

No. 23-0067

In the Supreme Court of Texas

Christine Lenore Stary,

Petitioner,

v.

Brady Neal Ethridge,

Respondent.

ON REVIEW FROM THE FIRST DISTRICT COURT OF APPEALS,
HOUSTON, TEXAS NO. 01-21-00101-CV

AMICUS COUNSEL'S BRIEF ON THE MERITS

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COURT FOR PURPOSES OF DEFENDING
THE COURT OF APPEALS'S JUDGMENT**

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TO THE HONORABLE SUPREME COURT OF TEXAS:

INTRODUCTION

A lifetime protective order entered against a parent who has been found, by a preponderance of the evidence, to have committed felony-level child abuse against her children fills a legitimate and constitutionally permissive role in balancing the important interests of protecting vulnerable children from abuse and a parent's constitutional right to parenthood. To be sure, any court-ordered separation of a mother from her child, no matter the duration, is devastating because it vitiates the integrity of the family unit integral to a child's well-being. But deliberate and severe physical abuse of a child by his mother is no doubt equally—if not more—damaging to the child's well-being.

To protect children from such physical abuse, the Legislature prescribed a civil protective order framework that may be initiated by a parent to protect children from the other parent but does not terminate the parent-child relationship. Because civil protective order proceedings are civil in nature, they are subject to the preponderance of the evidence standard.

Critically, while a protective order may prohibit a parent from seeing his or her children for the duration of the parent's life, such a protective order leaves intact many parental rights. A civil protective order also does not bear the same finality that attaches to parental termination. The parent subject to the protective order may move for modification of the protective order twice, and any other party, including the protected persons, may also move for modification. The prospect of lifetime separation of a child from his parent is tragic. But Texas's civil protective order statutory scheme permits—indeed, requires—Texas courts to modify a protective order upon a showing that there is no longer a continuing need for the protective order.

The court of appeals did not err in affirming the trial court's entry of a lifetime protective order, subject to modification, against the mother in this case based on extensive evidence presented at trial of the mother's felony-level abuse of her children. Accordingly, the Court should deny the petition for review. Alternatively, if the Court grants the petition, the Court should issue an opinion affirming the court of appeals's judgment.

STATEMENT OF FACTS

Petitioner Christine Lenore Stary (“Mother”) and Respondent Neal Ethridge (“Father”) are the parents of three children: C.M.E. (female, born in 2005), O.P.E. (female, born in 2008), and G.B.E. (male, born in 2010) (collectively, “the Children”). CR15. Mother and Father entered into an agreed final order of divorce on May 29, 2018. CR46. The final divorce decree set forth various provisions governing conservatorship, including shared possession of the Children and Mother and Father’s ongoing parenting rights and responsibilities. CR15-35.

I. Mother is arrested and charged with felony injury to her child, G.B.E.

On March 5, 2020, during a period in which the Children were in Mother’s care, Mother was arrested by the Houston Police Department and charged with felony-level injury to her child, G.B.E. 2RR30; 6RR at A-3. The indictment charging Mother with injury to a child alleged that she struck G.B.E. 6RR at A-3. Following Mother’s arrest, the magistrate judge entered an emergency protective order, which designated G.B.E. as the protected individual and prohibited Mother from going near G.B.E. or other members of G.B.E.’s household. 6RR at A-4. Additionally, as a

condition of Mother's release on bond, she was prohibited from having any contact with the Children. 6RR at A-5.

II. Father moves for entry of a protective order against Mother to protect the Children.

One week after Mother's arrest, Father filed an application for a protective order against Mother, naming himself and the Children as the protected persons. CR5.¹ The application alleged that Mother committed acts that were intended by Mother to result in physical harm, bodily injury, or assault to the Children, or acts that were threats that reasonably placed the Children in fear of imminent physical harm or bodily injury, which constituted family violence. CR5. The application also claimed that Mother committed acts of abuse against the Children that amounted to family violence and physical injury that resulted in substantial harm. CR5. The application sought several conditions for the protective order, including that the protective order would exceed two years in duration and prohibit Mother from contacting the Children. CR8-9. Father also sought an immediate temporary ex parte protective order. CR9.

¹ Father subsequently abandoned the request for himself to be a protected person under the protective order. CR83.

The trial court issued a temporary ex parte protective order on March 17, 2020, prohibiting Mother from contacting the Children. CR64-70. The temporary ex parte protective order was subsequently extended through the trial on the final protective order. CR72.

III. Evidence presented at the protective order trial demonstrates Mother abused G.B.E. on March 5, 2020.

Trial on the final protective order occurred over September 29 and October 20, 2020. 2RR1; 3RR1.² As discussed in the following section, evidence was presented of Mother's abuse of all three Children. But the most glaring evidence in support of the protective order regarded Mother's abuse of G.B.E. on March 5, 2020. Thus, we begin there.

On March 5, 2020, Father was called to pick up the Children from Mother's house amid her arrest. 2RR18-19. G.B.E. was transported by ambulance to Texas Children's Hospital, and O.B.E. and C.M.E. rode with Father's attorney to the hospital. 2RR19, 38; 6RR at A-6. At the time, G.B.E. was ten years old and O.B.E. was twelve. CR15.

Father was not able to see G.B.E. in the hospital for ten to twelve hours. 2RR20. When Father finally saw G.B.E., he observed obvious

² The trial was conducted by Zoom because of the Covid-19 pandemic. 2RR6.

physical injuries on G.B.E.'s face, neck, arms, and legs, including "multiple scratches, bruises, dried scabs from blood" and blood in G.B.E.'s nasal cavities. 2RR20-21. Father noticed "fingernail marks above" G.B.E.'s lips and scratches on G.B.E.'s face. 2RR21. Photographs and medical records admitted into evidence at trial corroborated Father's account of G.B.E.'s injuries. 2RR21-26; 6RR at A-9 to A-22.

Father testified that G.B.E. was shaken up, crying to the point that he could not catch his breath, and needed a hug from his father. 2RR27. G.B.E. told Father that Mother "grabbed him by the back of the head and beat his face on the hardwood floor and carpet." 2RR27.³ G.B.E. also told Father that after his nose started bleeding, he turned his head a little bit to the right, and Mother "continued to beat [G.B.E.'s face where there was] bruising from the cheeks and eyes." 2RR27. Then, after G.B.E. turned his head the other way, "the top of his ear got punched between" the floor, "while [Mother] had her hand in the back of his hair, slamming his head into the floor, the hardwood floors[,] and the carpet." 2RR28.

