 30, 94. Father also testified as to several other incidents, none of which he was physically present for, but about which the children allegedly told him. RR 2:30, 46, 48, 94, 101-102; RR 3:37, 76. Mother's attorney cross-examined and re-cross-examined Father. RR 2:88-110. At that time, the Trial Court recessed the hearing and advised that she would be conferring with the children. RR 2:115-121. Additionally, the Trial Court advised she was appointing an Amicus Attorney for the children who would be present when she conferred with the children. RR 2:115-121, 3:4. The meeting with the children was scheduled to happen later that week, and the remainder of the hearing was set to resume on October 20, 2020. RR 2:120-

121. There was no record made of the meeting with the children, but the Amicus Attorney was present at the meeting.

Father, Father's attorney, Mother, Mother's attorney, and the Amicus attorney participated in the hearing on October 20, 2020. RR 3:4. Cheyenne Brehm, Mother's longtime friend, testified for Mother, and Mother testified on her own behalf. RR 9-17; 18-78. At the end of the hearing the Trial Court ruled from the bench and granted a life-time protective order for all three children for the duration of their lives. RR 3:81-87; App. 2. The Trial Court also ordered that Mother have no periods of possession of or access to the children for the children's lifetimes. RR 3:82-83; App. 2. She ordered that Mother have no contact with the children except through the Amicus Attorney or the children's counselor. RR 3:82-83; App. 2. The Trial Court also ordered that Mother submit to a psychological evaluation by the Harris Center. RR 3:84-85; App. 2.

The Trial Court held an entry hearing on November 30, 2020. RR 4. At the entry hearing, Father's attorney and the Amicus Attorney appeared; however, there appeared to be some confusion over the setting, and Mother's attorney did not appear. RR 4:4. The Trial Court instructed Father's Attorney to make one change to the proposed final order and re-submit for signature. RR 4:5-6. A status conference was set for the following week to address Mother's evaluation from the Harris Center. RR 4:5-7. At the status conference, on December 7, 2020, Father's

attorney, the Amicus Attorney, and Mother's attorney were present. RR 5:4. At the hearing, the Trial Court focused on the ordered psychological evaluation, whether Mother complied with the order, and whether a more detailed order was needed on the issue. RR 5.

Mother filed a Request for Findings of Fact and Conclusions of Law on December 18, 2020 and a Notice of Past Due Findings of Fact and Conclusions of Law on January 13, 2021, but the Trial Court never issued any findings. CR 91, Supp CR 3. Mother then filed a Motion for New Trial on December 30, 2020. CR 93. On February 2, 2021, the Trial Court signed an Order Denying Mother's Motion for New Trial. CR 118.

Mother appealed the Final Protective Order to the Court of Appeals and filed her brief on June 2, 2021. App. 3. Father never filed a response. On December 15, 2022, the Court of Appeals issued a majority opinion and a dissent. App. 4; App. 5. The majority opinion upheld the lifetime protective order while the dissent found it violated Mother's constitutional rights as a de facto termination of her parental rights without the constitutionally required burden of clear and convincing evidence. App. 4; App. 5.

Mother now files this Brief on the Merits appealing the Final Protective Order signed November 30, 2020. CR 125.

III.
SUMMARY OF THE ARGUMENT

The United States Constitution and Texas law provide significant protection for parental rights, which have been repeatedly recognized as one of *the most* fundamental constitutional rights. In this case, the Trial Court violated Mother's due process constitutional rights by granting a ***lifetime*** protective order against her as to her children, which amounts to a de facto termination of her parental rights. The constitutional requirements to terminate parental rights are found in Chapter 161 of the Texas Family Code, but the protective order statute provided an end-around those constitutional requirements in this case. Further, the Trial Court abused its discretion and violated Mother's constitutional rights when, without proper due process consideration, it ordered a lifetime protective order based on the *allegation* of a felony charge that had not yet been adjudicated and without the constitutional protections of a criminal proceeding. The preponderance of the evidence standard in a civil protective order proceeding does not meet constitutional muster when a lifetime protective order effectively terminates a parent's rights to the care, custody and control of her children.

VI.
ARGUMENT

A. Standard of Review

A protective order rendered pursuant to the Texas Family Code is a final, appealable order, if it disposes of all parties and all issues. Tex. Fam. Code. §81.009(a); *Cooke v. Cooke*, 65 S.W.3d 785, 788 (Tex. App.—Dallas 2001, no pet). When a protective order disposes of all issues between parties, it is final for purposes of appellate jurisdiction, even though the Trial Court retains some power to modify it. *In re Cummings*, 13 S.W.3d 472 (Tex. App.—Corpus Christi 2000, no pet.). A final protective order can only be issued when there is sufficient evidence that family violence has occurred and is likely to occur in the future. Tex. Fam. Code §§ 81.001 (2022), 85.001 (2022).

Cases raising constitutional questions are reviewed de novo. *Interest of K.C.*, 563 S.W.3d 391, 396 (Tex. App. – Houston [1st. Dist.] 2018); *State v. Hodges,* 92 S.W.3d 489, 494 (Tex. 2002). For non-constitutional questions, the abuse of discretion standard examines whether the Trial Court acted arbitrarily or unreasonably and without reference to any guiding rules or principles. *Swaab v. Swaab*, 282 S.W.3d 519, 524 (Tex. App.—Houston [14th Dist.] 2008, pet. dism'd w.o.j.). The Trial Court does not abuse its discretion when ordering a protective order if the decision is based on conflicting evidence or where some evidence of a probative and substantive character supports the order. *Newberry v. Bohn-Newberry*,

146 S.W.3d 233, 235 (Tex. App.—Houston [14th Dist.] 2004, no pet.). Appellate courts must view the evidence in the light most favorable to the Trial Court's decision and indulge every reasonable presumption in favor of the Trial Court's judgment. *McGuire v. McGuire*, 4 S.W.3d 382, 384 (Tex. App.—Houston [1st Dist.] 1999, no pet.).

The Trial Court's findings on the act of family violence and whether family violence is likely to occur in the future must be reviewed under the legal and factual sufficiency standards. *In re Doe*, 19 S.W.3d 249, 253 (Tex. 2000); *Vongontard v. Tippit*, 137 S.W.3d 109, 112 (Tex. App. – Houston [1st Dist.] 2004, no pet). When appealing based on the legal insufficiency of the evidence, the court of appeals will consider all the evidence in the light most favorable to the prevailing party, indulging every reasonable inference in that party's favor, and disregarding contrary evidence unless a reasonable factfinder could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). However, the standard for legal sufficiency works in tandem with the standard of review – whenever the standard of proof at trial is elevated, the standard of appellate review must likewise be elevated. *Id.* at 817. Thus, a legal sufficiency review must consider all the evidence, not just the evidence favoring the verdict in reviewing cases of parental termination. *Id*. In such cases, evidence contrary to the ruling cannot be disregarded. *Id.* When reviewing a factual sufficiency challenge, the court examines all the evidence in the record and will set

aside the Trial Court's finding if it is "so against the great weight and preponderance of the evidence as to be clearly wrong and unjust." *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996).

B. Issue No. 1.

The Trial Court clearly abused its discretion and violated Mother's constitutional rights when it ordered a lifetime protective order for her children, constituting a de facto termination of her parental rights without due process.

The United States Constitution and Texas law provide significant protections for parental rights, which have been repeatedly recognized as one of *the most* fundamental constitutional rights. Courts have frequently emphasized the importance of family, and the rights to conceive and raise one's children have been deemed "essential," "basic civil rights of man," and "rights far more precious… than property rights." *See Stanley v. Illinois*, 405 U.S. 645, 651 (1972)(citing cases recognizing these rights); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *May v. Anderson*, 345 U.S. 528, 533 (1953). The integrity of the family unit is protected by the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment. *In the Interest of G.M.*, 596 S.W.2d 846, 846 (Tex. 1980) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972)). The natural right between parents and their children is one of constitutional dimensions. *See Wiley v. Spratlan*, 543 S.W.2d 349 (Tex. 1976).

In *Addington v. State*, 441 U.S. 418 (1979), the United States Supreme Court discussed the function of standards of proof, stating that it is to "instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions or a particular type of adjudication." The right to enjoy a natural family unit is no less important than the right to liberty which requires *at least* a clear and convincing standard of proof to inhibit such liberty through involuntary and indefinite confinement in a mental institution. *In the Interest G.M.*, 596 S.W.2d at 847. The United States Supreme Court stated that termination of parental rights is a drastic remedy. *Id. See also In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003); *In re J.R.*, 991 S.W.2d 318 (Tex. App.—Fort Worth 1999, no pet.); *In the Interest of A.T.*, 406 S.W.3d 365 (Tex. App.—Dallas 2013, pet. denied); *In the Interest of D.S.P. and H.R.P.*, 210 S.W.3d 776, 778 (Tex. App.—Corpus Christi 2006, no pet.). It is of such weight and gravity that due process requires the state to justify termination of the parent-child relationship by proof *more substantial* that a preponderance of the evidence. *See In the Interest G.M*., 596 S.W.2d at 847.

Due to the severity and permanency of termination, due process requires the party seeking to terminate parental rights prove the necessary elements by the heightened burden of proof of clear and convincing evidence. *In the Interest of B.L.D. and B.R.D.*, 113 S.W.3d 340, 353-54 (Tex. 2003); *see also Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982)(holding that the clear and convincing

evidence standard is required to "sever completely and irrevocably the rights of parents in their natural child."). Accordingly, Tex. Fam. Code § 161.001[1] requires proof by clear and convincing evidence at the Trial Court level to terminate parental rights. Clear and convincing evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. Tex. Fam. Code § 101.007.

The burden of proof for a protective order under Tex. Fam. Code § 85.025[2] is merely a preponderance of the evidence, which is significantly less than clear and convincing. *Roper v. Jolliffe*, 493 S.W.3d 624, 638 (Tex. App.—Dallas 2015, pet. denied). However, the interest at stake when a court orders a lifetime protective order against a parent is greater than those interests at stake that require proof by clear and convincing evidence. When the Trial Court ordered a lifetime protective order against Mother for the duration of her children's lives, the Court essentially terminated Mother's constitutional parental rights to the care, custody and control of her children through a loophole that allowed the effect of a termination proceeding without due process. CR 82.

At the time of this trial, a court could only issue a protective order after finding both that family violence had occurred and that family violence was likely to occur

[1] Section 161.001 was amended in September 2023 but the amendment is not relevant to the issues in this case.
[2] Section 85.025 was amended in September 2023 to remove the requirement of a finding that the subject of the protective order is likely to commit family violence in the future.

in the future. *See* Tex. Fam. Code § 85.001(a) – (b) (2022)[3]. Family violence is defined, in relevant part, as "an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself." Tex. Fam. Code § 71.004(1). Section 85.001(d) of the Texas Family Code states that if a court renders a protective order for a period of more than two years, the court must include in the order a finding described by Section 85.025(a-1). Tex. Fam. Code § 85.001 (2022).

When a protective order is granted under Section 85.001, the protective order generally lasts two years or less, and the burden is on the applicant to prove that an extension is needed. Tex. Fam. Code §§ 85.025(a)(2022); 87.002. However, that burden is shifted when, as here, the protective order extends longer than two years.

Under the Texas Family Code, the party enjoined by a family violence protective order can petition the court one year after the court enters such an order to determine if there is a "continuing need for the order." Tex. Fam. Code § 85.025(b)(2022). This places the burden on the party enjoined by the protective

[3] Sections 81.001 and 85.001 of the Texas Family Code were amended in September 2023, now requiring only a finding that family violence occurred and removing the finding that family violence is likely to occur in the future. These changes are not relevant to the constitutional issues in this case but are relevant to the legal and factual sufficiency arguments.

order to prove it is no longer necessary, as opposed to placing the burden on the applicant to prove that it is *still* necessary. Further, a party enjoined by a protective order lasting longer than two years is limited to *only two* motions to terminate the protective order. Tex. Fam. Code. § 85.025 (2022). The first motion to terminate cannot be filed until at least one year after the protective order was rendered, and the second motion to terminate cannot be filed until at least one year after the court rules on the first motion. Tex. Fam. Code §85.025(b), (b-1) (2022). If the party enjoined by the order does not prevail on either of these two motions, the order is in effect until its expiration. In this case, the order has no expiration date so would extend for the remainder of Mother's life. CR 82. If Mother were to file her two motions and be unsuccessful, the small opening she has to regain her parental rights would permanently close.

The protective order in this case prevents Mother from communicating directly with her children or going within 100 yards of her children ***forever***. CR 82. Calling this a lifetime protective order rather than a termination is a distinction without a difference. This protective order cuts off her ability to be a parent and meaningfully participate in the core activities of a parent. She cannot see her children in person, communicate with them, attend their school activities, or have any sort of relationship or involvement with her children. She has been restrained, by the government, from exercising her constitutionally protected rights as a parent,

forever, without the due process afforded to termination proceedings and without a guarantee of dissolving the order at some point in the future absent a showing by the applicant of a continuing need. Without the guarantee that Mother can take certain actions and rebuild a relationship with her children, Mother is left standing in the same shoes as a parent whose parental rights have been terminated by a court without recourse, except that in this instance, Father was not held to a clear and convincing burden of proof as required to terminate a parent's rights pursuant to Section 161.001 of the Texas Family Code.

The Majority argues that because Mother retained certain parental rights, this lifetime protective order does not amount to a "termination" of her parental rights. Majority Opinion at 13-14. As the Dissent properly found, the lifetime protective order here divested Mother of "all meaningful contact between [Mother] and her children – *forever*," and it is, in fact, even more restrictive than a termination order because "termination orders do not bar a parent from contacting or directing activity towards the child once the child reaches the age of majority." Dissent at 6. By depriving Mother of her interests in seeing, communicating with, and having a relationship with her children, the lifetime protective order deprived Mother of her fundamental liberty interest in the care, custody and control of her children without the mandated heightened standard of proof by clear and convincing evidence. Dissent at 6 (citing *Santosky,* 455 U.S. at 756).

The Fifth Circuit Court of Appeals recently addressed a legislature's ability to restrict constitutional rights with a civil protective order. *See Rahimi,* 59 F.4th 163 (holding it unconstitutional to restrict the right to bear arms of someone against whom there is a *civil* protective order). The Fifth Circuit noted that "[t]he distinction between a criminal and civil proceeding is important because criminal proceedings have afforded the accused substantial protections throughout our Nation's history…. It is therefore significant that [the statute] works to eliminate the Second Amendment right of individuals subject merely to civil process." *Id.* at *FN 6.

Here, a civil protective order statute has been used to restrict a different constitutional right than the one at issue in *Rahimi*, but the result should be the same. Surely protecting one's constitutional right to the care, custody and control of her children is at least as important as protecting the constitutional right to bear arms. By ordering this lifetime protective order, the Trial Court has violated Mother's constitutional rights, and by upholding the Trial Court's protective order, the Court of Appeals has created a roadmap for an easy, unconstitutional, shortcut to terminate a parent's fundamental rights. The Court of Appeals' decision must be reversed.

C. Issue No. 2

The Trial Court abused its discretion and violated Mother's constitutional rights when it ordered a lifetime protective order without proper due process considerations based on a felony charge that had not been adjudicated.

The burden of proof for a civil protective order in Texas is preponderance of the evidence. *Roper*, 493 S.W.3d at 638. In contrast, the burden of proof for a criminal conviction requires a significantly higher standard - proof beyond a reasonable doubt. *In the Interest of J.F.C., A.B.C., and M.B.C.*, 96 S.W.3d 256 (Tex. 2002). The purpose of the protective order statute is not to remedy past wrongs or punish prior criminal acts, but rather, it seeks to protect the applicant and prevent future violence. *Roper*, 493 S.W.3d at 634-35. Under Section 85.025(a-1), a Court may issue a protective order that exceeds a period of two years if it is *alleged* that the party committed an act constituting a felony offense involving family violence against the applicant or a member of the applicant's family or household, *regardless of whether the person has been charged with or convicted of the offense*. Tex. Fam. Code § 85.025 (2022).

Using the preponderance of evidence standard in a case where a protective order is a de facto termination of a parent's rights results in a clear constitutional violation of that parent's rights. A criminal conviction requires proof beyond a reasonable doubt. Termination of parental rights under the Chapter 161 of the Texas Family Code requires clear and convincing evidence. Tex. Fam. Code § 161.001. Despite the normally high burdens of proof required to protect constitutional rights, the protective order statute gives a judge the authority to order a lifetime protective

order that effectively terminates the parent's rights based on mere *allegations* of a felony even if other fact finders find insufficient evidence to prosecute or convict.

Mother was not afforded the constitutional protections of a criminal trial when she was accused by Father of committing a felony, which is the only means by which Father could obtain a lifetime protective order for the children. Protective order trials are held quickly and without the opportunity to conduct discovery. *See* Tex. Fam. Code §§ 84.001, 84.002[4] (requiring a court to set a hearing no later than fourteen days or twenty days, depending on the size of the county, after the date an application for protective order is filed[5]). Here, the Court held a quick, short trial and applied a preponderance of the evidence standard when it involuntarily and arbitrarily entered a lifetime protective order against Mother, barring her from ever seeing or speaking with her children again. Not only is this unjust, but it also results in an unconstitutional termination of Mother's parental rights, and the Trial Court's decision must be reversed.

D. Issue No. 3.
The Trial Court abused its discretion in ordering a lifetime protective order against Mother when the evidence was both legally and factually insufficient to prove that Mother committed family violence and was likely to commit family violence in the future.

[4] The 2023 amendment to Tex. Fam. Code 84.002 changed the population size from 2 million to 2.5 million but otherwise did not change the content of the statute.
[5] Although the trial in this case was held further out than provided by statute, the COVID-19 pandemic caused delays where there otherwise would not have been.

The Trial Court abused its discretion in ordering a protective order against Mother because the evidence was both legally and factually insufficient to prove that Mother committed family violence and was likely to commit family violence in the future[6]. Further, the Trial Court's clear bias in what it chose to allow into evidence wrongly tipped the scales in the favor of Father.

A court can *only* issue a protective order after finding both that family violence has occurred and that family violence is likely to occur in the future. *See* Tex. Fam. Code. § 85.001(a) – (b) (2022). When the legal sufficiency of the evidence supporting a judgment is challenged, the Court shall look at all the evidence admitted and decide if more than a scintilla of evidence existed to support the judgment. *City of Keller*, 168 S.W.3d at 827–28. The evidence is less than a scintilla of evidence when it is "so weak as to do no more than create a mere surmise or suspicion" of a fact. *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983).

A legal sufficiency challenge to a family violence protective order may be sustained only when "(1) the record discloses a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence establishes conclusively

[6] Tex. Fam. Code § 85.001(a)-(b) has since been amended to no longer require a finding of family violence is likely to occur in the future.

the opposite of the vital fact." *St. Germain v. St. Germain*, No. 14-14-00341-CV, 2015 WL 4930588, at *2-3 (Tex. App.—Houston [14th Dist.] Aug. 18, 2015, no pet.). More than a scintilla of evidence exists if the evidence furnishes some reasonable basis for differing conclusions by reasonable minds about a vital fact's existence. *Id*.

When the appellant challenges the legal sufficiency on a finding of which he did not have the burden of proof, then the appellant must demonstrate that there is no evidence to support the finding. *Croucher v. Croucher*, 660 S.W.2d 55, 58 (Tex. 1983). The evidence provided to the Trial Court in this case does not support a legal conclusion that Mother committed family violence or was likely to commit family violence in the future.

A factual sufficiency challenge is an assertion that the result at trial was flawed because the evidence was *so lacking* as to make the result fundamentally unfair or manifestly unjust. *Pool v. Ford Motor Co.,* 715 S.W.2d 629, 632 (Tex. 1986). When reviewing the factual sufficiency of evidence, the Court is required to examine all the evidence and will set aside the judgment when it is so contrary to the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709 S.W.2d. 175, 176 (Tex. 1986); *In re C.H.*, 89 S.W.3d 17, 19 (Tex. 2002). Unlike a legal-sufficiency review, a factual-sufficiency review requires the court to review the evidence in a neutral light. *CCC Group, Inc. v. S. Central Cement, Ltd.*, 450 S.W.3d 191, 196 (Tex.

App.—Houston [1st Dist.] 2014, no pet.). When the appellate court sustains a factual insufficiency point, it must reverse and remand. *Pool*, 715 S.W.2d at 632.

The evidence presented at trial was both legally and factually insufficient to prove that Mother had committed family violence *and* would be likely to commit family violence in the future, pursuant to Tex. Fam. Code § 85.001 (2022).

Tex. Fam. Code § 85.001 states:

> (a) At the close of a hearing on an application for a protective order, the court shall find whether:
>
> (1) family violence has occurred; and
>
> (2) family violence is likely to occur in the future.
>
> (b) If the court finds that family violence has occurred and that family violence is likely to occur in the future, the court:
>
> (1) shall render a protective order as provided by Section 85.022 applying only to a person found to have committed family violence; and
>
> (2) may render a protective order as provided by Section 85.021 applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order.
>
> …
>
> (d) If the court renders a protective order for a period of more than two years, the court must include in the order a finding described by Section 85.025(a-1).

Tex. Fam. Code § 85.001 (2022).

If a court issues an order that exceeds a period of two years, there must be a finding under Tex. Fam. Code § 85.025 that the person who is the subject of the protective order:

> (1) committed an act constituting a felony offense involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense;
>
> (2) caused serious bodily injury to the applicant or a member of the applicant's family or household; or
>
> (3) was the subject of two or more previous protective orders rendered:
>
> (A) to protect the person on whose behalf the current protective order is sought; and
>
> (B) after a finding by the court that the subject of the protective order:
>
> (i) has committed family violence; and
>
> (ii) is likely to commit family violence in the future.
>
> …

Tex. Fam. Code § 85.025 (2022).

A protective order must be reversed and rendered if there is legally insufficient evidence that family violence has occurred *or* is likely to occur in the future. Tex. Fam. Code § 85.001 (2022) (emphasis added); *In re J.A.T.*, No. 13-04-00477-CV (Tex. App. – Corpus Christi Aug. 18, 2005, no pet.) (mem. op.).

Father testified to an incident that occurred at Mother's home on March 5, 2020. RR 2:17-30, 94. Father was not present for this incident at Mother's home.

RR 2:17-30, 94. Despite repeated objections from Mother's counsel, the Trial Court improperly permitted Father to testify to the events on March 5, 2020 to which he was not present, lacked personal knowledge, and relied entirely upon hearsay. RR 2:17-30.

Specifically:

> Q: Okay. And what did [G.B.E.] tell you about what had happened at his mother's house right before he went to the hospital in the ambulance?
>
> A: He said –
>
> MS. BURKET: Objection. Hearsay.
>
> THE COURT: Overruled. I'm gonna allow him to tell it. Go ahead. Go ahead, sir.

RR 2:27.

> …
> Q: As far as what [G.B.E] told you during those first conversation – or during the first conversation you had after all this happened and he was upset, did he tell you what [O.P.E.] did to assist him?
>
> A: Yea. [O.P.E.] took him in the bathroom to try and calm him down, and you know, let him get a bath. Let him try to catch his breath, clean the blood off of him. You know, change his clothes. Try to put some – you know –
>
> MS. BURKET: I'm gonna object to hearsay of [O.P.E..]. She's not under twelve years old at the time, I do not believe.
>
> MS. ROBERTSON: I don't think he was testifying to anything [O.P.E.] said, just that [O.P.E.] was there and what she was doing.
>
> MS. BURKET: And he wasn't there, so how would he know?

> THE COURT: Well [G.B.E.] could have told him. So long as he doesn't say what some else said, he can certainly say she was present. Go ahead, [Father].
>
> …

RR 2:29.

Father explicitly stated that he was not present at Mother's home on March 5, 2020 when the alleged incident occurred. RR 2:30. All of Father's testimony about the alleged incident on March 5, 2020 was based on hearsay, concerned an incident about which Father completely lacked personal knowledge, and should have been excluded. RR 2:17-30, 94. The Trial Court clearly abused its discretion by allowing Father to testify about the alleged incident on March 5, 2020, and without his testimony, the evidence was insufficient to support the lifetime protective order imposed on Mother by the Trial Court. Even with Father's testimony factored in, it does not support a lifetime protective order. A finding that this incident constitutes family violence surely must require more than Father's hearsay allegations.

Father also offered the medical records of G.B.E. as an exhibit during the hearing. RR 2:38. Mother's Attorney objected to the hearsay contained within these records because the only witness Father presented at trial to testify regarding the records was himself. RR 2:38-39. The Trial Court admitted the records over Mother's objections stating that "I can weed out any hearsay and just focus on the things that are non-hearsay or that are exceptions". RR 2:39-40. However, no

redaction of the hearsay material occurred. Father argued that these records support a finding of the likelihood of future of violence, but there is no basis for such a finding in the record. RR 2:40-42. There is no testimony from an expert or medical professional. The only support presented for such statement was testimony from Father based on hearsay within hearsay in the medical records that were improperly admitted into evidence. RR 2:39-42.

Father also put on evidence of several other alleged incidents that had occurred in the past; however, Father was not present for any of those incidents. RR 2:30, 46, 48, 94, 101-102; RR 3:37, 76. Father testified to the following:

- Father stated Mother threw G.B.E. to the ground and was beating him with a belt, but he did not witness it and had no personal knowledge of the alleged incident. RR 2:48-49.

- Father stated Mother tried to take C.M.E.'s phone away and had her pinned to the bed, but he did not witness the incident and had no personal knowledge related to it. RR 2:49.

- Father stated that in 2019 Mother elbowed O.P.E. in the ribs causing bruising, but again he did not witness the incident and lacked personal knowledge. RR 2:50-52.

- Father testified that when C.M.E. was ten she sustained a fractured wrist because of Mother, but he admitted he was not present

when C.M.E. allegedly fractured her wrist and he lacked personal knowledge about the incident. RR 2:55-56.

- Father testified that in December 2019, Mother left C.M.E. on the side of the road driving back from Colorado, but he was not in the car or physically present for this incident and once again lacked personal knowledge. RR 2:57.

- Father testified that in February 2020 Mother chased O.P.E. down the street with "some hedge clippers in her hand," but Father did not witness the incident and lacked personal knowledge. RR 2:66-67.

- Father testified that Mother had locked the children out of the house and forced them to sleep on the front porch, but yet again he did not witness this and had no personal knowledge that it ever occurred. RR 2:67-68.

- Father testified that Mother shoved dirty socks in O.P.E. and G.B.E.'s mouths, but he lacked personal knowledge and did not personally witness it. RR 2:69.

- Father testified that in May 2018, Mother shoved C.M.E. off a dresser and down the front porch steps, but again, he did not witness the incident and lacked any personal knowledge that it ever occurred. RR 2:69.

It is critical to note that *the only* evidence of any of these incidents came from Father's testimony. Father was not present for ***any*** of the above alleged events. RR 2:30, 46, 48, 94, 101-102; RR 3:37, 76. Father provided no photos, no videos, no text messages, no recordings, no witnesses, no records, no reports to law enforcement or CPS, *no corroborating evidence of any sort* that any of these events actually happened, nor did he provide one shred of evidence that they occurred as a result of Mother's actions. RR 2. Mere allegations from someone who was not present to witness a single incident of alleged abuse cannot stand as sufficient evidence to prohibit a Mother from seeing her children for the remainder of her life.

When Mother attempted to offer evidence to combat the hearsay allegations made by Father and show the court what type of person she is, the Trial Court would not allow it. RR 3. For example, Mother's attorney called C.B. as a witness during her case in chief. RR 3:9-15. C.B. had a very long-standing relationship with Mother, had witnessed Mother's interactions with the children many times, was a parent at the school where Mother taught, and had many interactions with the children. RR 3:9-15. The Trial Court sustained relevance objections over and over again when C.B. attempted to testify as to Mother's relationship with the children, her character and reputation, and her parenting. RR 3:10-15. Testimony regarding a person's character and relationship with her children is clearly relevant to whether or not a lifetime protective order is justified, and the Trial Court's repeated refusal

to let C.B. answer or to let Mother's Attorney respond to objections shows the Trial Court had no interest in hearing any evidence in support of Mother. RR 3:10-15.

During cross-examination of C.B., Father's attorney asked the following questions:

> Q: Were you in the car with [Mother] over the Christmas holiday in late 2019, when she drove the children back from Colorado?
>
> A: No, I was not.
>
> Q: Were you in the house the time that Carlie fractured her wrist?
>
> A: No, I was not.
>
> Q: Were you present with the family at the time that Olivia sustained a rib contusion?
>
> A: No, I was not.

RR 3: 15-16.

Father's attorney made it a point to note that C.B. was not present for any of the alleged events, because, presumably, without being present for those events, C.B. would not be able to offer relevant testimony about them. Father had no more personal knowledge of what occurred on those dates than C.B. because he, too, was not present for any of those events. Yet, the Trial Court had no problem letting Father testify about those events and found his hearsay testimony sufficient to grant a lifetime protective order.

In another instance, Mother attempted to testify as to an incident where G.B.E. ran at the other children with a knife. RR 3:20. Father's attorney objected on the grounds that Mother was out with a friend when this incident occurred so it would be speculation. RR 3:20. The Trial Court sustained this objection stating "it's sustained as to speculation if she was not present." RR 3:20. Despite this clear ruling from the Trial Court that Mother could not testify about events for which she was not present, she repeatedly allowed Father to testify to alleged events for which he was not present.

Father also testified as to CPS involvement on a number of occasions. RR 2:71-73, 100. He testified that, notwithstanding the CPS case from the March 5, 2020 incident that was still pending, *all* prior CPS cases had ruled out abuse by Mother. RR 2:100. Despite Father's alleged concerns about Mother's actions for a period of more than ten years, he testified that he agreed to a 50/50 possession schedule in 2018 and continued to allow Mother access to the children during these incidents. RR 2:10-11. Many of the alleged incidents to which Father testified were prior to the divorce, and Father clearly did not feel the children were in danger when he agreed to a 50/50 possession schedule or continued to operate under one. RR 2:88-90.

Father had the burden of proving both that family violence had occurred *and* that family violence was likely to occur in the future. Father failed to put on legally

or factually sufficient evidence for both required prongs. Further, the Trial Court showed clear and obvious bias in allowing Father to put on his case while repeatedly refusing to allow Mother to do the same. Thus, the Trial Court abused its discretion in issuing a lifetime protective order against Mother and its ruling should be reversed.

E. Issue No. 4.

The Trial Court abused its discretion when it excluded evidence of Father's history of domestic violence and denied Mother's trial counsel the ability to make an offer of proof.

At a hearing for a final protective order, both parties are entitled to an opportunity to be heard, including the right to call witnesses, cross-examine witnesses, and introduce evidence. *Striedel v. Striedel*, 15 S.W.3d 163, 166 (Tex. App.—Corpus Christi 2000, no pet.). The Trial Court abused its discretion when it improperly excluded Mother's evidence and denied her the opportunity to properly cross-examine Father. The Trial Court's actions throughout the trial showed a clear bias against Mother, and that bias resulted in an improper lifetime protective order.

If an error is one of excluding evidence, Texas Rule of Evidence 103 requires that the proponent of excluded evidence make an "offer of proof" to preserve the error on appeal. Tex. R. Evid. 103. The court *must* allow a party to make an offer of proof as soon as practicable. *Id.* (emphasis added). The purpose of an "offer of proof" is to give the Trial Court a second chance to look at the evidence before finally ruling on its admissibility and to complete the record for appeal so that it is

clear to the appellate court exactly what was excluded at trial. *Mays v. State*, 285 S.W.3d 884, 890 (Tex. Crim. App. 2009).

