



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)
	§	

OPINION

This is an appeal from a protective order granted under the Family Code by the County Court of Lampasas County, Texas.

BACKGROUND

On May 26, 2020, the State of Texas (the “State”) requested a protective order under TEX.FAM.CODE ANN. § 82.002. The State sought this order against Cody Don Bell (“Bell”) on behalf of S.E.G. Bell and S.E.G. had formerly dated and lived together. The complaint alleged that Bell had previously engaged in conduct constituting family violence and alleged the likelihood of future family violence. That same day, the trial court entered a Temporary *Ex Parte* Protective Order and Show Cause Order, setting the hearing for June 9, 2020.

The trial court held a hearing on June 9, 2020. No record of the hearing was apparently

taken. The trial court completed a pre-printed "Protective Order" form and checked a box stating that "[f]amily violence has occurred and is likely to occur in the future." In addition, the trial court hand circled the clause, concerning future violence, on the form.

PROTECTIVE ORDER

On this day came to be heard this Application for a Protective Order, pursuant to and in accordance with the Texas Family Code.

I. APPEARANCES

- Applicant appeared in person and through the State's attorney and announced ready.
- Respondent appeared in person and by and through counsel ZACHARY MORRIS and announced ready.
- Respondent appeared pro se and announced ready.
- Respondent failed to appear, although duly served with citation and notice.

II. FINDINGS

The Court, having considered all pleadings and heard the evidence and argument of counsel, finds that all necessary prerequisites of the law have been legally satisfied pursuant to Title IV, of the Texas Family Code and that the Court has jurisdiction over the parties and subject matter of this cause.

- The making of a record of testimony was waived.
- A record of testimony was made.
- The Court finds that a protective order is in the best interest of the Applicant, the family or household, and the Court further finds that:
 - The parties have agreed to the following protective orders.
 - Family Violence has occurred and is likely to occur in the future.
 - Respondent, who is a party to these proceedings committed family violence. Applicant has been the victim of family violence.
 - Respondent poses a threat to the physical safety of the Applicant.
 - There was a previous protective order, which has expired, and the Respondent violated the previous protective order while it was in effect.
 - Respondent has a duty to support: _____

III. ORDERS

The Respondent is ORDERED, DIRECTED and COMMANDED:

- (A) To refrain from committing acts of family violence against the Applicant or any member of the Applicant's family or household (including acts intended to result in physical harm, bodily injury, assault or sexual assault, or threats reasonably placing a member in fear of physical harm, bodily injury, assault or sexual assault), and not to use any force that would cause injury to the Applicant.
- (B) Not to communicate nor attempt to communicate with the Applicant or any member of the Applicant's family or household in a threatening or harassing manner.
 - The Court finds that good cause exists to order Respondent not to communicate with Applicant in any manner whatsoever except through attorneys, and it is so ordered.

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The trial court ordered Appellant to refrain from committing acts of family violence against S.E.G. or members of her household, and likewise not to communicate with S.E.G. except through counsel. The protective order is effective until June 8, 2021. On June 16, 2020, Appellant requested findings of fact and conclusions of law. On June 16, 2020, Bell also filed his notice of appeal. On

June 22, 2020, the clerk certified the record for appeal. However, the clerk's record filed in this appeal reveals no findings of fact or conclusions of law were ever filed. No reporter's record was filed.

Appellant argues the trial court erred in granting a Protective Order "without making a finding that family violence had occurred." First, he posits the review of a Protective Order is not moot. Second, he alleges the trial court failed to make a finding that family violence had occurred by relying on a document attached to his brief but not included in the underlying record before us. Appellant concludes the evidence is legally insufficient to support the Protective Order because the trial court did not find family violence had occurred.

Exhibits Attached to Bell's Brief

Appellant attached what appears to be a June 26, 2020 file stamped copy of findings of fact and conclusions of law to his brief, however it is not included in the clerk's certified record to this Court. The appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record. TEX.R.APP.P. 34.1.

