

## **Question**

Petitioner has repeatedly claimed the existence of an “active protective order” with a finding of family violence, despite the record showing no such finding and the protective order proceeding being nonsuited. Texas Family Code § 81.001 et seq. governs protective orders and requires a finding of family violence for such orders to be issued. False statements to the court regarding the existence or basis of protective orders may constitute fraud upon the court. Petitioner’s and her counsel’s continued reliance on false representations about protective orders to obtain ex parte relief and to justify extraordinary restrictions on Respondent’s access to the children constitutes a serious abuse of legal process and a flagrant disregard for the integrity of the court.

## **Answer (Texas)**

### **Short response**

Under Texas law, a protective order based on family violence cannot exist without a judicial finding that family violence has occurred, and any contrary representation—especially after a nonsuit—misstates the legal status and may constitute sanctionable misconduct or abuse of process. Repeated false assertions to the court about the existence or basis of such an order undermine the integrity of judicial proceedings and may warrant sanctions against the party and counsel.

### **Summary**

Texas Family Code §§ 81.001 and 85.001 require a court to make explicit findings of family violence before issuing a protective order; if the record shows no such finding and the protective order proceeding was nonsuited, there is no valid “active protective order” with a family-violence finding. Persistently misrepresenting the existence or basis of such an order to the court—particularly to obtain ex parte relief or restrict another party’s rights—contravenes statutory requirements, may constitute fraud upon the court, and exposes the offending party and counsel to sanctions under the Texas Civil Practice and Remedies Code.

The statutory and case law authorities make clear that protective orders are only valid if the court has made the required findings, and that attorneys and parties have a duty to ensure their representations to the court are factually and legally supported. False or misleading statements about protective orders, especially when used to secure extraordinary relief, are not only improper but may be sanctionable as an abuse of process and a violation of the duty of candor to the tribunal.

# **Background and Relevant Law**

## **Legislative Framework**

The issuance of family-violence protective orders in Texas is governed by Texas Family Code §§ 81.001 et seq. Section 81.001 provides that a court must render a protective order only if it finds that family violence has occurred, as further detailed in Section 85.001, which requires the court to make findings at the close of a hearing on an application for a protective order. If the court finds that family violence has occurred, it must render a protective order as provided by Section 85.022, which sets out the specific restrictions and requirements that may be imposed on the person found to have committed family violence. Importantly, Section 85.001 makes clear that these findings are a prerequisite to the issuance of any such order.

Section 85.005 allows for agreed protective orders, which may be enforceable even if the court does not make the findings required by Section 85.001. However, the existence of an agreed order is distinct from a judicial finding of family violence; mischaracterizing an agreed order or a nonsuited proceeding as one involving a judicial finding of family violence is misleading.

The Texas Civil Practice and Remedies Code further regulates the conduct of parties and attorneys in civil proceedings. Section 10.001 requires that every signed pleading or motion is certified as being factually supported and not presented for improper purposes. Section 10.004 authorizes courts to impose sanctions for violations of this duty, including for filings that are groundless, made in bad faith, or for improper purposes. Section 10.002 provides the procedural mechanism for seeking such sanctions.

## **Case Law**

Texas appellate courts have consistently held that a protective order under the Family Code requires explicit findings that family violence has occurred (and, under prior law, that it is likely to occur in the future). In [Hagner v. Valdez, 04-23-00379-CV \(Tex. App. Mar 26, 2025\)](#), the court reiterated that a protective order issues only upon a judicial finding of family violence. Similarly, [Velasquez v. Rayon](#) (Tex. App. June 21, 2023) vacated a protective order where the required findings were absent, emphasizing that courts cannot presume such findings or independently review the record to supply them.

Other cases, such as [J.A.T. v. C.S.T., 641 S.W.3d 596 \(Tex. App. 2022\)](#), [Sharp v. Jimmerson, 01-20-00360-CV \(Tex. App. Aug 17, 2021\)](#), [Onkst v. Morgan, NO. 03-18-00367-CV \(Tex. App. Sep 11, 2019\)](#), and [Roper v. Jolliffe, 493 S.W.3d 624 \(Tex. App. 2015\)](#), all confirm that the statutory prerequisites for a protective order are mandatory and that the absence of such findings precludes the existence of a valid order. The Texas Supreme Court in [Stary v. Ethridge, 23-0067 \(Tex. May 02, 2025\)](#) and [Nath v. Tex. Children's Hosp., 446 S.W.3d 355 \(Tex. 2014\)](#) further affirms the importance of factual and

legal support for pleadings and the availability of sanctions for abuses of process.