Texas Rule of Evidence 103(a) provides the framework for preserving error on evidentiary rulings. To satisfy Rule 103(a)(2), the offering party must offer a summary of the evidence and secure an adverse ruling from the Trial Court. Tex. R. Evid. 103(a)(2). Thus, for error to be preserved in a bench trial, the trial judge must be made aware of the exact nature and details of the inadmissible evidence. The rule requiring a Trial Court to allow an offer of proof is mandatory. *4M Linen & Uniform Supply Co. v. Ballard*, 793 S.W.2d 320, 324 (Tex. App.—Houston [1st Dist.] 1990). Because the appellate court cannot evaluate excluded evidence unless it is preserved, it is reversible error for the Trial Court to refuse to permit a party to make an offer of proof. *Id.*

Here, Mother's attorney attempted to put on evidence that Father had a history of domestic violence towards her. RR 2:90-92; 3:59. Father's attorney objected based on relevance. RR 2:90, 92; 3:59. Mother's attorney argued that it was directly relevant to the issues at hand because there is a cycle of domestic violence and it spoke to the children's state of mind and family history. RR 2:90-92; 3:59. The Judge sustained the objection. RR 3:59. When Mother's attorney attempted to make an offer of proof, the Trial Court refused to allow her to make an offer of proof, stating that it was not relevant. RR 3:59. This clear error resulted in the exclusion of

powerful, relevant evidence and was extremely detrimental to Mother's ability to present her defense. The cycle of domestic violence is extremely important and relevant to a case where the only evidence presented against Mother was Father's testimony based on hearsay and related solely to events about which he lacked personal knowledge. If there was evidence that the children witnessed Father abusing Mother on multiple occasions, that history would absolutely be relevant to the issues in this case. If there was evidence that Father repeatedly abused Mother, it would put Father's credibility as a witness into question. When the *only* evidence against Mother came from Father, Father's credibility is key. Unfortunately, this Court cannot know if such evidence existed because the Trial Court refused to allow an offer of proof. A history of domestic violence is directly related to the issues in this case and refusing to allow an offer of proof constitutes an abuse of discretion. The Trial Court's ruling should be reversed.

IV.
CONCLUSION

Both the United States Constitution and Texas law provide significant protection for parental rights, which have been repeatedly recognized as one of *the most* fundamental constitutional rights. The Final Protective Order in this case serves as a de facto termination of Mother's parental rights, and an unconstitutional violation of her due process rights. The evidence presented in this case was both factually and legally insufficient to support these findings and the Trial Court

showed significant bias in her evidentiary rulings throughout the trial. The Trial Court hindered Mother's ability to put on her case and properly defend herself against Father's hearsay allegations. The end result is that Mother can never speak, see, or have any type of relationship with her children ever again. Mother's parental rights have been, essentially, terminated by this protective order, and the legal proceeding through which it was done did not provide the due process protections required by the United States Constitution and Texas law. The Trial Court's judgment must be reversed.

PRAYER

Wherefore, premises considered, for all the forgoing reasons alleged and briefed herein, Appellant, C.L.S. prays that this Court grant her relief and:

1. Reverse the Trial Court's final protective order of November 30, 2020; and
2. Render a decision that the application for protective order is denied.

Appellant, C.L.S., further requests that this Court grant her such other relief both general and special, at law or in equity, to which she may show herself to be justly entitled.

Respectfully submitted,

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Certification of Counsel Regarding Word Count

Pursuant to rule 9 of the Texas Rules of Appellate Procedure, I certify that the word count in this Appellant's Brief, excluding the caption and introductory matters, signature, proof of service, certification, certificate of compliance, and appendix, totals 9,194 words.

/s/ Holly J. Draper
Holly J. Draper

CERTIFICATE OF SERVICE

I certify that a true copy of this Petitioner's Brief on the Merits was served in accordance with rule 9.5 of the Texas Rules of Appellate Procedure on each party or that party's lead counsel on April 1, 2024 as follows:

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No. 23-0067

IN THE TEXAS SUPREME COURT

CHRISTINE LENORE STARY, *Petitioner*,

V.

BRADY NEAL ETHRIDGE, *Respondent*.

On Petition for Review from the
First District Court of Appeals at Houston
No. 01-21-00101-CV

APPENDIX

In support of this Brief, Petitioner submits this Appendix:

1. Agreed Final Decree of Divorce
2. Final Protective Order
3. Tex. Fam. Code § 71.004
4. Tex. Fam. Code § 81.001 (2022)
5. Tex. Fam. Code § 81.001
6. Tex. Fam. Code § 81.009
7. Tex. Fam. Code § 84.001
8. Tex. Fam. Code § 84.002
9. Tex. Fam. Code § 85.001 (2022)
10. Tex. Fam. Code § 85.001

11. Tex. Fam. Code § 85.025 (2022)

12. Tex. Fam. Code § 85.025

13. Tex. Fam. Code § 87.002

14. Tex. Fam. Code § 101.007

15. Tex. Fam. Code § 161.001

16. Tex. R. Evid. 103

Pgs-34

NO. 2018-05544

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IN THE MATTER OF THE MARRIAGE OF	$	IN THE DISTRICT COURT
B[redacted] N[redacted] E[redacted]	$	
AND	$	311th JUDICIAL DISTRICT
C[redacted] L[redacted] S[redacted]	$	
AND IN THE INTEREST OF	$	
C[redacted] M[redacted] E[redacted] C[redacted]	$	
F[redacted] E[redacted] AND G[redacted]	$	
B[redacted] E[redacted], CHILDREN	$	HARRIS COUNTY, TEXAS

AGREED FINAL DECREE OF DIVORCE

On May 8, 2018, the Court heard this case.

Appearances

Petitioner, B[redacted] N[redacted] E[redacted], did not appear in person but has agreed to the terms of this order as evidenced by Petitioner's signature, and that of his attorney, CAROLYN COOK ROBERTSON, below.

Respondent, C[redacted] L[redacted] S[redacted], appeared in person and through attorney of record, W. TYLER MORE, a[redacted]nounced ready for trial.

Record

The making of a record of testimony was waived by the parties with the consent of the Court.

Jurisdiction and Domicile

The Court finds that the pleadings of Petitioner are in due form and contain all the allegations, information, and prerequisites required by law. The Court, after receiving evidence, finds that it has jurisdiction of this case and of all the parties and that at least sixty days have elapsed since the date the suit was filed.

The Court further finds that, at the time this suit was filed, Petitioner had been a domiciliary of Texas for the preceding six-month period and a resident of the county in which this suit was filed for the preceding ninety-day period. All persons entitled to citation were properly cited.

Jury

A jury was waived, and questions of fact and of law were submitted to the Court.

EXHIBIT A

Agreement of Parties

The parties have entered into a written agreement as contained in this decree by virtue of having approved this decree as to both form and substance. To the extent permitted by law, the parties stipulate the agreement is enforceable as a contract. The Court approves the agreement of the parties as contained in this Final Decree of Divorce.

The agreements in this Final Decree of Divorce were reached in mediation with DANIEL GRAY on May 1, 2018. This Final Decree of Divorce is stipulated to represent a merger of a mediated settlement agreement between the parties. To the extent there exist any differences between the mediated settlement agreement and this Final Decree of Divorce, this Final Decree of Divorce shall control in all instances.

Divorce

IT IS ORDERED AND DECREED that B[redacted] N[redacted] E[redacted]E, Petitioner, and C[redacted] L[redacted] S[redacted], Respondent, are divorced and that the marriage between them is dissolved on the ground of insupportability.

Children of the Marriage

Petitioner and Respondent are the parents of the following children:

Name:	C[redacted] M[redacted] E[redacted]
Sex:	Female
Birth date:	June 20, 2005
Home state:	Texas
Name:	C[redacted] P[redacted] E[redacted]
Sex:	Female
Birth date:	June 20, 2008
Home state:	Texas
Name:	G[redacted] B[redacted] E[redacted]
Sex:	Male
Birth date:	December 15, 2010
Home state:	Texas

No other children of the marriage are expected.

Parenting Plan

The provisions in this decree relating to the rights and duties of the parties with relation to the children, possession of and access to the children, child support, and optimizing the development of a close and continuing relationship between each party and the children constitute the parties' agreed parenting plan.

Conservatorship

The following orders are in the best interest of the children.

IT IS ORDERED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] [redacted] are appointed Joint Managing Conservators of the following children: C[redacted] M[redacted] E[redacted], C[redacted] P[redacted] E[redacted] and G[redacted] B[redacted] E[redacted]

IT IS ORDERED that, at all times, B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted], as parent joint managing conservators, shall each have the following rights:

1. the right to receive information from any other conservator of the children concerning the health, education, and welfare of the children;

2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;

3. the right of access to medical, dental, psychological, and educational records of the children;

4. the right to consult with a physician, dentist, or psychologist of the children;

5. the right to consult with school officials concerning the children's welfare and educational status, including school activities;

6. the right to attend school activities;

7. the right to be designated on the children's records as a person to be notified in case of an emergency;

8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and

9. the right to manage the estates of the children to the extent the estates have been created by the parent or the parent's family.

IT IS ORDERED that, at all times, B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted], as parent joint managing conservators, shall each have the following duties:

1. the duty to inform the other conservator of the children in a timely manner of significant information concerning the health, education, and welfare of the children;

2. the duty to inform the other conservator of the children if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Texas Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that notice of this information shall be provided to the other

conservator of the children as soon as practicable, but not later than the fortieth day after the date the conservator of the children begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE;

3. the duty to inform the other conservator of the children if the conservator establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the thirtieth day after the date the conservator establishes residence with the person who is the subject of the final protective order. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE;

4. the duty to inform the other conservator of the children if the conservator resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the expiration of sixty-day period following the date the final protective order is issued. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the ninetieth day after the date the final protective order was issued. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE; and

5. the duty to inform the other conservator of the children if the conservator is the subject of a final protective order issued after the date of the order establishing conservatorship. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the thirtieth day after the date the final protective order was issued. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

IT IS ORDERED that, during his or her periods of possession, B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted], as parent joint managing conservators, shall each have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the children;

2. the duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

3. the right to consent for the children to medical and dental care not involving an

invasive procedure; and

4. the right to direct the moral and religious training of the children.

IT IS ORDERED that neither B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] shall have the exclusive right to designate the primary residence of the children. Instead, IT IS ORDERED that the residence of the children shall be established by each parent while that parent has the right to possession of and access to the children, and that each parent shall establish such residence within Harris County, Texas. IT IS FURTHER ORDERED that the parties shall not remove the children from Harris County, Texas for the purpose of changing their residence of the children until modified by further order of the court of continuing jurisdiction or by written agreement signed by the parties and filed with the court.

IT IS ORDERED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted], as parent joint managing conservators, shall each have the following rights and duty:

1. the right, subject to the agreement of the other parent conservator, to consent to medical, dental, and surgical treatment involving invasive procedures, and in the event that the parties are unable to reach an agreement regarding such an issue, the parties shall defer to and follow the advice of the child's primary care physician;

2. except as otherwise ordered herein, the right, subject to the agreement of the other parent conservator, to consent to psychiatric and psychological treatment of the children, and in the event that the parties are unable to reach an agreement regarding such an issue, the parties shall defer to and follow the advice of the child's primary care physician;

3. after reasonable consultation with the other parent, the independent right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children;

4. the right, subject to the agreement of the other parent conservator, to consent to enlistment in the armed forces of the United States;

5. the right, subject to the agreement of the other parent conservator, to make decisions concerning the children's education, and in the event that the parties are unable to reach an agreement regarding such an issue, the parties shall defer to and follow the advice of Dr. Jean Guez;

However, it is ORDERED that the children shall attend the schools associated with the residence of C[redacted] L[redacted] S[redacted]

6. after reasonable consultation with the other parent, except as provided by section 264.0111 of the Texas Family Code, the independent right to the services and earnings of the children;

7. except when a guardian of the children's estates or a guardian or attorney ad litem has been appointed for the children, after reasonable consultation with the other

parent, the independent right to act as an agent of the children in relation to the children's estates if the children's action is required by a state, the United States, or a foreign government; and

8. the independent duty to manage the estates of the children to the extent the estates have been created by community property or the joint property of the parent.

Passports and International Travel

IT IS ORDERED that each conservator shall follow any and all U.S. Department of State and U.S. Department of Justice regulations in regards to travel with the child the subject of this suit. The parties agree and IT IS ORDERED that this decree shall serve as written authorization for such travel.

If either parent applies for a passport for the children, that parent is ORDERED to notify the other conservator of that fact no later than 10 days after the application. IT IS ORDERED that either parent shall have the authority to obtain or renew a passport for the children the subject of this suit, and each parent shall cooperate to sign all documents necessary for the issuance of such passport, within three days of being presented with such paperwork by the requesting parent.

IT IS ORDERED that C[redacted] L[redacted] S[redacted] shall have the right to maintain possession of any passports of the children when not in use, subject to the requirements for delivery of the passports and all other requirements set forth below.

C[redacted] L[redacted] S[redacted] is ORDERED to deliver or cause to be delivered to B[redacted] N[redacted] E[redacted] the original, valid passports of the children the subject of this suit, within ten days of C[redacted] L[redacted] ST[redacted]'s receipt of B[redacted] N[redacted] E[redacted]'s notice of intent to have the children travel outside the United States during a period of possession of B[redacted] N[redacted] E[redacted]. B[redacted] N[redacted] E[redacted] is ORDERED to return or cause to be returned to C[redacted] L[redacted] S[redacted] the original, valid passports of the children, within ten days of the children's return from the travel outside the United States for which the passports were required.

IT IS ORDERED that if a conservator intends to have the children travel outside the United States during the conservator's period of possession of the children, the conservator shall provide written notice to the other conservator. IT IS ORDERED that this written notice shall include all the following:

1. any written consent form for travel outside the United States that is required by the country of destination, countries through which travel will occur, or the intended carriers;

2. the date, time, and location of the children's departure from the United States;

3. a reasonable description of means of transportation, including, if applicable, all names of carriers, flight numbers, and scheduled departure and arrival times;

4. a reasonable description of each destination of the intended travel, including the

name, address, and phone number of each interim destination and the final travel location;

5. the dates the children are scheduled to arrive and depart at each such destination;

6. the date, time, and location of the children's return to the United States;

7. a complete statement of each portion of the intended travel during which the conservator providing the written notice will not accompany the children; and

8. the name, permanent and mailing addresses, and work and home telephone numbers of each person accompanying the children on the intended travel other than the conservator providing the written notice.

If the intended travel is a group trip, such as with a school or other organization, the conservator providing the written notice is ORDERED to provide with the written notice all information about the group trip and its sponsor instead of stating the name, permanent and mailing addresses, and work and home telephone numbers of each person accompanying the children.

IT IS FURTHER ORDERED that this written notice shall be furnished to the other conservator no less than twenty-one days before the intended day of departure of the children from the United States.

C[redacted] L[redacted] S[redacted] and B[redacted] N[redacted] E[redacted] are each ORDERED to properly execute the written consent form to travel abroad (attached hereto) and any other form required for the travel by the United States Department of State, passport authorities, foreign nations, travel organizers, school officials, or public carriers; when applicable, to have the forms duly notarized; and, within ten days of that conservator's receipt of each consent form, to deliver the form to the conservator providing the written notice.

IT IS ORDERED that any conservator who violates the terms and conditions of these provisions regarding the children's passports shall be liable for all costs incurred due to that person's noncompliance with these provisions. These costs shall include, but not be limited to, the expense of nonrefundable or noncreditable tickets, the costs of nonrefundable deposits for travel or lodging, attorney's fees, and all other costs incurred seeking enforcement of any of these provisions.

Possession and Access

The parties agree that it is not in the best interest of the children that the parents exchange possession of and access to the children in accordance with a standard possession order.

IT IS ORDERED that each conservator shall comply with all terms and conditions of this Possession Order. IT IS ORDERED that this Possession Order is effective immediately and applies to all periods of possession occurring on and after the date the Court signs this Possession Order. IT IS, THEREFORE, ORDERED:

A. Definitions

1. In this Possession Order 'school' means the elementary or secondary school in which the child is enrolled or, if the child is not enrolled in an elementary or secondary school, the public school district in which the child primarily resides.

2. In this Possession Order 'child' includes each child, whether one or more, who is a subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

B. Mutual Agreement

IT IS ORDERED that the conservators shall have possession of the child at times mutually agreed to in advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the child under the specified terms set out in this Possession Order.

C. Specified Terms for Possession

(1) Non-Holiday and Non-Summer Periods of Possession: Except as otherwise expressly provided in this Possession Order, the parties shall each have the right to possession of the child for non-holiday and non-summer periods of possession as follows:

(a) Mondays and Tuesdays

B[redacted] N[redacted] E[redacted] shall have the right to possession of and access to the children beginning each Monday, during the regular school year, at the time school resumes, or during the summer, at 8:00 a.m., and ending the immediately following Wednesday, during the regular school year at the time school resumes, or during the summer, at 8:00 a.m.

(b) Wednesdays and Thursdays

C[redacted] L[redacted] S[redacted] E[redacted] shall have the right to possession of and access to the children beginning each Wednesday, during the regular school year, at the time school resumes, or during the summer, at 8:00 a.m., and ending the immediately following Friday, during the regular school year at the time school resumes, or during the summer, at 8:00 a.m.

(c) B[redacted] N[redacted] E[redacted] S Weekends

B[redacted] N[redacted] E[redacted] shall have the right to possession of and access to the children on alternating weekends, beginning on Friday, May 4, 2018, and every other weekend

thereafter.

IT IS ORDERED that May 4, 2018, shall serve as the "anchor point" to determine the alternating weekends to which B[redacted] N[redacted] E[redacted] shall be entitled. IT IS FURTHER ORDERED that, when either party's right to possession of or access to the children on a weekend is superseded by the other party's right to possession of or access to the children for extended summer possession or a holiday period of possession, after such summer or holiday period of possession, B[redacted] N[redacted] E[redacted] shall resume his right to non-holiday and non-summer weekend possession by reference to this original anchor point.

IT IS ORDERED that B[redacted] N[redacted] E[redacted]'S weekend periods of possession shall begin during the regular school year, at the time school resumes on Friday morning, or during the summer, at 8:00 a.m. on Friday morning, and end, during the regular school year, at the time school resumes on Monday morning, or during the summer, at 8:00 a.m.

(d) C[redacted] L[redacted] S[redacted]'S Weekends

C[redacted] L[redacted] STARY-[redacted] shall have the right to possession of and access to the children on alternating weekends, beginning on Friday, May 11, 2018, and every other weekend thereafter.

IT IS ORDERED that May 11, 2018, shall serve as the "anchor point" to determine the alternating weekends to which C[redacted] L[redacted] S[redacted] shall be entitled. IT IS FURTHER ORDERED that, when either party's right to possession of or access to the children on a weekend is superseded by the other party's right to possession of or access to the children for extended summer possession or a holiday period of possession, after such summer or holiday period of possession, C[redacted] L[redacted] S[redacted] shall resume his right to non-holiday and non-summer weekend possession by reference to this original anchor point.

IT IS ORDERED that C[redacted] L[redacted] S[redacted] E[redacted]'S weekend periods of possession shall begin during the regular school year, at the time school resumes on Friday morning, or during the summer, at 8:00 a.m. on Friday morning, and end, during the regular school year, at the time school resumes on Monday morning, or during the summer, at 8:00 a.m.

(2) Holiday and Summer Periods of Possession: Notwithstanding the non-holiday and non-summer periods of possession above, except as otherwise

expressly provided in this Possession Order, the parties shall each have the right to possession of the child for holiday and summer periods of possession as follows:

(a) Spring Vacation –

In even-numbered years, B N E shall have the right to possession of and access to the child, and in odd-numbered years, C L S shall have the right to possession of and access to the child, during the child's school spring vacation, beginning at the time school recesses for the spring vacation and ending at the time school resumes at the end of the spring vacation.

(b) Extended Summer Possession –

IT IS ORDERED that each summer, each parent shall be entitled to an extended summer possession of 14 consecutive days, to be designated by that parent.

In even-numbered years, B N E shall give C L S written notice of his designated days by May 5 of that year, and C L S shall give B N E written notice of her designated days by May 15 of that year. C L S 'S designation in these years shall not interfere with B N E 'S previously designated extended summer possession or Father's Day weekend.

In odd-numbered years, C L S shall give B N E written notice of her designated days by May 5 of that year, and B N E shall give C L S written notice of his designated days by May 15 of that year. B N E 'S designation in these years shall not interfere with C L S 'S previously designated extended summer possession and C L S E'S designation in these years shall not interfere with Father's Day weekend.

(c) Christmas Holidays in Odd-Numbered Years –

In odd-numbered years, C L S shall have the right to possession of the child beginning at the time the child's school is dismissed for the Christmas school vacation and ending at noon on December 28, and B N E shall have the right to possession of the child beginning

at noon on December 28 and ending at 6:00 p.m. on the day before school resumes after that Christmas school vacation.

(d) Christmas Holidays in Even-Numbered Years –

In even-numbered years, B N E shall have the right to possession of the child beginning at the time the child's school is dismissed for the Christmas school vacation and ending at noon on December 28, and C L S shall have the right to possession of the child beginning at noon on December 28 and ending at 6:00 p.m. on the day before school resumes after that Christmas school vacation.

(e) Thanksgiving in Even-Numbered Years –

In even-numbered years, C L S GE shall have the right to possession of the child beginning at the time the child's school is dismissed for the Thanksgiving holiday and ending at 6:00 p.m. on the Sunday following Thanksgiving.

(f) Thanksgiving in Odd-Numbered Years –

In odd-numbered years, B N E shall have the right to possession of the child beginning at the time the child's school is dismissed for the Thanksgiving holiday and ending at 6:00 p.m. on the Sunday following Thanksgiving.

(g) Child's Birthday –

If a parent is not otherwise entitled under this Standard Possession Order to present possession of a child on the child's birthday, that parent shall have possession of the child and the child's minor siblings beginning at 6:00 p.m. and ending at 8:00 p.m. on that day, provided that that parent picks up the children from the other parent's residence and returns the children to that same place.

(h) Father's Day –

B N E shall have the right to possession of the child each year, beginning at 6:00 p.m. on the Friday preceding Father's Day and ending at 8:00 a.m. on the Monday after Father's Day, provided that if B N E is not otherwise entitled under this Standard Possession Order to present possession of the child, he shall pick up the child from C L S 's residence and return the child to that same place.

(i) Mother's Day –

C [redacted] L [redacted] S [redacted] shall have the right to possession of the child each year, beginning at the time the child's school is regularly dismissed on the Friday preceding Mother's Day and ending at the time the child's school resumes after Mother's Day, provided that if C [redacted] L [redacted] S [redacted] is not otherwise entitled under this Standard Possession Order to present possession of the child, she shall pick up the child from B [redacted] N [redacted] E [redacted] 's residence and return the child to that same place.

D. General Terms and Conditions

Except as otherwise expressly provided in this Possession Order, the terms and conditions of possession of the child that apply are as follows:

(1) Surrender and Exchange of Child -

Except as otherwise ordered herein, and as a general rule herein, IT IS ORDERED that the party relinquishing possession of and access to the child shall surrender the child to the party beginning possession of and access to the child, at the time the period of possession begins for the party taking possession, at Speedy's Go-Kart located at 11440 Hempstead Highway, Houston, Texas the residence of the party relinquishing possession.

However, if a period of possession by a party begins at the time the child's school is regularly dismissed, the party relinquishing possession of the child shall surrender the child to the party taking possession at the beginning of each such period of possession at the school in which the child is enrolled. If the child is not in school on a particular day during the regular school year, the party taking possession of the child shall pick up the child at the residence of the party relinquishing possession at 6:00 p.m., at which time the party relinquishing possession shall surrender the child to the party taking possession.

Further, if a period of possession by a party ends at the time the child's school resumes, that party shall return the child to the party taking possession of the child at the end of each such period of possession at the school in which the child is enrolled or, if the child is not in school, at the residence of the party relinquishing possession at 6:00 p.m.

(2) Personal Effects –

Each conservator is ORDERED to return with the child the personal effects that the child brought at the beginning of the period of possession.

(3) Designation of Competent Adult –

Each conservator may designate any competent adult to pick up and return the child, as applicable. IT IS ORDERED that a conservator or a designated competent adult be present when the child is picked up or returned.

(4) Inability to Exercise Possession –

Each conservator is ORDERED to give notice to the person in possession of the child on each occasion that the conservator will be unable to exercise that conservator's right of possession for any specified period.

(5) Notice to School –

If a party's time of possession of the child ends at the time school resumes and for any reason the child is not or will not be returned to school, that party shall immediately notify the school and the other party that the child will not be or has not been returned to school.

The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

Termination of Orders

The provisions of this decree relating to conservatorship, possession, or access terminate on the remarriage of B[redacted] N[redacted] E[redacted] to C[redacted] L[redacted] S[redacted] unless a nonparent or agency has been appointed conservator of the children under chapter 153 of the Texas Family Code.

Child Support

The parties agree, and it is therefore ORDERED that neither party is obligated to provide a monthly child support payment to the other party. IT IS ORDERED that each party shall provide financially for the children when the children are in his or her possession, in accordance with the needs of the children and the financial ability of the party.

Health Care

IT IS ORDERED that C[redacted] L[redacted] S[redacted] shall be obligated to provide dental insurance under the same terms and conditions as set forth for health insurance below, and each reference to health insurance below shall be interpreted as including both health and dental insurance.

1. IT IS ORDERED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] shall each provide medical support for each child as set out in this order as child support for as long as the Court may order B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] to provide support for the child under sections 154.001 and 154.002 of the Texas Family Code. Beginning on the day B[redacted] N[redacted] E[redacted] and C[redacted]

[redacted]'s actual or potential obligation to support a child under sections 154.001 and 154.002 of the Family Code terminates. IT IS ORDERED that [redacted] and [redacted] are discharged from the obligations set forth in this medical support order with respect to that child, except for any failure by a parent to fully comply with those obligations before that date.

2. Definitions -

"Health Insurance" means insurance coverage that provides basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services, that may be provided through a health maintenance organization or other private or public organization, other than medical assistance under chapter 32 of the Texas Human Resources Code.

"Reasonable cost" means the total cost of health insurance coverage for all children for which [redacted] is responsible under a medical support order that does not exceed 9 percent of [redacted]'s annual resources, as described by section 154.062(b) of the Texas Family Code.

"Reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of a child" include, without limitation, any copayments for office visits or prescription drugs, the yearly deductible, if any, and medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges. These reasonable and necessary health-care expenses do not include expenses for travel to and from the health-care provider or for nonprescription medication.

"Furnish" means -

a. to hand deliver the document by a person eighteen years of age or older either to the recipient or to a person who is eighteen years of age or older and permanently resides with the recipient;

b. to deliver the document to the recipient by certified mail, return receipt requested, to the recipient's last known mailing or residence address;

c. to deliver the document to the recipient at the recipient's last known mailing or residence address using any person or entity whose principal business is that of a courier or deliverer of papers or documents either within or outside the United States; or

d. to provide the document to the recipient by posting the document on the Our Family Wizard parenting website Internet Web site program, in accordance with the provisions set forth below in this Final Decree of Divorce.

3. Findings on Health Insurance Availability - Having considered the cost, accessibility, and quality of health insurance coverage available to the parties, the Court finds:

Health insurance is available or is in effect for the children through C L S 's employment or membership in a union, trade association, or other organization at a reasonable cost of $_____.

IT IS FURTHER FOUND that the following orders regarding health-care coverage are in the best interest of the children.

4. Provision of Health-Care Coverage -

As child support, C L S is ORDERED to continue to maintain health insurance for each child who is the subject of this suit that covers basic health-care services, including usual physician services, office visits, hospitalization, laboratory, X-ray, and emergency services.

IT IS ORDERED that B N E shall reimburse to C L S each month 50% of the cost of the children's health and dental insurance, which is currently the sum of $_____ to be paid by father to mother each month, with the first reimbursement payment being due and payable on June 1, 2018, and a like payment on the first day of each month thereafter for so long as any child the subject of this suit is eligible for child support under Chapter 154 of the Texas Family Code (notwithstanding the fact that no child support is ordered herein to be paid). IT IS FURTHER ORDERED that, in the event the cost of the children's health and dental insurance changes, B N E shall be required to begin reimbursing C L S beginning the first day of the first month following the date on which C L S provides verification to B N E of the new and changed cost of the insurance. IT IS ORDERED that all such payments of health insurance reimbursement shall be paid by B N E to C L S at , or any subsequent address for which C L S E provides notice to B N E.

C L S is ORDERED to maintain such health insurance in full force and effect on each child who is the subject of this suit as long as child support is possible for that child under Chapter 154 of the Texas Family Code, notwithstanding the fact that no child support is ordered payable herein. C L S E is ORDERED to convert any group insurance to individual coverage or obtain other health insurance for each child within fifteen days of termination of her employment or other disqualification from the group insurance. C L S is ORDERED to exercise any conversion options or acquisition of new health insurance in such a manner that the resulting insurance equals or exceeds that in effect immediately before the change.

C L S is ORDERED to furnish B N E a true and correct copy of the health insurance policy or certification and a schedule of benefits within 30 days of the signing of this order. C L S E is ORDERED to furnish B N E the insurance cards and any other forms necessary for use of the insurance within 30 days of the signing of this order. C L S is ORDERED to provide, within three days of receipt by her, to B N E any insurance checks, other payments, or explanations of benefits

relating to any medical expenses for the children that BR[redacted] N[redacted] E[redacted] paid or incurred.

Pursuant to section 1504.051 of the Texas Insurance Code, IT IS ORDERED that if C[redacted] L[redacted] S[redacted] is eligible for dependent health coverage but fails to apply to obtain coverage for the children, the insurer shall enroll the children on application of B[redacted] N[redacted] E[redacted] or others as authorized by law.

Pursuant to section 154.183(c) of the Texas Family Code, the reasonable and necessary health-care expenses of the children that are not reimbursed by health insurance are allocated as follows: B[redacted] N[redacted] E[redacted] is ORDERED to pay 50 percent and C[redacted] L[redacted] S[redacted] is ORDERED to pay 50 percent of the unreimbursed health-care expenses if, at the time the expenses are incurred, C[redacted] L[redacted] S[redacted] is providing health insurance as ordered.

The party who incurs a health-care expense on behalf of a child is ORDERED to furnish to the other party forms, receipts, bills, statements, and explanations of benefits reflecting the uninsured portion of the health-care expenses within thirty days after the incurring party receives them. The nonincurring party is ORDERED to pay the nonincurring party's percentage of the uninsured portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring party for any advance payment exceeding the incurring party's percentage of the uninsured portion of the health-care expenses within thirty days after the nonincurring party receives the forms, receipts, bills, statements, and/or explanations of benefits. However, if the incurring party fails to submit to the other party forms, receipts, bills, statements, and explanations of benefits reflecting the uninsured portion of the health-care expenses within thirty days after the incurring party receives them, IT IS ORDERED that the nonincurring party shall pay the nonincurring party's percentage of the uninsured portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring party for any advance payment exceeding the incurring party's percentage of the uninsured portion of the health-care expenses within 120 days after the nonincurring party receives the forms, receipts, bills, statements, and/or explanations of benefits.

These provisions apply to all unreimbursed health-care expenses of any child who is the subject of this suit that are incurred while child support is payable for that child.

5. Secondary Coverage - IT IS ORDERED that if a party provides secondary health insurance coverage for the children, both parties shall cooperate fully with regard to the handling and filing of claims with the insurance carrier providing the coverage in order to maximize the benefits available to the children and to ensure that the party who pays for health-care expenses for the children is reimbursed for the payment from both carriers to the fullest extent possible.

6. Compliance with Insurance Company Requirements - Each party is ORDERED to conform to all requirements imposed by the terms and conditions of any policy of health insurance covering the children in order to assure the maximum reimbursement or direct payment by any insurance company of the incurred health-care expense, including but not limited to requirements for advance notice to any carrier, second opinions, and the like. Each party is ORDERED to use "preferred providers," or services within the health maintenance organization or preferred provider network, if applicable. Disallowance of the bill by a health insurance company shall not excuse the obligation of either party to make payment. Excepting emergency health-care

expenses incurred on behalf of the children, if a party incurs health-care expenses for the children using "out-of-network" health-care providers or services, or fails to follow the health insurance company procedures or requirements, that party shall pay all such health-care expenses incurred absent (1) written agreement of the parties allocating such health-care expenses or (2) further order of the Court.

7. Claims - Except as provided in this paragraph, the party who is not carrying the health insurance policy covering the children is ORDERED to furnish to the party carrying the policy, within fifteen days of receiving them, all forms, receipts, bills, and statements reflecting the health-care expenses the party not carrying the policy incurs on behalf of the children. In accordance with section 1204.251 and 1504.055(a) of the Texas Insurance Code, IT IS ORDERED that the party who is not carrying the health insurance policy covering the children, at that party's option, or others as authorized by law, may file any claims for health-care expenses directly with the insurance carrier with and from whom coverage is provided for the benefit of the children and receive payments directly from the insurance company. Further, for the sole purpose of section 1204.251 of the Texas Insurance Code, [redacted] is designated the managing conservator or possessory conservator of the children.

The party who is carrying the health insurance policy covering the children is ORDERED to submit all forms required by the insurance company for payment or reimbursement of health-care expenses incurred by either party on behalf of a child to the insurance carrier within fifteen days of that party's receiving any form, receipt, bill, or statement reflecting the expenses.