We note, "[a]n appendix is not a substitute for a clerk's record nor are citations to the appendix a substitute for citations to the record." *Jackson v. Citibank (S.D.), N.A.*, 345 S.W.3d 214, 214 (Tex.App.—Dallas 2011, no pet.)(quoting *Willms v. Wilson*, No. 05-08-01718-CV, 2009 WL 4283109, at *1 (Tex.App.—Dallas Dec. 2, 2009, no pet.)(mem. op.)). Further, we may not consider documents in an appendix that are not in the appellate record. *Deutsch v. Hoover, Bax & Slovacek, L.L.P.*, 97 S.W.3d 179, 198–99 (Tex.App.—Houston [14th Dist.] 2002, no pet.); *see also Quorum Int'l v. Tarrant Appraisal Dist.*, 114 S.W.3d 568, 572 (Tex.App.—Fort Worth 2003, pet. denied)("We cannot look outside the record in an effort to discover relevant facts omitted by the parties; rather, we are bound to determine this case on the record as filed."); *Warriner v. Warriner*,

394 S.W.3d 240, 254 (Tex.App.—El Paso 2012, no pet.)(holding that documents attached to a brief as an exhibit or an appendix, but not appearing in the record, cannot be considered on appellate review); *Fox v. Wardy*, 234 S.W.3d 30, 33 (Tex.App.—El Paso 2007, pet. dismiss'd w.o.j.) (refusing to consider appellant's affidavit attached to brief because it was not part of the appellate record); *WorldPeace v. Commission for Lawyer Discipline*, 183 S.W.3d 451, 465 n.23 (Tex.App.—Houston [14th Dist.] 2005, pet. denied)(“we cannot consider documents attached as appendices to briefs and must consider a case based solely upon the record filed”); *Siefkas v. Siefkas*, 902 S.W.2d 72, 74 (Tex.App.—El Paso 1995, no writ)(holding that appellate court may not consider matters outside appellate record); *Fuentes v. Union de Pasteurizadores de Juarez Sociedad Anonima de Capital Variable*, 527 S.W.3d 492, 502 (Tex.App.—El Paso 2017, no pet.); *Amarillo v. R.R. Commn. of Texas*, 511 S.W.3d 787, 793 (Tex.App.—El Paso 2016, no pet.); *Robb v. Horizon Communities Improvement Association, Inc.*, 417 S.W.3d 585, 589 (Tex.App.—El Paso 2013, no pet.).

The attachment of documents as exhibits or appendices to briefs is not a formal inclusion in the record on appeal and, therefore, the documents cannot be considered. *Fox*, 234 S.W.3d at 33; *Nguyen v. Intertex, Inc.*, 93 S.W.3d 288, 293 (Tex.App.—Houston [14th Dist.] 2002, no pet.); *Perry v. Kroger Stores, Store No. 119*, 741 S.W.2d 533, 534 (Tex.App.—Dallas 1987, no writ)(op. on reh'g). Accordingly, we will not consider any documents attached to Bell's brief which are not part of the appellate record.

Sufficiency of the Evidence

Apparently, no reporter's record was taken for the Protective Order hearing on June 9, 2020. It is well-established law that “without a complete record, it is impossible to review all the evidence presented to the jury or to apply the appropriate evidentiary sufficiency standards in

review of the case.” *In re Estate of Arrendell*, 213 S.W.3d 496, 499 (Tex.App.—Texarkana 2006, no pet.). When a reporter's record is not filed, as in this case, we must assume that the missing evidence supports the trial court's ruling. *Bryant v. United Shortline Inc. Assurance Services, N.A.*, 972 S.W.2d 26, 31 (Tex. 1998); *Bloyed v. General Motors Corp.*, 881 S.W.2d 422, 430 (Tex.App.—Texarkana 1994), *aff'd*, 916 S.W.2d 949 (Tex. 1996). If there is no reporter's record or findings of fact, we must presume the evidence was sufficient. *Guthrie v. National Homes Corp.*, 394 S.W.2d 494, 495 (Tex. 1965); *Smith v Grace*, 919 S.W.2d 673, 677-78 (Tex.App.—Dallas 1996, writ denied). Further, an Appellant cannot show insufficiency of the evidence to support a finding without a reporter's record. *Panizo v Young Men's Christian Ass'n of Greater Houston Area*, 938 S.W.2d 163, 165 (Tex.App.—Houston [1st Dist.] 1996, no writ); *Fisher v Evans*, 853 S.W.2d 839, 840-41 (Tex.App.—Waco 1993, writ denied).

CONCLUSION

Accordingly, we hold that Appellant has waived his sole issue on appeal and therefore overrule his issue and affirm the trial court's judgment.

March 11, 2021

YVONNE T. RODRIGUEZ, Chief Justice

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