

**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**

---

**REPLY TO AMICUS COUNSEL'S  
BRIEF ON THE MERITS**

---

Respectfully submitted by:  
THE DRAPER LAW FIRM, P.C.  
Holly J. Draper  
State Bar No. 24046300  
hdraper@draperfirm.com  
Carrie Tapia  
State Bar No. 24098500  
ctapia@draperfirm.com  
6401 W. Eldorado Pkwy., Ste. 80  
McKinney, TX 75070  
Tel: (469) 715-6801  
Fax: (469) 480-5290

Attorneys for Petitioner, Christine  
Lenore Stary

## TABLE OF CONTENTS

Index of Authorities.....	ii
Abbreviations & Record References.....	iv
I. Response to Amicus Brief’s Statement of Facts.....	1
II. Response to Amicus Brief’s Arugument.....	1
1. The preponderance of the evidence standard does not provide the constitutional protections necessary to protect parental rights.....	2
2. The protective order in this case eliminates Mother’s meaningful parental rights, making it tantamount to a termination.....	3
a. The “rights” from the Agreed Final Decree of Divorce were superseded by the protective order and subsequent litigation in the child custody case and are not relevant.....	3
b. Any “rights” retained by Mother do not include any meaningful parental rights.....	4
c. The limited ability Mother has to modify the protective order does not negate its effect as a de facto termination, and the Children’s ability to modify is not relevant.....	6
d. A protective order is distinctly different from a custody order, and because of those differences, it cannot be viewed in the same legal light.....	8
3. Although it is not relevant if Mother was convicted of a felony, it is relevant that the protective order was based on the allegation of a felony without the necessary constitutional protections.....	9
4. Evidence of Father’s history of domestic violence was relevant to Father’s truthfulness, and the failure to allow an offer of proof constitutes reversible error.....	10

III. Conclusion.....	11
IV. Prayer.....	11
Certification of Counsel Regarding Word Count.....	13
Certificate of Service.....	14

## INDEX OF AUTHORITIES

### Cases

<i>In re A.P.</i> , 54 S.W.3d 493, 498 (Tex. App. – Texarkana 2001).....	7
<i>Interest of S.V.</i> , 599 S.W.3d 25, 37 (Tex. App. – Dallas 2017).....	7
<i>Santosky v. Kramer</i> , 455 U.S. 745, 756 (1982).....	6

### Statutes

Tex. Fam. Code § 85.025 (2022).....	6, 9
Tex. Fam. Code § 156.101.....	8
Tex. R. Evid. 103.....	10

## **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.”**
3. Amicus Counsel’s Brief on the Merits will be referred to herein as **“Amicus Brief.”**

### *Record References:*

1. The appendix filed with the Brief on the Merits 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 \_\_\_\_.**

## **TO THE HONORABLE JUSTICES OF THE TEXAS SUPREME COURT:**

Petitioner, Christine Lenore Stary (“Mother”), petitions this Court for review of the opinion issued by the First District Court of Appeals, Houston, Texas, No. 01-21-00101-CV. In support of this petition, Petitioner respectfully shows as follows:

### **I. RESPONSE TO AMICUS BRIEF’S STATEMENT OF FACTS**

The Amicus Brief’s Statement of Facts certainly implies that the circumstances underlying the protective order issued against Mother overwhelmingly supported issuing a lifetime protective order against her. **Amicus Brief at 9-23.** It fails to recognize that much of the evidence came only from Father’s testimony, rather than from a direct source. Father was the one and only witness against Mother in this case, and the skewed statement of facts in the Amicus Brief seems to suggest otherwise. **RR 2-6.**

A complete reading of the transcript from the hearing paints a very different picture of what truly happened in this case. **RR 2-6.** This Court should look beyond the skewed statement of facts to the entire record for the true picture of what transpired in this case, and in so doing, it will be abundantly clear that Mother’s constitutional rights were violated by the issuance of this lifetime protective order.

### **II. RESPONSE TO AMICUS BRIEF’S ARGUMENT**

This lifetime protective order stems from weak evidence from an unreliable source, a clearly biased judge who seemed determined to allow all evidence in for

Father and very little evidence in for Mother, and a low burden of proof that lays the groundwork for future litigants to make false allegations of family violence and effectively terminate parental rights. This Court needs to consider the impact of the low burden of proof required to issue lifetime protective orders, how that directly conflicts with both United States Supreme Court and Texas Supreme Court authority on the protection of parental rights, and how that can violate the constitutional rights of Texas parents.