8. Constructive Trust for Payments Received - IT IS ORDERED that any insurance payments received by a party from the health insurance carrier as reimbursement for health-care expenses incurred by or on behalf of a child shall belong to the party who paid those expenses. IT IS FURTHER ORDERED that the party receiving the insurance payments is designated a constructive trustee to receive any insurance checks or payments for health-care expenses paid by the other party, and the party carrying the policy shall endorse and forward the checks or payments, along with any explanation of benefits received, to the other party within three days of receiving them.

9. WARNING - A PARENT ORDERED TO PROVIDE HEALTH INSURANCE OR TO PAY THE OTHER PARENT ADDITIONAL CHILD SUPPORT FOR THE COST OF HEALTH INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE CHILDREN, WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE HAD BEEN PROVIDED, AND FOR THE COST OF HEALTH INSURANCE PREMIUMS OR CONTRIBUTIONS, IF ANY, PAID ON BEHALF OF THE CHILDREN.

10. Prescription Medication -

Each parent will deliver the medications of the children to the other parent at the beginning of the other parent's parenting time, unless the medications have been divided by the pharmacist into two containers that provide appropriate dosages and administrations to cover the time with each parent or unless two prescriptions can be obtained.

Parenting Facilitator

IT IS ORDERED that DR. JEAN GUEZ is appointed as parenting facilitator. There is good cause shown and it is in the best interest of the children the subject of this suit that a parenting facilitator be appointed. DR. JEAN GUEZ meets the requirements of section 153.6101 of the Texas Family Code, as documented by DR. JEAN GUEZ.

All parties are ordered to send a copy of this order and the fully completed information sheet to DR. JEAN GUEZ, at 3000 Weslayan St, Houston, TX 77027, (713) 552-9500 within 10 business days of the signing of this order to schedule the first appointment with the parenting facilitator.

On or before May 4, 2018, each party shall contact Dr. Jean Guez to schedule his or her first individual parenting facilitation session. The first joint parenting facilitation shall be scheduled by the parenting facilitator and all parties shall appear as directed by the parenting facilitator. The duration of, frequency of, and parties in attendance at each parenting facilitation session shall be left to the discretion of the parenting facilitator, who is specifically authorized to notify the Court if any party is failing to comply with the spirit and letter of this order or further order of the Court.

The parties agree and IT IS THEREFORE ORDERED that C[redacted] B[redacted] shall have an initial appointment with Dr. Jean Guez, to be scheduled by B[redacted] N[redacted] E[redacted] to assist this child. In the event that Dr. Jean Guez cannot counsel this child as necessary, the parties shall work with Dr. Jean Guez to obtain the necessary counseling for the child to assist her in adapting to the visitation schedule and problems with her parent/child relationships.

The duties of the parenting facilitator are limited to matters that will aid the parties in the following: identifying disputed issues; reducing misunderstandings; clarifying priorities; exploring possibilities for problem solving; developing methods of collaboration in parenting; understanding parenting plans and reaching agreements about parenting issues to be included in a parenting plan; complying with the Court's order regarding conservatorship or possession of and access to the children; implementing parenting plans; obtaining training regarding problem solving, conflict management, and parenting skills; settling disputes regarding parenting issues and reaching a proposed joint resolution or statement of intent regarding those disputes; and monitoring compliance with the Court's orders. In performing these duties, the parenting facilitator shall comply with the standard of care that applies to the parenting facilitator's professional license.

The appointment of a parenting facilitator does not divest the Court of its exclusive jurisdiction to determine issues of conservatorship, support, and possession of and access to the children or the authority to exercise management and control of the suit. Accordingly, the parenting facilitator may not modify any order, judgment, or decree.

IT IS ORDERED that the fees of the parenting facilitator shall be paid 50 percent by B[redacted] N[redacted] E[redacted] and 50 percent by C[redacted] S[redacted] for any sessions that are joint or include the children, and 100 percent to be paid by any party for any individual session. Each party is responsible for that party's defined portion of cost. Each party is ordered to pay directly to the parenting facilitator the assigned fees according to the policies of

the parenting facilitator. The Court reserves the right to order a reasonable fee for the parenting facilitator as a money judgment to be paid directly to the parenting facilitator, which judgment may be enforced by any means available under law for civil judgments.

IT IS ORDERED that the parenting facilitator shall submit a written report to the Court and to the parties and their attorneys as requested by the parties or the Court. IT IS FURTHER ORDERED that the report may include a recommendation to the parties to implement or clarify provisions of the Court's order that are consistent with the intent of the order and in the best interest of the children. Such a recommendation will not affect the terms of the Court's order. IT IS FURTHER ORDERED that the report may include any other information required by the Court but may not include recommendations regarding conservatorship of or possession or access to the children.

IT IS ORDERED that the parenting facilitator shall submit a written report describing the parties' joint proposal or statement of intent regarding their dispute to the parties, any attorneys for the parties, and any attorney for the children. The parenting facilitator may not draft the proposal or statement.

Notwithstanding any rule, standard of care, or privilege that applies to the parenting facilitator's professional license, a communication made by a participant in parenting facilitation is subject to disclosure and may be offered in any judicial or administrative proceeding, if otherwise admissible under the rules of evidence. IT IS ORDERED that the parenting facilitator may be required to testify in any proceeding relating to or arising from the parenting facilitator's duties, including as to the basis for any recommendation made to the parties that arises from those duties.

IT IS ORDERED that the parenting facilitator shall keep a detailed record regarding meetings and contacts with the parties, attorneys, or other persons involved in the suit and shall keep the records until the seventh anniversary of the date the facilitator's services are terminated, unless a rule adopted by the licensing authority that issues the facilitator's professional license establishes a different retention period. IT IS FURTHER ORDERED that no record created as part of the parenting facilitation that arises from the parenting facilitator's duties is confidential. IT IS FURTHER ORDERED that, on request, the parenting facilitator shall make the records available to an attorney for a party, an attorney for the children, and a party who does not have an attorney.

IT IS ORDERED that, if the parenting facilitator has a conflict of interest with, or previous knowledge of, a party or a child the subject of this suit, the parenting facilitator shall, before accepting this appointment, disclose the conflict or previous knowledge to the Court, each attorney for a party, any attorney for the children, and any party who does not have an attorney and shall decline this appointment unless, after the disclosure, the parties and the child's attorney, if any, agree in writing to the parenting facilitator's appointment as parenting facilitator.

IT IS ORDERED that, before accepting this appointment, the parenting facilitator shall disclose to the Court, each attorney for a party, any attorney for the children, and any party who does not have an attorney the following: a pecuniary relationship with an attorney, party, or child in this suit; a relationship of confidence or trust with an attorney, party, or child in this suit; and other information regarding a relationship with an attorney, party, or child in this suit that might

reasonably affect the parenting facilitator's ability to act impartially during service as parenting facilitator. IT IS ORDERED that if the parenting facilitator makes such a disclosure, the parenting facilitator shall decline this appointment unless, after the disclosure, the parties and the child's attorney, if any, agree in writing to the parenting facilitator's service as parenting facilitator.

IT IS ORDERED that if the parenting facilitator discovers that the parenting facilitator has a conflict of interest with, or previous knowledge of, a party or a child the subject of the suit, the parenting facilitator shall immediately disclose the conflict or previous knowledge to the Court, each attorney for a party, any attorney for the children, and any party who does not have an attorney and shall withdraw unless, after the disclosure, the parties and the child's attorney, if any, agree in writing to the parenting facilitator's continuation as parenting facilitator.

IT IS ORDERED that the parenting facilitator must decline appointment in this suit if the parenting facilitator has served in any other professional capacity at any other time with any person who is a party to, or the subject of, this suit, or with any member of the family (as defined in section 71.003 of the Texas Family Code) of a party or subject, except as a teacher of coparenting skills in a class conducted in a group setting.

IT IS ORDERED that the parenting facilitator shall promptly and simultaneously disclose to each party's attorney, any attorney for the children, and any party who does not have an attorney the existence and substance of any communication between the parenting facilitator and another person, including a party, a party's attorney, a child who is the subject of the suit, and any attorney for the children, if the communication occurred outside a parenting facilitation session and involved the substance of parenting facilitation.

Referral to parenting facilitation is not a substitute for trial, and the case may be tried if not settled or agreed to continue in parenting facilitation or other intervention service. The Court shall remove the parenting facilitator on the request and agreement of all parties, on the request of the parenting facilitator, on the motion of a party if good cause is shown, or if the parenting facilitator ceases to satisfy the minimum qualifications required by section 153.6101 of the Texas Family Code.

Medical Notification

Each party is ORDERED to inform the other party within two hours of any medical condition of the children requiring emergency medical treatment, surgical intervention, hospitalization, or both.

Within three days of a request from either parent, the other parent is ORDERED to execute and return to the requesting parent -

1. all necessary releases pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and 45 C.F.R. section 164.508 to permit the other conservator to obtain health-care information regarding the children; and

2. for all health-care providers of the children, an authorization for disclosure of protected health information to the other conservator pursuant to the HIPAA and 45 C.F.R. section 164.508.

Each party is further ORDERED to designate the other conservator as a person to whom protected health information regarding the children may be disclosed whenever the party executes an authorization for disclosure of protected health information pursuant to the HIPAA and 45 C.F.R. section 164.508.

Coparenting Web Site Program

IT IS ORDERED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] E[redacted] each shall, within ten days after this Final Decree of Divorce is signed by the Court, obtain at his or her sole expense a subscription to the Our Family Wizard parenting website program on the Internet Web site at OurFamilyWizard.com. IT IS FURTHER ORDERED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] each shall maintain that subscription in full force and effect for as long as any child is under the age of eighteen years and not otherwise emancipated.

IT IS ORDERED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] shall each communicate through the Our Family Wizard parenting website program with regard to all communication regarding the children, except in the case of emergency or other urgent matter.

IT IS ORDERED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] E[redacted] each shall timely post all significant information concerning the health, education, and welfare of the children, including but not limited to the children's medical appointments, the children's schedules and activities, and request for reimbursement of uninsured health-care expenses, on the Our Family Wizard parenting website Internet Web site. However, IT IS ORDERED that neither party shall have any obligation to post on that Web site any information to which the other party already has access through other means, such as information available on the Websites of the children's schools.

IT IS FURTHER ORDERED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] shall each timely post on the Our Family Wizard parenting website Internet Web site a copy of any e-mail received by the party from the children's schools or any health-care provider of the children, in the event that e-mail was not also forwarded by the schools or health-care provider to the other party.

For purposes of this section of this order, 'timely' means on learning of the event or activity, or if not immediately feasible under the circumstances, not later than twenty-four hours after learning of the event or activity.

By agreement, the parties may communicate in any manner other than using the Our Family Wizard parenting website program, but other methods of communication used by the parties shall be in addition to, and not in lieu of, using the Our Family Wizard parenting website program.

Information Regarding Parties

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name: [redacted]
Social Security number:
Driver's license number: [redacted] Issuing state: Texas
Current residence address:
Mailing address:
Home telephone number:
Name of employer:
Address of employment:
Work telephone number:

Name: [redacted]
Social Security number:
Driver's license number [redacted] Issuing state: Texas
Current residence address:
Mailing address:
Home telephone number:
Name of employer:
Address of employment:
Work telephone number:

Required Notices

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by

registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk at P.O. Box 4651, Houston, Texas 77210-4651. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Contract Services Section, MC046S, P.O. Box 12017, Austin, Texas 78711-2017.

NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.

THE COURT MAY MODIFY THIS ORDER THAT PROVIDES FOR THE SUPPORT OF A CHILD, IF:

(1) THE CIRCUMSTANCES OF THE CHILD OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR

(2) IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR $100 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES.

Warnings to Parties

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Division of Marital Estate

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party and the children of the marriage.

Property to Petitioner

IT IS ORDERED AND DECREED that Petitioner, B[redacted] N[redacted] F[redacted], is awarded the following as his sole and separate property, and Respondent, C[redacted] L[redacted] S[redacted] E[redacted], is divested of all right, title, interest, and claim in and to that property:

P-1. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of Petitioner or subject to his sole control, including those items maintained by Petitioner at his storage unit at [redacted]

P-2. All clothing, jewelry, and other personal effects in the possession of Petitioner or subject to his sole control.

P-3. All sums of cash in the possession of Petitioner or subject to his sole control, including funds on deposit, together with accrued but unpaid interest, in banks, savings institutions, or other financial institutions, which accounts stand in Petitioner's sole name or from which Petitioner has the sole right to withdraw funds or which are subject to Petitioner's sole control.

P-4. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability plan, or other benefits existing by reason of Petitioner's past, present, or future employment.

P-5. 47% of the Teacher Retirement System account existing by reason of C[redacted] L[redacted] S[redacted]'s employment with the Houston Independent School District and any other school district in the State of Texas, as of May 1, 2018, together with all increases thereof, the proceeds therefrom, and any other rights related to this plan. The parties are further ORDERED to enter a Qualified Domestic Relations Order the effect the division of this account.

P-6. All individual retirement accounts, simplified employee pensions, annuities, and variable annuity life insurance benefits in Petitioner's name.

P-7. All policies of life insurance (including cash values) insuring Petitioner's life.

P-8. All brokerage accounts, stocks, bonds, mutual funds, and securities registered in Petitioner's name, together with all dividends, splits, and other rights and privileges in connection with them.

P-9. The _____ Chevrolet _____ motor vehicle, titled solely in Petitioner's name, together with all prepaid insurance, keys, and title documents.

Property to Respondent

IT IS ORDERED AND DECREED that Respondent, C[redacted] L[redacted] S[redacted] is awarded the following as her sole and separate property, and Petitioner, B[redacted] N[redacted] E[redacted], is divested of all right, title, interest, and claim in and to that property:

R-1. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of Respondent or subject to her sole control.

R-2. All clothing, jewelry, and other personal effects in the possession of Respondent or subject to her sole control.

R-3. All sums of cash in the possession of Respondent or subject to her sole control, including funds on deposit, together with accrued but unpaid interest, in banks, savings institutions, or other financial institutions, which accounts stand in Respondent's sole name or from which Respondent has the sole right to withdraw funds or which are subject to Respondent's sole control.

R-4. Save and except for Respondent's Teacher Retirement System retirement account, all sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability plan, or other benefits existing by reason of Respondent's past, present, or future employment.

R-5. 53% of the Teacher Retirement System account existing by reason of C[redacted] L[redacted] S[redacted]'s employment with the Houston Independent School District and any other school district in the State of Texas, as of May 1, 2018, together with all increases thereof, the proceeds therefrom, and any other rights related to this plan. The parties are further ORDERED to enter a Qualified Domestic Relations Order the effect the division of this account.

R-6. The individual retirement accounts, simplified employee pensions, annuities, and variable annuity life insurance benefits in Respondent's name.

R-7. All policies of life insurance (including cash values) insuring Respondent's life.

R-8. All brokerage accounts, stocks, bonds, mutual funds, and securities registered in Respondent's name, together with all dividends, splits, and other rights and privileges in connection with them.

R-9. The 2010 Audi A6 motor vehicle, titled in Respondent's sole name, together with all prepaid insurance, keys, and title documents.

Division of Debt

Debts to Petitioner

IT IS ORDERED AND DECREED that Petitioner, B[redacted] N[redacted] E[redacted], shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold Respondent, C[redacted] L[redacted] S[redacted], and her property harmless from any failure to so discharge, these items:

P-1. The balance due, including principal, interest, and all other charges, on the promissory note given as part of the purchase price of and secured by a lien on the _____ Chevrolet _____ motor vehicle awarded to Petitioner.

P-2. The following debts, charges, liabilities, and obligations:

a. auto insurance premium on any vehicle awarded herein to Petitioner; and

b. life insurance premium on any insurance policy awarded herein to Petitioner; and

c. any credit card debt in Petitioner's name.

P-3. All debts, charges, liabilities, and other obligations incurred solely by Petitioner, regardless of when incurred, unless express provision is made in this decree to the contrary.

P-4. All encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the real and personal property awarded to Petitioner in this decree unless express provision is made in this decree to the contrary.

Debts to Respondent

IT IS ORDERED AND DECREED that Respondent, C[redacted] L[redacted] S[redacted] E[redacted], shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold Petitioner, B[redacted] N[redacted] E[redacted], and his property harmless from any failure to so discharge, these items:

R-1. The balance due, including principal, interest, and all other charges, on the promissory note, given as part of the purchase price of and secured by a lien on the 2010 Audi A6 motor vehicle awarded to Respondent.

R-2. The following debts, charges, liabilities, and obligations:

a. auto insurance premium on any vehicle awarded herein to Respondent; and

b. life insurance premium on any insurance policy awarded herein to Respondent; and

c. any credit card debt in Respondent's name.

R-3. All debts, charges, liabilities, and other obligations incurred solely by Respondent, regardless of when incurred, unless express provision is made in this decree to the contrary.

R-4. All encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the real and personal property awarded to Respondent in this decree unless express provision is made in this decree to the contrary.

Notice

IT IS ORDERED AND DECREED that each party shall send to the other party, within three days of its receipt, a copy of any correspondence from a creditor or taxing authority concerning any potential liability of the other party.

[redacted]

Confirmation of Separate Property

IT IS ORDERED AND DECREED that the following described property is confirmed as the separate property of C[redacted] L[redacted] S[redacted]:

The following real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties and service contracts, and title and closing documents:

[redacted]

Judgment to Equalize Division and Lien

For the purpose of a just and right division of property made in this decree, to compensate B[redacted] N[redacted] E[redacted] for his share of the reimbursement claim for community funds contributed to the purchase price of [redacted], IT IS FURTHER ORDERED AND DECREED that Petitioner, B[redacted] N[redacted] E[redacted], is awarded judgment of twenty-nine thousand dollars ($29,000.00) against Respondent.

This judgment is part of the division of community property between the parties and shall not constitute or be interpreted to be any form of spousal support, alimony, or child support.

IT IS ORDERED AND DECREED that an equitable lien is created in favor of B[redacted] N[redacted] E[redacted] against the entirety of the following property:

[redacted]

C[redacted] L[redacted] S[redacted] IS ORDERED to sign a real estate lien note and deed of trust to secure the real estate lien note, in the amount for twenty-nine thousand

dollars ($29,000.00) payable to B[redacted] N[redacted] E[redacted], with interest at three percent per year compounded annually from the date of judgment, for which let execution issue. It is to be payable according to the following terms: the sum of $29,000.00 shall be paid by C[redacted] L[redacted] S[redacted] in full on or before June 1, 2019.

Provisions Dealing with Sale of Residence

IT IS FURTHER ORDERED AND DECREED that if C[redacted] L[redacted] S[redacted] E[redacted] does not satisfy the terms of the Real Estate Lien Note by paying to B[redacted] NE[redacted] E[redacted] the sum of $29,000.00 on or before June 1, 2019, the property and all improvements located thereon at

[redacted]

shall be sold under the following terms and conditions:

1. On or before June 7, 2019, C[redacted] L[redacted] S[redacted] shall list the property with NICOLE GARNER, 281.450.1810, NicoleGarnerRealtor@gmail.com, who is represented by Respondent to be a duly licensed real estate broker having sales experience in the area where the property is located, and an active member in the Multiple Listing Service with the Houston Board of Realtors.

2. The property shall be sold for a price that is representative of fair market value. If Petitioner and Respondent are unable to agree on a sales price equivalent to fair market value, on the application of either party, the property shall be sold under terms and conditions determined by a court-appointed receiver.

3. Respondent shall have the exclusive right to enjoy the use and possession of the premises until closing, and shall be responsible for all maintenance and repairs necessary on the property.

4. The net sales proceeds (defined as the gross sales price less cost of sale and full payment of any mortgage indebtedness or liens on the property and any applicable fees to a court reported receiver) shall be distributed as follows: $29,000.00 to B[redacted] N[redacted] E[redacted] with the remaining proceeds to C[redacted] L[redacted] S[redacted]

Attorney's Fees

To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the children, each party shall be responsible for his or her own attorney's fees, expenses, and costs incurred as a result of legal representation in this case.

Federal Income Taxes

IT IS ORDERED AND DECREED that B[redacted] N[redacted] E[redacted] and C[redacted]

L S shall each be solely responsible for all federal income tax liabilities attributable to his or her own income and earnings from the date of marriage through the date of divorce. IT IS ORDERED that each party shall indemnify and hold the other party and the other party's property harmless from the liabilities of his or her own income tax returns.

IT IS ORDERED AND DECREED that each party shall preserve for a period of seven years from the date of divorce all financial records relating to the community estate. Each party is ORDERED to allow the other party access to these records to determine acquisition dates or tax basis or to respond to an IRS examination within five days of receipt of written notice from the other party. Access shall include the right to copy the records.

IT IS ORDERED AND DECREED that all payments made to the other party in accordance with the allocation provisions for payment of federal income taxes contained in this Final Decree of Divorce are not deemed income to the party receiving those payments but are part of the property division and necessary for a just and right division of the parties' estate.

IT IS ORDERED AND DECREED that for tax year 2018 and each even-numbered tax year thereafter, B N E shall have the exclusive right to claim the federal dependency tax exemption for each of the children the subject of this suit, and C L S is prohibited, in the absence of a duly executed IRS Form 8332 from B N E, from claiming any of these exemptions in any even-numbered tax year. IT IS ORDERED AND DECREED that for tax year 2019 and each odd-numbered tax year thereafter, C L S shall have the exclusive right to claim the federal dependency tax exemption for each of the children the subject of this suit, and B N E is prohibited, in the absence of a duly executed IRS Form 8332 from C L S, from claiming any of these exemptions in any odd-numbered tax year.

No Alimony

IT IS ORDERED AND DECREED that no provision of this decree shall be construed as alimony under the Internal Revenue Code, except as this decree expressly provides for payment of maintenance or alimony under the Internal Revenue Code.

Transfer and Delivery of Property

IT IS ORDERED that B N E shall return to C L S the following items, by and through her attorney of record: 1) 2 Audi car keys and fobs; 2) 1 Walther PPK and clip; 3) the Arlo security camera and system; and 4) Wife's ipad.

IT IS ORDERED that C L S E shall return to B N E the following items, by and through her attorney of record: 1) the keys to his storage area at

Continuation of Health Insurance Coverage (COBRA)

C I S is ORDERED to give written notice to C L S E s employer within fifteen days of the date of the

signing of this Final Decree of Divorce that B[redacted] N[redacted] E[redacted] is exercising B[redacted] N[redacted] E[redacted]'s option to continue the existing health insurance coverage, and CHRISTINE L[redacted] S[redacted] E[redacted] is FURTHER ORDERED to pay all premiums required to maintain the coverage in full effect until a new policy is issued in the name of B[redacted] N[redacted] E[redacted], at which time C[redacted] L[redacted] S[redacted] E[redacted] shall be relieved of the obligation to pay the premiums. IT IS FURTHER ORDERED that the notice to the employer shall include the last known mailing address of B[redacted] N[redacted] E[redacted] and that a copy of the notice shall be sent to B[redacted] N[redacted] E[redacted] C[redacted] L[redacted] S[redacted] E[redacted] is also ORDERED to furnish to B[redacted] N[redacted] E[redacted] a copy of the presently existing health insurance card and any explanation of benefits under the coverage within fifteen days from the signing of this decree.

Permanent Injunctions as to Persons

The Court finds that, because of the conduct of the parties, permanent injunctions against them should be granted as appropriate relief because there is no adequate remedy at law.

The permanent injunctions granted below shall be effective immediately and shall be binding on B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted]; on his or her agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

IT IS ORDERED AND DECREED that B[redacted] N[redacted] E[redacted] and C[redacted] L[redacted] S[redacted] are permanently enjoined from:

1. Making any comment or attempting to utilize the child and/or any other individual (i.e., the parent conservator's significant other, family, future spouse, present or future fiances or present or future girlfriends/boyfriends) as the messenger or communicator of information between or to the other parent/conservator.

2. Interfering in any way with the other party's awarded periods of possession of the child or taking or retaining possession of the child, directly or in concert with other persons except as permitted by order of the Court.

3. Communicating with the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.

4. Threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person.

5. Placing one or more telephone calls to the other party, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

6. Causing bodily injury to the other party or to a child of either party.

7. Threatening the other party or a child of either party with imminent bodily injury.

8. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the other party.

9. Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account.

10. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.

11. Disturbing the peace of the children or of another party.

12. Hiding or secreting the children from the other party.

13. Making disparaging remarks regarding the other party or the other party's family in the presence or within the hearing of the children or on any form of social media.

14. Discussing any litigation concerning the children in the presence or within the hearing of the children, or on any form of social media, or to any teacher or personnel at the children's school and extracurricular activities.

15. Going to or remaining at, or within 100 yards of, the other party's place of employment, including any off-site assignments.

16. Save and except by and through an attorney for record, contacting (in person, by phone, by email or by any other electronic means, or in any other manner) any person associated with the other party's employment, including but not limited to supervisors, co-workers, and management personnel.

17. Going to or remaining at the other party's storage units.

18. Except as specifically required to exchange possession of and access to the children pursuant to a court order, going to or remaining at, or within 100 yards of, any residence of the other party.

19. Going to or remaining at the residences of the other party's parents.

20. Preventing the children from contacting the other party at any reasonable time, including but not limited to removing the children's cellular telephones from their use and possession at any time.

21. Using the children's cellular telephones to track or monitor the whereabouts of the other party at any time.

22. Having a firearm, concealed or open-carry, present during any exchange of possession of the children between Petitioner and Respondent.

23. Taking possession of the other party's cellular telephone or in any manner preventing the other party from the full use and exclusive authority over his cellular telephone.

24. Administering, or allowing any third party to administer, corporal punishment of any type to any child the subject of this suit.

25. To or within hearing distance of the children, or on any form of social media, making any disparaging remarks regarding the children, including but not limited to referring to the children by profane names or euphemisms.

Service of Writ

Petitioner and Respondent waive issuance and service of the writ of injunction, by stipulation or as evidenced by the signatures below. IT IS ORDERED that Petitioner and Respondent shall be deemed to be duly served with the writ of injunction.

Change of Respondent's Name

IT IS ORDERED AND DECREED that C[redacted] L[redacted] S[redacted]'s name is changed to C[redacted] L[redacted] S[redacted].

Court Costs

IT IS ORDERED AND DECREED that costs of court are to be borne by the party who incurred them.

Discharge from Discovery Retention Requirement

IT IS ORDERED AND DECREED that the parties and their respective attorneys are discharged from the requirement of keeping and storing the documents produced in this case in accordance with rule 191.4(d) of the Texas Rules of Civil Procedure.

Decree Acknowledgment

Petitioner, B[redacted] N[redacted] E[redacted], and Respondent, C[redacted] L[redacted] S[redacted] E[redacted], each acknowledge that before signing this Final Decree of Divorce they have read this Final Decree of Divorce fully and completely, have had the opportunity to ask any questions regarding the same, and fully understand that the contents of this Final Decree of Divorce constitute a full and complete resolution of this case. Petitioner and Respondent acknowledge that they have voluntarily affixed their signatures to this Final Decree of Divorce, believing this agreement to be a just and right division of the marital debt and assets, and state that they have not signed by virtue of any coercion, any duress, or any agreement other than those specifically set forth in this Final Decree of Divorce.

Indemnification

Each party represents and warrants that he or she has not incurred any outstanding debt, obligation, or other liability on which the other party is or may be liable, other than those

described in this decree. Each party agrees and IT IS ORDERED that if any claim, action, or proceeding is hereafter initiated seeking to hold the party not assuming a debt, an obligation, a liability, an act, or an omission of the other party liable for such debt, obligation, liability, act or omission of the other party, that other party will, at that other party's sole expense, defend the party not assuming the debt, obligation, liability, act, or omission of the other party against any such claim or demand, whether or not well founded, and will indemnify the party not assuming the debt, obligation, liability, act, or omission of the other party and hold him or her harmless from all damages resulting from the claim or demand.

Damages, as used in this provision, includes any reasonable loss, cost, expense, penalty, and other damage, including without limitation attorney's fees and other costs and expenses reasonably and necessarily incurred in enforcing this indemnity.

IT IS ORDERED that the indemnifying party will reimburse the indemnified party, on demand, for any payment made by the indemnified party at any time after the entry of the divorce decree to satisfy any judgment of any court of competent jurisdiction or in accordance with a bona fide compromise or settlement of claims, demands, or actions for any damages to which this indemnity relates.

The parties agree and IT IS ORDERED that each party will give the other party prompt written notice of any litigation threatened or instituted against either party that might constitute the basis of a claim for indemnity under this decree.

Clarifying Orders

Without affecting the finality of this Final Decree of Divorce, this Court expressly reserves the right to make orders necessary to clarify and enforce this decree.

Relief Not Granted

IT IS ORDERED AND DECREED that all relief requested in this case and not expressly granted is denied. This is a final judgment, for which let execution and all writs and processes necessary to enforce this judgment issue. This judgment finally disposes of all claims and all parties and is appealable.

Date of Judgment

This divorce judicially PRONOUNCED AND RENDERED in court at Houston, HARRIS County, Texas, on May 8, 2018 and further noted on the court's docket sheet on the same date, but signed on _____.

Signed:
5/29/2018

JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

CAROLYN ROBERTSON
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Attorney for Petitioner
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Telephone 713.715.5060
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W. TYLER MOORE
State Bar No. 14404500
Attorney for Respondent
5005 Woodway, Suite 201
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Telephone 713.492.0998
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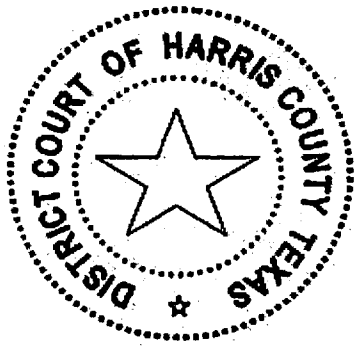
Email WTM@WTylerMoore.com

APPROVED AND CONSENTED TO AS TO BOTH FORM AND SUBSTANCE:

[redacted] Petitioner

[redacted] Respondent

EXHIBIT A



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this March 11, 2020

Certified Document Number: 80149698 Total Pages: 34

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

EXHIBIT A

11/30/2020 11:07 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 48464415
By: Ashley Johnson
Filed: 11/30/2020 11:07 AM
Pgs-9

NO. 2020-16834

B[redacted] N[redacted] E[redacted]	§	IN THE DISTRICT COURT	SENSX
	§		NCA
AND	§	280TH JUDICIAL DISTRICT	CPLHX
	§		CASO
C[redacted] L[redacted] S[redacted]	§	HARRIS COUNTY, TEXAS	ATFEX
			8E

FINAL PROTECTIVE ORDER

On September 29, 2020, and October 20, 2020, the Court heard the Application of B[redacted] N[redacted] E[redacted] for a Protective Order.

Appearances

Applicant, B[redacted] N[redacted] ET[redacted], appeared in person and through attorney of record, CAROLYN ROBERTSON, and announced ready.

Respondent, C[redacted] L[redacted] S[redacted], appeared in person and through attorney of record, DANA BURKET, and announced ready.

Also appearing on October 20, 2020, was ALICE J. O'NEILL who was appointed as the Amicus Attorney for the children following the court proceedings on September 29, 2020.

Jurisdiction

The Court, after examining the record and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been satisfied and that this Court has jurisdiction over the parties and subject matter of this case.

Findings

The court finds that Applicant and Respondent were members of the same family or household or previously involved in a dating relationship, in that Applicant is the Respondent's former spouse with whom he has three minor children.

The Court finds that Applicant has applied for this protective order on behalf of his three

minor children, who are the children of Respondent. The Court further finds that Applicant has abandoned any and all requests for relief on his own behalf for which he had pled.

The Court finds, based on the evidence and testimony presented, that family violence has occurred and that family violence is likely to occur in the future. The Court finds that Respondent, CH[redacted] L[redacted] S[redacted], has committed family violence. The Court finds, based on the evidence and testimony presented, that the following protective orders are for the safety and welfare and in the best interest of the three minor children and are necessary for the prevention of family violence.

The Court further finds, based on the evidence and testimony presented, that conduct of Respondent against at least one of the minor children for whom the suit was filed would be a felony if charged, and therefore this protective order can be granted for a period of longer than two years.

The Court finds, based on the evidence and testimony presented, that the following protective orders should be no-contact orders of permanent duration, subject to Applicant or any of the Protected Persons filing a motion to vacate or a motion to modify this protective order.

"Protected Person"

In this order, "Protected Person" means C[redacted] M[redacted] E[redacted], C[redacted] P[redacted] E[redacted] and G[redacted] B[redacted] E[redacted].

Orders

IT IS ORDERED that Respondent, C[redacted] L[redacted] S[redacted], is:

1. Prohibited from committing family violence and any actions that could cause physical or emotional harm to another, as defined by section 71.004 of the Texas Family Code.