## **Analysis**

### **Statutory Prerequisites for Protective Orders**

The Texas Family Code establishes a clear and mandatory framework for the issuance of family-violence protective orders. Section 81.001 provides that a court may only render a protective order if it finds that family violence has occurred. Section 85.001 requires the court to make this finding at the close of a hearing on the application for a protective order. If the court does not make the required finding, it cannot issue a protective order under Section 85.022, which sets out the specific restrictions that may be imposed on the person found to have committed family violence ([Tex. Fam. Code § 81.001](#); [Tex. Fam. Code § 85.001](#); [Tex. Fam. Code § 85.022](#)).

The statutory scheme is reinforced by case law. In [Hagner v. Valdez](#) (Tex. App. Mar 26, 2025), the court held that a protective order may only issue upon a judicial finding of family violence. [Velasquez v. Rayon](#) (Tex. App. June 21, 2023) vacated a protective order where the trial court failed to make the required findings, holding that such findings cannot be presumed or supplied by appellate review. [J.A.T. v. C.S.T., 641 S.W.3d 596 \(Tex. App. 2022\)](#) and [Sharp v. Jimmerson, 01-20-00360-CV \(Tex. App. Aug 17, 2021\)](#) similarly confirm that the absence of the required findings precludes the issuance of a valid protective order.

If a protective order proceeding is nonsuited, there is no judicial finding of family violence, and thus no valid "active protective order" under the Family Code. The existence of an agreed protective order under Section 85.005 does not equate to a judicial finding of family violence; such orders are enforceable but do not carry the same legal implications as an order issued after a contested hearing and explicit findings ([Tex. Fam. Code § 85.005](#)).

### **Duty of Candor and Sanctions for False Representations**

Attorneys and parties have a duty to ensure that their representations to the court are factually and legally supported. Section 10.001 of the Texas Civil Practice and Remedies Code requires that every signed pleading or motion is certified as being factually supported and not presented for improper purposes. Section 10.004 authorizes courts to impose sanctions for violations of this duty, including for filings that are groundless, made in bad faith, or for improper purposes. Section 10.002 provides the procedural mechanism for seeking such sanctions ([Tex. Civ. Prac. and Rem. Code § 10.001](#); [Tex. Civ. Prac. and Rem. Code § 10.004](#); [Tex. Civ. Prac. and Rem. Code § 10.002](#)).

The Texas Supreme Court in [Nath v. Tex. Children's Hosp., 446 S.W.3d 355 \(Tex. 2014\)](#) and [Low v. Henry, 221 S.W.3d 609 \(Tex. 2007\)](#) has affirmed that courts may sanction parties and attorneys for pleadings or representations made with an improper purpose or without evidentiary support, and for false

or bad-faith filings. The amount and nature of sanctions are within the trial court's discretion but must be tailored to the abuse found.

## **Application to the Scenario**

Where, as here, the record shows no judicial finding of family violence and the protective order proceeding was nonsuited, there is no valid "active protective order" with a family-violence finding. Repeatedly asserting otherwise in pleadings, motions, or oral representations to the court is factually unsupported and misstates the legal status of the case. If such representations are made to obtain ex parte relief or to justify extraordinary restrictions on another party's rights (such as access to children), they are not only improper but may constitute an abuse of process and a violation of the duty of candor to the tribunal.

The authorities make clear that such conduct is sanctionable. Under Section 10.001, the signing of a pleading or motion certifies that the factual contentions have evidentiary support. If a party or counsel asserts the existence of an "active protective order" with a family-violence finding when the record shows otherwise, that certification is false. Section 10.004 authorizes the court to impose sanctions to deter repetition of such conduct, including directives to cease the conduct, monetary penalties, and fee-shifting. Section 10.002 provides the mechanism for seeking such sanctions.