**1. The preponderance of the evidence standard does not provide the constitutional protections necessary to protect parental rights.**

The Amicus Brief correctly states that the statutory framework for civil protective orders provides for a preponderance of the evidence standard; however, the brief seems to imply that because the preponderance of the evidence standard was properly applied, it ends the inquiry. **Amicus Brief at 26-28.** Mother is not arguing the trial court or Court of Appeals improperly applied the statutory framework. Mother is arguing the statutory framework, when applied to issue a lifetime protective order that terminates all a parent's meaningful parental rights forever, is unconstitutional. The legislature's decision not to include a higher evidentiary standard for protective orders exceeding two years under Chapter 85 does not mean that the statute passes constitutional muster. It does not.

**2. The protective order in this case eliminates Mother’s meaningful parental rights, making it tantamount to a termination.**

The Amicus Brief argues that because the protective order did not terminate all Mother’s parental rights, it did not amount to a termination and, therefore, Mother was not entitled to any constitutionally required heightened burden of proof. **Amicus Brief at 28-39.** Any “rights” retained by Mother are negligible when compared to the rights lost, and the limited opportunities for Mother to attempt to modify the protective order do not change its effect as a de facto termination. Finally, a protective order is distinctly different from a child custody order and, as such it cannot be treated like a custody order when it amounts to an effective termination of parental rights.

**a. The “rights” from the Agree Final Decree of Divorce were superseded by the protective order and subsequent litigation in the child custody case and are not relevant.**

The Amicus Brief argues extensively that the protective order does not constitute a de facto termination of parental rights because Mother retained a whole laundry list of rights from the Agreed Final Decree of Divorce. **Amicus Brief at 31-39.** Such an argument fails because the Agreed Final Decree of Divorce was superseded by both this protective order and by subsequent litigation in a child custody modification. **CR 38-62, 82-90.** Such an argument appears to be an attempt to mislead this Court into believing Mother retained far more rights than she did. **CR**

**38-62.** Specifically, at the time of this protective order trial, Temporary Orders<sup>1</sup> severely restricted Mother's rights. **CR 38-62.** The Temporary Orders removed Mother as a joint managing conservator and instead named her as a temporary possessory conservator, with far fewer rights than under the Agreed Final Decree of Divorce. **CR 39-44.** The rights Mother retained under the Temporary Orders are substantially fewer than those suggested in the Amicus Brief and, in light of the restrictions under the protective order, amount to virtually no rights at all. **CR 39-44, 82-90.**

**b. Any "rights" retained by Mother do not include any meaningful parental rights.**

The terms of the protective order have eliminated all Mother's meaningful rights. An order does not need to explicitly state that it terminates a parent's rights to effectively do just that. Here, the protective orders are "no contact orders of permanent duration" that restrict Mother's parental rights in the following ways:

- She is prohibited from communicating directly with her children;
- She is prohibited from going within 100 yards of any location where her children are known to be;
- She is prohibited from going within 100 yards of her children's residences or places of employment; and

---

<sup>1</sup> A review of the public record docket sheet in Cause No. 2018-05544 shows this modification case is still pending at the time of the filing of this Reply and no final modification order has been entered.

- She is prohibited from going to or near the child-care facilities, babysitters, schools, or extracurricular activities of the children.

**CR 83-85.**

With the above restrictions, Mother is prevented from having any meaningful relationship whatsoever with her children, which is the core foundation of parental rights. She cannot talk to her children. She cannot spend time with her children. She cannot attend their dance recitals or band concerts or soccer games. She cannot take a child to the doctor. She cannot go to the school for a meeting with a teacher or principal. She cannot comfort her children when they are sick or hug them when they are upset. The list of typical parental activities Mother is prohibited from doing is endless under this protective order.

Any rights Mother has retained on paper in the Temporary Orders are meaningless when the above restrictions are in place. 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 even more restrictive than a termination order because termination orders do not prohibit contact past the age of 18. Dissent at 6. By depriving Mother of the ability to see, communicate with, and have 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 v. Kramer*, 455 U.S. 745, 756 (1982)). Accordingly, the rights stripped from Mother by this lifetime protective order amount to a de facto termination of her parental rights, and her constitutional rights as a parent have been violated.

**c. The limited ability Mother has to modify the protective order does not negate its effect as a de facto termination, and the Children's ability to modify is not relevant.**

The Amicus Brief argues that because Mother and the Children can separately move to modify the protective order, and the protective order contemplates reunification, it does not amount to termination. **Amicus Brief at 39-42.** Mother is limited to only two motions to modify or terminate the protective order, with restrictions on when those can be filed. Tex. Fam. Code § 85.025 (2022). Although it's theoretically possible for Mother to modify during those two attempts, the burden has shifted to require Mother to prove a protective order is no longer necessary. Proving something is no longer necessary is an extremely difficult task, and the Texas Family Code provides no guidance about how one might prove such a claim. A parent who has had no access to her children for a year or more and whose access to schools, doctors, and others involved in a child's life has been eliminated will have an extremely difficult hurdle to overcome.