2. Prohibited from doing any act other than a defensive measure to protect

Respondent that is intended to result in physical harm, bodily injury, assault, or sexual assault against any Protected Person.

3. Prohibited from doing any act other than a defensive measure to protect Respondent that is a threat that reasonably places any Protected Person in fear of imminent physical harm, bodily injury, assault, or sexual assault.

4. Prohibited from committing abuse of a child of the family or household as defined by Texas Family Code section 261.001(1)(C), (E), (G), (H), (I), (J), (K) and (M).

5. Prohibited from communicating directly with any Protected Person.

6. Prohibited from communicating a threat through any person to any Protected Person.

7. Prohibited, on the basis of good cause shown, from communicating in any manner with any Protected Person except through the children's amicus attorney, ALICE J. O'NEILL, while ALICE J. O'NEILL continues to represent the children, and thereafter, only through the then-current counselor for the children. Applicant is ORDERED to, within 10 days of entry of this order, give notice to Respondent of the name and contact information for each minor child's counselor, and thereafter in the event of a change in counselors, to notify Respondent of the new counselor's name and contact information within 10 days of establishing the professional relationship between the child and the counselor.

8. Prohibited from engaging in conduct directed specifically toward any Protected Person, including following Protected Person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass Protected Person.

9. Harming, threatening, or interfering with any pets of the Protected Persons.

10. Prohibited from going to or near, or within 100 yards of, any location where any

Protected Person is known by Respondent to be and further prohibited from remaining within 100 yards after Respondent becomes aware of Protected Person's presence.

11. Prohibited from going to or near the residences or places of employment or business of any Protected Person. Specifically, Respondent is prohibited from going to or near [redacted], and specifically must maintain a distance of at least 100 yards from that location.

12. Prohibited from going to or near the child-care facilities, babysitters (even if such babysitter is a family member), schools, or extracurricular activities C[redacted] M[redacted] E[redacted], C[redacted] P[redacted] E[redacted] and G[redacted] B[redacted] E[redacted] normally attend. Specifically, Respondent is prohibited from going to or near [redacted] High School at [redacted], TX [redacted]; [redacted] Middle School at [redacted] TX [redacted]; and [redacted] Elementary School at [redacted], TX [redacted], and specifically must maintain a distance of at least 100 yards from those locations.

13. Prohibited from removing C[redacted] M[redacted] E[redacted], C[redacted] P[redacted] E[redacted] and G[redacted] B[redacted] E[redacted] from the possession of B[redacted] N[redacted] E[redacted] or any person or entity with whom B[redacted] N[redacted] E[redacted] has entrusted the care of the children.

14. Prohibited from possessing a firearm or ammunition, unless Respondent is a peace officer, as defined by section 1.07 of the Texas Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

15. IT IS ORDERED that the license to carry a handgun that was issued to

Respondent, C[redacted] L[redacted] S[redacted], under section 411.177 of the Texas Government Code, if any, is suspended.

CHRISTINE LENORE STARY IS FURTHER ORDERED:

1. IT IS ORDERED that Respondent submit to a psychological evaluation through the Harris Center for Mental Health, and that she contact this entity at 713.970.7000 on or before November 30, 2020, at 5:00 p.m. to make her initial appointment. Respondent is ORDERED to provide documentation to the Court of her initial appointment, as well as the results of the psychological evaluation including any treatment protocol or plan. IT IS ORDERED that Respondent shall follow all of the recommendations of the treatment protocol or plan, and to provide an update to the Court every 90 days that she is abiding by the treatment protocol or plan. IT IS ORDERED that the amicus attorney, Alice J. O'Neill shall also be provided with a copy of the psychological evaluation for the purposes of any other litigation in the family court of continuing jurisdiction.

2. IT IS ORDERED that Respondent shall attend an online course for domestic violence and children through the Family Education and Support Services, https://familyess.org/classes, and to file the certificate of completion with the Court.

B[redacted] N[redacted] E[redacted] IS ORDERED:

1. IT IS ORDERED that C[redacted] M[redacted] E[redacted], C[redacted] P[redacted] E[redacted] and G[redacted] B[redacted] ET[redacted] remain in counseling with a counselor that fits the needs of each child, and that the counselor for each child shall specifically consider whether and when the child is ready to begin reunification with C[redacted] L[redacted] S[redacted].

Attorney's Fees

The Court finds that C[redacted] L[redacted] S[redacted] should be assessed $7,791.34 as attorney's fees for the services of Carolyn Robertson. IT IS ORDERED that Carolyn Robertson is awarded judgment of $7,791.34 for legal services rendered. The judgment, for which let execution issue, is awarded against C[redacted] L[redacted] S[redacted]. IT IS ORDERED that this judgment shall be paid in full by December 31, 2020, at 5:00 p.m. unless a payment plan is agreed to between CAROLYN ROBERTSON and Respondent.

The Court finds that C[redacted] L[redacted] S[redacted] should be assessed $570.00 and B[redacted] N[redacted] E[redacted] should be assessed an additional $570.00, for a total of $1,1400.00 as attorney's fees for the services of the amicus attorney ALICE J. O'NEILL. IT IS ORDERED that ALICE J. O'NEILL is awarded judgment of $570.00 for legal services rendered, against C[redacted] L[redacted] S[redacted], for which let execution issue. IT IS ORDERED that ALICE J. O'NEILL is awarded judgment of $570.00 for legal services rendered, against B[redacted] N[redacted] E[redacted], for which let execution issue. IT IS ORDERED that these judgments shall be paid in full by December 31, 2020, at 5:00 p.m. unless a payment plan is agreed to between ALICE J. O'NEILL and the parties.

Relief Not Granted

IT IS ORDERED that all relief requested in the Application for Protective Order but not expressly granted is denied.

Compliance Hearings

IT IS ORDERED that Respondent appear before this Court for a compliance hearing on January 11, 2021 at 9:00 a.m., through a Zoom conference unless notice to the contrary is later delivered by this Court to the parties.

Order Forwarded

A copy of this order, along with the information provided by Applicant's attorney that is required under section 411.042(b)(6) of the Texas Government Code, shall be forwarded by the clerk of this Court, not later than the next business day after the date the court issues the order, to the sheriff and the appropriate constable of Harris County, Texas, no later than the next business day after the date the Court issues this order.

Effective Period

The Court finds that Respondent committed an act constituting a felony offense involving family violence against at least one of the Protected Persons, specifically, G[redacted] B[redacted] E[redacted], regardless of whether the person has been charged with or convicted of the offense.

IT IS THEREFORE ORDERED that this order shall remain permanently in full force and effect until such time as this order may be vacated or modified.

Warnings:

A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR

AMMUNITION.

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.

IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION. POSSESSION OF A FIREARM OR AMMUNITION, AS DEFINED IN 18 U.S.C. § 921, WHILE THIS PROTECTIVE ORDER IS IN EFFECT MAY BE A FELONY UNDER FEDERAL LAW PNISHABLE BY UP TO TEN YEARS IN PRISON, A $250,000 FINE, OR BOTH.

PURSUANT TO 18 U.S.C. § 925(a)(1), THE RESTRICTIONS ON POSSESSION OF FIREARMS OR AMMUNITION FOUND AT 18 U.S.C. § 922(g)(8), AND IMPOSED BY THIS PROTECTIVE ORDER, DO NOT APPLY TO FIREARMS OR AMMUNITION ISSUED BY THE UNITED STATES OR ANY DEPARTMENT OR AGENCY THEREOF OR ANY STATE OR ANY DEPARTMENT, AGENCY, OR POLITICAL SUBDIVISION THEREOF, WHICH RESPONDENT POSSESSES IN CONNECTION WITH THE DISCHARGE OF OFFICIAL GOVERNMENT DUTIES. THE POSSESSION OF PRIVATELY OWNED FIREARMS AND AMMUNITION, HOWEVER, REMAINS UNLAWFUL AND VIOLATES THE TERMS OF THIS PROTECTIVE ORDER.

IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO KNOWINGLY PURCHASE, RENT, LEASE, OR RECEIVE AS A LOAN OR GIFT FROM ANOTHER, A HANDGUN FOR THE DURATION OF THIS ORDER.

INTERSTATE VIOLATION OF THIS PROTECTIVE ORDER MAY SUBJECT RESPONDENT TO FEDERAL CRIMINAL PENALTIES. THIS PROTECTIVE ORDER IS ENFORCEABLE IN ALL FIFTY STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, AND U.S. TERRITORIES.

SIGNED on _____.

Signed:
11/30/2020

JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

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ALICE J. O'NEILL
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Amicus Attorney
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Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 4. Protective Orders and Family Violence (Refs & Annos)
Subtitle A. General Provisions
Chapter 71. Definitions (Refs & Annos)

V.T.C.A., Family Code § 71.004

§ 71.004. Family Violence

Effective: September 1, 2017
Currentness

"Family violence" means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), (G), (H), (I), (J), (K), and (M), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

Credits
Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 91, § 2, eff. Sept. 1, 2001; Acts 2015, 84th Leg., ch. 117 (S.B. 817), § 2, eff. Sept. 1, 2015; Acts 2017, 85th Leg., ch. 319 (S.B. 11), § 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 1136 (H.B. 249), § 1, eff. Sept. 1, 2017.

O'CONNOR'S NOTES
Source: Former Fam. Code §71.01(b)(2).

O'CONNOR'S CROSS REFERENCES
See also ***O'Connor's Fam. Law Handbook***, "Family Violence," ch. 6-A, §2.

O'CONNOR'S ANNOTATIONS
Burt v. Francis, 528 S.W.3d 549, 553-54 (Tex.App.--Eastland 2016, no pet.). "'Given the remedial nature of [the Family Code's protective-order provisions], courts should broadly construe its provisions so as to effectuate its humanitarian and preventative purposes.' [¶] Even in circumstances where no express threats are conveyed, the factfinder may nonetheless conclude that an individual was reasonably placed in fear."

Agbogwe v. State, 414 S.W.3d 820, 839 (Tex.App.--Houston [1st Dist.] 2013, no pet.). "Code of Criminal Procedure art. 42.013 provides that if the trial court 'determines that the offense involved family violence, as defined by [Fam. Code] §71.004 … the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of the case.' [¶] The State contends that the family violence finding is proper, despite the undisputed evidence that [victim] was not a member of [D's] family or household, because this offense 'only occurred in an attempt to further [D's] family violence assault on [girlfriend]' and 'the offense as a whole was committed with the intent to cause physical harm or threaten physical harm to his household member….' *At 840-41:* The focus of the family-violence finding is … on the relationship between the defendant and the specific victim of the offense. If the victim of the specific offense is a member of the defendant's family or household, then the affirmative finding is justified. The statute is silent on whether a family violence finding is justified when the victim of the specific offense at issue is not a member of the defendant's family or household, but the criminal episode as a whole does involve a member of the defendant's household. [¶] The State … contends that the family violence finding was proper based on the doctrine of transferred intent, arguing that '[w]hile [D] was directing an assault on his household member … he attacked [victim] when she intervened. …' … The transferred intent doctrine is … inapplicable under these circumstances. [¶] [T]he record does not support the affirmative family violence finding…."

In re Wean, No. 03-10-00383-CV, 2010 WL 3431708 (Tex.App.--Austin 2010, orig. proceeding) (memo op.; 8-31-10). "[T]he fact that a child is spanked, on its own, does not evidence family violence. A parent generally has discretion to use some amount of corporal punishment. Therefore, for corporal punishment to constitute family violence, there must be some evidence--such as severity of injury, type of instrument used, or mental or emotional state of the perpetrator--that would transcend a reasonable level of parental discretion regarding discipline."

V. T. C. A., Family Code § 71.004, TX FAMILY § 71.004
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 4. Protective Orders and Family Violence (Refs & Annos)
Subtitle B. Protective Orders
Chapter 81. General Provisions (Refs & Annos)

V.T.C.A., Family Code § 81.001

§ 81.001. Entitlement to Protective Order

Currentness

A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred and is likely to occur in the future.

Credits
Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997.

Notes of Decisions (43)

V. T. C. A., Family Code § 81.001, TX FAMILY § 81.001
Current through legislation effective May 19, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 4. Protective Orders and Family Violence (Refs & Annos)
Subtitle B. Protective Orders (Refs & Annos)
Chapter 81. General Provisions (Refs & Annos)

V.T.C.A., Family Code § 81.001

§ 81.001. Entitlement to Protective Order

Effective: September 1, 2023
Currentness

A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred .

Credits
Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997. Amended by Acts 2023, 88th Leg., ch. 688 (H.B. 1432), § 1, eff. Sept. 1, 2023.

O'CONNOR'S NOTES
Source: Former Fam. Code §71.10(a), (b).

LEGISLATIVE NOTES
The amended text in §81.001 is effective for protective orders rendered on or after Sept. 1, 2023. Orders rendered before Sept. 1, 2023, are governed by the former law in effect at that time.

O'CONNOR'S ANNOTATIONS
Roper v. Jolliffe, 493 S.W.3d 624, 630 (Tex.App.--Dallas 2015, pet. denied). Family Code §81.001 "did not give [respondent] the right to have a jury act as the fact finder in this case. The statute makes clear that the legislature intended that courts, not juries, act as the sole fact finders and have the responsibility for making the findings necessary for the issuance of a family violence protective order. *At 636:* [Respondent] has not shown he has a right to a jury trial under the plain meaning of [Fam. Code] Title 4, [Tex. Const.] art. 1, §15 or art. 5, §10…."

V. T. C. A., Family Code § 81.001, TX FAMILY § 81.001
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 4. Protective Orders and Family Violence (Refs & Annos)
Subtitle B. Protective Orders (Refs & Annos)
Chapter 81. General Provisions (Refs & Annos)

V.T.C.A., Family Code § 81.009

§ 81.009. Appeal

Effective: June 18, 2005
Currentness

(a) Except as provided by Subsections (b) and (c), a protective order rendered under this subtitle may be appealed.

(b) A protective order rendered against a party in a suit for dissolution of a marriage may not be appealed until the time the final decree of dissolution of the marriage becomes a final, appealable order.

(c) A protective order rendered against a party in a suit affecting the parent-child relationship may not be appealed until the time an order providing for support of the child or possession of or access to the child becomes a final, appealable order.

Credits
Added by Acts 2005, 79th Leg., ch. 916, § 2, eff. June 18, 2005.

O'CONNOR'S CROSS REFERENCES
See also ***O'Connor's Fam. Law Handbook***, "Appellate Review," ch. 6-C, §15.

O'CONNOR'S ANNOTATIONS
Dolgener v. Dolgener, 651 S.W.3d 242, 255 (Tex.App.--Houston [14th Dist.] 2021, no pet.). "[T]he collateral consequences exception applies to protective orders under [Fam. Code] Ch. 85…. Because the protective order is based on allegations of abuse directed towards a spouse and children--allegations that carry significant legal repercussions and social stigma--[mother] is entitled to appellate review."

In re Keck, 329 S.W.3d 658, 661 (Tex.App.--Houston [14th Dist.] 2010, no pet.). Father "filed both an appeal and a petition for writ of mandamus, and the parties dispute which is the proper vehicle for review. … If either of the exceptions [of §81.009] applies, then appeal of the protective order must await issuance of a final, appealable order in the underlying case. There was apparently never a marriage between [father] and [mother], so the first exception does not apply. An action to terminate [father's] parental rights was pending at the time the application for a protective order was filed, and such a suit is indeed a SAPCR. However, the termination action was filed in a different court … and with a different cause number than the protective order at issue here…. It therefore cannot be said that the protective order was issued 'in' the termination action. Because neither of the §81.009 exceptions [applies] in this case, the protective order is appealable under that Family Code section."

Watts v. Adviento, No. 02-17-00424-CV, 2019 WL 1388534 (Tex.App.--Fort Worth 2019, no pet.) (memo op.; 03-28-19). The Applicant's "statements that she filed her application for protective order 'during the pendency' of a SAPCR and that the trial court held a temporary orders hearing on the SAPCR 'in conjunction with' the final hearing on her application for protective order suggest that the SAPCR and application for protective order are not one cause but separate causes. … Thus, it was not rendered in the SAPCR. [¶] Since neither of the §81.009 exceptions applies to the protective order in this case, we have jurisdiction over this appeal."

V. T. C. A., Family Code § 81.009, TX FAMILY § 81.009
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 4. Protective Orders and Family Violence (Refs & Annos)
Subtitle B. Protective Orders (Refs & Annos)
Chapter 84. Hearing

V.T.C.A., Family Code § 84.001

§ 84.001. Time Set for Hearing

Currentness

(a) On the filing of an application for a protective order, the court shall set a date and time for the hearing unless a later date is requested by the applicant. Except as provided by Section 84.002, the court may not set a date later than the 14th day after the date the application is filed.

(b) The court may not delay a hearing on an application in order to consolidate it with a hearing on a subsequently filed application.

Credits

Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997.

O'CONNOR'S NOTES

Source: Former Fam. Code §§71.09(a), 71.121(c).

O'CONNOR'S ANNOTATIONS

Barbee v. Barbee, No. 12-09-00151-CV, 2010 WL 4132766 (Tex.App.--Tyler 2010, no pet.) (memo op.; 10-20-10). "The Family Code does not contain specific consequences for noncompliance with the 14-day limitation [under §84.001]. The purpose of the provision, like similar statutes, appears to be to ensure prompt resolution of the applicant's request. [T]he purpose of the statute would not be served if noncompliance resulted in dismissal for want of jurisdiction. We conclude that the final protective order, even though signed six months after the application was filed, is neither void nor voidable merely because the hearing was not held within 14 days of the date the application was filed."

V. T. C. A., Family Code § 84.001, TX FAMILY § 84.001
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 4. Protective Orders and Family Violence (Refs & Annos)
Subtitle B. Protective Orders (Refs & Annos)
Chapter 84. Hearing

V.T.C.A., Family Code § 84.002

§ 84.002. Extended Time for Hearing in District Court in Certain Counties

Effective: September 1, 2023
Currentness

(a) On the request of the prosecuting attorney in a county with a population of more than 2.5 million or in a county in a judicial district that is composed of more than one county, the district court shall set the hearing on a date and time not later than 20 days after the date the application is filed or 20 days after the date a request is made to reschedule a hearing under Section 84.003.

(b) The district court shall grant the request of the prosecuting attorney for an extended time in which to hold a hearing on a protective order either on a case-by-case basis or for all cases filed under this subtitle.

Credits
Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997. Amended by Acts 1997, 75th Leg., ch. 1193, § 12, eff. Sept. 1, 1997; Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 17, eff. Sept. 1, 2011; Acts 2023, 88th Leg., ch. 644 (H.B. 4559), § 32, eff. Sept. 1, 2023.

O'CONNOR'S NOTES
Source: Former Fam. Code §71.09(d).

V. T. C. A., Family Code § 84.002, TX FAMILY § 84.002
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

V.T.C.A., Family Code § 85.001

§ 85.001. Required Findings and Orders

Effective: September 1, 2011
Currentness

(a) At the close of a hearing on an application for a protective order, the court shall find whether:

(1) family violence has occurred; and

(2) family violence is likely to occur in the future.

(b) If the court finds that family violence has occurred and that family violence is likely to occur in the future, the court:

(1) shall render a protective order as provided by Section 85.022 applying only to a person found to have committed family violence; and

(2) may render a protective order as provided by Section 85.021 applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order.

(c) A protective order that requires the first applicant to do or refrain from doing an act under Section 85.022 shall include a finding that the first applicant has committed family violence and is likely to commit family violence in the future.

(d) If the court renders a protective order for a period of more than two years, the court must include in the order a finding described by Section 85.025(a-1).

Credits
Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 91, § 6, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., ch. 627 (S.B. 789), § 1, eff. Sept. 1, 2011.

Notes of Decisions (45)

V. T. C. A., Family Code § 85.001, TX FAMILY § 85.001
Current through legislation effective May 19, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

V.T.C.A., Family Code § 85.001

§ 85.001. Required Findings and Orders

Effective: September 1, 2023
Currentness

(a) At the close of a hearing on an application for a protective order, the court shall find whether family violence has occurred .

(b) If the court finds that family violence has occurred , the court:

(1) shall render a protective order as provided by Section 85.022 applying only to a person found to have committed family violence; and

(2) may render a protective order as provided by Section 85.021 applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order.

(c) A protective order that requires the first applicant to do or refrain from doing an act under Section 85.022 shall include a finding that the first applicant has committed family violence .

(d) If the court renders a protective order for a period of more than two years, the court must include in the order a finding described by Section 85.025(a-1).

Credits
Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997. Amended by Acts 2001, 77th Leg., ch. 91, § 6, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., ch. 627 (S.B. 789), § 1, eff. Sept. 1, 2011; Acts 2023, 88th Leg., ch. 688 (H.B. 1432), § 3, eff. Sept. 1, 2023.

O'CONNOR'S NOTES
Source: Former Fam. Code §§71.10(a), (b), 71.121(d).

O'CONNOR'S CROSS REFERENCES
See also ***O'Connor's Fam. Law Handbook***, "Ruling on Application," ch. 6-C, §9.

LEGISLATIVE NOTES

The amended text in §85.001 is effective for protective orders rendered on or after Sept. 1, 2023. Orders rendered before Sept. 1, 2023, are governed by the former law in effect at that time.

O'CONNOR'S ANNOTATIONS

Fontenot v. Fontenot, __ S.W.3d ___, 2023 WL 3102676 (Tex. App.--Houston [14th Dist] 2023, no pet.) (No. 14-21-00451; 4-27-23). "The Family Code does not provide that 'the applicant' for a protective order under the Family Code *automatically* seeks a protective order on his or her behalf by filing for a protective order. [¶] [Applicant's] pleading only requested a protective order for [child] and did not request a protective order for [herself]. [¶] [Applicant] argues that the issue was tried by consent. [¶] [Respondent] is entitled to rely on [applicant's] pleading, and without reference to [applicant] seeking an order as a protected person, [respondent] had no reason to allege the pleading was defective and specially except. [T]he record does not demonstrate that the issue concerning an order protecting [applicant] was tried by consent because the record does not indicate that both parties understood that was an issue in the case. … Because [applicant] did not plead for this relief and the issue was not tried by consent, we conclude that the trial court erred when it entered a protective order in regard to [applicant]."

Bell v. State, 656 S.W.3d 163, 168 (Tex.App.--Fort Worth 2022, no pet.). Mother "argues that because the protective order named only [father] as the protected person, there is no evidence that Son was a person protected by the order. *At 169:* [T]hroughout the Family Code and the Penal Code, … the Legislature has differentiated between (1) the person protected by the order, (2) members of the family or household of a person protected by the order, (3) a child protected by the order, and (4) a protected individual. [¶] However, [mother's] construction ignores the trial court's finding in the protective order that the order was 'for the safety and welfare and in the best interest of [father] *and other members of the family*.' [Emphasis added.] Because indisputably Son is a member of the family of both [father and mother], the order purports to protect the safety and welfare of not only [father] but also of Son as well."

Lei Yang v. Yuzhuo Cao, 629 S.W.3d 666, 672-73 (Tex.App.--Houston [1st Dist.] 2021, no pet.). See annotation under Family Code §85.025.

Burt v. Francis, 528 S.W.3d 549, 553-54 (Tex.App.--Eastland 2016, no pet.). See annotation under Family Code §71.004.

Roper v. Jolliffe, 493 S.W.3d 624, 638 (Tex.App.--Dallas 2015, pet. denied). Respondent's "due process challenge is that an elevated standard of proof should apply in protective order cases. [Respondent] contends Title 4 proceedings, while classified as civil proceedings, have quasi-criminal overtones and should be based on a clear and convincing standard of proof. … The interests at stake in this case do not equate to cases that require proof by clear and convincing evidence, such as the involuntary termination of parental rights or commitment for mental illness. Because Title 4 proceedings are civil in nature, the traditional standard of proof by a preponderance of the evidence applies."

Coffman v. Melton, 448 S.W.3d 68, 71 (Tex.App.--Houston [14th Dist.] 2014, pet. denied). See annotation under Family Code §82.0085.

V. T. C. A., Family Code § 85.001, TX FAMILY § 85.001
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 4. Protective Orders and Family Violence (Refs & Annos)
Subtitle B. Protective Orders
Chapter 85. Issuance of Protective Order
Subchapter B. Contents of Protective Order

V.T.C.A., Family Code § 85.025

§ 85.025. Duration of Protective Order

Effective: January 1, 2021
Currentness

(a) Except as otherwise provided by this section, an order under this subtitle is effective:

(1) for the period stated in the order, not to exceed two years; or

(2) if a period is not stated in the order, until the second anniversary of the date the order was issued.

(a-1) The court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court finds that the person who is the subject of the protective order:

(1) committed an act constituting a felony offense involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense;

(2) caused serious bodily injury to the applicant or a member of the applicant's family or household; or

(3) was the subject of two or more previous protective orders rendered:

(A) to protect the person on whose behalf the current protective order is sought; and

(B) after a finding by the court that the subject of the protective order:

(i) has committed family violence; and

(ii) is likely to commit family violence in the future.

(b) A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order.

(b-1) Following the filing of a motion under Subsection (b), a person who is the subject of a protective order issued under Subsection (a-1) that is effective for a period that exceeds two years may file not more than one subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order. The subsequent motion may not be filed earlier than the first anniversary of the date on which the court rendered an order on the previous motion by the person.

(b-2) After a hearing on a motion under Subsection (b) or (b-1), if the court does not make a finding that there is no continuing need for the protective order, the protective order remains in effect until the date the order expires under this section. Evidence of the movant's compliance with the protective order does not by itself support a finding by the court that there is no continuing need for the protective order. If the court finds there is no continuing need for the protective order, the court shall order that the protective order expires on a date set by the court.

(b-3) Subsection (b) does not apply to a protective order issued under Subchapter A, Chapter 7B, Code of Criminal Procedure.

(c) If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a) or (a-1), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, the period for which the order is effective is extended, and the order expires on:

(1) the first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or

(2) the second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less.

Credits

Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997. Amended by Acts 1999, 76th Leg., ch. 1160, § 3, eff. Sept. 1, 1999; Acts 2011, 82nd Leg., ch. 627 (S.B. 789), § 2, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 336 (H.B. 388), § 1, eff. June 9, 2015; Acts 2017, 85th Leg., ch. 64 (S.B. 712), § 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 97 (S.B. 257), § 1, eff. Sept. 1, 2017; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.35, eff. Jan. 1, 2021.

Notes of Decisions (10)

V. T. C. A., Family Code § 85.025, TX FAMILY § 85.025

Current through legislation effective May 19, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

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Chapter 85. Issuance of Protective Order (Refs & Annos)
Subchapter B. Contents of Protective Order

V.T.C.A., Family Code § 85.025

§ 85.025. Duration of Protective Order

Effective: September 1, 2023
Currentness

(a) Except as otherwise provided by this section, an order under this subtitle is effective:

(1) for the period stated in the order, not to exceed two years; or

(2) if a period is not stated in the order, until the second anniversary of the date the order was issued.

(a-1) The court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court finds that the person who is the subject of the protective order:

(1) committed an act constituting a felony offense involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense;

(2) caused serious bodily injury to the applicant or a member of the applicant's family or household; or

(3) was the subject of two or more previous protective orders rendered:

(A) to protect the person on whose behalf the current protective order is sought; and

(B) after a finding by the court that the subject of the protective order has committed family violence .

(b) A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order.

(b-1) Following the filing of a motion under Subsection (b), a person who is the subject of a protective order issued under Subsection (a-1) that is effective for a period that exceeds two years may file not more than one subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order. The subsequent motion may not be filed earlier than the first anniversary of the date on which the court rendered an order on the previous motion by the person.

(b-2) After a hearing on a motion under Subsection (b) or (b-1), if the court does not make a finding that there is no continuing need for the protective order, the protective order remains in effect until the date the order expires under this section. Evidence of the movant's compliance with the protective order does not by itself support a finding by the court that there is no continuing need for the protective order. If the court finds there is no continuing need for the protective order, the court shall order that the protective order expires on a date set by the court.

(b-3) Subsection (b) does not apply to a protective order issued under Subchapter A, Chapter 7B, Code of Criminal Procedure.

(c) If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a) or (a-1), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, the period for which the order is effective is extended, and the order expires on:

(1) the first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or

(2) the second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less.

(d) As soon as practicable after the release of a person who is the subject of a protective order from confinement or imprisonment, the Department of Public Safety shall update the statewide law enforcement information system maintained by the department to reflect the date that the order will expire following the person's release.

Credits

Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997. Amended by Acts 1999, 76th Leg., ch. 1160, § 3, eff. Sept. 1, 1999; Acts 2011, 82nd Leg., ch. 627 (S.B. 789), § 2, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 336 (H.B. 388), § 1, eff. June 9, 2015; Acts 2017, 85th Leg., ch. 64 (S.B. 712), § 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 97 (S.B. 257), § 1, eff. Sept. 1, 2017; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.35, eff. Jan. 1, 2021; Acts 2023, 88th Leg., ch. 688 (H.B. 1432), § 5, eff. Sept. 1, 2023; Acts 2023, 88th Leg., ch. 1117 (H.B. 1423), § 1, eff. Sept. 1, 2023.

O'CONNOR'S NOTES

Source: Former Fam. Code §71.13.

LEGISLATIVE NOTES

The amended text in §85.025 is effective for protective orders rendered on or after Sept. 1, 2023. Orders rendered before Sept. 1, 2023, are governed by the former law in effect at that time.

O'CONNOR'S ANNOTATIONS

Stary v. Ethridge, __ S.W.3d __, 2022 WL 17684334 (Tex.App.--Houston [1st Dist.] 2022, pet. filed 2-28-23) (No. 01-21-00101-CV; 12-15-22). Mother "argues that a lifetime protective order effectively terminates her parental rights. We disagree. [¶] [T]he protective order does not state that it terminates [mother's] parental rights. Nor does it actually divest [mother] and her children of all legal rights and duties with respect to each other. To the contrary, it only prohibits certain specific actions…. [¶] [Mother] retains some parental rights. Undoubtedly, the rights she retains pale in comparison to the rights she lost by the protective order. But the retention of some rights distinguishes the protective order in this case from an order in a parental termination case. [¶] [Mother] argues that because the protective order is effective indefinitely, she would forever lose her parental rights if she is unsuccessful after two attempts to persuade the trial court that no continuing need exists for the order. But, even a limited opportunity to seek review of a protective order renders it impermanent, unlike a parental termination which is 'complete, final, and irrevocable.'"

Lei Yang v. Yuzhuo Cao, 629 S.W.3d 666, 670 (Tex.App.--Houston [1st Dist.] 2021, no pet.). Section 85.025 "does not define the term 'serious bodily injury.' However, … Texas Penal Code [§1.07(46)] defines 'serious bodily injury' as 'bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.' Both statutes seek to define a specific type of injury to the victim of physical assault. Thus, we find it appropriate to consider the definition set forth in the Penal Code to determine whether there is sufficient evidence in this case of a 'serious bodily injury.' *At 671:* The only evidence of bodily injury was a black eye and a swollen nose, neither of which required medical treatment. As such, we agree that the evidence is legally insufficient to show that appellant caused [petitioner] serious bodily injury. [¶] [T]he State argues that we can affirm the trial court's lifetime protective order even without the required showing of 'serious bodily injury' under §85.025(a-1)(2) because the State proved that appellant 'committed an act constituting a felony offense involving family violence' under §85.025(a-1)(1). Specifically, the State argues that we can affirm the trial court's lifetime protective order because there was sufficient evidence to prove that appellant sexually assaulted [petitioner], which is 'an act constituting a felony offense involving family violence ... regardless of whether the person has been charged with or convicted of the offense.' *At 672:* Here, there is no finding in the judgment to support a lifetime protective order under §85.025(a-1)(1) [for a felony involving family violence]; the only finding in the judgment was under §85.025(a-1)(2) [for 'serious bodily injury']. Because the trial court specified the basis for its lifetime restraining order, we will not review the sufficiency of the evidence to support a different basis."

V. T. C. A., Family Code § 85.025, TX FAMILY § 85.025

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

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Family Code (Refs & Annos)
Title 4. Protective Orders and Family Violence (Refs & Annos)
Subtitle B. Protective Orders (Refs & Annos)
Chapter 87. Modification of Protective Orders

V.T.C.A., Family Code § 87.002

§ 87.002. Modification May Not Extend Duration of Order

Effective: September 1, 2011
Currentness

A protective order may not be modified to extend the period of the order's validity beyond the second anniversary of the date the original order was rendered or beyond the date the order expires under Section 85.025(a-1) or (c), whichever date occurs later.