The Texas Supreme Court in [Nath v. Tex. Children's Hosp., 446 S.W.3d 355 \(Tex. 2014\)](#) and [Low v. Henry, 221 S.W.3d 609 \(Tex. 2007\)](#) confirms that sanctions are appropriate for pleadings or representations made without factual support or for improper purposes. The courts have emphasized that the duty of candor to the tribunal is fundamental to the integrity of the judicial process, and that abuses of process—such as knowingly false representations about the existence or basis of a protective order—are serious violations warranting judicial intervention.

## **Abuse of Process and Fraud Upon the Court**

The repeated reliance on false representations about protective orders to obtain ex parte relief or to justify extraordinary restrictions on another party's rights constitutes a serious abuse of legal process. The Texas Supreme Court and courts of appeals have recognized that such conduct undermines the integrity of judicial proceedings and may constitute fraud upon the court. While the authorities provided do not use the precise term "fraud upon the court," the principles articulated in [Nath v. Tex. Children's Hosp., 446 S.W.3d 355 \(Tex. 2014\)](#) and [Low v. Henry, 221 S.W.3d 609 \(Tex. 2007\)](#) make clear that knowingly false representations to the court are sanctionable and may be remedied by the court to protect the integrity of its proceedings.

The gravity of such misconduct is heightened in the context of protective orders, which carry significant collateral consequences and social stigma, as noted in secondary materials ([Hit Me Baby Just One Time – But Not in Texas: How the 2023 Texas Legislative Update to Family Violence Protective Orders Will Affect Divorce and Custody Litigation](#) (2023)). The misuse of

protective order proceedings to gain tactical advantage in custody or other family law disputes, through false or misleading representations, is particularly egregious.

## Exceptions and Caveats

There are limited circumstances in which a protective order may exist without explicit findings of family violence, such as agreed protective orders under Section 85.005. However, these orders are enforceable only as agreed and do not carry the same legal implications as orders issued after a contested hearing and explicit findings. Mischaracterizing an agreed order or a nonsuited proceeding as one involving a judicial finding of family violence is misleading and improper.

It is also important to note that the statutory requirements for protective orders have evolved. As of September 1, 2023, a single act of family violence may suffice for issuance of a protective order, but the requirement of a judicial finding remains unchanged ([Hit Me Baby Just One Time – But Not in Texas: How the 2023 Texas Legislative Update to Family Violence Protective Orders Will Affect Divorce and Custody Litigation](#) (2023)). The authorities provided do not indicate any subsequent negative treatment of the key statutory or case law principles discussed.

## Conclusion

Texas law is unequivocal: a protective order based on family violence cannot exist without a judicial finding that family violence has occurred, and any contrary representation—especially after a nonsuit—misstates the legal status and may constitute sanctionable misconduct or abuse of process. Attorneys and parties have a duty to ensure that their representations to the court are factually and legally supported; repeated false assertions about the existence or basis of a protective order, particularly when used to obtain ex parte relief or restrict another party's rights, undermine the integrity of judicial proceedings and may warrant sanctions. The statutory and case law authorities make clear that such conduct is not only improper but may be remedied by the court to protect the integrity of its proceedings and to deter future abuses.

## Legal Authorities

### [Velasquez v. Rayon](#)

#### **Texas Court of Appeals**

##### **Extract**

'A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred and is likely to occur in the future.' Tex. Fam. Code § 81.001. ... Here, the trial court made no finding that family violence is likely to occur in the future. ... The trial court failed to

make all findings required by section 85.001(a) of the family code. The Final Protective Order is, therefore, not supported by legally sufficient evidence. Accordingly, we vacate the trial court's Final Protective Order and dismiss the case.

## **Summary**

Texas Family Code § 81.001 requires two findings—past family violence and likelihood of future family violence—for a protective order to be rendered. The court of appeals vacated and dismissed a protective order where the record lacked the required future-liability finding. Thus, assertions that there exists an “active protective order” with the necessary family-violence findings are untenable when those statutory findings were not made or the order was vacated/dismissed. This supports argument that representing the existence or basis of such an order, despite the absence of required findings or the case’s dismissal, misleads the court and undermines the integrity of proceedings.