Forcing a parent to exhaust both attempts to modify or terminate the protective order could unnecessarily extend the length of time during which that parent's

constitutional rights are violated. It has been almost four years since the trial court issued this protective order, and Mother is still embroiled in her appeal trying to fight for her constitutional rights as a parent. If she had been forced to wait until after two unsuccessful attempts to modify or terminate the protective order, that would extend this process for at least another two years. Six years amounts to a third of a child's life before adulthood. When, as here, some of the children were at or near the age of 12, those children would be adults by the time Mother could obtain relief for the violation of her constitutional rights. Four years is already too long when someone's constitutional parental rights have been violated, but extending that timeline even further is unfathomable.

The fact that Father or the Children could hypothetically move to modify the protective order in the future does nothing to protect Mother's constitutional parental rights. Amicus Brief at 41-42. Courts have repeatedly held that a trial court abuses its discretion if it gives complete authority to deny access to a parent or a child. *See Interest of S.V.*, 599 S.W.3d 25, 37 (Tex. App. – Dallas 2017)(holding a trial court abused its discretion when the father's access was entirely within the control of the children); *In re A.P.*, 54 S.W.3d 493, 498 (Tex. App. – Texarkana 2001)(holding a trial court cannot give one parent sole authority over the other parent's possession of a child because it can effectively deny access to the child.) In the same way, placing the ability to modify this protective order in the hands of Father or the

Children effectively denies Mother the ability to modify, beyond the two modification opportunities the Texas Family Code provides for her.

Furthermore, the notion that the Children's counselors might say in the future that reunification is possible does not guarantee that Mother will get the opportunity to reunify with the Children. **CR 86.** Nothing in the order requires the Children's counselors to work towards reunification, nor does it provide any guidance about what reunification looks like. **CR 86.** Placing the decision to reunify in the hands of the Children or the Children's counselors effectively denies Mother of the opportunity to reunify.

**d. A protective order is distinctly different from a custody order, and because of those differences, it cannot be viewed in the same legal light.**

The Amicus Brief argues the protective order is “more akin to a custody order limiting parental access,” and therefore it is not tantamount to termination. **Amicus Brief at 42-46.** If the protective order were a custody order, then Mother's constitutional rights would not be in jeopardy. In a custody case, Mother would have been given ample opportunity for discovery prior to final trial. More importantly, she would have the opportunity to seek to modify that custody order over and over again to attempt to regain access to her children. A party can file to modify a child custody order at any time if there has been a material and substantial change in circumstances. Tex. Fam. Code § 156.101. The Texas

Family Code does not place any restrictions on the number of modifications a party can file in a child custody suit. The protective order statute is drastically different, limiting Mother's ability to modify or terminate the protective order to only two attempts, to occur at least a year apart, with the first occurring at least a year after the protective order was issued. Tex. Fam. Code § 85.025 (2022). A child custody order alone can accomplish the goals of protecting children without violating a parent's constitutional rights, and this suit would not be necessary if a child custody order were the only order at issue.

**3. Although it is not relevant if Mother was convicted of a felony, it is relevant that the protective order was based on the allegation of a felony without the necessary constitutional protections.**

The Amicus Brief misconstrues Mother's constitutional arguments with respect to the ability of a court to issue a protective order longer than two years based on the mere *allegation* of a felony. **Amicus Brief at 47-48.** Mother never contended that her constitutional rights were violated because she was not convicted of a felony, nor has she contended that the trial court misapplied the statute. The Amicus Brief completely ignores the crux of Mother's argument – that granting a lifetime protective order based on the *allegation* of a felony should require the due process considerations applicable to a criminal charge. Specifically, a criminal conviction requires the substantially higher burden of proof – beyond a reasonable doubt. Although *no one* wants to see violent criminals walking the streets, our society has

deemed it necessary to protect the rights of the accused by requiring proof beyond a reasonable doubt. Further, in a criminal court, a defendant has the constitutional right to invoke the fifth amendment, and by doing so, neither the court nor a jury can make any adverse inferences from her decision to do so. In a civil protective order trial, that same defendant effectively loses the right to plead the fifth because the trial court can make a negative inference from that decision. Constitutional parental rights are on a par with constitutional liberty rights. The low burden of proof based on the mere *allegation* of a felony simply does not pass constitutional muster.