Credits
Added by Acts 1997, 75th Leg., ch. 34, § 1, eff. May 5, 1997. Amended by Acts 1999, 76th Leg., ch. 1160, § 5, eff. Sept. 1, 1999; Acts 2011, 82nd Leg., ch. 627 (S.B. 789), § 3, eff. Sept. 1, 2011.

O'CONNOR'S NOTES
Source: Former Fam. Code §71.14(b).

O'CONNOR'S ANNOTATIONS
In re J.K.R., 658 S.W.3d 354, 362 (Tex.App.--Corpus Christi 2022, no pet.). Mother "argues that [Fam. Code] §87.001's authority to add 'any item' that could have been originally added, coupled with [Fam. Code] §87.002's reference to [Fam. Code §85.025(a-1)], allows the trial court to modify the protective order to include a finding of family violence and extend the protective order to any date that it could have expired under [§85.025(a-1)]. *At 363:* While §87.001 provides a trial court with broad authority to modify a protective order, §87.002 places a clear and express limitation on that authority. The limitations of §87.002 are consistent with the limitations found in §85.025. We conclude the trial court erred by extend[ing] the duration of the protective beyond two years from the date it was originally entered."

V. T. C. A., Family Code § 87.002, TX FAMILY § 87.002
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (Refs & Annos)
Subtitle A. General Provisions
Chapter 101. Definitions (Refs & Annos)

V.T.C.A., Family Code § 101.007

§ 101.007. Clear and Convincing Evidence

Currentness

"Clear and convincing evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

Credits
Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

O'CONNOR'S NOTES
Source: Former Fam. Code §11.15(c).

O'CONNOR'S ANNOTATIONS
In re G.M., 596 S.W.2d 846, 847 (Tex.1980). Clear and convincing "is an intermediate standard, falling between the preponderance standard of ordinary civil proceedings and the reasonable doubt standard of criminal proceedings."

V. T. C. A., Family Code § 101.007, TX FAMILY § 101.007
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

V.T.C.A., Family Code § 161.001

§ 161.001. Involuntary Termination of Parent-Child Relationship

Effective: September 1, 2023
Currentness

(a) In this section, "born addicted to alcohol or a controlled substance" means a child:

(1) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and

(2) who, after birth as a result of the mother's use of the controlled substance or alcohol:

(A) experiences observable withdrawal from the alcohol or controlled substance;

(B) exhibits observable or harmful effects in the child's physical appearance or functioning; or

(C) exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

(iv) Section 21.11 (indecency with a child);

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(x) Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);

(xi) Section 25.02 (prohibited sexual conduct);

(xii) Section 43.25 (sexual performance by a child);

(xiii) Section 43.26 (possession or promotion of child pornography);

(xiv) Section 21.02 (continuous sexual abuse of young child or disabled individual);

(xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and

(xvi) Section 43.05(a)(2) (compelling prostitution);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:

(i) the department has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

(i) failed to complete a court-ordered substance abuse treatment program; or

(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

(i) conviction of an offense; and

(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;

(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;

(T) been convicted of:

(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);

(iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or

(iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code;

(U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

(V) been convicted of:

(i) criminal solicitation of a minor under Section 15.031, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.031, Penal Code; or

(ii) online solicitation of a minor under Section 33.021, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 33.021, Penal Code; and

(2) that termination is in the best interest of the child.

(c) Evidence of one or more of the following does not constitute clear and convincing evidence sufficient for a court to make a finding under Subsection (b) and order termination of the parent-child relationship:

(1) the parent homeschooled the child;

(2) the parent is economically disadvantaged;

(3) the parent has been charged with a nonviolent misdemeanor offense other than:

(A) an offense under Title 5, Penal Code;

(B) an offense under Title 6, Penal Code; or

(C) an offense that involves family violence, as defined by Section 71.004 of this code;

(4) the parent provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code;

(5) the parent declined immunization for the child for reasons of conscience, including a religious belief;

(6) the parent sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to another health care facility; or

(7) the parent allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.

(d) A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that:

(1) the parent was unable to comply with specific provisions of the court order; and

(2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

(d-1) The court may not order termination under Subsection (b)(1)(M) unless the petition for the termination of the parent-child relationship is filed not later than the first anniversary of the date the department or an equivalent agency in another state was granted managing conservatorship of a child in the case that resulted in the termination of the parent-child relationship with respect to that child based on a finding that the parent's conduct violated Subsection (b)(1)(D) or (E) or substantially equivalent provisions of the law of another state.

(e) This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter.

(f) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services, the court may not order termination of the parent-child relationship under Subsection (b)(1) unless the court finds by clear and convincing evidence and describes in writing with specificity in a separate section of the order that:

(1) the department made reasonable efforts to return the child to the parent before commencement of a trial on the merits and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent; or

(2) reasonable efforts to return the child to the parent, including the requirement for the department to provide a family service plan to the parent, have been waived under Section 262.2015.

(g) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services in which the department made reasonable efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, the court shall include in a separate section of its order written findings describing with specificity the reasonable efforts the department made to return the child to the child's home.

Credits

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, § 65, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, § 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, § 60, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1087, § 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, § 18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 809, § 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 508, § 2, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 593, § 3.30, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 86, § 1, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 4.02, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.078, eff. April 2, 2015; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 11, eff. Sept. 1, 2015; Acts 2017, 85th Leg., ch. 40 (S.B. 77), § 2, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 12, eff. Sept. 1, 2017; Acts 2021, 87th Leg., ch. 8 (H.B. 567), § 3, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 29 (H.B. 2536), § 1, eff. May 15, 2021; Acts 2021, 87th Leg., ch. 221 (H.B. 375), § 2.17, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 831 (H.B. 2924), § 1, eff. Sept. 1, 2021; Acts 2023, 88th Leg., ch. 675 (H.B. 1087), § 1, eff. Sept. 1, 2023; Acts 2023, 88th Leg., ch. 728 (H.B. 2658), § 1, eff. Sept. 1, 2023; Acts 2023, 88th Leg., ch. 768 (H.B. 4595), § 8.002, eff. Sept. 1, 2023; Acts 2023, 88th Leg., ch. 830 (H.B. 2187), § 5, eff. Sept. 1, 2023.

O'CONNOR'S NOTES

Source: Former Fam. Code §§11.15(b), 15.02(a).

O'CONNOR'S CROSS REFERENCES

See also ***O'Connor's Fam. Law Handbook***, "Terminating the Parent-Child Relationship," ch. 4-H, §12.

LEGISLATIVE NOTES

The amended text in §161.001(b)(1)(L) is effective for offenses committed on or after Sept. 1, 2023. Offenses in which any element of the offense was committed before Sept. 1, 2023, are governed by the former law in effect at that time.Subsections (b)(1)(V), (f), and (g) are effective for SAPCRs filed on or after Sept. 1, 2023.

O'CONNOR'S ANNOTATIONS

Generally

Holick v. Smith, 685 S.W.2d 18, 20 (Tex.1985). "The natural right existing between parents and their children is of constitutional dimensions. … A termination decree is complete, final, irrevocable and divests for all time that natural right as well as all legal rights, privileges, duties and powers with respect to each other except for the child's right to inherit. … Consequently, termination proceedings should be strictly scrutinized, and involuntary termination statutes are strictly construed in favor of the parent."

Wiley v. Spratlan, 543 S.W.2d 349, 352 (Tex.1976). "Actions which break the ties between a parent and child 'can never be justified without the most solid and substantial reasons.' Particularly in an action which permanently sunders those ties, should the proceedings be strictly scrutinized. This court has always recognized the strong presumption that the best interest of a minor is usually served by keeping custody in the natural parents. [¶] 'The presumption is based upon a logical belief that the ties of the natural relationship of parent and child ordinarily furnish strong assurance of genuine efforts on the part of the custodians to provide the child with the best care and opportunities possible, and, as well, the best atmosphere for the mental, moral and emotional development of the child.'"

In re N.L.W., 534 S.W.3d 102, 111 (Tex.App.--Texarkana 2017, no pet.). "[T]he question of whether termination of a parent-child relationship is in the child's best interest is 'a conclusion drawn by way of reasonable inference from the evidence.' As such, and regardless of whether it is a pure question of fact or a mixed question of law and fact, the best interest issue is not a pure question of law. Consequently, whether termination of a parent-child relationship is in the child's best interest is a matter capable of being judicially admitted under [TRCP] 198. *At 112:* [B]ecause [father] failed to answer [mother's] requests for admission that termination of his parental rights was in [child's] best interest, he is deemed to have admitted that fact. *At 115:* Because deemed admissions constitute judicial admissions, [father's] admissions were 'conclusive …, and it relieve[d mother's] burden of proving [that termination of [father's] parental rights was in [child's] best interest], and bars [father] from disputing it.' Because '[a]dmissions of fact on file at the time of a summary judgment hearing are proper summary judgment proof and will, therefore, support a motion for summary judgment,' … and because a judicially admitted fact is no longer subject to a legal or factual sufficiency attack on appeal, … the trial court did not err in granting summary judgment."

In re D.N., 405 S.W.3d 863, 870 (Tex.App.--Amarillo 2013, no pet.). "[A] trial court can terminate the parent-child relationship, even though it previously denied termination in another order, using [Fam. Code] §161.001 alone if termination is sought on *evidence of acts or omissions having occurred since the earlier order in which termination was denied*. But, to rely on acts or omissions evidence of which has been presented to the trial court prior to the earlier order denying termination, the Department must garner sufficient evidence of [Fam. Code] §161.004's elements, including a material and substantial change of the parties' circumstances."

Ruiz v. TDFPS, 212 S.W.3d 804, 813-14 (Tex.App.--Houston [1st Dist.] 2006, no pet.). "[T]his Court, in an en banc opinion, has specifically rejected DFPS's argument that we may affirm a trial court's termination order on the basis of a subsection of §161.001, which, although pleaded by DFPS in its original petition, was not expressly found to have been violated in the decree…. '[A] parental rights termination order can be upheld only on grounds both pleaded by [DFPS] and found by the trial court.'"

In re S.A.P., 169 S.W.3d 685, 695 (Tex.App.--Waco 2005, no pet.), *overruled on other grounds*, ***In re E.C.***, 402 S.W.3d 239 (Tex.2013). "In a proceeding to terminate the parent-child relationship brought under §161.001, [petitioner] must establish by clear and convincing evidence two elements: (1) one or more acts or omissions enumerated under subsection (1) [now subsection (b)(1)] of §161.001 (termed a predicate violation); *and* (2) that termination is in the best interest of the child. The factfinder must find that *both* elements are established by clear and convincing evidence, and proof of one element does not relieve the petitioner of the burden of proving the other. If multiple predicate violations under §161.001(1) [now §161.001(b)(1)] were found in the trial court, we can affirm based on any one ground because only one predicate violation under §161.001(1) is necessary to a termination judgment."

In re J.T.G., 121 S.W.3d 117, 130 (Tex.App.--Fort Worth 2003, no pet.). Held: The entitlement in criminal proceedings of an indigent defendant to an expert in order to prepare and present a defense is not extended to parental-termination cases.

Avery v. State, 963 S.W.2d 550, 553 (Tex.App.--Houston [1st Dist.] 1997, no pet.). "The parental conduct to be examined in considering termination of parental rights includes what the parents did before and after the birth of the child."

Clear & Convincing Evidence

In re N.G.,577 S.W.3d 230, 235 (Tex.2019). "In parental termination cases, due process mandates a clear and convincing evidence standard of proof. 'Due process compels this heightened standard because terminating the parent-child relationship imposes permanent, irrevocable consequences.' ... Because of this high evidentiary burden at trial, we have concluded that appellate review in parental termination cases also warrants a heightened standard of review. Further, a parent must be permitted to appeal the termination of parental rights, and due process requires that the appeal be meaningful. *At 237:* [W]hen a court of appeals reverses a finding based on insufficient evidence, the court must 'detail the evidence relevant to the issue of parental termination and clearly state why the evidence is insufficient to support a termination finding by clear and convincing evidence.'"

In re K.M.L., 443 S.W.3d 101, 112-13 (Tex.2014). "Our traditional legal sufficiency--or 'no evidence'--standard of review upholds a finding supported by '[a]nything more than a scintilla of evidence.' However, '[r]equiring only anything more than a mere scintilla of evidence does not equate to clear and convincing evidence.' Thus, our legal sufficiency review in a parental termination case must take into consideration whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the matter on which the State bears the burden of proof. [¶] In a legal sufficiency challenge, we credit evidence that supports the verdict if reasonable jurors could have done so and disregard contrary evidence unless reasonable jurors could not have done so. However, the reviewing court should not disregard undisputed facts that do not support the verdict to determine whether there is clear and convincing evidence. In cases requiring clear and convincing evidence, even evidence that does more than raise surmise and suspicion will not suffice unless that evidence is capable of producing a firm belief or conviction that the allegation is true. If the reviewing court determines that no reasonable factfinder could form a firm belief or conviction that the matter to be proven is true, then the court must conclude that the evidence is legally insufficient." *See also* ***In re E.N.C.***, 384 S.W.3d 796, 802-03 (Tex.2012); ***In re J.F.C.***, 96 S.W.3d 256, 265-66 (Tex.2002).

In re A.B., 437 S.W.3d 498, 502-03 (Tex.2014). "Because the termination of parental rights implicates fundamental interests, a higher standard of proof--clear and convincing evidence--is required at trial. Given this higher burden at trial, … a proper factual sufficiency review requires the court of appeals to determine whether 'the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations.' 'If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient.' And in making this determination, the reviewing court must undertake 'an exacting review of the entire record with a healthy regard for the constitutional interests at stake.' [¶] [D]espite the heightened standard of review …, the court of appeals must nevertheless still provide due deference to the decisions of the factfinder, who, having full opportunity to observe witness testimony first-hand, is the sole arbiter when assessing the credibility and demeanor of witnesses. [I]f a court of appeals is *reversing* the jury's finding based on insufficient evidence, the reviewing court must 'detail the evidence relevant to the issue of parental termination and clearly state why the evidence is insufficient to support a termination finding by clear and convincing evidence.' *At 505:* But … we decline to mandate that courts of appeals detail the evidence when affirming a jury verdict."

In re C.M.J., 573 S.W.3d 404, 410-411 (Tex.App.--Houston [1st Dist.] 2019, pet. denied). "[I]n the context of a parental-termination case, the clear-and-convincing standard applies at the summary-judgment stage."

In re R.H.W. III, 542 S.W.3d 724, 734 (Tex.App.--Houston [14th Dist.] 2018, no pet.). "'Circumstantial evidence may be sufficient to support termination.' Circumstantial evidence is 'simply indirect evidence that creates an inference to establish a central fact.' *At 737:* The evidence supporting the predicate grounds for termination also may be used to support a finding that the best interest of the child warrants termination of the parent-child relationship. Furthermore, in conducting the best interest analysis the court may consider circumstantial evidence, subjective factors, and the totality of the evidence as well as the direct evidence."

In re E.W., 494 S.W.3d 287, 296-97 (Tex.App.--Texarkana 2015, no pet.). "The trial court specifically stated that it was relying on its own 'judicial knowledge' of the case in terminating [parents'] parental rights…. We have no doubt that the trial court may have been well acquainted through previous dealings with the parties with facts that may have supported termination on one of these grounds. However, it is inappropriate for a trial judge to take judicial notice of testimony even in a retrial of the same case. In order for testimony from a prior hearing or trial to be considered in a subsequent proceeding, the transcript of that testimony must be properly authenticated and entered into evidence. Thus, a trial judge may not even judicially notice testimony that was given at a temporary hearing in a family law case at a subsequent hearing in the same cause without admitting the prior testimony into evidence. The Department admitted no such transcripts into evidence at this termination hearing, and none were included in the clerk's record. [¶] Simply put, there was no evidence to support the trial court's finding that the Department proved the existence of either ground (D) or ground (E) by clear and convincing evidence." (Internal quotes omitted.)

Due Process

In re M.P., 639 S.W.3d 700, 704 (Tex.2022). "Here, the court of appeals determined that there was legally and factually sufficient evidence to support terminating Father's rights under §161.001(b)(1)(O) but factually insufficient evidence to support termination under (D) and (E). Thus, the proper remedy was to affirm the trial court's termination under (O) and strike the (D) and (E) findings, which would dispose of the case. [¶] Striking the insufficiently supported findings avoids the mootness issues raised by the Department and the concurrences in the denial of en banc review. [B]ecause the Department already got its requested relief, 'even if on remand the trial court were to again find that Father committed a predicate act under (D) or (E), it could not be the case that Father's rights to [child] were terminated on those grounds.' Thus, we hold that the court of appeals erred in remanding the case for a new trial on the factually insufficient predicate grounds."

In re D.T., 625 S.W.3d 62, 73 (Tex.2021). See annotation under Family Code §107.013.

In re N.G., 577 S.W.3d 230, 235 (Tex.2019). "When due process requires the heightened standard for termination of parental rights by clear and convincing evidence, it follows that due process also requires a heightened standard of review of a trial court's finding under § 161.001(b)(1)(D) or (E), even when another ground is sufficient for termination, because of the potential consequences for parental rights to a different child [under Fam. Code § 161.001(b)(1)(M), which references (D) and (E)]. A parent may be denied the fundamental liberty interest in parenting only after they have been provided due process and due course of law, and terminating parental rights based on a challenged, unreviewed § 161.0001(b)(1)(D) or (E) finding runs afoul of this principle. When a parent has presented the issue on appeal, an appellate court that denies review of a § 161.001(b)(1)(D) or (E) finding deprives the parent of a meaningful appeal and eliminates the parent's only chance for review of a finding that will be binding as to parental rights to other children. *At 237:* Allowing § 161.001(b)(1)(D) or (E) findings to go unreviewed on appeal when the parent has presented the issue to the court thus violates the parent's due process and due course of law rights. [¶] Additionally, when a court of appeals reverses a finding based on insufficient evidence, the court must 'detail the evidence relevant to the issue of parental termination and clearly state why the evidence is insufficient to support a termination finding by clear and convincing evidence.'"

In re M.S., 115 S.W.3d 534, 549 (Tex.2003). The State's "initial interest in maintaining the familial bond versus its interest in maintaining procedural integrity weighs in favor of permitting a factual sufficiency review when counsel unjustifiably fails to [preserve error]. [¶] The parent's, child's and government's interest in a just and accurate decision dovetails with the third ***Eldridge*** factor--that of the risk of erroneous deprivation. [W]e cannot think of a more serious risk of erroneous deprivation of parental rights than when the evidence, though minimally existing, fails to clearly and convincingly establish in favor of jury findings that parental rights should be terminated." *See also* ***Mathews v. Eldridge***, 424 U.S. 319, 335 (1976).

In re B.L.D., 113 S.W.3d 340, 354 (Tex.2003). "As a general rule, due process does not mandate that appellate courts review unpreserved complaints of charge error in parental rights termination cases. [¶] [W]e acknowledge that in a given parental rights termination case, a different calibration of the ***Eldridge*** factors[, (1) private interests at stake, (2) the countervailing governmental interest, and (3) the risk of an erroneous deprivation of parental rights,] could require a court of appeals to review an unpreserved complaint of error to ensure that our procedures comport with due process." This could occur when a failure to preserve charge error constitutes ineffective assistance of counsel. *See also* ***Mathews v. Eldridge***, 424 U.S. 319, 335 (1976).

In re P.W., 579 S.W.3d 713, 721 (Tex.App.--Houston [14th Dist.] 2019, no pet.). "[T]he ***N.G.*** [above] court made deliberate statements for future guidance in the conduct of litigation. Without determining whether nonconstitutional law required review of the trial court's findings under [§ 161.001](D) and (E), the ***N.G.*** court concluded that (1) allowing (D) and (E) findings to go unreviewed on appeal when the parent has presented the issue to the appellate court violates the parent's due-process and due-course-of-law rights and (2) due process and due course of law require an appellate court to detail its analysis as to why a parent's challenge to a finding under (D) or (E) lacks merit. [C]onsistency with the high court's recent pronouncements demands that, without first determining whether nonconstitutional law requires review of the trial court's (D) and (E) findings, we determine whether Mother's challenge to the (D) and (E) findings has merit and detail our analysis, even though another finding listed

in the Final Order as a ground for termination provides a proper basis for the predicate act required under § 161.001(b)(1) and even though Mother does not challenge the trial court's best-interest-of-the-child finding."

In re L.N.C., 573 S.W.3d 309, 322 (Tex.App.--Houston [14th Dist.] 2019, pet. denied). "[I]n a proceeding to terminate parental rights[,] a prison inmate has an interest that is entitled to protection. In such a proceeding, due process requires, at a minimum, notice and an opportunity to be heard at a meaningful time and in a meaningful manner. We determine what process is due based upon the practical requirements of the circumstances. Three factors are weighed: (1) the private interest affected by the proceeding or official action; (2) the countervailing governmental interest supporting use of the challenged proceeding; and (3) the risk of an erroneous deprivation of the private interest due to the procedures used. *At 324:* A prisoner's right of access 'entails not so much his personal presence as his opportunity to present evidence or contradict the evidence of the opposing party.' If the trial court determines that the inmate's personal appearance is not warranted, then the trial court should allow the inmate to proceed by affidavit, deposition, telephone, or other effective means."

In re P. RJ E., 499 S.W.3d 571, 576 (Tex.App.--Houston [1st Dist.] 2016, pet. denied). See annotation under Family Code §102.010.

In re A.M., 385 S.W.3d 74, 78 (Tex.App.--Waco 2012, pet. denied). "We … address the Department's assertion that [mother's] factual-sufficiency complaint is not preserved because she did not file a motion for new trial asserting factual insufficiency. [¶] The [Texas Supreme Court] has not directly addressed whether the factual-sufficiency preservation requirement comports with due process in termination cases, though it has viewed the preservation requirement through the prism of an ineffective-assistance claim. *At 79:* [I]t appears to us that, in [***In re M.S.***, above], the supreme court implicitly declined to dispense with the factual-sufficiency preservation requirement in termination cases. We therefore … hold that in termination cases, to raise a factual-sufficiency complaint on appeal, it must be preserved by including it in a motion for new trial."

In re R.M.T., 352 S.W.3d 12, 18 (Tex.App.--Texarkana 2011, no pet.). "[T]here is no Texas authority which would permit a trial court to halt termination proceedings due to the incompetency of the parent. *At 19-20:* [Father] argues that because a parental rights termination proceeding is a quasi-criminal proceeding, procedural due process requires (as in criminal cases), that he not be subjected to trial until such time as he is competent to do so. [¶] We do not believe … that classification of a termination proceeding as quasi-criminal can (or should) be a sole factor which is outcome determinative in resolving the question of whether [father's] termination of parental rights proceeding should have been continued until such time as he regained competency. Rather, we look to and weigh the ***Eldridge*** factors to determine if the termination proceeding in this case afforded [father] the measure of procedural due process to which he was entitled…." *See also* ***Mathews v. Eldridge***, 424 U.S. 319, 335 (1976).

Juries

In re J.W., 645 S.W.3d 726, 751 (Tex.2022) (No. 19-1069; 5-27-22). "Here, the broad-form charge erroneously, and over Father's objection, commingled a valid termination ground supported by sufficient evidence (Subsection (O)) with an invalid termination ground supported by legally insufficient evidence (Subsection (D)). We reaffirmed in *Harris County* [*v. Smith*, 96 S.W.3d 230, 231 (Tex. 2002)] that the right to a fair trial includes a jury properly instructed on the issues authorized and supported by the law governing the case. In a case involving termination of parental rights, the 'death penalty' of civil cases, the importance of safeguarding a parent's right to a fair trial is even more pronounced." (Internal quotes omitted.)

In re J.T., 594 S.W.3d 782, 783-84 (Tex.App.--Waco 2019, no pet.). Mother "complains that the trial court erroneously utilized a procedure to allow jurors to ask whatever questions they had for each witness after the parties had concluded their questioning of the witness. [¶] [W]e ... hold that it was error to allow the jury to ask questions of the witnesses. Moreover, allowing the jury to do so probably caused the rendition of an improper judgment or probably prevented the appellant from properly presenting the case to this Court. This is in part because, from all of the questions tendered by the jurors, there were over 165 of the jurors' questions actually allowed and asked by the trial court to the witnesses, and it is impractical, if not impossible, to isolate in the record the impact of the evidence received in response to those questions and determine what, if any, impact it had on the judgment. We do not intend to imply that fewer questions would necessarily be harmless, but hold that on this record, the

manner in which the trial was conducted significantly impaired [mother's] ability to present the issue on appeal and show its impact on the judgment."

§161.001(b)(1)(A)

In re R.D.S., 902 S.W.2d 714, 718-19 (Tex.App.--Amarillo 1995, no writ). "[A] statute vests the trial judge with authority to end a parent-child relationship if it finds that 'the parent … voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return.' There is no specified time frame within which these pivotal indicia must arise. Though some authority suggests that the underlying misconduct may not be too remote in time, it is certain that it need not immediately precede the final hearing. [¶] Furthermore, discontinuing the misconduct does not necessarily prevent the court from acting. Once activity within the parameters of [Fam. Code] §15.02(a) [now §161.001(b)(1)] occurs, a parent's change of heart does not stay the court's hand. … Thus, if the evidence at bar established that [mother] voluntarily left her son with someone other than his biological father while expressing an intent not to return, the court was entitled to sever the parent-child relationship, notwithstanding her later attempt to renounce her decision." *See also* ***In re S.S.G.***, 153 S.W.3d 479, 484 (Tex.App.--Amarillo 2004, pet. denied) (having intent and expressing intent are not synonymous).

Swinney v. Mosher, 830 S.W.2d 187, 195 (Tex.App.--Fort Worth 1992, writ denied). There is no "evidence that [respondent] abandoned [daughter] as contemplated by [Fam. Code] §15.02(1)(A) [now §161.001(b)(1)(A)]. [Respondent's] actions of surrendering possession of [daughter] and execution of the affidavit relinquishing her parental rights were done in contemplation of her adoption …, not with an intent to abandon…. Also, there is [no] evidence that [respondent] expressed 'an intent not to return' as that language was intended to be applied by the legislature. [Respondent's] actions were done in furtherance of her original agreement to allow [petitioners] to adopt [daughter], which under [Fam. Code] §15.03(d)[, now §161.103, respondent] had a right to revoke. [Respondent's] prompt notice to [adopting couple] of her intent to revoke the affidavit coupled with her prompt retention of a lawyer, her attendance at all hearings concerning her termination, and her weekly visitation [with daughter], when it was permitted, establishes conclusively that [respondent] did not intend to abandon [daughter] under §15.02(1)(A). Any finding to the contrary would render §15.03(d) null and void. [¶] A finding that parental rights could be involuntarily terminated based on the actions consistent with an open adoption would be contrary to the history of Texas law prior to the Family Code and a subversion of the legislatures' intent…."

Smith v. McLin, 632 S.W.2d 390, 392 (Tex.App.--Austin 1982, writ ref'd n.r.e.). Adopting parents "provided [respondent] with an affidavit of relinquishment. The instrument, which [respondent] signed before a notary, manifested a clear intent to completely sever her ties with the child. Because the instrument was defective it could not, standing alone, serve as the proof necessary for termination. It is, however, evidentiary as to [respondent's] expressed intent not to return."

§161.001(b)(1)(B)

Brokenleg v. Butts, 559 S.W.2d 853, 856 (Tex.App.--El Paso 1977, writ ref'd n.r.e.). There are four elements to Fam. Code §15.02(1)(B), now §161.001(b)(1)(B): "(1) voluntarily leaving the child; (2) without expressing an intent to return; (3) without providing for the adequate support of the child; and (4) remaining away for a period of at least three months. [T]he standard for determining nonsupport under Subparagraph (B) is whether or not there is provision for adequate support of the child, rather than the parent's ability to support the child as in Subparagraph (F). The evidence in this case all reflects that the grandparents were able to and did in fact adequately support the child…. Since the test under this Subparagraph is not whether or not the parent actually supported the child, but whether or not arrangements were made for the adequate support of the child, and the evidence is undisputed that they were, we conclude that §15.02(1)(B) is not applicable…."

§161.001(b)(1)(C)

Holick v. Smith, 685 S.W.2d 18, 21 (Tex.1985). Respondents "argue that the legislature intended to require parents to personally 'provide adequate support' under (1)(C) [now (b)(1)(C)] because (1)(B) [now (b)(1)(B)] contains the language 'provide *for the* adequate support.' [¶] We believe that subsection (1)(C) is capable of two interpretations. 'Provide' is defined to mean 'to

furnish; supply' or 'to fit out with means to an end.' Thus, subsection (1)(C) is susceptible to an interpretation which would merely require that the parent make arrangements for adequate support rather than personally support the child. [¶] We hold that under [Fam. Code] §15.02(1)(C) [now §161.001(b)(1)(C)], [mother] was required to make arrangements for the adequate support rather than personally support the children." *See also* ***In re R.M.***, 180 S.W.3d 874, 878 (Tex.App.--Texarkana 2005, no pet.) (physical delivery of child is not significant; controlling issue is whether parent was aware of, consented to, and participated in arrangement for child's support).

In re F.E.N., 542 S.W.3d 752, 762 (Tex.App.--Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74. "The period of six months [referenced in § 161.001(b)(1)(C)] is a period of six consecutive months. [¶] Father contends there is no evidence that he voluntarily left [child]. *At 763:* Father's visitation with [child] was suspended by court order … until he obtained a clean drug test and paternity was established. We note that this order was signed before Father made an appearance in the case. Additionally, the record does not establish that Father's visitation was reinstated, although there is evidence that Father requested the court to reinstate his visits three to four years prior to trial…. We conclude that Father's time away from [child] was not 'voluntary.'" *See also* ***Interest of J.W.***, 645 S.W.3d 726, 751 (Tex.2022) , under Family Code § 161.001(b)(1)(D); ***In re F.E.N.***, under Family Code § 153.131.

In re B.T., 954 S.W.2d 44, 49 (Tex.App.--San Antonio 1997, pet. denied). Respondent "claims in his brief that he did not voluntarily leave [child] with the Department since he was in jail most of the time. Mere imprisonment does not constitute intentional abandonment of the child as a matter of law. However, imprisonment is a factor to consider along with the other evidence."

In re S.K.S., 648 S.W.2d 402, 404 (Tex.App.--San Antonio 1983, no writ). Under §161.001(1)(C), now §161.001(b)(1)(C), "[i]n-ability to provide support during some months would not interrupt the running of the [limitations] period if no effort is made to pay support during other months in which there is clear ability to pay." *See also* ***In re Guillory***, 618 S.W.2d 948, 951 (Tex.App.--Houston [1st Dist.] 1981, no writ) (termination for nonsupport applies even when inability to pay is result of parent's conscious choice).

§161.001(b)(1)(D)

Interest of J.W., 645 S.W.3d 726, 749-50 (Tex.2022). "[T]he courts of appeals have held that the relevant time frame for evaluating this ground is before the child's removal 'since conditions or surroundings cannot endanger a child unless that child is exposed to them.' As a general matter, we agree with that reasoning. The suitability of a child's living conditions and the conduct of parents or others in the home are relevant to a Subsection (D) inquiry. Moreover, evidence that a parent will knowingly expose the child to a dangerous environment in the future, while relevant to a best-interest determination, is not proof that the parent has knowingly exposed the child to a dangerous environment in the past for Subsection (D) purposes. [¶] Both Mother and Father have had only supervised visits with [child] since his birth and have had no say in his living conditions. Accordingly, to support the jury's Subsection (D) finding, the Department necessarily relies on Father's role in [child's] 'environment' before he was born. Certainly, *Mother's* use of controlled substances while pregnant created a dangerous environment for [child], but the extent to which *Father* bears responsibility for that environment is a much more difficult question. [¶] [A] parent's knowledge of the other parent's drug use during pregnancy and corresponding failure to attempt to protect the unborn child from the effects of that drug use can contribute to an endangering environment and thus support an endangerment finding. [H]olding otherwise would effectively endorse a parent's willful ignorance of the significant risk that a pregnant mother's drug use poses, which we decline to do. But neither do we endorse attributing any and all known dangers posed to a child during the mother's pregnancy to the other parent."

In re G.C.S., 657 S.W.3d 114, 130 (Tex.App.--El Paso 2022, pet. denied). "'Unsanitary conditions can qualify as surroundings that endanger a child.' A lack of electricity or water for the winter months and the lack of an indoor toilet are factors that jeopardize a child's physical and emotional well-being. 'While poverty should not be a basis for termination of parental rights, a parent's inability to provide basic utilities in the family home may constitute evidence of endangerment of the children's well-

being.' Moreover, the inappropriate or unlawful conduct of a person who lives in the home of a child is inherently part of the 'conditions or surroundings' of that home."