³ The trial court admitted Father's testimony about details of Mother's abuse that the Children recounted to Father when they were twelve years or younger, pursuant to a hearsay exception for such testimony. 2RR15; *see also* Tex. Fam. Code § 84.006.

Father testified that G.B.E. told him that after blood got on the carpet, “that’s when the abuse escalated higher.” 2RR28. O.P.E. was present during this incident of abuse. 2RR28. While G.B.E. was crying and screaming for help, he pleaded with O.P.E. to “[h]elp get Mom off of him” and to call the police. 2RR28. O.P.E. took G.B.E. into the bathroom to calm him down and so that he could catch his breath and locked the door to keep Mother from getting to G.B.E. 2RR29.

Father also testified that O.P.E. provided a similar account to Father in the hospital of Mother’s March 5 abuse of G.B.E. 2RR33-34; 36. O.P.E. said that Mother “grabbed [G.B.E.] by the back of the head and threw him on the floor and beat his head and drug him by . . . his legs round the house. Flipped him over, landed on top of him and tried to perform an exorcism. [M]eanwhile, [G.B.E.] was screaming asking for help.” 2RR36. O.P.E. told Father that G.B.E. “was screaming so loud that [Mother] grabbed her hand and tried to clamp [G.B.E.’s] mouth shut to keep him from screaming anymore.” 2RR37. O.P.E. said that after she took G.B.E. into the bathroom for shelter, Mother “was pounding on the door saying unlock the door.” 2RR38.

During a break in the abuse, G.B.E. called 911. 2RR30. When the police arrived, they arrested Mother and charged her with third-degree felony assault with bodily injury to a child under fifteen years of age. 2RR30.

The medical records from Texas Children's Hospital admitted at trial further describe G.B.E.'s injuries. Specifically, the records state that G.B.E. was admitted to the emergency center following "physical assault by mother." 6RR at A-7, pg. 19. The records state that a conflict "resulted in [Mother] throwing [G.B.E.] to the ground multiple times, during which he hit his forehead." *Id.* G.B.E. had "multiple scratches over his arms, neck, and face that he reports occurred during this confrontation. He states he was dragged on the floor." *Id.* The records further reflect that G.B.E. stated, "this happens regularly – scratching and hitting by [Mother]. He does not feel safe at [Mother's] house." *Id.*

G.B.E.'s treating physician at Texas Children's Hospital completed a "Physician's Statement Regarding Injury to a Child," that recounted the physical evidence of Mother's physical abuse of G.B.E.:

[G.B.E.] states his mother threw him to the ground and hit his forehead repeatedly against the ground; she also scratched him over his face, neck, arms and chest. . . . He has bruises over his belly and ankle, as well as small burst blood vessels

in the skin around his right eye. He has multiple deep scratches over his face, neck, chest, arms, and legs. . . . Prognosis of the current injuries is that he is expected to make a full recovery. However, prognosis overall is poor if he is left in the environment in which the injuries occurred, due to the high risk of further and more severe injuries.

6RR at A-7, pg. 65 (emphasis in original). The physician's report also stated that G.B.E.'s condition is consistent with abuse and/or neglect. *Id.* The treating physician called the police who came to the hospital and took a statement from O.P.E. and indicated they would follow up with CPS. 2RR54.

Mother's arrest on March 5, 2020 came as a relief to O.P.E. 2RR46-47. O.P.E. had previously made video and audio recordings of things that happened at Mother's house, including a recording from the March 5 incident. 2RR47. O.P.E. made these recordings for proof for the police. 2RR47. After the police arrived on March 5, O.P.E. played the recording from that day for the police. 2RR47. Despite O.P.E.'s claim that the police did not listen when they were called for prior incidents, the police listened on March 5. 2RR47.

IV. Additional evidence presented at trial illustrates other instances of abuse by Mother.

Beyond the March 5, 2020 abuse of G.B.G., Father testified at the protective order trial that Mother committed multiple acts that Father believed were intended by Mother to result in physical harm, bodily injury, or assault to all three Children; that Mother made threats of these same acts that placed the Children in fear of imminent physical harm, bodily injury, or assault; and that each of the three children experienced actual injury, which included the need for medical attention, at the hands of Mother. 2RR13. Father testified that each child has experienced pain as a result of these injuries, and O.P.E. experienced torment and embarrassment as a result of Mother's actions. 2RR14. As a result, Father testified that good cause existed for the trial court to enter the protective order to protect the Children's safety and mental wellbeing. 2RR14.

Father testified that in the months leading up to the March 5, 2020 incident, the Children had called the police for help at least six times. 2RR17. In addition, CPS had also "been involved" on at least five occasions. 2RR17. And approximately twice a month, Father would

receive calls from his Children while they were in Mother's care seeking help, including at least once at midnight. 2RR16-17.

O.P.E. recorded other incidents involving Mother, sometimes as often as three times a month. 2RR47-48. Once such incident involved Mother throwing G.B.E. to the ground and beat him with a belt. 2RR48-49. In another incident, Mother attempted to take C.M.E.'s cell phone away and pinned her to a bed. 2RR49.

In March of 2019, Father picked O.P.E. up from school for his period of possession and observed that she was in physical pain. 2RR50. O.P.E. complained that her ribs hurt, and as a result, she would sleep sitting up in a chair, had limited bathroom usage, and needed a stool softener to have a bowel movement. 2RR50. She could not laugh hard or take deep breaths because of chest-cavity pain. 2RR50. O.P.E. stated that she had suffered the injury three days before Father picked her up from school. 2RR50.

O.P.E., who was eleven at the time, told Father that Mother had taken O.P.E.'s phone and swung her right elbow and hit O.P.E. in her lower ribs. 2RR51. Father observed a light yellow-green-colored bruise on O.P.E.'s ribs. 2RR51-52. Later that same night, O.P.E. was having

trouble breathing and was in excruciating pain, so Father took her to the emergency room. 2RR52. The hospital confirmed that O.P.E. had suffered a bone contusion on her rib. 2RR52. O.P.E. continued to remain in pain for seven more days, and experienced restricted movements for at least five days. 2RR52-53.