[Wilkerson v. Wilkerson, 321 S.W.3d 110 \(Tex. App. 2010\)](#)

## **Texas Court of Appeals**

### **Extract**

A trial court shall render a family violence protective order “if the court finds that family violence has occurred and is likely to occur in the future.” Tex. Fam. Code Ann. § 81.001 (Vernon 2008); see also id. § 85.001(b). “A trial court must issue a family violence protective order if it ‘finds that family violence has occurred and is likely to occur in the future.’” Tex. Fam. Code Ann. § 81.001 (Vernon 2002); see also id. § 85.001(b) (Vernon 2002).

## **Summary**

The court reiterates the statutory requirement that a protective order may issue only upon a judicial finding that family violence has occurred and is likely to occur in the future under Tex. Fam. Code § 81.001 and § 85.001(b). This supports the proposition’s premise that Texas Family Code § 81.001 et seq. governs protective orders and requires such findings. If the record reflects no such finding (e.g., proceeding nonsuited), representations that an “active protective order” with a family-violence finding exists are inconsistent with these statutory prerequisites and can be argued as false statements to the court used to obtain ex parte relief or restrictions.

[J.A.T. v. C.S.T., 641 S.W.3d 596 \(Tex. App. 2022\)](#)

## **Texas Court of Appeals**

## **Extract**

If the trial court finds that family violence has occurred and that family violence is likely to occur in the future, the trial court: (1) shall render a protective order as provided by Family Code section 85.022... See Tex. Fam. Code Ann. § 85.001(b)." ... "Though the trial court had the power to issue a protective order allowing Father to have only supervised access to Daughter, the trial court was only authorized to do so after finding that family violence had occurred and was likely to occur in the future. See Tex. Fam. Code Ann. § 81.001, 84.001(a); 85.001; 85.002..." ... "Taylor v. Taylor... (concluding that without findings that family violence has occurred and is likely to occur in the future, a trial court may not issue a family-violence protective order unless a person has violated an existing protective order—not a temporary ex parte order—when the protective order was in effect and the protective order has since expired).

## **Summary**

The passages confirm that a family-violence protective order requires findings that family violence occurred and is likely to occur in the future, citing §§ 81.001, 84.001, 85.001-.002 and Taylor. This directly undermines any claim that an “active protective order” exists absent such findings or where proceedings were nonsuited. It supports arguing that representations of an active order with family-violence findings are false and an abuse of process when the statutory predicates are unmet.

### Roper v. Jolliffe, 493 S.W.3d 624 (Tex. App. 2015)

## **Texas Court of Appeals**

## **Extract**

At the close of the hearing on the application for a protective order, the trial court must find whether family violence has occurred and is likely to occur in the future. Id. § 85.001(a). If the court makes those findings, it must render a protective order applying to the person found to have committed family violence. Id. §§ 81.001, 85.022... “A court shall render a protective order ... if the court finds that family violence has occurred and is likely to occur in the future.” Tex. Fam. Code Ann. § 81.001 (West 2014). Section 85.001(a) requires “the court shall find whether: (1) family violence has occurred; and (2) family violence is likely to occur in the future.”

## **Summary**

The case reiterates that a protective order may be issued only if the court makes specific findings that family violence has occurred and is likely to occur. Thus, claiming an “active protective order” with a finding of family violence when no such findings were made—and where the proceeding was nonsuited—contradicts the statutory preconditions summarized by the court.

While the passage does not address fraud directly, it establishes the legal prerequisite that any valid protective order necessarily rests on those findings, undermining false assertions of such an order or findings.

[In re Epperson, 213 S.W.3d 541 \(Tex. App. 2007\)](#)

**Texas Court of Appeals**

**Extract**

A trial court shall render a protective order if the court finds that family violence (1) has occurred and (2) is likely to occur in the future. TEX. FAM.CODE ANN. § 81.001 (Vernon 2002). 'At the close of a hearing on an application for a protective order, the court shall find whether: (1) family violence occurred; and (2) family violence is likely to occur in the future.' TEX. FAM.CODE ANN. § 85.001(a) (Vernon 2002).

**Summary**

Texas law requires a court finding that family violence has occurred and is likely to occur in the future before a protective order may be rendered. Thus, absent such findings (e.g., where the proceeding was nonsuited or no findings were made), there can be no valid "active protective order" with a family-violence finding. Misrepresenting that such an order exists contradicts the statutory requirements.