In re L.E.R., 650 S.W.3d 771, 785 (Tex.App.--Houston [14th Dist.] 2022, no pet.). "[D]omestic violence in Mother's and Father's home, Mother's health issues, the home being in disrepair, Mother being abusive and not providing a safe environment per her service plan, and her extended family not recommending she maintain her parental rights to [child] is not evidence in support of a finding under subsection D. [Child] was never in Mother's home or care; [child] never lived with Mother. Therefore, Mother never placed or allowed [child] to remain in conditions or surroundings which endangered [child's] physical or emotional well-being as required by subsection D."

In re G.M., 649 S.W.3d 801, 809 (Tex.App.--El Paso 2022, no pet.). "A child is endangered when the environment creates a potential for danger that the parent is aware of but disregards. Sexual abuse is conduct that endangers a child's physical or emotional well-being. Domestic violence and a propensity for violence may be considered evidence of endangerment, even if the endangering acts did not occur in the child's presence, were not directed at the child, or did not cause actual injury to the child. A parent's decision to continue living with someone who has committed instances of domestic violence may support an endangerment finding under Subsection (b)(1)(D). Likewise, a mother's act of allowing her boyfriend back into her home after her daughters reported that he sexually abused them may also be considered evidence of endangerment."

In re R.W., 627 S.W.3d 501, 512 (Tex.App.--Texarkana 2021, no pet.). "Although there are certain circumstances that will support removal based on unsavory living conditions--or even homelessness--those cases do not generally uphold termination findings based solely on those factors. *At 513:* [T]o the extent that [child] was exposed to domestic violence, Mother removed him from exposure to future incidents of violence by taking refuge in a domestic violence shelter. Had she failed to do so, Mother could have been found to have endangered [child's] physical or emotional well-being."

In re A.L.H., 624 S.W.3d 47, 56 (Tex.App.--El Paso 2021, no pet.). "Subsections (D) and (E) differ in one respect: the source of the physical or emotional endangerment to the child. Subsection (D) requires a showing that the environment in which the child is placed endangered the child's physical or emotional health. Conduct of a parent or another person in the home can create an environment that endangers the physical and emotional well-being of a child as required for termination under Subsection D. Inappropriate, abusive, or unlawful conduct by persons who live in the child's home or with whom the child is compelled to associate on a regular basis in his home is a part of the 'conditions or surroundings' of the child's home under subsection (D). The fact finder may infer from past conduct endangering the child's well-being that similar conduct will recur if the child is returned to the parent. Thus, subsection (D) addresses *the child's surroundings and environment rather than parental misconduct*, which is the subject of subsection (E). [¶] Under subsection (E), the cause of the danger to the child *must be the parent's conduct alone*, as evidenced not only by the parent's actions but also by the parent's omission or failure to act." (Internal quotes omitted.)

In re L.D.C., 622 S.W.3d 63, 71-72 (Tex.App.--El Paso 2020, no pet.). On "Father's criminal conviction for arson[, it] is uncontested that Father set fire to a house while [child] and Mother were inside. That is direct evidence that Father placed [child] in grave physical danger. Even if Father genuinely did not intend to kill Mother, [child], or any of the home's other occupants by setting fire to the house, Father did intend to set the fire, and 'intentional criminal activity which exposed the parent to incarceration is relevant evidence tending to establish a course of conduct endangering the emotional and physical well being of the child.' Indeed, Subsection D permits termination 'because of a single act or omission.' Setting fire to a house in which [child] was sleeping is an act of arson, standing alone, is enough to justify termination under either Subsection D or Subsection E. Additionally, Mother testified that Father is subject to a previous no-contact order, which also could weigh in favor of an inference that Father previously engaged in a course of endangering conduct. The fact that Father's conduct in committing arson also subjected him to incarceration is another factor that weighs in favor of an endangerment finding, as conduct that subjects a child to the probability of abandonment 'because a parent is jailed endangers both the physical and emotional well-being of the child.' Finally, Father admitted to committing domestic violence in [child's] presence. 'Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment.' Taking these factors in total, we find that the trial court could have found by a preponderance of the evidence that Subsection D and Subsection E predicates were established."

In re M.G., 585 S.W.3d 51, 57 (Tex.App.--Eastland 2019, no pet.). "Subsection (D) requires that the parent knowingly place or knowingly allow the child to remain in such conditions. [¶] Here, the record is devoid of any evidence relating to the father's knowledge of the conditions of the home, the conditions of the home at the time of removal, or the father's knowledge of the mother's drug use. Although one witness mentioned the father's 'criminal history,' the extent of that criminal history was not proved at trial. The record failed to show that the father engaged in conduct or knowingly placed [child] with someone that engaged in conduct that endangered [child's] physical or emotional well-being. Nothing in the record shows how long the father had been incarcerated or whether he was aware that the mother was engaging in conduct that endangered [child]."

In re E.A.R., 583 S.W.3d 898, 908 (Tex.App.--El Paso 2019, pet. denied). "Conduct that demonstrates awareness of an endangering environment is sufficient to show endangerment. *At 909:* In the context of subsection D, the term 'environment' includes the conduct of the parents or others … in the home. Inappropriate, abusive, or unlawful conduct by persons who live in the child's home or with whom the child is compelled to associate on a regular basis in his home is a part of the 'conditions or surroundings' of the child's home under [§161.001(b)(1)(D)]. Further, a child's unexplained, non-accidental fractures of various ages support a reasonable inference that the child's caregivers knew of the injuries and their cause, and supports termination under subsection D. [¶] The presence of ... unexplained, non-accidental fractures of various ages supports a reasonable inference that [mother] and [father] knew of the injuries and their cause, and supports termination under subsection D."

In re B.M.S., 581 S.W.3d 911, 917 (Tex.App.--El Paso 2019, no pet.). "A child is endangered when the environment creates a potential for danger that the parent is aware of but disregards. … Evidence of illegal drug use and drug-related criminal activity by a parent supports the conclusion that the children's surroundings are endangering to their physical or emotional well-being. [¶] [Father] testified he did not know the specific drugs [mother] and her boyfriend were using, and he was unaware of the domestic violence in the home, but he knew she was using drugs in front of the children. [Father] understood that [mother's] use of drugs created an environment which endangered the children's physical or emotional well-being. The evidence also showed that [father] had only sporadic contact with the children when he would drop by uninvited and he made no effort to protect the children by removing them from [mother's] home. We conclude that the evidence, viewed in the light most favorable to the challenged endangerment finding, was sufficient for a reasonable fact finder to have formed a firm belief or conviction that [father] knowingly allowed the children to remain in conditions or surroundings which endangered their physical or emotional well-being."

In re P.W., 579 S.W.3d 713, 724 (Tex.App.--Houston [14th Dist.] 2019, no pet.). "A direct appeal from the final termination order under Family Code §109.002(a-1) likely presents the only opportunity for review of the trial court's findings under [Fam. Code §161.001(b)(1)](D) and (E). In addition, if a party does not challenge these findings and waits to see if the Department seeks to use these findings against the party in a future termination case as to another child, no remedy likely will be available because, in most scenarios, one whose parental rights have been terminated may not assert a direct or collateral attack against the final termination order more than six months after the date on which the trial court signed the order. In those cases, once that period expires, Texas statutes do not allow a party to challenge the (D) and (E) findings in the final order in the future if the Department seeks to terminate parental rights as to another child under subsection (M)."

In re J.J.L., 578 S.W.3d 601, 611 (Tex.App.--Houston [14th Dist.] 2019, no pet.). "A parent's unwillingness to admit she has a substance abuse problem suggests she will continue to abuse drugs and therefore continue to endanger her child. *At 612:* In any event, substance abuse is 'hard to escape,' and the fact finder is 'not required to ignore a long history of dependency ... merely because it abates as trial approaches.' The trial court may reasonably decide a parent's changes before trial are too late to impact the best-interest decision. Although a reasonable fact finder could look at Mother's attempts at sobriety and decide they justified the risk of keeping her as a parent, we cannot say the trial court acted unreasonably in finding [child's] best interest lay elsewhere."

In re L.M., 572 S.W.3d 823, 835 (Tex.App.--Houston [14th Dist.] 2019, no pet.). "Father … denied falsely that he was growing several marijuana plants…. A parent's unwillingness to admit he has a substance-abuse problem suggests he will continue to

engage in the same behaviors that endangered his child. Cultivating large quantities of marijuana in a residence where a child is living is an endangering course of conduct to the child. A parent's continuing drug-related conduct can qualify as a voluntary, deliberate, and conscious course of conduct endangering the child's well-being. A parent's drug use exposes the child to the possibility the parent may be impaired or imprisoned and, thus, unable to take care of the child."

In re N.G., 577 S.W.3d 230, 235 (Tex.2019). See annotation under this code section, *Due Process*.

In re E.J.Z., 547 S.W.3d 339, 349-50 (Tex.App.--Texarkana 2018, no pet.). "No one at trial testified that they knew who abused [son]. However, Mother and Father said they cared for both children and that [son] was never left alone with anyone else long enough to have sustained the significant injuries. [¶] Here, it was within the jury's purview to resolve credibility issues and the issue of whether [son's] injuries were the result of child abuse or a medical condition. 'A child's unexplained, non-accidental fractures of various ages support a reasonable inference that the child's caregivers knew of the injuries and their cause.' [¶] With respect to [daughter], '[a] parent's abuse of the other parent or children can support a finding of endangerment.' [Caseworker] testified that [a] child can suffer emotional abuse when witnessing domestic violence in the home. Thus, [caseworker] said [sister] would have suffered emotional abuse if she was present in the home when [son] was injured. [B]ecause Mother and Father were the primary caretakers of both children, evidence at trial showed that [brother] had experienced petechiae and discoloration on more than one occasion, and ... the abuse occurred at least three times, the jury could have determined that [daughter] had witnessed more than one incident of abuse and [son's] suffering."

In re J.E.M.M, 532 S.W.3d 874, 881 (Tex.App.--Houston [14th Dist.] 2017, no pet.). "A child is endangered when the environment creates a potential for danger and the parent is aware of the danger but consciously disregards it. [¶] The Department contends Mother ignored the danger presented by leaving [child 1] and [child 2] in the care of [child 3], who was 10¾ years old at the time. *At 883-84:* Though an adult might be more capable of managing risks, a near 11-year-old with a track record of helping provides greater protection than leaving no one to supervise…. Leaving [child 3] to supervise his younger siblings was not without risks, but the record contains no clear and convincing evidence that Mother showed a conscious disregard of those risks. Mother mitigated the risks by remaining in close proximity to the children (in the same building) and returning quickly. [¶] While it may have been a less-than-ideal situation, living conditions that are merely less-than-ideal do not support a finding under subsection D. [¶] Toddler-running-and-bumping accidents can happen with or without adult supervision. The evidence shows that [child 2] was an energetic child who was prone to falls and collisions. No evidence showed [child 2's] head injury would not have occurred had an adult been present. Likewise, assuming [child 1] inflicted the bite marks on his little sister, no evidence suggests that an adult could have stopped him from biting her. The child-bites [child 2] received did not cause serious or permanent injury. Notably, the record does not show any other incidents of [child 2] being bitten. So, even if the trial court disregarded the evidence that Mother was unaware of how the bite marks occurred and instead found that [child 1] bit [child 2], the record contains no evidence that Mother knew of the biting behavior or could have predicted the preschooler would bite the toddler or that Mother or any other adult could have prevented the bites. [¶] Though [child 2] suffered child-bites as well as a serious head injury in a less-than-ideal environment, subsection D requires proof that Mother knowingly exposed the children to an endangering environment. The record contains no evidence that Mother consciously disregarded a known danger." (Internal quotes omitted.)

In re E.M., 494 S.W.3d 209, 222 (Tex.App.--Waco 2015, pet. denied). "A parent's illegal drug use and drug-related criminal activity may … support a finding that the child's surroundings endanger his or her physical or emotional well-being. … A factfinder may reasonably infer from a parent's refusal to take a drug test that the parent was using drugs. A parent's continued drug use demonstrates an inability to provide for the child's emotional and physical needs and to provide a stable environment for the child."

A.S. v. TDFPS, 394 S.W.3d 703, 713 (Tex.App.--El Paso 2012, no pet.). "[T]here are some distinctions in the application of subsections (D) and (E). Knowledge of paternity is a prerequisite to a showing of knowing placement of a child in an endangering environment under §161.001(1)(D) [now §161.001(b)(1)(D)], however it is not a prerequisite to a showing of a parental course of conduct which endangers a child under §161.001(1)(E) [now §161.001(b)(1)(E)]. Furthermore, termination

[under] §161.001(1)(D) is permitted 'because of a single act or omission.' Conversely, termination under (E) requires a conscious course of conduct by the parent."

In re H.L.F., No. 12-11-00243-CV, 2012 WL 5993726 (Tex.App.--Tyler 2012, pet. denied) (memo op.; 11-30-12). "[T]he fact that a mother used a controlled substance while she was pregnant and did not obtain routine prenatal care does not mean that termination is automatic. [¶] The Department did not present any evidence that [child] tested positive for any controlled substance, that she needed specialized medical treatment, or that she suffered from any birth defects, abnormalities, or complications as a result of [mother's] drug use during the first trimester of her pregnancy. At the time of the removal, [mother] had not had possession of [child]. Therefore, [mother] could not have exposed [child] to endangering conditions or surroundings between the time of [child's] birth and the time of her removal. [¶] [The Department] implicitly contend[s] that [methamphetamine use prior to and during the first trimester of mother's pregnancy] created an endangering condition or surrounding inside [mother's] womb before [child] was born. [But this is not a case involving] a mother who abused one or more controlled substances throughout her pregnancy and had a child who was born addicted to the controlled substance or with the controlled substance still in the child's system. [¶] [W]e hold that the evidence is legally insufficient to terminate [mother's] parental rights pursuant to subsection (D)."

§161.001(b)(1)(E)

In re J.F.-G., 627 S.W.3d 304, 313-15 (Tex.2021). "A parent's criminal history--taking into account the nature of the crimes, the duration of incarceration, and whether a pattern of escalating, repeated convictions exists--can support a finding of endangerment. Imprisonment thus 'is certainly a factor' the trial court may weigh when considering endangerment. [¶] Newer subsections of [§161.001] identify particular circumstances in which a crime or imprisonment, standing alone, supports termination. When it added these grounds, however, the Legislature did not circumscribe subsection (E) or exclude incarceration from conduct that might endanger a child's physical or emotional well-being. Lengthy incarceration presents a risk of endangerment to the child's well-being--such a significant risk, in fact, that the Legislature provides for the *pre-emptive* termination of parental rights, even before the risk associated with incarceration manifests itself. [¶] [S]ubsection (E) should not be read so capaciously as to 'render the legislature's painstaking enumeration of other predicate acts superfluous.' But under subsections (L), (Q), (T), and (U) a single criminal conviction may result in termination. These grounds allow the Department to act swiftly to protect children without specific evidence of long-term abandonment. In such cases, the State may 'act in anticipation of a parent's abandonment of the child' due to incarceration, not in response to it. *At 316:* [M]other admitted that she had contact with the father only three or four times a year. Leaving aside incarceration, an absence of that duration resulting from criminal conduct is sufficient evidence to establish a 'pattern of conduct that is inimical to the very idea of child-rearing' that endangered [child's] physical or emotional well-being. The trial court, as the factfinder, could reasonably conclude that such a disruption is qualitatively different from a single, short-term incarceration. *At 317:* We decline the invitation to draw a bright-line rule that incarceration cannot support an endangerment finding under subsection (E)."

In re N.G., 577 S.W.3d 230, 235 (Tex.2019). See annotation under this code section, *Due Process*.

In re E.N.C., 384 S.W.3d 796, 805 (Tex.2012). "[D]eportation, like incarceration, is a factor that may be considered (albeit an insufficient one in and of itself to establish endangerment), [but] its relevance to endangerment depends on the circumstances. Under the [appellate] court's reasoning, the mere threat of deportation or incarceration resulting from an unlawful act, regardless of severity, would establish endangerment. We disagree with that analysis. … The court's broad reasoning necessarily applies to citizens as well. Any offense committed by a citizen that could lead to imprisonment or confinement would also apparently establish endangerment, simply because the parent's ability to be present in his children's lives would be uncertain. Our nation's Constitution forbids such a far-reaching interpretation of our parental rights termination statutes. *At 806:* [T]here are similarities between incarceration and deportation in that the parent is no longer available to reside with the children in their home in the U.S. But, [u]nlike an incarcerated individual, a person who is deported is able to work, have a home, and support a family. More importantly, it is possible for the person's children to live with him. [¶] Deportation flowing from an unknown offense occurring many years earlier cannot satisfy the State's burden of proving by clear and convincing evidence that a parent engaged

in an endangering course of conduct…." *See also* ***J.O. v. TDFPS***, 604 S.W.3d 182, 191 (Tex.App.--Austin 2020, no pet.); ***In re R.A.G.***, under this code section.

In re M.C., 917 S.W.2d 268, 270 (Tex.1996). "Although there is no evidence that [respondent] inflicted direct physical abuse on her children, there is evidence that she neglected their physical needs, and neglect can be just as dangerous to the well-being of a child as direct physical abuse."

Texas DHS v. Boyd, 727 S.W.2d 531, 533 (Tex.1987). "While we agree that 'endanger' means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, it is not necessary that the conduct be directed at the child or that the child actually suffers injury. Rather, 'endanger' means to expose to loss or injury [or] to jeopardize[,] and imprisonment is certainly a factor to be considered by the trial court on the issue of endangerment. *At 534:* We hold that if the evidence, including the imprisonment, shows a course of conduct which has the effect of endangering the physical or emotional well-being of the child, a finding under [Fam. Code] §15.02(1)(E) [now §161.001(b)(1)(E)] is supportable."

In re C.B., 659 S.W.3d 504, 516 (Tex.App.--Tyler 2023, no pet.). "[S]cienter is not required for a parent's own acts under §161.001(b)(1)(E); scienter is required under subsection (E) only when the parent places the child with others who engage in endangering acts."

In re E.G., 643 S.W.3d 236, 252 (Tex.App.--Amarillo 2022, no pet.). "A parent's mental state may be considered in determining whether a child is endangered if that mental state allows the parent to engage in conduct that jeopardizes the physical or emotional well-being of the child. Suicidal ideation may also contribute to a finding that a parent engaged in endangering conduct. ***At 253:*** While mental incompetence or mental illness alone are not grounds for termination of the parent-child relationship, '[w]hen a parent's mental state allows the parent to engage in conduct that endangers the physical or emotional well-being of the child, that conduct has bearing on the advisability of terminating the parent's rights.'"

D.H. v. TDFPS, 652 S.W.3d 54, 61-62 (Tex.App.--Austin 2021, no pet.). "Although we agree that 'a finding of endangerment based on drug use alone is not automatic,' … to the extent [that other courts have] held … that direct evidence is required to show a causal link between drug use and endangerment, we disagree. [¶] Endangerment does not have to be established as an independent proposition but may instead be inferred from parental misconduct. As a result, a court's consideration of allegations of endangerment is a fact-intensive process and depends on the specific circumstances of the case. In some circumstances, a parent's drug use might be so pervasive or serious that the factfinder could reasonably infer that the drug use is endangering, despite a lack of evidence showing that the drug use caused some other endangering activity or even that the drug use occurred while the children were in the parent's direct care. In addition, this and numerous other courts of appeals have recognized that a parent's decision to use illegal drugs while the termination suit is pending, and the parent is at risk of losing her child, may support a finding of endangering conduct under subsection (E). This is because a parent's ongoing drug use jeopardizes the parent-child relationship and subjects the child to a life of uncertainty and instability." *But see* ***In re R.R.A.***, under this code section.

In re R.R.A., 654 S.W.3d 535, 550 (Tex.App.--Houston [14th Dist.] 2022, pet. granted 6-2-23). "Crucially, … the Department presented no evidence of a causal link between Father's drug use and any endangerment of the children. There was no evidence that Father used drugs around the children, allowed the children to be around the presence of drugs or drug users, or was unable to care for the children or provide for their needs as a result of his drug use. [¶] As to Father's homelessness, the Department did not introduce any testimony or evidence regarding the length of Father's homelessness, the conditions, or how it endangered the children; the only evidence the Department points to is the family service plan, which simply states Father was homeless and living out of a car. *At 552:* [W]hile missed visitations may support an endangerment finding because such conduct can subject children to instability and uncertainty, there is no evidence that the lack of visitation by Father … resulted in any instability or uncertainty for the children. No testimony was presented about the effect on any of the children resulting from the lack of parental contact. *At 553:* The facts of this case present no more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment. We conclude that there was legally insufficient evidence to support termination of

Father's parental rights…." *But see* ***In re J.W.***, 645 S.W.3d 726, 749-50 (Tex.2022) (father's knowledge of mother's drug use during pregnancy and corresponding failure to attempt to protect unborn child from effects of that drug use can contribute to endangering environment); ***D.H. v. TDFPS***, under this code section.

In re J.A.V., 632 S.W.3d 121, 130-31 (Tex.App.--El Paso 2021, no pet.). "Mother contends the evidence was legally and factually insufficient to support termination of her parental rights because although the Department established that Mother used drugs, the Department did not establish that her drug use endangered Child. We disagree. [¶] A parent's use of narcotics and its effects on his or her ability to parent may qualify as an endangering course of conduct under Subsection (E). Illegal drug use during pregnancy specifically can also support a charge that the mother has engaged in conduct that endangers the physical and emotional welfare of the child. [¶] Two months before Child's birth, Mother was admitted into a heroin detox treatment program while pregnant, and … at the time of her admission, Mother was under the influence of drugs and in a state of active withdrawal. Because of Mother's drug abuse during pregnancy, Child was born in a state of opiate withdrawal and had to be treated with morphine. The causal connection between Mother's actions during pregnancy and direct physical endangerment to Child is clearly established under these circumstances."

In re L.W., 609 S.W.3d 189, 200-01 (Tex.App.--Texarkana 2020, no pet.). "Subsection (b)(1)(E) permits termination when the parent has engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child. 'Endanger' means to expose to loss or injury; to jeopardize. It is not necessary that the conduct be directed at the child or that the child actually suffer injury. Under subsection (E), it is sufficient that the child's well-being is jeopardized or exposed to loss or injury. Further, termination under subsection (E) must be based on more than a single act or omission. Instead, a voluntary, deliberate, and conscious course of conduct by the parent is required. [¶] Subsection E refers only to the parent's conduct, as evidenced not only by the parent's acts, but also by the parent's omissions or failures to act. The conduct to be examined includes what the parent did both before and after the child was born. To be relevant, the conduct does not have to have been directed at the child, nor must actual harm result to the child from the conduct. [¶] A fact-finder can consider the history of abuse between the mother and the father for purposes of subsection (E), even if the children are not always present." (Internal quotes omitted.) *But see* ***In re T.C.C.H.***, No. 07-11-00179-CV, 2011 WL 6757409 (Tex.App.--Amarillo 2011, no pet.) (memo op.; 12-22-11) (termination can be based on single act or omission in extreme cases).

In re C.V.L., 591 S.W.3d 734, 752 (Tex.App.--Dallas 2019, pet. denied). "Here, the Department presented factually insufficient evidence that Father's past use of methamphetamines endangered [child]. This is not a case in which the Department alleged that Father used drugs in the child's presence, left the child in the care of drug users or in a home where drugs were present, or was ever arrested or incarcerated for drug possession. The Department relied solely on Father's positive drug tests to support the termination. Under this record, we conclude that no reasonable fact finder could form a firm belief or conviction that Father's past drug use knowingly placed or knowingly allowed [child] to remain in conditions or surroundings that endangered her physical or emotional well-being. Therefore, we hold that the evidence is factually insufficient to terminate father's parental rights pursuant to subsection (D). [¶] The same is true under subsection (E). While unquestionably an exercise of poor judgment, Father's use of methamphetamines on two occasions, standing alone, does not rise to the level of a conscious course of conduct. Therefore, we hold that the evidence is factually insufficient to terminate Father's parental rights pursuant to subsection (E)."

In re J.S., 584 S.W.3d 622, 636 (Tex.App.--Houston [1st Dist.] 2019, no pet.). "[A] parent's illegal drug usage, even after removal of the child from the home and during the pendency of termination proceedings, may establish an endangering course of conduct because it 'creates the possibility that the parent will be impaired or imprisoned and thus incapable of parenting.' ... Father has a history with illegal drugs ... and ... he continued to test positive for cocaine usage during the pendency of the underlying termination proceedings. Based on these facts, we conclude that the trial court, as the factfinder, reasonably could have formed a firm belief or conviction that Father engaged in conduct that endangered [child's] physical and emotional well-being. *At 637*: Father also argues that there was no evidence in the record tying his positive drug test results and his past criminal history to any present endangerment of [child]. Courts have repeatedly held, however, that conduct does not have to be directed toward the child to constitute an endangering course of conduct under subsection (E). This Court has held that the conduct does not have to be directed toward the child and the child does not need to actually be injured by the parent's conduct; instead,

'danger to a child need not be established as an independent proposition and may be inferred from parental misconduct.' Father points to no authority requiring the Department to prove how drug use or criminal history specifically endangered a particular child. We decline Father's invitation to impose such a requirement here." *See also* ***In re M.G.P.***, No. 02-11-00038-CV, 2011 WL 6415168 (Tex.App.--Fort Worth 2011, pet. denied) (memo op.; 12-22-11) (drug use before mother knew she was pregnant did not support termination because she stopped using drugs when she learned she was pregnant); ***In re A.S.***, 261 S.W.3d 76, 86 (Tex.App.--Houston [14th Dist.] 2008, pet. denied) (one-time use of marijuana during pregnancy did not support termination).

In re M.D.M., 579 S.W.3d 744, 764 (Tex.App.--Houston [1st Dist.] 2019, no. pet.). "In determining whether the Department has established that the parent engaged in an endangering course of conduct, we may consider evidence concerning how a parent has treated another child or a spouse. Under subsection (E), we consider the child's environment before the Department obtained custody of the child. *At 765:* Abusive and violent criminal conduct by a parent can also produce an endangering environment. Evidence that a person has engaged in abusive and violent conduct in the past permits an inference that the person will continue to engage in violent behavior in the future. A factfinder may also infer that a parent's lack of contact with the child and absence from the child's life endangered the child's emotional well-being."

In re T.L.E., 579 S.W.3d 616, 625-26 (Tex.App.--Houston [14th Dist.] 2019, pet. denied). "Father appears to argue that evidence of the prior conviction [for indecency with a child] only goes toward proof of subsection L. To the contrary, '[e]vidence of sexual abuse of one child is sufficient to support a finding of endangerment with respect to other children.' Violent or abusive acts directed toward one child can endanger other children that are not the direct victims of the abuse in question and support termination of parental rights as to the other children, even if the other children were not yet born at the time of the conduct. Courts of appeals have consistently held in termination cases that evidence a parent has sexually or physically abused a child not subject of the termination action also constitutes evidence of endangerment to the child subject to the termination action. [¶] [W]e may infer from a parent's plea of guilty to aggravated sexual assault of a stepdaughter that the parent engaged in conduct that will endanger or jeopardize the physical or emotional well-being of other children in the home who may discover the abuse or be abused themselves. [¶] Father also argues that his conviction for indecency with a child was too remote in time to constitute legally- and factually-sufficient evidence supporting the trial court's endangerment finding. Father suggests that this court ignore Father's prior conviction in reviewing the sufficiency of the evidence of endangerment. While termination may not be based solely on conditions that existed in the distant past but no longer exist, the dispositive inquiry is whether the past continues to bear on the present. Father's conviction for indecency with a child requires him to register as a sex offender. In requiring lifetime registration, the Legislature has made a policy decision that the crime for which Father was convicted will never be so remote that it will no longer be a matter of legitimate public concern. Therefore, evidence of Father's prior conviction for indecency with a child by contact is sufficient to support the trial court's endangerment finding under §161.001(b)(1)(E)."

In re F.E.N., 542 S.W.3d 752, 764-65 (Tex.App.--Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74. "'One parent's drug-related endangerment of the child may be imputed to the other parent.' However, Father must have had knowledge of Mother's drug use for his inaction to constitute endangerment. [¶] [B]oth Mother and Father testified that Father was unaware of Mother's drug use. Mother testified she hid her drug use from everyone. Father testified Mother told him the reason for [child's] removal by the Department was she drank beer. The Department contends the trial court was free to disregard the testimony that Father was unaware of Mother's drug use based on the referrals to the Department alleging Mother's drug use and Father's testimony that he lived with Mother before and after [child's] birth. However, 'although a trial court is generally free to disbelieve testimony, in the absence of competent evidence to the contrary, it is not authorized to find that the opposite of the testimony is true.' Our review of the record shows that the testimony that Father had no knowledge of Mother's drug use was left uncontroverted." *See also* ***In re F.E.N.***, under Family Code §153.131.

In re E.R.W., 528 S.W.3d 251, 264-65 (Tex.App.--Houston [14th Dist.] 2017, no pet.). "[S]ubjecting a child to a life of uncertainty and instability endangers the child's physical and emotional well-being. Although incarceration alone will not support termination, evidence of criminal conduct, convictions, and imprisonment may support a finding of endangerment under subsection (E). Likewise, illegal drug use may support termination under §161.001(1)(E) because 'it exposes the child to the possibility that the parent may be impaired or imprisoned.' A parent's decision to engage in illegal drug use during the pendency

of a termination suit, when the parent is at risk of losing a child, may support a finding that the parent engaged in conduct that endangered the child's physical or emotional well-being. Additionally, a fact finder reasonably can infer that a parent's failure to submit to court-ordered drug tests indicates the parent is avoiding testing because they were using illegal drugs." *See also* ***In re U.G.G.***, 573 S.W.3d 391, 400-01 (Tex.App.--El Paso 2019, no pet.) (father's use of illegal drugs while termination case was pending, even though he knew his parental rights were in jeopardy, and refusal to submit to drug test two months before trial supported termination).

In re R.A.G., 545 S.W.3d 645, 652 (Tex.App.--El Paso 2017, no pet.). Father "was incarcerated for the first four years of [child's] life…. Following his release from prison, [father] was deported to Mexico. It is understandable that [father], as a result of his deportation, has been unable to visit with [child] in person in the U.S., but the evidence showed that [father] has not had any other type of contact with [child] during the years following his deportation. According to [father's] sister, [father] has maintained the same telephone number and Facebook account since his release from prison …, yet he made no effort to contact [child] even after he learned that the child had been removed from [mother's] care. [Father] has been absent from [child's] life to the extent that [child] did not even know that [father] is [child's] father. While incarceration and deportation are not sufficient, standing alone, to support a finding under §161.001(b)(1)(E), these facts are part of [father's] overall course of conduct. We conclude that the evidence is legally and factually sufficient to establish a firm conviction or belief in the mind of the trier of fact that [father] engaged in conduct that endangered [child's] physical or emotional well-being under §161.001(b)(1)(E)." *See also* ***In re E.N.C.***, under this code section.

Burns v. Burns, 434 S.W.3d 223, 228 (Tex.App.--Houston [1st Dist.] 2014, no pet.). "According to [mother, father] judicially admitted that he endangered the child's emotional well-being by not visiting him [for several years], which conclusively proves that [father] engaged in conduct proscribed by §161.001(1)(E) [now §161.001(b)(1)(E)]. *At 229:* [Father's] acknowledgment that his absence from [child's] life 'endangers [child's] emotional well-being' is a testimonial admission, but it is not the kind of unequivocal statement that amounts to a judicial admission. *At 230:* Because the parties disputed both the reasons for, and effect of, [father's] absence from [child's] life, we hold [mother] cannot establish that [father's] rights must be terminated as a matter of law."

In re A.T., 406 S.W.3d 365, 372 (Tex.App.--Dallas 2013, pet. denied). Mother "asserts that her low IQ rendered her incapable of knowing and recognizing any danger to [child]. We disagree. Courts have held that limited mental capacity does not, as a matter of law, negate a parent's ability to knowingly neglect their child. *At 374:* [T]he evidence supports the trial court's ruling that Mother and Father violated §§161.001(1)(D) and (E) [now §161.001(b)(1)(D) and (E)]."

In re C.A.B., 289 S.W.3d 874, 883 (Tex.App.--Houston [14th Dist.] 2009, no pet.). "[A] court may consider evidence establishing that a parent continued to engage in endangering conduct after the child's removal by the Department or after the child no longer was in the parent's care, thus showing the parent continued to engage in the course of conduct in question." *See also* ***Walker v. TDFPS***, 312 S.W.3d 608, 617 (Tex.App.--Houston [1st Dist.] 2009, pet. denied) (same as annotation); ***In re S.T.***, 263 S.W.3d 394, 402 (Tex.App.--Waco 2008, pet. denied) (father committed criminal acts before and after child's removal even though he knew his parental rights were in jeopardy; all conduct was evidence of endangerment). *But see* ***In re J.K.F.***, 345 S.W.3d 706, 711 (Tex.App.--Dallas 2011, no pet.) (relevant time frame to determine endangerment is before children are removed).