Father also testified that on C.M.E's tenth birthday, when Father and Mother were still together, C.M.E. suffered a fractured wrist. 2RR55. When Father returned home from work, C.M.E. told father that Mother pushed her over the side of the bed, and C.M.E. tripped behind the bed and fell and fractured her wrist. 2RR56. Father took C.M.E. to the doctor to have the injury treated. 2RR56.

In December 2019, during a period of Mother's possession of the Children, Mother took the Children to Colorado. 2RR57. On the drive home, C.M.E. called Father sobbing and scared. 2RR57-58. C.M.E. told Father that Mother kicked her out of the car on the side of the road in Henrietta, Texas, 313 miles away from Father's house, and drove away. 2RR58. Father told C.M.E. to call the police. 2RR58. After the police were called, Mother returned and picked up C.M.E. 2RR59.

Father also testified to other details of abuse the Children shared with him. For example, one of the Children told Father that Mother dragged O.P.E. out of bed by her ponytail and dragged her across the floor into the living room. 2RR67. G.B.E. and O.P.E. also told Father that on several occasions, Mother locked them out of the house and forced them to sleep on the front porch. 2RR67-68. Father also testified that Mother forced the Children to sleep in their beds with no sheets, pillows, or blankets, leaving the Children to place their legs through the sleeves of their jackets to try to stay warm. 2RR68. Father subsequently made sure to send the Children to Mother's house with blankets, socks, and sweatpants. 2RR68. O.P.E. also told Father that Mother would shove dirty socks in the Children's mouths. 2RR69.

Father testified about another incident in May of 2018 in which C.M.E. called Father from a park sobbing. 2RR69. C.M.E. told Father that she was sitting on her dresser and Mother told her not to sit on furniture and that she needed to start cleaning. 2RR70. Mother then proceeded to shove C.M.E. off of the dresser onto the floor. 2RR70. C.M.E. was trying to get away from Mother, and Mother pushed C.M.E. down the front steps, causing C.M.E. to trip over the concrete and land in the

bushes. 2RR70-71. Father testified that C.M.E.'s shins were bleeding and there was blood under her kneecap as a result of tripping over the concrete. 2RR71. O.P.E. and C.M.E ran to a nearby park, where they called the police who wrote a CPS report. 2RR71.

Finally, Father testified that his mother called CPS due to the lack of food the Children were receiving while in Mother's care. 2RR72. When the Children were in Mother's possession, Father would have to bring, or have delivered, food to the Children every Friday and Saturday night. 2RR72. Additionally, when the Children were in Mother's possession during the week, Father had to provide food on Wednesdays so the Children would have something to take to lunch. 2RR72. Father testified that he received calls twice a week during the periods of Mother's possession regarding lack of adequate food. 2RR72.

Throughout these periods of abuse, Father testified that CPS was contacted at least five times but did not intervene. 2RR72-73. Father's ongoing concern for his Children's safety led him to initiate the protective order proceeding. 2RR72-73. Specifically, without a permanent protective order, Father feared that additional incidents of domestic violence would occur. 2RR73. The trial court rejected Mother's attempt

to put on evidence of Father's alleged domestic abuse of Mother on the basis that such evidence was irrelevant to the issue of the entry of the protective order against Mother for the Children's protection. 2RR90-93.

During her case, Mother first presented testimony from one of her longtime friends whose daughter was one of Mother's students when Mother was a teacher. 3RR9. The friend testified that from what she observed, Mother was very gentle and loving in her discipline of children, including Mother's three Children. 2RR10.

Mother also testified at the protective order trial and waived her Fifth Amendment right to not testify after the trial court warned Mother of the implications of doing so. 3RR18-19. Mother denied the specific instances of abuse Father testified to and stated that she never abused the Children. 3RR20-51.

V. The trial court enters a lifetime protective order, subject to modification, against Mother.

At Father's request, the trial court conducted individual, *in-camera* interviews with the Children to discuss their allegations of Mother's abuse. 2RR48-49, 67-68, 117-18; 3RR4. The Children's court-appointed amicus attorney was present during the interviews. 3RR4.

After conducting the interviews with the Children, and considering the evidence presented at trial, the trial court entered a final protective order on November 30, 2020 (“the Protective Order”). CR81; 3RR81-87; 4RR1. The trial court found that the Protective Order was necessary to protect the safety and welfare of the Children and was in the best interest of the Children. CR83. The Protective Order prohibits Mother from having any contact with the Children except through the Children’s amicus attorney for the duration of Mother’s life, subject to the Protective Order’s modification by Mother, Father, or the Children. CR83. The Protective Order also expressly contemplates reunification between Mother and the Children and does not purport to remove rights Mother otherwise has pursuant to the final divorce decree. CR84-86.

Mother appealed the trial court’s entry of the Protective Order to the First Court of Appeals. CR125. Father did not file an appellee’s brief. The court of appeals overruled all of Mother’s points on appeal and held that the trial court did not violate Mother’s due process rights by entering the Protective Order under a preponderance—as opposed to a clear and convincing—evidentiary standard. *Stary v. Ethridge*, ---S.W.3d---, 2022 WL 17684334 (Tex. App.—Houston [1st Dist.] Dec. 15, 2022, pet.

pending). Justice Farris dissented on the basis that the Protective Order amounted to de facto parental termination. *Id.* at *16.

Mother subsequently filed a petition for review in this Court. After the Court sent three requests for a response to the petition to Father, the Court appointed undersigned counsel as amicus attorney for the purpose of defending the court of appeals's judgment.

SUMMARY OF THE ARGUMENT

The court of appeals correctly held that the trial court's entry of a lifetime protective order against Mother under a preponderance-of-the-evidence standard was not tantamount to parental termination such that the trial court should have applied the clear-and-convincing evidentiary standard. Texas's civil protective order framework provides an avenue for protecting children from a parent's abuse without terminating the parent's rights. A parent subject to a protective order under Chapter 85 of the Family Code, such as Mother here, may retain a number of parental rights following the entry of a lifetime protective order. Moreover, a person subject to a protective order may move to modify the protective order twice, and the protected persons or the applicant may similarly move for modification. Further, the Protective Order here specifically contemplates reunification of Mother and the Children. As a result, due process did not mandate the application of a heightened evidentiary standard in this civil protective order proceeding amid these legally significant distinctions between the Protective Order and parental termination.