[Low v. Henry, 221 S.W.3d 609 \(Tex. 2007\)](#)

**Texas Supreme Court**

**Extract**

Chapters 9 and 10 of the Texas Civil Practice and Remedies Code and rule 13 of the Texas Rules of Civil Procedure allow a trial court to sanction an attorney or a party for filing motions or pleadings that lack a reasonable basis in fact or law. ... The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry: (1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation; ... (3) each allegation or other factual contention in the pleading or motion has evidentiary support..." ... "We recognize that in some cases, a party may not have evidence that proves each specific factual allegation at the time a lawsuit is filed... However, this does not excuse the filing of claims against parties when the attorney filing the lawsuit possesses information that a reasonable inquiry would have determined negated some of the claims made. We affirm the trial court's determination that chapter 10 was violated..."

## **Summary**

The case establishes that attorneys certify factual contentions have evidentiary support after reasonable inquiry and may be sanctioned under Chapter 10/Rule 13 for filings lacking a factual basis or presented for improper purposes. It further holds that proceeding despite information negating allegations violates Chapter 10. These principles support sanctions or other remedies when counsel falsely represents the existence/basis of a protective order to secure ex parte relief and impose extraordinary restrictions, particularly where the record shows no family-violence finding and a nonsuit.

[Nath v. Tex. Children's Hosp., 446 S.W.3d 355 \(Tex. 2014\)](#)

## **Texas Supreme Court**

### **Extract**

The Civil Practice and Remedies Code and our Rules of Civil Procedure allow for pleadings sanctions against parties and attorneys when, among other things, a pleading was filed with an improper purpose or was unlikely to receive evidentiary support. ... Chapter 10 allows sanctions for pleadings filed with an improper purpose or that lack legal or factual support. ... Rule 13 provides that pleadings that are groundless and in bad faith, intended to harass, or false when made are also sanctionable: ... The amount of a sanction is limited only by the trial court's duty to act within its sound discretion in accordance with the Due Process clause of the Texas Constitution. ... [T]he trial court must ensure that the sanction: (1) relates directly to the abuse found; and (2) is not excessive.

## **Summary**

The Texas Supreme Court affirms that courts may sanction parties and attorneys for pleadings or representations made with an improper purpose or without evidentiary support, and for false or bad-faith filings under Chapter 10 and Rule 13. This supports the proposition's contention that knowingly false assertions about a protective order (e.g., claiming an "active protective order" with a family-violence finding when none exists) are sanctionable abuses of process. The opinion underscores due-process constraints but confirms trial courts' authority to impose sanctions tailored to the abuse, which aligns with seeking remedies against parties/counsel who rely on false protective-order claims to obtain ex parte relief or extraordinary restrictions.

[Flanigan v. Glasgow, No. 04-11-00516-CV \(Tex. App. Aug 01, 2012\)](#)

## **Texas Court of Appeals**

## **Extract**

Under section 85.001 of the Texas Family Code, the trial court must grant a protective order upon finding that family violence has occurred and is likely to occur again in the future. TEX. FAM. CODE ANN. § 85.001(b) (West 2008). " ... "In the order, the trial court found that Ramon 'has committed family violence and family violence is likely to occur in the future pursuant to Section 85.001 of the Texas Family Code.'

## **Summary**

The case confirms that a valid protective order under Chapter 85 requires an explicit finding that family violence occurred and is likely to occur again. Thus, where no such finding exists—especially if a protective order application was nonsuited—representations that there is an “active protective order” with a family-violence finding are inconsistent with the statutory scheme. This supports arguing that any contrary assertion misstates the legal status and foundation required by § 81.001 et seq. and § 85.001.

### [Vest v. Vest](#)

#### **Texas Court of Appeals**

## **Extract**

Under the Texas Family Code, a court shall render a protective order if the court finds that family violence has occurred and is likely to occur in the future. Tex. Fam. Code Ann. § 81.001. ... A protective order is a statutory remedy that is distinct from a permanent injunction. ... A protective order does not require a party to establish liability on an underlying cause of action. ... The purpose of the statute is to provide an expedited procedure for victims of domestic violence and give immediate protection to the applicant.