Doyle v. TDPRS, 16 S.W.3d 390, 398 (Tex.App.--El Paso 2000, pet. denied). "The [TDPRS] urges that [respondent's] failure to locate and maintain stable employment so that she could provide for the children's needs and her failure to provide a stable home for the children violates §161.001(1)(E) [now §161.001(b)(1)(E)]. Ordinarily, the stability of the home is one of the factors that should be examined in ascertaining the best interest of a child. Depending on the evidence, it is possible that a parent's failure to provide a stable home and otherwise provide for the children's needs may contribute to a finding that termination is appropriate." *See also* ***In re J.R.***, 171 S.W.3d 558, 578 (Tex.App.--Houston [14th Dist.] 2005, no pet.) (§161.001(1)(E), now §161.001(b)(1)(E), finding cannot be based solely on failure to maintain stable housing).

§161.001(b)(1)(F)

Interest of S.E.F., No. 05-21-00361-CV, 2021 WL 4057433, (Tex.App.--Dallas 2021, no pet.) (memo op.; 9-3-21). "Father argues the failure to pay for 12 consecutive months requires an analysis separate from the issue of his ability to pay. Father argues ... that 'the requisite period of time was satisfied in which the additional arrearage payment was not made' and a separate sentence states the court's further determination that sufficient evidence in the record showed Father had the ability to make payments but such payments were not made. ...Father argues '[h]aving the ability to pay, and whether or not payments are made are two separate, very important findings that need to be made independently in order to terminate a parent's parental rights' under §161.001(b)(1)(F). [¶] We decline to adopt Father's [interpretation of] §161.001(b)(1)(F) that would prevent application of that section when a parent makes a minimal payment during a 12-month period though not a payment in accordance with the parent's ability to pay."

In re F.E.N., 542 S.W.3d 752, 765-66 (Tex.App.--Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74. "A parent has a duty to provide support for his child, even when the parent does not have custody of the child. Support includes 'providing the child with clothing, food, shelter, medical and dental care, and education.' [¶] The Department does not contest that Father sent financial support to Mother …, but instead contends that the Department was the only one authorized to receive support on [child's] behalf as her managing conservator…. The Department does not cite any case law in support of its argument. Additionally, at trial, no evidence was offered to establish that only the Department could receive financial support intended for [child] when it was appointed managing conservator. We note that Father was not served in this proceeding and was not ordered to pay the Department for [child's] support or notified where support should be sent. … Based on the evidence in the record, we conclude the Department did not establish Father's provision of financial support to Mother for [child] was a failure to support [child]." *See also* ***In re F.E.N.***, under Family Code §153.131.

In re D.M.D., 363 S.W.3d 916, 922 (Tex.App.--Houston [14th Dist.] 2012, no pet.). Mother's "primary support obligation was to pay … court-ordered child support. Nevertheless, [she] ignored this responsibility by providing certain necessities directly to the children--in the process circumventing the ability of the Department and the foster families to recoup money they were spending to support the children. Because [mother] had the ability but chose not to pay at least some amount of child support, the trial court could have reasonably found [she] failed to support the child in accordance with her ability during a period of one year ending within six months of the date of the filing of the petition."

In re C.L., 322 S.W.3d 889, 892-93 (Tex.App.--Houston [14th Dist.] 2010, no pet.). "The undisputed evidence in the record shows that in [a] 12-month period …, [father] gave no money whatsoever in [child] support…. [Father] had the ability to provide at least some support during these 12 months, but he provided none. [He] argues that DFPS must present evidence of his ability to pay during each month of the 12-month period. The evidence in the record regarding [his] income is not broken down on a monthly basis for the entire time period. However, even if [father] was unable to provide support during some of those months, that will not interrupt the running of the one-year period if he made no effort to pay during other months in which there is a clear ability to pay. It is undisputed that [father] had [some] income in the relevant time frame but provided no support at all. This is sufficient to support a finding … of a violation of §161.001(1)(F) [now §161.001(b)(1)(F)]." *See also* ***In re C.M.C.***, No. 11-02-00270-CV, 2003 WL 760678 (Tex.App.--Eastland 2003, no pet.) (memo op.; 3-6-03) (inability to provide support during some months will not interrupt running of one-year period if no effort is made to pay support during other months); ***In re T.B.D.***, under this code section.

In re N.A.F., 282 S.W.3d 113, 118 (Tex.App.--Waco 2009, no pet.). "While it is true that a child-support order contains an implied finding that the obligor was able to pay the ordered support, that 'support order only contains an implied finding as of the time the order is entered; it cannot predict the future.' Thus, a child-support order is no evidence of [father's] ability to pay support for the 12 consecutive months required by §161.001(1)(F) [now §161.001(b)(1)(F)]." *See also* ***In re D.M.D.***, 363 S.W.3d 916, 920 (Tex.App.--Houston [14th Dist.] 2012, no pet.).

In re E.M.E., 223 S.W.3d 71, 73-74 (Tex.App.--El Paso 2007, no pet.). "[W] argued at trial that the child support order contains an implied finding that [H] has the ability to pay the amount of child support ordered[, thus requiring H to prove

as an affirmative defense that he did not have the ability to pay]. Section 161.001 does not create [an] affirmative defense in termination proceedings. To the contrary, §161.001(1)(F) [now §161.001(b)(1)(F)] squarely places the burden to prove ability to pay on the petitioner. [¶] [R]equiring the respondent to present evidence of inability to pay wrongfully shifts the burden and excuses the petitioner from proving that the parent failed to support in accordance with the parent's ability." *See also* ***In re L.J.N.***, 329 S.W.3d 667, 672 (Tex.App.--Corpus Christi 2010, no pet.) (managing conservators had burden to prove that incarcerated father had ability to pay child support); ***In re N.A.F.***, 282 S.W.3d 113, 117-18 (Tex.App.--Waco 2009, no pet.) (same as annotation). *But see* ***In re J.M.M.***, 80 S.W.3d 232, 251 (Tex.App.--Fort Worth 2002, pet. denied) (inability to pay court-ordered child support is affirmative defense in termination suit), *disapproved on other grounds*, ***In re J.F.C.***, 96 S.W.3d 256 (Tex.2002) .

In re T.B.D., 223 S.W.3d 515, 518 (Tex.App.--Amarillo 2006, no pet.). "The one-year period means 12 consecutive months, and there must be proof the parent had the ability to pay support during each month of the 12-month period." *See also* ***In re R.M.***, 180 S.W.3d 874, 878 (Tex.App.--Texarkana 2005, no pet.) (termination was proper when father worked for 18-month period before suit was filed but did not pay any child support); ***Hellman v. Kincy***, 632 S.W.2d 216, 218 (Tex.App.--Fort Worth 1982, no writ) (12 consecutive months of not making arrearage payments supported termination even though father made current child-support payments during that period); ***In re C.L.***, under this code section.

§161.001(b)(1)(H)

In re D.M.F., 283 S.W.3d 124, 132 (Tex.App.--Fort Worth 2009, pet. granted, judgm't vacated w.r.m.). Section 161.001(1)(H), now §161.001(b)(1)(H), "requires scienter or prior knowledge of the pregnancy. [¶] [B]ecause there is no clear and convincing proof that [father] had knowledge that [mother] was carrying his child until … *after* the child was born, the evidence could not show that he abandoned her *during* her pregnancy. [S]ubsection H cannot apply."

In re T.M.Z., 665 S.W.2d 184, 187 (Tex.App.--San Antonio 1984, no writ). "Although the evidence clearly shows it was the mother who left the scene when violence erupted during her seventh month of pregnancy, we do not agree there was no 'voluntary abandonment' by the father as the result of her departure. The father knew where his pregnant [W] went; he knew her parents and the location of their house. Testimony indicates he did go to that house on occasion, but he never provided any support either to [W] or his child. He was not prohibited from tendering support through the [mail]. He was not prohibited from going to the attending doctor's office to arrange payment for prenatal care. Nor was he denied entrance to the business office of the hospital to arrange payment for hospital care for [W] and for delivery of his child. [¶] Abandonment can mean more than a physical leave-taking. It can also mean to turn one's back on a duty that one has."

Allred v. Harris Cty. Child Welfare Unit, 615 S.W.2d 803, 807 (Tex.App.--Houston [1st Dist.] 1980, writ ref'd n.r.e.). "The evidence that [father] entered into a course of wilful criminal activity with knowledge of [W's] pregnancy and of the possible consequences of his course of conduct implied a conscious disregard and indifference to his parental responsibilities and the subsequent imprisonment for such conduct constituted 'voluntary abandonment.'"

§161.001(b)(1)(J)

Yonko v. DFPS, 196 S.W.3d 236, 242 (Tex.App.--Houston [1st Dist.] 2006, no pet.). Mother "admits that she never enrolled [child] in school or otherwise provided him with a certified home-school education…. [Mother] further contends that she and [child] were never Texas residents for any relevant time period under the statute. [¶] The compulsory education statute does not state a residency requirement, and the case law indicates that moving frequently does not exempt a parent from the requirement of enrolling a child in school or otherwise providing for his education."

§161.001(b)(1)(K)

In re K.S.L., 538 S.W.3d 107, 110 (Tex.2017). Section §161.001(b) "is unmistakably written in the conjunctive and requires both a statutorily-compliant affidavit [of relinquishment] *and* a finding that termination is in the child's best interest. *At 112:*

[I]n the ordinary case a sworn, voluntary, and knowing relinquishment of parental rights, where the parent expressly attests that termination is in the child's best interest, would satisfy a requirement that the trial court's best-interest finding be supported under [the clear-and-convincing] standard of proof. … A parent's willingness to voluntarily give up her child, and to swear affirmatively that this is in her child's best interest, is sufficient, absent unusual or extenuating circumstances, to produce a firm belief or conviction that the child's best interest is served by termination."

In re K.M.L., 443 S.W.3d 101, 113 (Tex.2014). "Family Code §161.001(1)(K) [now §161.001(b)(1)(K)] permits a trial court to terminate the parent-child relationship if it finds by clear and convincing evidence that the parent has executed an unrevoked or irrevocable affidavit of relinquishment of parental rights. The petitioner … has the burden to prove the elements necessary to support termination of the parent-child relationship. [Family Code] §161.103 requires that the affidavit be for *voluntary* relinquishment, … and implicit in §161.001(1)(K) is the requirement that the affidavit of parental rights be voluntarily executed. An involuntarily executed affidavit is a complete defense to a termination suit based on §161.001(1)(K)."

In re B.B.F., 595 S.W.2d 873, 874 (Tex.App.--San Antonio 1980, no writ). "Since execution of an affidavit of relinquishment of parental rights is a proper basis for terminating those rights in a subsequent suit to terminate the parent-child relationship, and a waiver of process may be included in the affidavit, it is clear that a waiver of citation may be signed prior to the filing of suit. Thus, the Family Code provides an exception to the general rule that a waiver of citation is proper only if executed after suit is brought. There is a sound reason for this exception. After executing an unrevoked or irrevocable affidavit of relinquishment of parental rights, a natural parent is no longer an interested party in a suit to terminate the parent-child relationship. Consequently, neither due process nor logic require that a person who has voluntarily relinquished parental rights and waived service of citation be given notice of a subsequent suit to terminate the parent-child relationship."

§161.001(b)(1)(L)

In re Z.N., 602 S.W.3d 541, 547-48 (Tex.2020). "Section 161.001's plain language requires that the Department demonstrate that 'death or serious injury of a child' resulted from one of the offenses enumerated in ground (L). We hold that, under §161.001(b)(1)(L)(iv), a parent's conviction for indecency with a child can constitute legally sufficient evidence that the parent was 'criminally responsible' for the 'serious injury of a child.' *At n. 5:* Because this case involves only the offense of indecency with a child, we need not and do not address whether a conviction for other offenses enumerated in ground (L) can imply serious injury to a child. [¶] [W]e note that the simple illegality of the act does not in itself indicate that a trial court may infer serious injury. As such, the phrase 'convicted ... for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code' requires not only that an offense be committed but also that death or serious injury result from that offense. [¶] Still, for the purpose of ground (L), a conviction for an enumerated offense can imply that a serious injury has occurred based on the nature of the offense and the injury that will likely result. Here, [Pen. Code] §21.11 provides the necessary reasonable basis for a factfinder to infer that serious injury resulted from the commission of the offense of indecency with a child. [¶] Given the physical, emotional, and psychological harm that can (and often does) result from the actions that constitute indecency with a child, a trier of fact may draw the 'reasonable and logical' inference that a conviction for indecency with a child, standing alone, resulted in serious injury to the child for the purpose of predicate ground (L). [¶] That said, a parent may certainly refute any inference of serious injury to a child resulting from a conviction. Thus, a parent may argue that the conviction at issue does not imply serious injury and may present evidence controverting the existence of serious injury in a particular case."

In re L.S.R., 92 S.W.3d 529, 530 (Tex.2002). "The State presented evidence at trial showing that [father] had received deferred adjudication for the offense of indecency with a child, an offense [father] committed against his four-year-old cousin when he was 16. The court of appeals held that there was no evidence to support termination under §161.001(1)(L)(iv) [now §161.001(b)(1)(L)(iv)] because there had been 'no showing that [father's] cousin suffered death or serious injury as a result of his conduct.' The court of appeals deleted this ground for termination from the judgment, but otherwise affirmed the judgment against [father]. [¶] We deny the petitions for review, but disavow any suggestion that molestation of a four-year-old, or indecency with a child, generally, does not cause serious injury."

In re A.L., 389 S.W.3d 896, 900-01 (Tex.App.--Houston [14th Dist.] 2012, no pet.). "The Family Code does not define 'serious injury,' and [mother] urges us to adopt the Penal Code's definition of 'serious bodily injury' as the standard required for [Fam. Code §161.001(1)(L), now §161.001(b)(1)(L),] to support termination. We decline to do so. [¶] 'Serious injury,' as used in subsection (L) modifies all the offenses listed thereunder. Not all offenses listed in subsection (L) require bodily injury. We conclude demonstrating 'serious injury' to a child under subsection (L) does not require a showing of 'serious bodily injury' as defined in the Penal Code. [¶] 'Serious' means 'having important or dangerous possible consequences,' while 'injury' means 'hurt, damage, or loss sustained.'" *See also* ***C.H. v. DFPS***, No. 01-11-00385-CV, 2012 WL 586972 (Tex.App.--Houston [1st Dist.] 2012, pet. denied) (memo op.; 2-23-12) (§161.001(1)(L) requires showing of "serious injury" as defined by dictionary, not "serious bodily injury" as required by Pen. Code).

§161.001(b)(1)(M)

In re P.W., 579 S.W.3d 713, 723 (Tex.App.--Houston [14th Dist.] 2019, no pet.). "Interpreting subsection (M) to allow the Department to prove a predicate act based on a termination finding as to another child when a court has deleted the finding or reversed the final order or when a court in a pending appeal might delete the finding or reverse the final order would raise a serious doubt as to the constitutionality of subsection (M). Therefore, we interpret subsection (M) to require the Department to prove that a trial court had signed a final order terminating the parent's parent-child relationship as to another child based on a finding that the parent's conduct violated (1) subsection (D) or subsection (E) or (2) a substantially equivalent provisions of another state's law, and also that (1) the final termination order is final by appeal and (2) no court has deleted the finding or reversed or set aside the final order. This interpretation of subsection (M) differs from that of courts that have concluded that a certified copy of a prior final termination order as to another child based on (D) or (E) is sufficient evidence to support an (M) finding." *But see* ***In re A.C.***, under this code section.

In re A.C., 394 S.W.3d 633, 640 (Tex.App.--Houston [1st Dist.] 2012, no pet.). "The mother challenges whether [prior termination] decree could be used to prove a prior termination because the decree, and therefore the termination, was on appeal and thus not necessarily final. The prior decree stated that 'this case is not final until [the trial court's] plenary jurisdiction from this final judgment expires, and all appeals, if any, have concluded.' While acknowledging that the 'case' was not final and accordingly maintaining the appointment of the attorneys ad litem and the guardian ad litem, the decree reiterated that 'this judgment is final.' But finality, in the sense of a complete exhaustion or waiver of all possible appellate remedies, is not expressly required by [§161.001(1)(M), now §161.001(b)(1)(M)]." *But see* ***In re P.W.***, under this code section.

In re J.M.M., 80 S.W.3d 232, 243 (Tex.App.--Fort Worth 2002, pet. denied), *disapproved on other grounds*, ***In re J.F.C.***, 96 S.W.3d 256 (Tex.2002). "We hold that, when a prior decree of termination as to another child is properly admitted into evidence, the TDPRS need not reestablish that the parent's conduct with respect to that child was in violation of §161.001(1)(D) or (E) [now §161.001(b)(1)(D), (E)]. The TDPRS need only show that [parent's] rights were terminated as to her other children based on *findings* that she violated [sub]sections (D) and (E)." *See also* ***Espinosa v. TDFPS***, No. 01-08-00309-CV, 2008 WL 4757051 (Tex.App.--Houston [1st Dist.] 2008, no pet.) (memo op.; 10-30-08).

§161.001(b)(1)(N)

In re A.M., No. 05-21-00712-CV, 2022 WL 278972 (Tex.App.--Dallas 2022, n.p.h.) (memo op.; 1-31-22). "[T]he Department can prove it made reasonable efforts to return the child to [father] by showing that [father] impeded the Department's attempts to timely adjudicate [father's] parentage. In other words, an alleged father in [father's] situation cannot use a delay in adjudication of parentage that he created to defend against termination of his parental rights. [¶] [C]aseworkers made a diligent search to locate [father] and made several attempts to contact and/or serve him. … And [father] knew of the Department's attempts to contact him and the reason. … Nevertheless, he refused to respond because, based on his own testimony, he feared being arrested on an outstanding warrant, he wanted to wait to see the paternity results of the other two men identified by Mother, and/or he needed 'more time' to get matters in order to take care of his legal issues. When he finally confirmed he was [child's] father …, he waited to contact the Department for more than a month, which was one week before trial. This evidence does not merely

establish that [father] impeded the Department's efforts to determine his parentage; rather, it shows he actively avoided the Department and the paternity determination."

In re J.W., 615 S.W.3d 453, 467-68 (Tex.App.--Texarkana 2020, no pet.) "[T]he Department's argument is essentially that, even though it did not provide the service plan to [father] until 15 days before trial, and even though the trial court did not issue its Additional Temporary Order until 29 days before trial, the trial court and the Department told [father] when he first appeared in court ... that he would have to perform services before the final trial. It concludes that such evidence establishes that it made a reasonable effort to return [child] to [father]. However, to allow termination based on general orders and statements regarding [father's] need to perform future services without actually implementing a plan would significantly undermine the statutory provisions requiring that the Department prepare a service plan in cooperation with the parents. Accordingly, the fact that [father] knew he would have to perform services at some future point does not satisfy the Department's requirement that it make a reasonable effort to return the child to a parent. Thus, [father's] failure to comply with these general orders and statements of future obligations do not establish that the Department made a reasonable effort to return [child] to [father] as required by subsection N."

In re F.E.N., 542 S.W.3d 752, 766-67 (Tex.App.--Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74. "While implementation of a family service plan by the Department is generally considered a reasonable effort to return a child to the parent, that is not the only evidence which can satisfy this element. [¶] We consider whether the record reflects that there were reasonable efforts to return the child in spite of the absence of a family service plan. We focus on the Department's efforts, not Father's. In determining whether the evidence is sufficient to support termination under subsection (N), the question is whether the Department made reasonable efforts, not ideal efforts. [¶] The permanency goal as stated in this service plan was 'Alt. Family: [u]nrelated, [a]doption,' and not family reunification. [¶] Subsequently, the trial court entered an order suspending Father's visitation until paternity could be established, despite Father's name being on the birth certificate, and until Father submitted a clean drug test, despite there being no allegations of Father's drug use. … The record contains a copy of Father's acknowledgement of paternity and negative drug tests related to Father. However, there is no evidence the Department made any attempt to resume Father's visitation with [child]. Father met with [child's] psychologist. The psychologist recommended that Father not be allowed any visitation with [child] as such would endanger her emotional well-being because she is bonded to the foster family. [¶] We do not agree that the Department's actions constitute a reasonable effort to return [child] to Father. The record does not shed light on the Department's failure to serve Father with notice of the first suit or whether any attempt at service was made. Additionally, the Department's … permanency goal of unrelated adoption is contrary to an attempt to return [child] to Father."

In re R.I.D., 543 S.W.3d 422, 427-28 (Tex.App.--Houston [14th Dist.] 2018, no pet.). "We find the evidence legally insufficient to support a finding under part (iii) of subsection N: that Father has demonstrated an inability to provide the child with a safe environment. [¶] 'Environment' refers to 'the acceptability of living conditions, as well as a parent's conduct in the home.' Courts use that definition in considering another statutory predicate for termination under §161.001(b)(1): subsection D…. We see no reason not to apply the same definition in our subsection N analysis. [¶] The record contains no evidence of Father's living conditions. Although the Department elicited testimony … about Mother's living situation, no witness was asked, for example, where Father lived, who lived with him, or how much room there would be for [child]. [¶] Further, there is no evidence about Father's conduct in his home. The record contains a judgment of Father's conviction of misdemeanor possession of marijuana six years before trial. [Caseworker] testified Father also had an assault charge …, but no other information about the alleged offense appears in the record. Notably, the record does not reflect whether he was convicted of assault. [¶] The Department suggests Father's alleged unwillingness to care for [child] eliminates its burden to prove his inability to do so…. [¶] We disagree. Given the lack of any evidence about Father's living conditions, we are unwilling to equate Father's supposed preference that [child] live with Father's mother … with proof by clear and convincing evidence that he is unable to provide [child] a safe environment."

In re G.P., 503 S.W.3d 531, 533-34 (Tex.App.--Waco 2016, pet. denied). "Under the second element, '[r]eturning the child to the parent, per §161.001(1)(N)(i) [now §161.001(b)(1)(N)(i)], does not necessarily mean that the child has to be physically

delivered' to the individual. In fact, courts have previously held that this element can be satisfied by preparing and administering a service plan. [¶] There are several factors to indicate a parent's willingness and ability to provide the child with a safe environment: 'the child's age and physical and mental vulnerabilities; the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; and whether the child's family demonstrates adequate parenting skills, including providing the child with minimally adequate health and nutritional care, a safe physical home environment, and an understanding of the child's needs and capabilities.'"

In re A.T.L., __S.W.3d__, 2015 WL 6507807 (Tex.App.--San Antonio 2015, pet. denied) (No. 04-15-00379-CV; 10-28-15). "'[T]he requirement that the Department has made reasonable efforts to return the child to the parent may be inapplicable when the parent is incarcerated.' However, reasonable efforts to return a child to a parent 'under §161.001(1)(N)(i) does not necessarily mean the child must be physically delivered to the incarcerated parent.' [¶] [Father] was confirmed as [child's] father during the … termination hearing; he signed his plan [four months later]; he was incarcerated approximately three weeks later; and he remained incarcerated until the termination hearing. According to [father], there is no evidence in the record that he was provided a reasonable opportunity to enroll in, much less complete, any of his plan requirements. [¶] Although there appears to be no dispute that [mother] denied him any contact with [child], nothing in the record indicates [father] took any action to contact or gain access to his child in the more than eight months between her birth and his incarceration, or during the period of his incarceration. [Caseworker] testified [father] told her [that] doing the services was not imperative to him and [that] the plan was not important to him at that point in time because he wanted to get himself situated first. [¶] [T]he Department's preparation and administration of a service plan, in conjunction with its consideration of relative placements, supports the trial court's finding that the Department made reasonable efforts to return the child to [father]. [¶] Incarceration does not render 'it impossible for the parent to maintain significant contact with the child.' … On this record, we conclude the evidence supports the trial court's finding that [father] did not regularly visit or maintain significant contact with [child]." *See also* ***In re M.V.G.***, 440 S.W.3d 54, 60-61 (Tex.App.--Waco 2010, no pet.) (Department must make "reasonable efforts," not ideal efforts).

Earvin v. DFPS, 229 S.W.3d 345, 348 (Tex.App.--Houston [1st Dist.] 2007, no pet.). "While we agree … that the first three elements of constructive abandonment have been met, we do not agree that the [TDFPS] met its burden on the fourth element. *At 349:* The [TDFPS] cites no authority that a parent has an obligation to attempt to take custody of a child when the mother is in a treatment center and subsequently released. Nothing in the record indicates that [father] was aware of the severity of the mother's drug use or knew or should have known that the mother would resume drug use after being released from the treatment center. [¶] What the record does show, however, is that [father] cared for [child] while the mother was in the hospital and the treatment center, that [father] had access to a home to provide for [child], and that he had obtained a job three weeks before trial. Even if the trial court, as the trier of fact, chose to disbelieve [father's] testimony as not credible, this does not prove that the opposite is true."

In re D.S.A., 113 S.W.3d 567, 573-74 (Tex.App.--Amarillo 2003, no pet.). "[W]e disagree with the proposition that §161.001(1)(N) [now §161.001(b)(1)(N)] 'was never intended to apply to someone' in prison merely because the parent is in prison. … Returning the child to the parent, per §161.001(1)(N)(i), does not necessarily mean that the child has to be physically delivered to the incarcerated individual. [I]t is quite conceivable that one in prison may still be able to [provide a good environment] by … leaving the ward in the capable hands of a relative, friend or spouse. If such could be done, then it is conceivable that the State has the ability to relinquish its custody over the youth and, thereby, effectively return the child to the incarcerated parent. … Nor can we say that incarceration renders it impossible for the parent to maintain significant contact with the child. While the child may not be able to live with the parent in a jail cell, … the parent could nonetheless pursue a significant relationship [through] written correspondence. In sum, incarceration does not render sub-paragraph (N) inapplicable simply because of incarceration." *See also* ***In re L.C.M.***, 645 S.W.3d 914, 921 (Tex.App.--El Paso 2022, no pet.) (DFPS efforts to place incarcerated parent's child with relatives constituted legally and factually sufficient evidence that reunification was attempted). *But see* ***In re D.T.***, 34 S.W.3d 625, 633 (Tex.App.--Fort Worth 2000, pet. denied) (requirement that Department return child to parent under §161.001(1)(N), now §161.001(b)(1)(N), does not apply to parent who is incarcerated).

§161.001(b)(1)(O)

In re A.A., __ S.W.3d __, 2023 WL 3910142 (Tex.2023) (No. 21-0998; 6-9-23). "Mother … reads ['the child's removal from the parent … for … abuse or neglect'] as limiting (O)'s reach to a parent whose wrongdoing caused a child to be physically taken from that parent. We disagree. [¶] [T]his is exactly the kind of case that (O) is for. DFPS cannot leave a child with a parent whose conduct or home environment would endanger the child; several policy statements in the Family Code make that clear. DFPS had to pursue removal of [children] from Mother once it determined that Mother could not provide a stable home environment for them. In a case like this one where the other parent's conduct directly caused DFPS' involvement, none of the other §161.001(b)(1) grounds may provide a pathway to either reunification or termination. That is the work that (O) does. It gives a parent like Mother an opportunity to have the child returned to her by demonstrating her parenting ability through compliance with the service plan. But at the same time, if the parent in Mother's position cannot demonstrate her ability to provide a stable home for the child, then her rights to the child can be terminated, thereby clearing the path for the child's adoption."

In re A.L.R., 646 S.W.3d 833, 837 (Tex.2022). "Because the general order does not 'specifically establish[ ]' the actions that a parent must take, however, violation of the order does not fulfill the ground for termination under Subsection (O). Subsection (O) contemplates direct, specifically required actions. Here, those actions are worded as requests, not as positive mandates. For example, the plan states: 'The Department *requests* that [the father] participate in parenting classes,' not 'the father *must*.' *At 838:* The service plan's goals, unlike its 'tasks,' are worded as commands. These goals, however, are not part of the checklist establishing specific actions that the parent must complete to obtain the return of the child. A parent could interpret the service plan as *requiring* that a parent provide the child with a safe environment, with the Department's *requested* 'tasks' acting as signposts to help achieve that goal. The plan does not alert the parent to the mandatory nature of specific criteria, as it must to serve as grounds for termination under Subsection (O)."

In re S.M.R., 434 S.W.3d 576, 584 (Tex.2014). "[W]hether a parent has done enough under the family-service plan to defeat termination under subpart (O) is ordinarily a fact question. [¶] While parents have generally had little success arguing substantial compliance to reverse a termination judgment under subpart (O), … here the argument simply suggests a factual dispute. Conceivably, subpart (O) could be established as a termination ground as a matter of law. But when questions of compliance and degree are raised, and the trial court declines to terminate on this ground, the evidence is not conclusive; it is disputed."

In re E.C.R., 402 S.W.3d 239, 248 (Tex.2013). "[W]hile [Fam. Code §161.001(1)(O), now §161.001(b)(1)(O),] requires removal under [Fam. Code] ch. 262 for abuse or neglect, those words are used broadly. '[A]buse or neglect of the child' necessarily includes the risks or threats of the environment in which the child is placed. Part of that calculus includes the harm suffered or the danger faced by other children under the parent's care. If a parent has neglected, sexually abused, or otherwise endangered her child's physical health or safety, such that initial and continued removal are appropriate, the child has been 'remov[ed] from the parent under Ch. 262 for the abuse or neglect of the child.'" *See also* ***In re S.M.R.***, 434 S.W.3d 576, 583 (Tex.2014) (acts or omissions listed in Fam. Code ch. 261 can be used to "inform" the terms abuse and neglect in ch. 262); ***In re K.N.D.***, 424 S.W.3d 8, 9-10 (Tex.2014) (evidence showed that child was removed for abuse and neglect under Fam. Code ch. 262 as required by §161.001(1)(O), now §161.001(b)(1)(O); mother's fight with roommates caused child's early birth, and mother had recently relinquished parental rights to her first child because she could not care for child).

In re J.W., 615 S.W.3d 453, 464 (Tex.App.--Texarkana 2020, no pet.). "[I]n order to prove a parent's parental rights should be terminated under subsections O and P based on the parent's failure to comply with a trial court's orders, including orders to comply with the Department's service plan, the Department must also present clear and convincing evidence that the 'parent was given a reasonable opportunity to comply with the terms of the plan' and the trial court's order."

In re M.P., 618 S.W.3d 88, 101 (Tex.App.--Houston [14th Dist.] 2020), *rev'd in part on other grounds*, 639 S.W.3d 700 (Tex.2022). "Father argues that the service plan was not sufficiently 'specific' under subsection O because, as a general matter, it did not contain deadlines for completion of tasks. [E]ven when the deadline for completion of a task is not specifically delineated, a parent could reasonably infer from the proceedings that, at the very least, 'the deadline for compliance for each requirement

would have been prior to termination.' Moreover, Father's plan included some tasks for which deadlines were either stated or inapplicable. [¶] Father next argues the subsection O finding should be reversed because he proved his affirmative defense that he was unable to complete the plan…. *At 102:* Father argues that he was unable to understand the service plan, and accordingly was unable to comply with it, because he cannot read due to his intellectual disabilities. While the statute requires the parent to prove that he could not comply with 'specific provisions' of the court order in question, evidence that a parent cannot read at all may support a blanket determination that the parent was unable to comply with any part of the court order due to a lack of comprehension. [¶] By failing to identify specific portions of the service plan he was unable to comply with, however, Father assumes the burden to prove that he could not comply with the service plan *at all* because of his lack of comprehension of it. … Moreover, Father does not explain how his inability to read prevented him from completing tasks such as maintaining contact with the Department (the evidence shows he contacted [CPS conservatorship worker] by phone at least once, so he was aware of how to do so), attending family visits (which he did at least once), or submitting to random drug screening, particularly in light of Aunt's testimony that Father was 'refusing to take certain drug tests at certain times' and 'refusing to do his plans that he needs to do.' *At 103:* Father failed to prove his [§161.001(d)] affirmative defense by a preponderance of the evidence."