Additionally, the court of appeals correctly overruled Mother's challenge to the sufficiency of the evidence. The extensive evidence of Mother's physical abuse of the Children constituted more than a scintilla of evidence that supported the trial court's entry of the Protective Order. To the extent Mother has preserved various complaints about the trial court's evidentiary rulings, she fails to establish that any such ruling constitutes reversible error. Namely, the evidence the trial court admitted at trial was admissible under expressly applicable hearsay exceptions.

Finally, the court of appeals correctly held that any error arising from the trial court's refusal to allow Mother to make an offer of proof about Father's alleged domestic abuse was harmless because the evidence was irrelevant. Mother fails to establish otherwise.

For these reasons, the Court should deny the petition for review, or alternatively, grant the petition and issue an opinion affirming the court of appeals's judgment.

ARGUMENT

I. The court of appeals correctly concluded that the trial court's entry of the Protective Order did not run afoul of due process protections.

Mother's principal argument is that the trial court's entry of a lifetime protective order that prohibits Mother from seeing the Children is tantamount to termination of Mother's parental rights. *Pet. Brief* at 10. As a result, Mother contends that the trial court should have applied a clear and convincing evidence, as opposed to a preponderance of the evidence, standard at trial. *Id.* But because the Protective Order is distinct from a parental termination order, the court of appeals did not err in affirming the trial court's entry of the Protective Order.

A. The preponderance of the evidence standard applies to civil protective orders under Chapter 85 of the Family Code.

Chapter 85 of the Texas Family Code provides a statutory framework for the imposition of civil protective orders to protect individuals, including children, from familial physical abuse. *See generally* Tex. Fam. Code Ch. 85. Specifically, the Family Code requires a trial court to enter a civil protective order "if the court finds that family violence has occurred." Tex. Fam. Code § 81.001. In entering a civil protective order, the trial court "may prohibit the person found to have

committed family violence from . . . going to or near” a protected person’s—or a protect person’s family member’s—residence, place of work, childcare facility, or school that “a child protected under the order normally attends or which the child normally attends.” Tex. Fam. Code § 85.022(b)(3)-(4).

By default, civil protective orders entered under Chapter 85 last for two years or less. *See* Tex. Fam. Code § 85.025. But a protective order may extend beyond two years, and for an indefinite duration, if the trial court makes certain findings. *See id.* § 85.025(a-1). For example, a civil protective order may exceed two years in duration if the trial court finds that the person subject to the protective order “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.” *Id.* § 85.025(a-1)(1).

The Legislature did not require that a higher evidentiary standard apply to a civil protective order proceeding under Chapter 85. In the absence of any contrary legislative intent, civil proceedings under Chapter 85 are governed by a preponderance of the evidence standard—

the default standard for civil proceedings in Texas. *See In re Lipsky*, 460 S.W.3d 579, 589 (Tex. 2015) (“The applicable evidentiary standard is generally determined by the nature of the case or particular claim. . . . [C]ivil cases typically apply the preponderance-of-the-evidence standard, that is, a fact-finder’s determination that the plaintiff’s version of the events is more likely than not true.”).

The Legislature is acutely aware of how to prescribe a higher evidentiary standard in the family law context when it intends to do so. For example, in parental termination proceedings, the Legislature mandated that trial courts must apply a clear and convincing evidence standard. *See* Tex. Fam. Code § 161.001(b). Because the Legislature included no such mandate in Chapter 85, trial courts apply a preponderance of the evidence standard in civil protective order proceedings.

B. The Protective Order does not amount to de facto termination of Mother’s parental rights such that the trial court should have applied a clear and convincing evidence standard.

Mother contends that the trial court should have imported into Chapter 85 a heightened evidentiary standard that the Legislature never intended because the Protective Order was tantamount to termination of

Mother's parental rights. *Pet. Brief* at 10-13. But there is a substantial and legally significant difference between termination of parental rights and a lifetime protective order entered pursuant to Chapter 85 of the Family Code. While parental termination divests forever a mother of *all* her parental rights, the Protective Order here leaves in place a host of Mother's parental rights, while limiting her physical and oral interactions with the Children to protect their safety. The Protective Order is also subject to future modification by either Mother or the Children, and it expressly contemplates an opportunity for reunification under a counselor's supervision. CR86. These critical distinctions demonstrate that the court of appeals did not err in affirming the trial court's Protective Order under a preponderance of the evidence standard.

1. ***Termination extinguishes every parental right in perpetuity and thus requires a heightened evidentiary standard.***

Parental termination proceedings are among the most drastic remedies provided for in civil law. “[A]n order terminating the parent-child relationship divests the parent and the child of all legal rights and duties with respect to each other, except that the child retains the right to inherit from and through the parent unless the court otherwise

provides.” Tex. Fam. Code § 161.206(b). “[T]ermination of parental rights is traumatic, permanent, and irrevocable.” *In re M.S.*, 115 S.W.3d 534, 549 (Tex. 2003). Indeed, this Court has described termination as the “death penalty” of civil cases. *Interest of D.T.*, 625 S.W.3d 62, 69 (Tex. 2021).

The Court’s correct characterization of the drastic nature of a parental termination order is rooted in the reality that termination divests a parent of every conceivable aspect of the parent-child relationship. Not only does parental termination remove the right of the parent to see the child, but termination orders also prohibit the parent from having *any* say in the child’s life. Following termination, a parent no longer has any say in the child’s healthcare decisions, education, or living arrangements. Moreover, a parent whose parental rights have been terminated may not represent the child’s legal interests, is not entitled to any information about the child’s whereabouts, and may not inherit from the child through intestate succession.

Forty-four years ago, the Court held the gravity of an involuntary parental termination proceeding mandates the application of the clear and convincing evidence standard. *In the Interest of G.M.*, 596 S.W.2d

846 (Tex. 1980). In reaching this decision that enshrined in Texas law the appropriate constitutional protections regarding an involuntary termination of parental rights, the Court focused on the breadth and finality of a parental termination order. “The termination of this right is complete, final, and irrevocable. It divests forever the parent and child of all legal rights, privileges, duties, and powers between each other except for the child’s right to inherit.” *Id.* at 846. Parental termination, the Court explained, “is a drastic remedy and is of such weight and gravity that due process requires the state to justify termination of the parent-child relationship by proof more substantial than a preponderance of the evidence.” *Id.* at 847.