## **Summary**

Texas Family Code § 81.001 requires an actual judicial finding that family violence has occurred and is likely to occur before a court may render a protective order. Thus, if no such finding exists—e.g., because the proceeding was nonsuited—there is no valid “protective order” under the statute. The case also clarifies that protective orders are statutory remedies, distinct from other injunctive relief, reinforcing that their existence depends on compliance with the statute’s prerequisites, including the family-violence finding.

### [Diaz v. Alston](#)

## **Texas Court of Appeals**

### **Extract**

In the final protective order rendered by the trial court the court found and concluded that Sierra 'is a victim of stalking and harassment pursuant to the Texas Penal Code and Chapter 7b of the Code of Criminal Procedure.' The trial court further found and concluded that 'this protective order can be granted for longer than 2 years based on chapter 7b of the Code of Criminal Procedure.' ... 'Although Tinch applied for a protective order pursuant to Family Code provisions relating to cases involving family violence, the trial court found at the hearing on the application that there were no allegations of family violence and instead issued a protective order based on a finding of harassment. ... Morott did not object in the trial court and does not complain on appeal that the trial court's judgment does not comport with Tinch's pleadings.' ... Ana raises this issue in relation to the findings necessary to obtain a protective order under the Family Code, as opposed to those required under the Code of Criminal Procedure.

### **Summary**

The passages show that not all protective orders are based on Family Code family-violence findings; some are issued under Chapter 7B of the Code of Criminal Procedure for stalking/harassment with no family-violence allegations. This undermines any assertion that an "active protective order" necessarily entails a Family Code finding of family violence. It supports arguing that claiming a Family Code family-violence finding when the order rests on a different statutory basis misrepresents the record and the legal basis for the order.

## [Velasquez v. Rayon](#)

### **Texas Court of Appeals**

### **Extract**

'A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred and is likely to occur in the future.' Tex. Fam. Code § 81.001. ... To issue a family-violence protective order, the trial court is required to find whether family violence has occurred and whether family violence is likely to occur in the future. ... Where the trial court fails to make findings of fact and conclusions of law that include the required findings, 'we can neither presume the existence of these omitted findings in support of the judgment nor independently review the record to ascertain whether the evidence would support such findings had they been made.' ... Here, the trial court's findings of fact and conclusions of law lack any reference to the required finding that family violence is likely to occur in the future. ... we hold that the evidence is legally insufficient to sustain the trial court's issuance of the protective order pursuant to the family code. We sustain Velasquez's second issue.

## **Summary**

The case confirms that under Tex. Fam. Code § 81.001 and § 85.001, a valid protective order requires explicit findings that family violence occurred and is likely to occur. Without those findings, an order cannot be sustained; courts cannot presume missing findings. Thus, claims of an “active protective order” with a finding of family violence are untenable when the record lacks the mandatory findings or the proceeding was dismissed. This supports arguing that representing otherwise misstates the legal status and undermines court integrity.

[Sharp v. Jimmerson, 01-20-00360-CV \(Tex. App. Aug 17, 2021\)](#)

## **Texas Court of Appeals**

### **Extract**

Family Code Section 82.002 allows a person to file an application for a protective order to protect against family violence... After holding a hearing on the application and before issuing a protective order under either the Family Code or Chapter 7A, the trial court is required to make certain findings. For a family-violence protective order under the Family Code, the trial court is required to find whether family violence has occurred and whether family violence is likely to occur in the future. TEX. FAM. CODE § 85.001(a)... "Taylor, 608 S.W.3d at 272 (vacating trial court's family-violence protective order because trial court failed to make required findings that respondent either committed family violence and was likely to commit family violence in future or had violated prior family-violence protective order)...". "Because the trial court made findings of fact and conclusions of law that lack any reference to these required findings, we can neither presume the existence of these omitted findings... we hold that the evidence is legally insufficient to sustain the trial court's issuance of the protective order pursuant to the Family Code or Chapter 7A of the Code of Criminal Procedure.

## **Summary**

The opinion confirms that a valid family-violence protective order requires explicit findings under Family Code § 85.001 that family violence occurred and is likely to occur. Where such required findings are absent, a protective order cannot stand, and courts cannot presume them. This undermines any claim that there is an “active protective order” with a family-violence finding when the record contains no such findings or the proceeding did not result in a valid order.