In re A.J.A.R., No. 14-20-00084-CV, 2020 WL 4260343 (Tex.App.--Houston [14th Dist.] 2020, pet. denied) (memo op.; 7-24-20). "Although Father's substantial compliance with the service plan does not undermine the trial court's [§161.001(b)(1)(O)] finding, … we consider the evidence that Father completed the 'vast majority' of the service plan for purposes of the best-interest analysis. The record does not show that his failure to comply with the service plan--by not always scheduling his drug tests within 24 hours, and by using cocaine twice in a six month period--was due to indifference or malice toward his children. [¶] By completing the vast majority of the service plan, maintaining stable employment, securing an appropriate home for the children, regularly visiting the children, bonding with the children, being loved by the children, never having caused physical or emotional injury to the children, providing necessities to the children, ending his relationship with Mother (who could not explain the children's injuries and continued to commit offenses involving violence), and showing improvement on his drug tests (going from 'pretty high' results to 'very low' results), Father has shown a willingness and ability to effect positive environmental and personal changes. [¶] The evidence is factually insufficient to support the termination of Father's parental rights."

In re V.A., 598 S.W.3d 317, 330-331 (Tex.App.--Houston [14th Dist.] 2020, pet. denied). "Mother contends she complied with the plan by attending all required counseling sessions, consistently testing negative for drugs and alcohol, refraining from criminal activity, and visiting her children regularly. Mother's negative drug and alcohol tests are commendable, as is her lack of criminal activity, but neither was a requirement of her service plan. The requirements of her service plan that she did not satisfy were: (1) acquire, maintain for more than six months, and provide documentation of a legal form of income; and (2) take all prescribed medications. [¶] Our sufficiency analysis does not depend on the wisdom of the service plan's requirements. It is undisputed she did not satisfy the employment requirement. Though the record contains no evidence about the details of Mother's epilepsy or treatment, we do not presume to question the efficacy of her prescription. For purposes of subsection O, all we may consider is that she was prescribed to take medication, and there is some evidence to support an inference that she did not take her medication as prescribed. Therefore, we conclude the evidence is legally and factually sufficient to support termination under subsection O."

In re E.F., 591 S.W.3d 138, 144 (Tex.App.--San Antonio 2019, no pet.). "Mother contends the trial court was precluded from terminating her parental rights based on §161.001(b)(1)(O). Mother argues her mental health issues precluded her ability to complete all of the requested hair follicle exams. Mother testified she shaved her head in an effort to deal with bald spots resulting from a mental condition that caused her to pull her hair out. [¶] [T]he evidence relied upon by Mother would excuse only her failure to submit to random drug testing; it would not excuse her failure to complete the mandated parenting classes or the requirement that she remain drug free. We have found no evidence, nor does Mother point to any, regarding her inability to comply with the requirement that she complete the mandated parenting classes. Mother references her mental health issues, but there is nothing in the record to suggest these issues, for which Mother is medicated, precluded completion of her parenting classes. Moreover, the service plan required that Mother not only submit to drug testing, but that she remain drug free. Neither the evidence pointed to by Mother nor any other evidence in the record shows her mental health condition made her unable to

comply with the requirement that she not engage in illegal drug use. [¶] Even if there is evidence supporting completion or good faith engagement in [some] services, the evidence still shows an unexcused failure to complete other service plan requirements."

D.F. v. TDFPS, 393 S.W.3d 821, 830 (Tex.App.--El Paso 2012, no pet.). "Children are removed from their parents under [Fam. Code] ch. 262 for the abuse or neglect of a child where the children may have been physically in the care of a relative, a medical or social services institution, or the Department. At the time of her removal, [child] was residing at the Child Crisis Center. While she was physically removed from that facility, we find for purposes of ch. 262, she was removed from her parent."

§161.001(b)(1)(P)

In re J.W., 615 S.W.3d 453, 464 (Tex.App.--Texarkana 2020, no pet.). See annotation under Family Code §161.001(b)(1)(O).

In re A.Q.W., 395 S.W.3d 285, 290-91 (Tex.App.--San Antonio 2013, no pet.), *overruled on other grounds,* ***In re J.M.T.***, 617 S.W.3d 604 (Tex.App.--San Antonio 2020, no pet.). "Because [father] was incarcerated the six and one-half months from the time of [child's] birth to the time of the termination hearing, he could not have 'used a controlled substance … in a manner that endangered the health or safety of the child.' And … having received his service plan only 34[ ] days before the termination hearing, there is no evidence [father] was provided with an opportunity to enroll in, much less complete, 'a court-ordered substance abuse treatment program' while incarcerated. Finally, there is no evidence he has 'continued to abuse a controlled substance.' [¶] [T]he State argues [father's] drug use is a 'course of conduct' that has endangered [child's] health and safety. The State speculates this 'course of conduct' subjects a child to being left alone because his parent is once again jailed or once again committed to a drug treatment facility. But nothing in the record supports this speculation. There is no evidence [father] has been jailed repeatedly or been in and out of drug treatment of any type. Therefore, we conclude the evidence is legally insufficient to support a finding under §161.001(1)(P) [now §161.001(b)(1)(P)]."

In re J.E.H., 384 S.W.3d 864, 871 (Tex.App.--San Antonio 2012, no pet.). "[T]he Department had the burden of proving that [father] used a controlled substance *in a manner that endangered* [*child*]. … The Department … points out that [father] testified he tested positive for cocaine during the pendency of this suit. While [father] admitted that he tested positive for cocaine during the pendency of this suit, he denied having actually used cocaine and gave no testimony that would support a finding that his use of controlled substance endangered [child]. There is simply no evidence in this record that supports the finding [father] used a controlled substance *in a manner that endangered* [*child*]."

§161.001(b)(1)(Q)

In re C.L.E.E.G., 639 S.W.3d 696, 700 (Tex.2022). "[B]y essentially requiring the Department to show Father had 'zero chance of early release,' the court of appeals erred by 'impermissibly elevat[ing] the burden of proof from clear and convincing to beyond a reasonable doubt.'"

In re H.R.M., 209 S.W.3d 105, 108-09 (Tex.2006). "We recognize that a two-year sentence does not automatically meet subsection Q's two-year imprisonment requirement. In some cases, neither the length of the sentence nor the projected release date is dispositive of when the parent will in fact be released from prison. A parent sentenced to more than two years might well be paroled within two years. Thus, evidence of the availability of parole is relevant to determine whether the parent will be released within two years. Mere introduction of parole-related evidence, however, does not prevent a factfinder from forming a firm conviction or belief that the parent will remain incarcerated for at least two years. *At 110:* [Also,] [a]bsent evidence that the non-incarcerated parent agreed to care for the child on behalf of the incarcerated parent, merely leaving a child with a non-incarcerated parent does not constitute the ability to provide care." *See also* ***In re R.A.L.***, 291 S.W.3d 438, 443-44 (Tex.App.--Texarkana 2009, no pet.) (evidence that parents had been repeatedly denied parole in past was sufficient for jury to form belief that neither parent would be paroled within two years).

In re A.V., 113 S.W.3d 355, 356-57 (Tex.2003). "We hold that subsection Q's time period is prospective and that the subsection is constitutional even though applied to a parent incarcerated before the subsection's effective date. *At 360:* In reading subsection

Q to apply prospectively, the subsection fills a gap left by other grounds for termination. A prospective reading of subsection Q allows the State to act in anticipation of a parent's abandonment of the child and not just in response to it. Thus, if the parent is convicted and sentenced to serve at least two years and will be unable to provide for his or her child during that time, the State may use subsection Q to ensure that the child will not be neglected."

In re I.N.B., 662 S.W.3d 631, 645-46 (Tex.App.--Beaumont 2023, no pet.). "'[A] parent relying on another's provision of care to avoid termination under Subsection (Q) must demonstrate that the care is being provided on behalf of the parent, not out of an existing duty or inclination to care for the child.'"

In re J.G.S., 574 S.W.3d 101, 118 (Tex.App.--Houston [1st Dist.] 2019, pet. denied). "The requirement of clear and convincing evidence of an 'inability to care for the child' is not met on the mere showing of prolonged incarceration. 'Otherwise, the termination of parental rights could become an additional punishment automatically imposed along with imprisonment for almost any crime.' Therefore, evidence of a two-year incarceration is only the first of a three-step analysis. *At 119-20:* During the first step, the party moving for termination must produce evidence of criminal conduct by the parent that results in confinement for two or more years. The burden of production then shifts to the parent. [¶] In the second step, the parent must produce some evidence of how the parent will provide care for the child during the period of confinement or that the parent has arranged with another person for that person to provide care for the child during the period of confinement. [¶] If the parent's burden of production is met, the third step shifts the burden to the party seeking to terminate parental rights. That party then has the burden of persuasion to show by clear and convincing evidence that the parent's provision or arrangement would not adequately satisfy the parent's duty to the child. [¶] The parties do not point us to any caselaw analyzing whether a conviction that was based on legally and factually sufficient evidence but was nonetheless reversed for retrial meets the requirements of a 'conviction' under Subsection (Q). Nor have we found any such case. [¶] [T]he focus of ... Subsection (Q) is not whether a conviction is final or will be affirmed on appeal but, rather, whether there is a period of two or more years in which the parent will be confined following a conviction, thereby raising the possibility of inadequate parental care. [C]ourts have permitted termination of parental rights while an appeal of the parent's conviction remains pending."

In re A.R., 497 S.W.3d 500, 503 (Tex.App.--Texarkana 2015, no pet.). "[I]n order to satisfy the elements of subsection (Q), the Department must present evidence that [father] knowingly engaged in the conduct that resulted in his conviction. … DWI, third or more, [is] found in [Pen. Code] Ch. 49…. [Pen. Code] §49.11(a) … provides, '[P]roof of a culpable mental state is not required for conviction of an offense under this chapter.' Thus, the holding in [***In re***] ***C.D.E.*** [below] is applicable here, and the Department could not establish that [father] knowingly engaged in the conduct that resulted in his conviction of the offense of DWI, third or more, by merely introducing evidence of the conviction. Instead, the Department was required to present proof of the facts surrounding the conviction to show that the father knowingly engaged in the conduct resulting in that conviction."

In re C.D.E., 391 S.W.3d 287, 299 (Tex.App.--Fort Worth 2012, no pet.). "Father's mere conviction for the strict-liability offense of intoxication manslaughter cannot automatically supply the knowing element required by subsection (Q). [¶] Given its common and ordinary meaning, the term 'knowingly' means 'in a knowing manner' and 'with awareness, deliberateness or intention.' *At 300:* [W]e hold that to establish that a parent 'knowingly engaged in criminal conduct' as set forth in subsection (Q), the Department must prove more than mere negligence. *At 301:* [T]he record contains no evidence from which the trial court could have formed a firm conviction or belief that Father '*knowingly* [as opposed to negligently] engaged in criminal conduct'…."

In re D.J.H., 381 S.W.3d 606, 612 (Tex.App.--San Antonio 2012, no pet.). Father "argues that the trial court erred in terminating his parental rights based on subsection (Q) … because he will be released from prison less than two years from the date the State's amended petition for termination was filed. According to [father], the date of the amended petition for termination should control because it was the amended petition that added subsection (Q) as a ground for termination. *At 613:* Given that the purpose of subsection (Q) is to protect children from being neglected, and not to provide notice, it is logical to conclude that when subsection (Q) refers to 'the petition,' it is referring to the original petition for termination, and not a subsequently amended one adding an allegation for termination under subsection (Q)."

§161.001(b)(1)(R)

In re L.G.R., 498 S.W.3d 195, 202-03 (Tex.App.--Houston [14th Dist.] 2016, pet. denied). "Mother argues the evidence is legally and factually insufficient to support the trial court's finding because there were no observable signs of marijuana, or withdrawal from marijuana in the Child at birth. The Family Code, however, does not require proof of signs of withdrawal. Under the Family Code definition, it is sufficient to show that the demonstrable presence of a controlled substance was observable in the Child's bodily fluids. [¶] Mother further argues that the Department presented no expert testimony that Mother was the cause of the Child being born addicted to a controlled substance. Mother does not cite, nor have we found, any legal authority supporting her argument that the Department was required to present expert testimony as to causation. A reasonable fact-finder could believe that a child's testing positive for a controlled substance at birth could be caused by its mother's use of the controlled substance during pregnancy. Mother's admission of marijuana use during pregnancy and the admission of the medical records showing marijuana in the Child's bodily fluids constitute sufficient evidence under the Family Code that Mother was the cause of the Child being born addicted to a controlled substance."

§161.001(b)(1)(T)

In re E.M.N., 221 S.W.3d 815, 825 (Tex.App.--Fort Worth 2007, no pet.). "Despite [mother's] conviction and imprisonment before subsection (T)'s enactment, [her] rights were not violated by its retroactive application. [Child] and [managing conservator], her grandmother, are part of the public whose interest subsection (T) advances. Subsection (T)'s underlying purpose is not to add additional punishment to [mother] for murdering [child's] father, but to safeguard the public welfare and advance the public interest by facilitating termination when one parent murders the other--an act previously used to support terminations under subsection (E). Therefore, [mother] cannot now claim surprise and damage to her settled expectations under these circumstances."

§161.001(b)(2)--Best Interest

Interest of J.F.-G., 627 S.W.3d 304, 317-18 (Tex. 2021). "Although ... father's strides toward overcoming his past conduct are important in evaluating [child's] best interests, his rehabilitation does not negate his past criminal conduct and incarceration such that a trial court could not consider them to have been endangering to [child]. Based on the evidence before it, the trial court reasonably could have formed the firm belief that [child's] father engaged in endangering conduct under subsection (E). We note, specifically: his absence from her childhood for more than eight years; his history of dealing drugs; his choice not to monitor her safety during his incarceration; and his minimal effort to contact Julie or be part of decisions regarding her health, education, or well-being."

Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex.1976). "An extended number of factors have been considered by the courts in ascertaining the best interest of the child. Included among these are the following: (A) the desires of the child; (B) the emotional and physical needs of the child now and in the future; (C) the emotional and physical danger to the child now and in the future; (D) the parental abilities of the individuals seeking custody; (E) the programs available to assist these individuals to promote the best interest of the child; (F) the plans for the child by these individuals or by the agency seeking custody; (G) the stability of the home or proposed placement; (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (I) any excuse for the acts or omissions of the parent. This listing is by no means exhaustive, but does indicate a number of considerations which either have been or would appear to be pertinent." *See also* ***Swate v. Swate***, 72 S.W.3d 763, 769 (Tex.App.--Waco 2002, pet. denied) (stepparent's desire to adopt is another factor); ***Salas v. TDPRS***, 71 S.W.3d 783, 792 (Tex.App.--El Paso 2002, no pet.) (child's young age is another factor).

C. C. v. TDFPS, 653 S.W.3d 204, 217-18 (Tex.App.--Austin 2022, no pet.). "When it comes to children with physical or intellectual disabilities, 'The fact that a child has special needs does not automatically mean that termination of the parent-child relationship is in the best interest of the child.' Instead, the factfinder must view the existence of any special needs--like all relevant facts and circumstances--through the ***Holley*** lens. For example, the factfinder must weigh the parties' relative

abilities to meet the child's needs and any programs available to help them do so. Thus, a child's special needs weighs in favor of termination to the extent the evidence suggests that 'termination of [the] parental rights would improve the outlook' for the child's health."

In re L.M., 572 S.W.3d 823, 837 (Tex.App.--Houston [14th Dist.] 2019, no pet.). "Though the State gives preference to an adult relative over a non-relative if that placement is in the best interest of the child, the overriding consideration for the court in placement decisions is always the child's best interest. A child's anticipated placement is a factor in determining the child's best interest, but the fact that placement will be with non-relatives is not a bar to termination. That the Department has not considered potential placement with a paternal relative does not bear on whether termination is in the child's best interest."

In re D.A.Z., 583 S.W.3d 676, 682 (Tex.App.--El Paso 2018, no pet.). "Evidence that a child is well-cared for by her foster family, is bonded to her foster family, and has spent minimal time in the presence of a parent is relevant to the best interest determination under the desires of the child factor."

In re J.K.V., 490 S.W.3d 250, 258 (Tex.App.--Texarkana 2016, no pet.). "[P]roof that a parent is outside the U.S. and cannot return should not automatically establish best interest. Still, there is evidence that [father] may not have done all he could to return and exercise parental duties over [child]. Accordingly, we find that [this] factor weighs slightly in favor of terminating [father's] parental rights."

In re K.D., 471 S.W.3d 147, 165 (Tex.App.--Texarkana 2015, no pet.). Family Code "§§153.002 and 161.001(2) both require the trial court to determine the best interest of the child, and [***In re Lee***, 411 S.W.3d 445 (Tex.2013),] holds that [an MSA] obtained under [Fam. Code] §153.0071(e) forecloses the trial court's best-interest review under §153.002. *At 171:* Having determined that ***Lee***'s interpretation of §153.0071(e) in the context of best-interest review under §153.002 does not apply to parental-rights termination cases brought by the Department [see ***In re K.D.*** annotation under Family Code §153.0071], we must now interpret §153.0071(e) in the context of best-interest review under §161.001(2). *At 172:* [O]nly cases for conservatorship, possession, and access to children that are referred to mediation under §153.0071(c) can produce [an MSA] that forecloses the trial court's best-interest review. Because termination cases are governed by [Fam. Code] Ch. 161, §153.0071(e) would not apply to such cases. Therefore, §153.0071(c) and (e) can be interpreted to mean that any suit under Title 5, including a parental-rights termination suit, may be referred to mediation, but only those suits for conservatorship, possession, and access that produce [an MSA] can eliminate the trial court's best-interest review. *At 174:* Section 153.0071(e) does not foreclose judicial review of the best-interest element of proof in a parental-rights termination case brought by the Department. Likewise, we hold that §153.0071(e) does not foreclose an appellate court from reviewing the legal and factual sufficiency of a trial court's finding that termination is in the child's best interest. Therefore, we are not bound by the MSA and or the Affidavit to find that termination of Mother's parental rights was in [child's] best interest; instead, the Department was required to prove best interest by clear and convincing evidence."

J.S. v. TDFPS, 511 S.W.3d 145, 160 (Tex.App.--El Paso 2014, no pet.). "The evidence supporting the predicate ground(s) [under §161.001(1), now §161.001(b)(1),] may also be used to support the finding that termination is in the best interests of the child. *At 161:* Mother urges this Court to weigh the evidence of her actual acts or omissions without reference to her guilty plea [to injury of a child] to determine whether there is legal or factual sufficiency to support the termination grounds. [Mother argues that] DFPS has waived the evidence of Mother's conviction because [§161.001(1)(L), now §161.001(b)(1)(L),] was not pleaded and DFPS induced Mother to plead guilty. [¶] It is uncontroverted Mother pled guilty to injury of a child and received four years' deferred adjudication supervision. … Mother denies she committed the injury to a child. Secondly, she asserts, her plea of guilty, presumably under oath, was motivated by her fear of Father coupled with DFPS's reassurance her children would be reunified with her. [T]here is no authority to collaterally attack a criminal conviction in a parental termination case. Therefore, we are not inclined to peer behind Mother's guilty plea to injury of [child] and will not disregard it in our sufficiency analysis."

T.W. v. TDFPS, 431 S.W.3d 645, 651 (Tex.App.--El Paso 2014, no pet.). "While it is presumed that it is in the child's best interest to preserve the parent-child relationship, the requirement to show that termination is in the child's best interest in addition to

the clear and convincing standard of proof subsumes reunification issues and guarantees the constitutionality of termination proceedings. A separate consideration of alternatives to termination is not required. When determining the child's best interest, the focus is on the child and not the parent."

In re E.D., 419 S.W.3d 615, 618 (Tex.App.--San Antonio 2013, pet. denied). In response to being asked why termination would be in the best interest of the children, CPS supervisor "explained that if both parents' parental rights were terminated, the children's maternal grandparents could get financial assistance after adopting the children. She said that if the parental rights were not terminated, the grandparents would not be entitled to a financial subsidy. *At 619:* We do not believe terminating a parent's rights to his children so that someone can obtain financial subsidies upon adoption is an appropriate basis on which to base a best interest finding."

In re A.H., 414 S.W.3d 802, 807 (Tex.App.--San Antonio 2013, no pet.). "The only evidence of best interest was offered by the caseworker who testified termination of all parental rights was in the children's best interest 'because the children need a loving family that will care for them and take care of their needs,' and the children were to be adopted by their current care givers. The State argues that although the evidence regarding best interest was 'limited,' no evidence was offered to contradict the caseworker's testimony and [mother] offered no proof that termination of her parental rights was not in the children's best interest. But due process and the Texas Family Code place the burden of proof on the Department to prove the necessary elements by the heightened burden of 'clear and convincing evidence.' Thus, conclusory testimony, such as the caseworker's, even if uncontradicted does not amount to more than a scintilla of evidence. And, '[a]lthough [a parent's] behavior may reasonably suggest that a child would be better off with a new family, the best interest standard does not permit termination merely because a child might be better off living elsewhere.'"

In re N.L.D., 412 S.W.3d 810, 819 (Tex.App.--Texarkana 2013, no pet.). "Evidence supporting the termination of parental rights [under §161.001(1), now §161.001(b)(1),] is also probative of best interest. A parent's inability to provide adequate care for her child, lack of parenting skills, and poor judgment may be considered when looking at the child's best interests. Parental drug abuse is also a factor to be considered in determining a child's best interests. *At 823:* Evidence that a person has recently improved her life weighs against a finding that termination is in the best interest of the child."

In re S.R.L., 243 S.W.3d 232, 235-36 (Tex.App.--Houston [14th Dist.] 2007, no pet.). "The factfinder must find both a statutory violation and that termination is in the children's best interest. The trial judge may have believed DFPS conclusively established a statutory ground for termination under subsection Q, but the best interest determination is a separate inquiry. Because the trial judge did not actually form a firm conviction or belief that severing [father's] relationship with his children was in their best interest, we conclude the evidence is legally insufficient. [¶] That a parent is imprisoned does not automatically establish that termination of parental rights is in the child's best interest."

In re C.J.B., 137 S.W.3d 814, 820 (Tex.App.--Waco 2004, no pet.). "[T]he factors considered in termination cases are broader than those mentioned in [Fam. Code] §263.307, which is limited to the factors considered when 'determining whether the child's parents are willing and able to provide the child a safe environment….' Many, if not all, of the 13 factors listed in §263.307, one with six sub-parts, are subsumed within one of the broader ***Holley*** factors. [¶] Further, neither the Texas Supreme Court, nor this Court, has ever held that the ***Holley*** factors are exhaustive, or that all such considerations must be proved as a condition precedent to parental termination. The absence of evidence about some of these considerations does not preclude a factfinder from reasonably forming a firm belief or conviction that termination is in the child's best interest. The analysis of one factor may be adequate in a particular factual situation to support a finding that termination is in the best interest of the child." *See also* ***In re D.W.***, 445 S.W.3d 913, 925 (Tex.App.--Dallas 2014, pet. denied).

V. T. C. A., Family Code § 161.001, TX FAMILY § 161.001
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

Vernon's Texas Rules Annotated
Texas Rules of Evidence (Refs & Annos)
Article I. General Provisions (Refs & Annos)

TX Rules of Evidence, Rule 103

Rule 103. Rulings on Evidence

Effective: June 1, 2020
Currentness

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection. When the court hears a party's objections outside the presence of the jury and rules that evidence is admissible, a party need not renew an objection to preserve a claim of error for appeal.

(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court must allow a party to make an offer of proof as soon as practicable. In a jury trial, the court must allow a party to make the offer outside the jury's presence and before the court reads its charge to the jury. At a party's request, the court must direct that an offer of proof be made in question-and-answer form. Or the court may do so on its own.

(d) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) Taking Notice of Fundamental Error in Criminal Cases. In criminal cases, a court may take notice of a fundamental error affecting a substantial right, even if the claim of error was not properly preserved.

Credits

Eff. March 1, 1998. Amended by orders of Supreme Court March 10, 2015 and Court of Criminal Appeals March 12, 2015, eff. April 1, 2015; orders of Supreme Court May 26, 2020, and Court of Criminal Appeals June 1, 2020, eff. June 1, 2020.

O'CONNOR'S NOTES

Source: FRE 103, with changes: Party entitled to make offer in question-and-answer form.

O'CONNOR'S CROSS REFERENCES

See also TRAP 44.1; ***O'Connor's Texas Rules,*** "Motion in Limine," ch. 5-E, §1 et seq.; ***O'Connor's Texas Rules,*** "Objecting to Evidence," ch. 8-D, §1 et seq.; ***O'Connor's Texas Rules,*** "Offer of Proof & Bill of Exception," ch. 8-E, §1 et seq.; Brown & Rondon, ***Texas Rules of Evidence Handbook***, Rule 103.

O'CONNOR'S ANNOTATIONS

In re Toyota Motor Sales, U.S.A., Inc., 407 S.W.3d 746, 760 (Tex.2013). "[W]here … the party that requested the limine order *itself* introduces the evidence into the record, and then fails to immediately object, ask for a curative or limiting instruction or, alternatively, move for mistrial, the party waives any subsequent alleged error on the point."

Bonilla v. State, 452 S.W.3d 811, 817 (Tex.Crim.App.2014). "Both [TRAP] 33.1 and [TRE] 103 are 'judge-protecting' rules of error preservation. The basic principle of both rules is that of 'party responsibility.' Thus, the party complaining on appeal (whether it be the State or the defendant) about a trial court's admission, exclusion, or suppression of evidence 'must, at the earliest opportunity, have done everything necessary to bring to the judge's attention the evidence rule [or statute] in question and its precise and proper application to the evidence in question.'"

Bekendam v. State, 441 S.W.3d 295, 299 (Tex.Crim.App.2014). "Because preservation of error is a systemic requirement on appeal, a court of appeals should review preservation of error regardless of whether the issue was raised by the parties."

Haley v. State, 173 S.W.3d 510, 517 (Tex.Crim.App.2005). "While it is clear from the record that [D's] counsel did not obtain a running objection, we find that the bench conference was a hearing outside the presence of the jury and satisfied [TRE] 103(a). … Therefore, we find [D] properly preserved this alleged error…."

Warner v. State, 969 S.W.2d 1, 2 (Tex.Crim.App.1998). "An offer of proof may be in question-and-answer form, or it may be in the form of a concise statement by counsel. An offer of proof to be accomplished by counsel's concise statement must include a reasonably specific summary of the evidence offered and must state the relevance of the evidence unless the relevance is apparent, so that the court can determine whether the evidence is relevant and admissible. [¶] [A] State's motion in limine that excludes defense evidence is subject to reconsideration throughout trial and that to preserve error an offer of the evidence must be made at trial."

PNS Stores v. Munguia, 484 S.W.3d 503, 511 (Tex.App.--Houston [14th Dist.] 2016, no pet.). "To adequately and effectively preserve error, an offer of proof must show the nature of the evidence specifically enough so that the reviewing court can determine its admissibility. The offer of proof may be made by counsel, who should reasonably and specifically summarize the evidence offered and state its relevance unless already apparent. If counsel makes such an offer, he must describe the actual content of the testimony and not merely comment on the reasons for it." *See also* ***PPC Transp. v. Metcalf***, 254 S.W.3d 636, 640-41 (Tex.App.--Tyler 2008, no pet.).

Bledsoe v. State, 479 S.W.3d 491, 495 (Tex.App.--Fort Worth 2015, pet. ref'd). "At trial, [D] objected that [witness's] testimony was inadmissible hearsay, and the State asserted that her testimony fell under an exception to the hearsay rule…. [¶] Although

[D's] general hearsay objection would preserve his complaint for appellate review in most cases, the State identified the hearsay exception on which it relied in response to [D's] objection; therefore, [D] was required to further object that the invoked exception did not apply."

Allen v. State, 473 S.W.3d 426, 451 (Tex.App.--Houston [14th Dist.] 2015, pet. dism'd). "Texas courts recognize a narrow exception to [TRE] 103(a)(2)'s requirements for error preservation during the defendant's cross-examination of a State's witness. A defendant may preserve a complaint when a trial court prohibits the defendant from questioning a State's witness about matters that affect the witness's credibility by merely establishing what general subject matter he desires to examine the witness about during his cross-examination and, if challenged, show on the record why such should be admitted into evidence. A 'witness's credibility' refers to personal characteristics of the witness. Matters that affect a witness's credibility are matters which might show malice, ill feeling, ill will, bias, prejudice, or animus. 'The credibility of a witness's testimony,' in contrast, refers to the substance of the evidence. A defendant who wishes to cross-examine a State's witness regarding the credibility of a witness's testimony must preserve error according to Rule 103(a)(2)." (Internal quotes omitted.)

Torres v. State, 371 S.W.3d 317, 319 (Tex.App.--Houston [1st Dist.] 2012, pet. ref'd). "[T]he defendant bears the burden of establishing the State lost or destroyed [potentially useful] evidence in bad faith."

Bowman v. Patel, No. 01-10-00811-CV, 2012 WL 524428 (Tex.App.--Houston [1st Dist.] 2012, no pet.) (memo op.; 2-16-12). "An offer of proof may be in the form of concise statement by counsel or in question-and-answer form. It is not required that the offer of proof show what specific facts the examination would reveal, but the appellant must clearly inform the trial court of the subject matter about which it wants to examine the witness."

Bobbora v. Unitrin Ins., 255 S.W.3d 331, 334-35 (Tex.App.--Dallas 2008, no pet.). "To preserve error concerning the exclusion of evidence, the complaining party must actually offer the evidence and secure an adverse ruling from the court. While the reviewing court may be able to discern from the record the nature of the evidence and the propriety of the trial court's ruling, without an offer of proof, we can never determine whether exclusion of the evidence was harmful. … An offer of proof preserves error for appeal if: (1) it is made before the court, the court reporter, and opposing counsel, outside the presence of the jury; (2) it is preserved in the reporter's record; and (3) it is made before the charge is read to the jury. When no offer of proof is made before the trial court, the party must introduce the excluded testimony into the record by a formal bill of exception. A formal bill of exception must be presented to the trial court for its approval, and, if the parties agree to the contents of the bill, the trial court must sign the bill and file it with the trial court clerk. Failure to demonstrate the substance of the excluded evidence results in waiver." *See also* ***In re J.R.P.***, 526 S.W.3d 770, 780 (Tex.App.--Houston [14th Dist.] 2017, no pet.).

Andrade v. State, 246 S.W.3d 217, 226 (Tex.App.--Houston [14th Dist.] 2007, pet. ref'd). "[W]hile the trial court erred when it prevented [D] from making an offer of proof prior to the charge being read to the jury during the guilt/innocence phase of his trial, the error was harmless because [D] was ultimately allowed to make his offer of proof [prior to the charge being read to the jury during the punishment phase of the trial]."

Benavides v. Cushman, Inc., 189 S.W.3d 875, 885 (Tex.App.--Houston [1st Dist.] 2006, no pet.). "'[A]ny error in admitting evidence is cured where the same evidence comes in elsewhere without objection.'"

Greenberg Traurig of N.Y., P.C. v. Moody, 161 S.W.3d 56, 91 (Tex.App.--Houston [14th Dist.] 2004, no pet.). "Because a trial court's ruling on a motion in limine preserves nothing for review, a party must object at trial when the testimony is offered to preserve error for appellate review. However, not all pretrial motions are motions in limine. There is a distinction between a motion in limine and a pretrial ruling on admissibility. The trial court has the authority to make a pretrial ruling on the admissibility of evidence."

Bean v. Baxter Healthcare Corp., 965 S.W.2d 656, 660 (Tex.App.--Houston [14th Dist.] 1998, no pet.). "[P] preserved error after its initial offer of the videotape. If exclusion of evidence is based on the substance of the evidence, however, the offering

party must reoffer it if it again becomes relevant. This may occur when the evidence is pertinent to rebuttal. Error is waived if the offering party fails to reoffer evidence for a limited purpose after it has been excluded pursuant to a general objection."

Hess v. State, 953 S.W.2d 837, 841 (Tex.App.--Fort Worth 1997, pet. ref'd). "[A]ny error in admission of evidence is cured by admission of the same evidence elsewhere without objection."

Chance v. Chance, 911 S.W.2d 40, 52 (Tex.App.--Beaumont 1995, writ denied). "[T]he rule requiring that proffered evidence be incorporated in a bill of exception does not apply to cross examination of an adverse witness. When cross-examination testimony is excluded, [D] need not show the answer to be expected but only need show that the substance of the evidence was apparent from the context within which the question was asked."

Mack v. State, 872 S.W.2d 36, 38 (Tex.App.--Fort Worth 1994, no pet.). "There are two exceptions to the contemporaneous objection rule. Error may be preserved with the continuing or running objection. [C]ounsel may also lodge a valid objection to all the offered testimony it deems objectionable on a given subject at one time out of the jury's presence. If the trial court admits the evidence, any error in its admission is preserved." *See also* ***Cordero v. State***, 444 S.W.3d 812, 817 (Tex.App.--Beaumont 2014, pet. ref'd).

Rules of Evid., Rule 103, TX R EVID Rule 103
- Current with amendments received through January 1, 2024. Some rules may be more current, see credits for details.

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