In response to the Court’s decision in *G.M.*, the Legislature amended the Family Code to require that involuntary parental termination cases be subject to a clear and convincing evidence standard. Tex. Fam. Code § 161.001(b).

2. *The Protective Order did not effectively terminate Mother’s parental rights.*

The Protective Order’s effect on Mother’s parental rights stands in contrast to a parental termination order. As a threshold matter, and as the court of appeals correctly noted, the 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," which is the hallmark of a parental termination order. *Stary*, 2022 WL 17684334, at *6. Instead, the trial court entered the Protective Order to restrict Mother's physical and oral interactions with the Children after finding that family violence had occurred and would likely occur in the future, that Mother's conduct against at least one of the Children would be a felony if charged, that the Protective Order is "for the safety and welfare and in the best interest of the" Children, and that entry of the Protective Order is necessary for the prevention of family violence. CR83. Unlike an order terminating parental rights, the Protective Order leaves in place at least thirty individual parental rights set out in the final divorce decree in addition to any other parental rights Mother has as a matter of law that were not addressed in the final divorce decree. CR16-334. Many of these rights are those specifically delineated in section 151.001 of the Family Code. *See* Tex. Fam. Code § 151.001. The below chart summarizes Mother's parental rights from the final divorce decree that survive the Protective Order:

Mother's Remaining Parental Rights

Joint managing conservator of the Children with Father. CR16.

“[T]he right to receive information from Father concerning the health, education, and welfare of the children.” CR16.

“[T]he right to confer with [Father] to the extent possible before making a decision concerning the health, education, and welfare of the children.” CR16.

“[T]he right of access to medical, dental, psychological, and educational records of the children.” CR16.

“[T]he right to consult with a physician, dentist, or psychologist of the children.” CR16.

“[T]he right to consult with school officials concerning the children’s welfare and educational status, including school activities.” CR16.

“[T]he right to be designated on the children’s records as a person to be notified in case of an emergency.” CR16.

“[T]he right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children.” CR16.

“[T]he right to manage the estates of the children to the extent the estates have been created by the parent or the parent’s family.” CR16.

The right to know if Father “resides with for at least thirty days, marries, or intends to marry a person who [Father] 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.” CR16.

Mother's Remaining Parental Rights

The right to know if Father “establishes a residence with a person who [Father] knows is the subject of a final protective order sought by an individual other than [Father] that is in effect on the date the residence with the person is established.” CR17.

The right to know if Father “resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by [Father] after the expiration of sixty-day period following the date the final protective order is issued.” CR17.

The right to know if Father “is the subject of a final protective order issued after the date of the order establishing conservatorship.” CR17.

Father may not remove the Children from Harris County, Texas for the purposes of changing his residence, without approval from Mother or order of the trial court. CR18.

The right, “subject to the agreement of [Father], 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.” CR18.

The right, “subject to the agreement of [Father], 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.” CR18.

“After reasonable consultation with [Father], the independent right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children.” CR18.

“[T]he right, subject to the agreement of [Father], to make decisions concerning the children’s education, and in the event that the parties

Mother's Remaining Parental Rights

are unable to reach an agreement regarding such an issue, the parties shall defer to and follow the advice of Dr. Jean Guez.” CR18.

“[A]fter reasonable consultation with [Father], except as provided by section 264.0111 of the Texas Family Code, the independent right to the . . . earnings of the children.” CR21.

“[E]xcept 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 [Father,] 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.” CR18-19.

“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.” CR19.

The right to know if Father has applied for a passport for the children (within ten days after the application is submitted). CR19.

The authority to obtain or renew a passport for the Children. CR19.

The right to maintain possession of any passports of the Children when not in use. CR19.

The right to receive notice from Father if he intends to take the Children outside of the United States, including duration of the trip, the location(s) of the international travel, the trip itinerary, the methods of travel, and information on any person accompanying the Children on the trip. CR19.

The right to reimbursement from Father of 50% of the cost of the Children’s health and dental insurance if paid for by Mother. CR28.

Mother's Remaining Parental Rights

The right to receive notice from Father within two hours of “any medical condition of the children requiring emergency medical treatment, surgical intervention, hospitalization, or both.” CR33.

The right to receive within three days after requesting from Father: (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 healthcare 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.” CR33.

The right to be designated by Father “as a person to whom protected health information regarding the children may be disclosed whenever [Father] executes an authorization for disclosure of protected health information pursuant to the HIPAA and 45 C.F.R. section 164.508.” CR34.

The right to receive from Father in a timely manner, and not later than within twenty-four hours, through the Our Family Wizard parenting website “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.” CR34.

The right to receive from Father in a timely manner, and not later than within twenty-four hours, through the Our Family Wizard parenting website “a copy of any email received by [Father] from the children’s schools or any health-care provider of the children, in the event that email was not also forwarded by the schools or health-care provider to [Mother].” CR34.

If Mother’s parental rights had been terminated, she would not have retained the rights enumerated above. *See* Tex. Fam. Code § 161.206(b) (“[A]n order terminating the parent-child relationship divests the parent and the child of **all** legal rights and duties with respect to each other, except that the child retains the right to inherit from and through the parent unless the court otherwise provides.”) (emphasis added); *see also J.A.T. v. C.S.T.*, 641 S.W.3d 596, 616-17 (Tex. App.—Dallas 2022, pet. denied) (rejecting father’s argument that protective order amounted to de facto parental termination and enumerating rights father retained issuance of the protective order). Mother’s right to have physical or oral contact with the Children is undeniably a significant right that Mother may no longer exercise for as long as the Protective Order remains unmodified. *See* Tex. Fam. Code § 151.001(a)(1) (specifically stating that a parent has the right to have physical possession of her child). But the trial court entered the Protective Order prohibiting Mother from seeing the Children after extensive evidence presented at trial detailed Mother’s abuse of the Children. The Protective Order is thus consistent with the Legislature’s explicit intent stated in the Family Code to “assure that children will have frequent and continuing contact with parents who

have shown the ability to act in the best interest of the child [and] provide a safe, stable, and nonviolent environment for the child.” *Id.* § 153.001.