**4. Evidence of Father's history of domestic violence was relevant to Father's truthfulness, and the failure to allow an offer of proof constitutes reversible error.**

The Court of Appeals erred in finding the trial court's failure to allow an offer of proof constituted harmless error. The one and only witness against Mother was Father. If Father's credibility is called into question, it puts the truthfulness of the only evidence against Mother into serious doubt. Without allowing an offer of proof, this Court cannot know the depths of the evidence against Father and to what extent that would tarnish his credibility and cast doubt on his testimony. The Rules of Evidence do not give a court discretion to deny an offer of proof. An offer of proof is *mandatory* because, without it, the court cannot know if evidence is relevant or not. Tex. R. Evid. 103. Whether or not Father was seeking a protective order for himself is not dispositive of this issue. When the *only* evidence against Mother came

through the testimony of Father, evidence as to Father's character is clearly relevant. Accordingly, the trial court abused its discretion in failing to allow Mother to present an offer of proof, and such abuse of discretion did not constitute harmless error.

### **III. CONCLUSION**

This case illustrates exactly what can happen when the law does not contain the necessary constitutional safeguards for parents. An improperly granted lifetime protective order destroys lives. It not only destroys the life of the parent, but it destroys the lives of the children who have lost out on that parental relationship. A complete review of the record in this case shows just how little evidence is needed to destroy lives under the Texas civil protective order statute. This Court must take action to protect the constitutional rights not just of Mother but of all Texas parents who could face the effective termination of their parental rights based on mere allegations of felony conduct. The Trial Court's judgment must be reversed.

### **IV. 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,

THE DRAPER LAW FIRM, PC  
6401 W. Eldorado Pkwy., Ste. 80  
McKinney, TX 75070  
Tel: (469) 715-6801  
Fax: (469) 480-5290

By: /s/ Holly J. Draper

Holly J. Draper  
State Bar No. 24046300  
hdraper@draperfirm.com  
Carrie Tapia  
State Bar No. 24098500  
ctapia@draperfirm.com

Attorneys for Petitioner

### **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 2,727 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 May 7, 2024 as follows:

Carolyn Robertson  
1900 N. Memorial Way  
Houston, Texas 77007

*Via E-Service*

Alice J. O'Neill  
O'Neill Family Law  
1900 N. Memorial Way  
Houston, Texas 77007

*Via E-Service*

Marshall A. Bowen  
Butler Snow LLP  
1400 Lavaca St., Suite 1000  
Austin, Texas 78701-1764

*Via E-Service*

Bradley W. Pierce  
Heritage Defense Foundation  
2082 US 183, Ste. 170 #224  
Leander, Texas 78641

*Via E-Service*

Elizabeth Boyce  
Texas Association Against Sexual Assault  
7100 Chevy Chase, Suite 200  
Austin, Texas 78752

*Via E-Service*

/s/ Holly J. Draper  
Holly J. Draper

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system.  
The filer served this document via email generated by the eFiling system  
on the date and to the persons listed below:

Holly Draper on behalf of Holly Draper  
Bar No. 24046300  
hdraper@draperfirm.com  
Envelope ID: 87472377  
Filing Code Description: Reply Brief  
Filing Description: Reply Brief  
Status as of 5/7/2024 2:26 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Holly JDraper		hdraper@draperfirm.com	5/7/2024 2:21:56 PM	SENT
Alice J. O'Neill	788145	aoneill@oneill-familylaw.com	5/7/2024 2:21:56 PM	SENT
Carolyn Robertson	787278	CRobertsonAttorney@gmail.com	5/7/2024 2:21:56 PM	SENT
Marshall Bowen	24096672	marshall.bowen@butlersnow.com	5/7/2024 2:21:56 PM	SENT
Carrie Tapia		ctapia@draperfirm.com	5/7/2024 2:21:56 PM	SENT
Ken Paxton		const_claims@texasattorneygeneral.gov	5/7/2024 2:21:56 PM	SENT
Andrés Gámez		andres.gamez@butlersnow.com	5/7/2024 2:21:56 PM	SENT

#### Associated Case Party: Heritage Defense Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Bradley W.Pierce		bpierce@heritagedefense.org	5/7/2024 2:21:56 PM	SENT

#### Associated Case Party: Texas Association Against Sexual Assault

Name	BarNumber	Email	TimestampSubmitted	Status
Liz Boyce		eboyce@taasa.org	5/7/2024 2:21:56 PM	SENT