



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

CODY DON BELL,	§	No. 08-20-00149-CV
Appellant,	§	Appeal from the
v.	§	County Court
THE STATE OF TEXAS FOR THE PROTECTION OF S.E.G.,	§	of Lampasas County, Texas
Appellee.	§	(TC# 3444)
	§	

CONCURRING OPINION

I concur in the Court’s disposition of this case but write separately to emphasize that there are statutory prerequisites for issuing protective orders in Texas that cannot be lightly overlooked.

Appellant’s primary issue on appeal is that the trial court erred in granting a protective order when there was not a finding that family violence had occurred in the past. And indeed, issuance of a protective order depends on two distinct and required findings: the existence of past family violence *and* the likelihood of future family violence. This conclusion flows inexorably from the statutory language. In a section titled “Required Findings and Orders” the trial court is required to make a finding as to both aspects of family violence. TEX.FAM.CODE ANN. § 85.001(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.”).

Subsection (b) of the same provides that the trial court shall render a protective order “[i]f the court finds that family violence has occurred and that family violence is likely to occur in the future[.]” *Id.* at § 85.001(b). And Subsection (c) repeats the same requirement for a finding of both past family violence and the likelihood of future violence. *Id.* at § 85.001(c) (A protective order compelling a person to complete certain programs “shall include a finding that the first applicant has committed family violence and is likely to commit family violence in the future.”). Similarly, Section 81.001 also states: “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.” TEX.FAM.CODE ANN. § 81.001; *see also S. N. v. Texas Department of Family & Protective Services*, No. 03-18-00539-CV, 2019 WL 471069, at *4 (Tex.App.--Austin Feb. 7, 2019, no pet.) (mem. op.); *Onkst v. Morgan*, No. 03-18-00367-CV, 2019 WL 4281913, at *1 (Tex.App.--Austin Sept. 11, 2019, pet. denied) (mem. op.).

The statute plainly places the two requirements (past family violence and the requirement of future family violence) in the conjunctive. In other words, “Both findings are required before a court may issue a protective order under the family code.” *Colvin v. Colvin*, No. 03-03-00234-CV, 2004 WL 852266, at *6 (Tex.App.--Austin Apr. 22, 2004, no pet.) (mem. op.).

As the form order, reproduced in the majority opinion reflects, the trial court checked a box stating that “[f]amily violence has occurred and is likely to occur in the future” but the trial court hand circled only the latter clause (concerning future violence) on the form. Appellant asked for findings of fact and conclusions of law. Those findings were not included in the clerk’s record on appeal, and no motion to supplement the clerk’s record was ever filed with this Court. The majority opinion alludes to an attachment to Appellant’s brief, which purports to be the findings of fact and conclusions of law, but the case law in this district, as well as the Third Court of Appeals

are replete with cases disallowing supplementations of the record by merely attaching documents to an appellate brief.

The State's responsive brief on appeal does not raise any of the record infirmities advanced by the majority, nor challenge that the trial court did in fact make findings of fact and conclusions of law that omitted a finding of past family violence. Instead, the State's only response on appeal is that because these sections of the Family Code are remedial, we should construe them broadly to effectuate their remedial and humanitarian purposes. While that is certainly true, a liberal construction does not include re-writing the statute to eliminate one of the elements of proof required to obtain a protective order.

JEFF ALLEY, Justice

March 11, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.