[Garcia v. State, No. 10-16-00045-CR \(Tex. App. Jan 11, 2017\)](#)

## **Texas Court of Appeals**

## **Extract**

The Court of Criminal Appeals has stated that the hypothetically-correct jury charge for a violation of a protective order offense would state the elements of the charged offense as follows: (1) Garcia, (2) in violation of an order issued on the 28th day of November, 2013, by Judge Virgil Bain of the ARNJ of McLennan County, Texas under Article 17.292 of the Texas Code of Criminal Procedure, (3) at a proceeding that Garcia attended, (4) knowingly and intentionally, (5) committed family violence against Joanna Garcia by hitting her with a metal club." ... "Harvey v. State, 78 S.W.3d 368, 373 (Tex. Crim. App. 2002) (construing the term 'in violation of an order issued under Section 6.504 or Chapter 85, Family Code [or] under Article 17.292, Code of Criminal Procedure' as meaning 'in violation of an order that was issued under one of those statutes at a proceeding that the defendant attended or at a hearing held after the defendant received service of the application for a protective order and notice of the hearing')." ... "A conviction for violation of a protective order requires proof of a protective order issued under Chapter 85 of the Family Code..."

## **Summary**

The case reiterates that to rely on a protective order, there must actually be an order issued under Chapter 85 (or Article 17.292, etc.), with proper notice/hearing. It references Harvey's construction that the order must be issued under the specified statutes and at a proceeding the respondent attended or after service and notice. It also quotes the definition of family violence under the Family Code and notes that violation requires proof of a valid protective order issued under Chapter 85. These points support the proposition that invoking an "active protective order" with a finding of family violence requires that such an order actually exist and be properly issued; absent such an order (e.g., if nonsuited or without a finding), claims to the contrary are false and an abuse of process.

[Onkst v. Morgan, NO. 03-18-00367-CV \(Tex. App. Sep 11, 2019\)](#)

## **Texas Court of Appeals**

### **Extract**

A trial court may issue a protective order if it finds that family violence has occurred and is likely to occur in the future. Tex. Fam. Code § 85.001(b). ... The court may render a protective order that lasts longer than two years if, as relevant to this case, it finds that the subject of the order was also the subject of at least two previous protective orders that were rendered to protect the current applicant, that the subject had committed family violence, and that the subject is likely to commit family violence in the future. Id. §§ 85.001(d), .025(a-1).

## **Summary**

Texas appellate authority confirms that issuance of a protective order requires an express finding that family violence has occurred and is likely to occur again. It also confirms that extended-duration orders require findings including prior protective orders and future likelihood, reinforcing that findings of family violence are a statutory prerequisite. Thus, if no finding exists (e.g., proceeding nonsuited), claiming an “active protective order” with a family-violence finding contradicts the statutory framework. This supports the proposition that misrepresenting the existence or basis of such orders is improper and can be argued as abuse of process/fraud on the court.

[Stary v. Ethridge, 23-0067 \(Tex. May 02, 2025\)](#)

## **Texas Supreme Court**

### **Extract**

Domestic violence protective orders protect family members from one of their own who turns abusive toward them... Recognizing as much, the law requires a court that issues a protective order lasting longer than two years to find felony-level violence, serious bodily injury, or repeated violations of prior protective orders... The statutory regime governing protective order proceedings leaves trial courts with much discretion as to the duration of the order and its intrusion into the parent-child relationship... E.g., Tex. Fam. Code § 85.025(a-1) (permitting trial courts to extend an order for any period exceeding two years upon making a requisite finding); id. § 85.022 (setting out actions that a trial court may prohibit a person found to have committed family violence from committing, including communication and contact with specific persons).

## **Summary**

The Court confirms that protective orders are governed by the Family Code and tethered to required findings of family violence; orders—especially those exceeding two years—require specific statutory findings. This undermines any assertion of an “active protective order” absent such findings or where the proceeding has been nonsuited. While the opinion does not address fraud-on-the-court directly, it reinforces that representations about protective orders must rest on valid statutory findings, supporting arguments that false claims about such orders are improper and abusive.