Moreover, in considering whether the Protective Order amounted to “de facto parental termination,” the Court must examine the totality of parental rights. Section 151.001 of the Family Code, which is titled “Rights and Duties of Parent,” delineates “the legal rights and duties that a parent has by default.” *Interest of A.A.*, 670 S.W.3d 520, 527 (Tex. 2023) (referring to these rights collectively as an “entire bundle of conservatorship rights”); *see also* Tex. Fam. Code § 105.001(a). Texas’s parental termination statute speaks exclusively to parental termination in terms of terminating all of a parent’s rights. *See* Tex. Fam. Code § 161.206(b) (“[A]n order terminating the parent-child relationship divests the parent and the child of **all legal rights and duties** with respect to each other[.]”) (emphasis added).

Consistent with the notion that parental termination proceedings target the totality of parental rights, the Supreme Court of the United States has characterized parental termination actions in the same manner. For example, the Supreme Court has held that “[b]efore a State may sever **completely and irrevocably** the rights of parents in their

natural child, due process requires that the State support its allegations by at least clear and convincing evidence.” *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982) (emphasis added). The Supreme Court’s recognition of these quintessential characteristics of termination—absolute finality and the elimination of all rights—draws a clear distinction from the Protective Order here. These distinctions support the use of clear and convincing standard for termination orders, versus a preponderance of the evidence standard for civil protective orders, even when entered for a lifetime duration.

Here, although the Protective Order restricts *some* of Mother’s parental rights, it does not divest her of *all* parental rights. Hence, the Protective Order is *not* tantamount to parental termination such that the clear and convincing evidence standard should have been applied.

3. *Mother and the Children can separately move to modify the Protective Order, and the Protective Order contemplates reunification.*

The ability for Mother and the Children to separately move to modify the Protective Order further distinguishes the Protective Order from parental termination. The Family Code provides two opportunities for Mother to modify the Protective Order. Tex. Fam. Code § 85.025(b-

1). Mother may first move to modify the order after November 30, 2021 (one year after the Protective Order was entered) on the basis that there is no longer a continuing need for the Protective Order. *Id.* § 85.025(b). One year after the trial court renders an order on Mother’s motion to modify, she may file a second motion to modify the Protective Order. *Id.* § 85.025(b-2). “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.” *Id.* (emphasis added). Thus, upon a showing that the Protective Order is no longer needed, the trial court *must* modify it. *Id.* Whether a continuing need for the Protective Order exists would be evaluated under a preponderance of the evidence standard—the same standard applicable to the trial court’s entry of the Protective Order. Mother could also pursue appellate review of the trial court’s ruling on the motions to modify. *See In re S.S.*, 217 S.W.3d 685, 685 (Tex. App.—Eastland 2007, no pet.) (appeal from trial court’s order modifying protective order); *see also Cooke v. Cooke*, 65 S.W.3d 785, 788 (Tex. App.—Dallas 2001, no pet.) (“[A] protective order rendered pursuant to the family code is a final, appealable order as long as it disposes of all parties and all issues.”).

A review of the trial court’s current docket reveals that Mother filed a motion to modify the protective order on May 9, 2023.⁴ Mother’s motion to modify was originally set for a hearing on June 13, 2023, but the Harris County online docket states that the hearing was passed. As a result, it appears that Mother’s motion to modify the Protective Order remains pending in the trial court. The fact that Mother exercised her right to seek modification demonstrates at least some recognition on her part that the Protective Order is different than a termination order.

Moreover, the Family Code expressly authorizes “any party” to move to modify an existing protective order to “exclude any item included in the order.” Tex. Fam. Code § 87.001(1). As a result, Father or the Children could at any time file a motion to modify the protective order to remove any of its provisions, including those which prohibit Mother from seeing the Children. *Id.* The Family Code does not provide any limitation on the number of opportunities a party other than the person subject to the protective order has to seek modification of the order. *See J.A.T*, 641 S.W.3d at 617 (“Under [section 87.001], the trial court retains

⁴ An appellate court may take judicial notice of the trial court’s online docket. *See, e.g., In re City of Garland*, No. 05-24-00019-CV, 2024 WL 242993, at *1 (Tex. App.—Dallas Jan. 23, 2024, orig. proceeding).

jurisdiction and authority to modify the Order throughout its pendency, including after this appeal from the Order comes to an end.”). As a result, Father and the Children could move to modify the Protective Order in addition to the two opportunities Mother has to seek modification. Father and the Children could also pursue an appeal from the trial court’s order on the motion to modify. *S.S.*, 217 S.W.3d at 685.

Finally, the Protective Order expressly contemplates reunification of the Children with Mother. Specifically, the Protective Order states that the Children are to “remain in counseling with a counselor that fits the needs of each child, and the counselor for each child shall specifically consider whether and when the child is ready to begin reunification with Mother.” CR86. The Protective Order thus provides an even greater opportunity for Mother to eventually be with her Children again than the statutory right of modification.

4. *The Protective Order is more akin to a custody order limiting parental access*

The Court’s jurisprudence contrasting child custody suits with parental termination proceedings is also instructive in evaluating whether the Protective Order is tantamount to termination:

There is a significant distinction between a custody suit and a termination action. Termination does not merely end the right of the parent to physical possession of the child, subject to modification; it is an action with constitutional dimensions, terminating forever the natural right which exists between parents and their children. *Wiley v. Spratlan*, 543 S.W.2d 349 (Tex. 1976). The substantial difference between suits for possession of children and those to terminate a parent-child relationship as well as “the difference in proceedings” justifies the caution with which courts have characteristically considered termination cases.

Richardson v. Green, 677 S.W.2d 497, 500 (Tex. 1984).

Indeed, the Court has explained that a trial court has discretion to deploy a less drastic degree of separation between a mother and her child than termination to protect the child’s wellbeing. *Interest of J.J.R.S.*, 627 S.W.3d 211, 222 (Tex. 2021). In *J.J.R.S.*, the Court explained that “upon concluding that the kind of severe restriction imposed here is necessary to protect a child’s best interest,” a trial court is not required to “irrevocably terminate a parent’s rights rather than restrict those rights and give parent the opportunity to seek to increase her access rights in the future.” *Id.* The Court explicitly recognized the meaningful difference between a custody order that restricts a parent from seeing her children and parental termination order:

Requiring termination of parental rights rather than a conservatorship with severe access restrictions would place

trial courts in an unimaginable bind. Such a harsh rule would force a trial court to either allow access to a child by a possessory conservator who may immediately endanger that child's physical or emotional wellbeing, or conversely, force the trial court to prematurely sever the parent-child relationship out of fear that immediate access may cause irreparable harm to the child.

Id.

Given these differences from termination orders, custody orders—like civil protective orders—are subject to a preponderance of the evidence standard rather than a clear and convincing standard. *See, e.g., In re J.A.J.*, 243 S.W.3d 611, 616 (Tex. 2007) (“[T]he quantum of proof required to support a termination decision differs from the level necessary to support a conservatorship appointment. Termination decisions must be supported by clear and convincing evidence. . . . On the other hand, a finding that appointment of a parent as managing conservator would significantly impair the child's physical health or emotional development is governed by a preponderance-of-the-evidence standard.”).

The Protective Order is more akin to an order appointing Mother as a joint managing conservator without the right of access or possession than to a parental termination order. The trial court employed a less

harsh approach than termination to protect the Children’s physical and emotional wellbeing. Specifically, the trial court: (1) removed Mother’s rights of access and possession for as long as the protective order remains in place after finding that Mother had committed acts constituting felony-level family violence against at least one of the Children; (2) afforded Mother the opportunity to regain the right to see the Children in the future; and (3) left in place all of Mother’s other rights as joint managing conservator. CR82-86. The trial court properly entered the order under a preponderance of the evidence standard—the same standard applicable to child custody suits. The trial court also made the explicit finding in the Protective Order that the order was in the best interest of the Children, which is a required finding in child custody suits. CR83; *see also* Tex. Fam. Code § 153.002.

Unlike the Protective Order or nonpossessory conservatorship orders, parental termination orders are final once the initial appeal is exhausted. *See J.A.J.*, 243 S.W.3d at 616 (explaining that parental termination proceedings mandate a higher evidentiary standard “because terminating the parent-child relationship imposes permanent, irrevocable consequences”). The Family Code provides a very limited

avenue to reinstate parental rights and only in termination proceedings initiated by CPS. Tex. Fam. Code § 161.302. By contrast, a person subject to a civil protective order may move to modify the order, regardless of the circumstances under which the order was entered on the basis that there is no longer a continuing need for the protective order. Tex. Fam. Code § 85.025(b). Additionally, any party may move to modify a protective order to remove any item included in the order. Tex. Fam. Code § 87.001. As a result, the narrow circumstances in which the Family Code provides that parental rights may be reinstated following termination does not equate the protective order here to a termination order.

In sum, the status quo following the Protective Order is that Mother is a joint managing conservator of the Children without the rights of access or possession. This status, like a child custody order, is subject to modification—twice on a motion by Mother and an indefinite number of attempts by Father or the Children. These circumstances place the Protective Order here outside the realm of parental termination and do not mandate the application of the clear and convincing evidence standard in the Protective Order proceeding.

C. The fact that Mother had not been convicted of felony injury to a child at the time the trial court entered the Protective Order is irrelevant.

Mother also contends that because she had not been convicted of felony-level child abuse at the time that the trial court entered the Protective Order, the trial court abused its discretion in entering the Protective Order. *Pet. Brief* at 17-18. The plain language of Chapter 85 of the Family Code illustrates that a conviction of family violence is not a prerequisite for a protective order that exceeds two years in duration.

Section 85.025(a-1) states that a trial court may

render a protective order sufficient to protect . . . 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 . . . 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(a-1) (emphasis added).

Here, not only did the evidence at trial support the trial court's finding that Mother committed multiple acts constituting a felony offense involving family violence against the Children, Mother was actually arrested and indicted for felony injury of a child. 2RR30; 6RR at A-3. As a result, it is of no moment that Mother had not been convicted of a

felony-level family violence offense at the time of the protective order trial.

II. The court of appeals did not err in concluding that the evidence was legally sufficient to support the Protective Order.

A. The extensive evidence presented at trial of Mother's abuse of the Children was legally sufficient to support the Protective Order.

The court of appeals did not err in concluding that the evidence presented at trial was legally sufficient to support the trial court's entry of the Protective Order.⁵ “When a party attacks the legal sufficiency of an adverse finding on an issue on which it did not have the burden of proof, it must demonstrate on appeal that no evidence supports the adverse finding. [The Court] will sustain a legal sufficiency challenge if the evidence offered to prove a vital fact is no more than a scintilla.” *Graham Cent. Station, Inc. v. Pena*, 442 S.W.3d 261, 263 (Tex. 2014) (internal quotation marks and citations omitted).

⁵ Mother also argues in this Court that the trial court abused its discretion in entering the Protective Order because the evidence was “factually insufficient to prove that Mother committed family violence and was likely to commit family violence in the future.” *Pet. Brief* at 18. “However, [the Court] does not have jurisdiction to conduct a factual sufficiency review.” *Interest of J.F.-G.*, 627 S.W.3d 304, 311 (Tex. 2021) (citations omitted).

Father presented extensive evidence of Mother's abuse of the Children that constituted more than a scintilla of evidence to support entry of the Protective Order. This evidence, detailed above, included accounts of Mother physically abusing the Children in a manner that caused them bodily injury. *See, e.g.*, 2RR18-71. Indeed, Mother was arrested and indicted for felony injury to her child. 2RR30; 6RR at A-3. This evidence constitutes at least some evidence that Mother "committed an act constituting a felony offense of family violence" against the Children. Tex. Fam. Code § 85.025(a-1)(1). The court of appeals thus did not err in overruling Mother's legal sufficiency challenge.

B. The court of appeals did not err in overruling Mother's evidentiary points.

Mother complains about several evidentiary rulings made during the protective order trial. She fails to establish that any of these rulings require reversal of the Protective Order.

Primarily, Mother argues that the trial court improperly allowed Father to testify about instances of abuse as recounted by the Children and as shown through medical records, both of which Mother contends are hearsay. *Pet. Brief* at 23-25. Mother's arguments fail under Texas law.

First, Mother waived any complaint about Father's testimony as to what the Children told him by not objecting to Father's testimony on numerous instances and failing to ask the trial court for a running objection. "The general rule is error in the admission of testimony is deemed harmless and is waived if the objecting party subsequently permits the same or similar evidence to be introduced without objection." *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 907 (Tex. 2004). While Mother's trial counsel objected to some of the claimed hearsay testimony Mother objects to on appeal, Mother's trial counsel did not object to extensive testimony from Father about the Children's accounts of Mother's abuse, whether on personal knowledge grounds or hearsay grounds. *See, e.g.*, 2RR50-70. Nor did Mother seek a running objection to Father's testimony. Accordingly, Mother waived any objection to this testimony.

Second, as to Mother's argument that Father's testimony of what the Children told him was hearsay, this argument fails based on the exception to the hearsay rule for child testimony in the Family Code. "In a hearing on an application for a protective order, a statement made by a child 12 years of age or younger that describes alleged family violence

against the child is admissible as evidence in the same manner that a child's statement regarding alleged abuse against the child is admissible under Section 104.006 in a suit affecting the parent-child relationship.”

Tex. Fam. Code § 84.006.

Section 104.006 consistently provides that

in a suit affecting the parent-child relationship, a statement by a child twelve or younger that describes alleged abuse of the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside the presence of the jury, the court finds that the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability and:

- (1) the child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or
- (2) the court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.

Tex. Fam. Code § 104.006.

Father's testimony of what the Children said was based on statements the Children made to Father when they were twelve years or age or younger. *E.g.*, 2RR12. Following Father's testimony about what the Children told him, the trial court conducted *in-camera* interviews with each of the Children. To the extent Mother contends that the trial court or Father failed to comply with section 104.006's requirements,

Mother made no such objection at trial or in the court of appeals and thus waived the issue. Tex. R. App. P. 33.1(a)(1); *see also Stary*, 2022 WL 17684334, at *11 n.8 (“[Mother] does not challenge any of the children’s statements on the ground that the child was over twelve years of age when the statement was made.”).

Mother’s arguments that the medical records admitted at trial constituted inadmissible hearsay also lack merit. *Pet. Brief* at 24. Texas Rule of Evidence 803 excepts from the general hearsay rule a statement that “is made for—and is reasonably pertinent to—medical diagnosis or treatment” and “describes medical history, past or present symptoms or sensations, their inception, or their general cause.” Tex. R. Evid. 803(4). The records admitted at trial fit squarely within this exception. *See* 6RR at A-5 to A-7. In any event, the court of appeals concluded that Mother waived this argument in the court of appeals and Mother does not challenge that conclusion in this Court. *See Stary*, 2022 WL 17684334, at *12.

Mother also contends that the trial court erred in allowing Father to testify about instances of Mother’s abuse of the Children for which Father was not present yet refused to allow Mother and Mother’s friend

to testify about events for which they were not present. *Pet. Brief* at 27-28. The critical difference is that Father's testimony was based on the Children's accounts to Father of Mother's abuse. And as discussed above, the Children's statements to Father when the Children were twelve years old or younger fall under an explicit exception to the hearsay rule. *See* Tex. Fam. Code § 84.006. Moreover, after the trial court sustained Father's objection as to speculation about one incident Mother attempted to testify about, Mother's trial counsel did not attempt to establish that the testimony was based on an account of the incident from a child twelve years or younger. 3RR19-21. As a result, the trial court's evidentiary rulings were not inconsistent.

III. The court of appeals did not err in upholding the trial court's exclusion of irrelevant evidence Mother attempted to introduce at trial.

Finally, Mother contends that the trial court erred in excluding evidence of Father's alleged domestic abuse of Mother and in refusing to allow Mother to make an offer of proof regarding such evidence. *Pet. Brief* at 30. The court of appeals did not err in rejecting these arguments because any resulting error was harmless based on the irrelevance of the alleged evidence.

While Father initially sought to include himself as a protected person under the Protective Order, Father abandoned this request before trial. CR83. As a result, the only issue at trial was whether entry of a protective order was necessary to protect the Children from future instances of family violence by Mother. 2RR92. Because the only issue before the trial court was whether to enter a protective order against Mother to protect the Children, Mother's testimony about Father's alleged abuse of Mother was wholly irrelevant to the sole question before the trial court. *See* Tex. R. Evid. 401. As the trial court correctly stated on the record, evidence of Father's alleged domestic violence toward Mother "does not have anything to do with whether family violence occurred or it's likely to occur in the future by [Mother] against the [C]hildren." 3RR59. Indeed, Mother does not point to any authority supporting her contention that evidence of Father's alleged domestic violence toward Mother is relevant in the context of a protective order sought only to protect the Children. The court of appeals correctly held that the trial court did not abuse its discretion in excluding this irrelevant character evidence.

The irrelevance of this evidence also supports the court of appeals’s holding that any error in refusing Mother’s offer of proof was harmless. *Sary*, 2022 WL 17684334, at *15.

Texas Rule of Evidence 103(a) states that an offer of proof is not required when the substance of the proffered testimony was apparent from the context. Tex. R. Evid. 103(a)(4); *see also Lewis v. Lewis*, 853 S.W.2d 850, 852 (Tex. App.—Houston [14th Dist.] 1993, no writ) (“[A]n offer of proof is not required when the trial court forecloses the admission of evidence in a manner that indicates that an offer of proof would be futile.”).

Here, the trial court refused the offer of proof because the evidence was irrelevant—meaning the offer would be futile. 3RR58-59. Accordingly, the court of appeals correctly concluded that any error on the part of the trial court in refusing the offer of proof was harmless. *Sary*, 2022 WL 17684334, at *15 (citing Tex. R. Evid. 103(a)).

PRAYER

For the foregoing reasons, the Court should deny Mother’s petition for review because the court of appeals did not err in affirming the trial court’s entry of the Protective Order. Alternatively, if the Court grants

Mother's petition for review, the Court should affirm the court of appeals's judgment.

Respectfully submitted,

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/s/ Marshall A. Bowen

Marshall A. Bowen

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