[Hagner v. Valdez, 04-23-00379-CV \(Tex. App. Mar 26, 2025\)](#)

## **Texas Court of Appeals**

## **Extract**

See TEX. FAM. CODE ANN. § 81.001 ('A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred.'). ... Under the Texas Family Code, a trial court shall render a protective order if, at the close of a hearing on the application, the court finds family violence has occurred and is likely to occur in the future. TEX. FAM. CODE ANN. §§ 81.001, 85.001. ... Evidence of a single act of family violence can support a finding of future family violence.

## **Summary**

The passages establish that, under Texas Family Code §§ 81.001 and 85.001, a protective order issues only upon a judicial finding that family violence has occurred (and is likely to occur). This supports arguing that if the record shows no such finding and the proceeding was nonsuited, there can be no "active protective order" with a family-violence finding. Thus, representations to the contrary misstate the legal preconditions for a protective order and bolster the contention that repeated false assertions about an existing protective order and its basis are improper.

### [Teel v. Shifflett, 309 S.W.3d 597 \(Tex. App. 2010\)](#)

## **Texas Court of Appeals**

### **Extract**

Under section 85.001 of the Texas Family Code, the trial court may grant a protective order upon finding that family violence has occurred and is likely to occur again. TEX. FAM.CODE ANN. § 85.001(a) (Vernon 2008). ... Section 81.001 provides that 'a court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred and is likely to occur in the future.' Tex. Fam.Code Ann. § 81.001 (Vernon 2008). Section 85.001 lists the required findings and orders to be issued by the court if it finds that family violence has occurred and is likely to occur in the future.

## **Summary**

The passages confirm that a Texas protective order requires a judicial finding that family violence has occurred and is likely to occur again. Thus, absent such a finding or where the proceeding is nonsuited, there is no lawful basis to assert an "active protective order" with a family-violence finding. This supports challenging false representations about the existence or basis of a protective order.

### [Harvey v. State, 78 S.W.3d 368 \(Tex. Crim. App. 2002\)](#)

## **Texas Court of Criminal Appeals**

### **Extract**

A person commits the offense of violation of protective order if, 'in violation of an order issued under [one of certain provisions of the Family Code or Code of Criminal Procedure], the person knowingly or intentionally commits family violence' ... Section 25.07(a) makes it an element of the offense that the culpable act be performed 'in violation of an order issued under Section 6.504 or Chapter 85, Family Code...' Those codes, in turn, require certain procedures for the order to be binding... The Family Code procedures for a Texas court to render a protective order require service of notice and a copy of the application as a prerequisite for a protective order to be binding. 'A court may render a protective order that is binding on a respondent who does not attend a hearing if the respondent received service of the application and notice of the hearing.' ... When issuance of a protective order is sought under Chapter 85 of the Family Code, the notice requirements of Chapter 82 apply. The clerk of the court must issue a notice that application for a protective order has been filed. 'Each respondent to an application for protective order is entitled to service of notice of an application for protective order.' ... 'The notice "must be served in the same manner as citation under the Texas Rules of Civil Procedure, except that service by publication is not authorized.'" ... 'The charge in this case correctly told the jury, "A person commits the offense of violation of a protective order if, in violation of a protective order issued after notice and hearing, the person knowingly or intentionally commits family violence.'"'

### **Summary**

Harvey confirms that a "protective order" contemplated under Chapter 85/§ 6.504 is only binding if statutory prerequisites—service of the application and notice of hearing, and issuance after notice and hearing—are met. The court's articulation that a valid protective order is "issued after notice and hearing" and that service/notice are prerequisites helps rebut claims that an "active protective order" exists where the protective order proceeding was nonsuited or no finding/hearing occurred. By tying enforceability and criminal consequences to proper issuance under the Family Code, Harvey underscores that misrepresenting the existence of such an order (or a family-violence finding supporting it) is contrary to the statutory framework and prejudices court processes—supporting arguments that such misstatements are an abuse of process and undermine court integrity.

### [Tex. Fam. Code § 85.022 Tex. Fam. Code § 85.022 Requirements of Order Applying to Person Who Committed Family Violence](#)

### **Extract**

In a protective order, the court may order the person found to have committed family violence to perform acts specified by the court... In a

protective order, the court may prohibit the person found to have committed family violence from: committing family violence; communicating... going to or near the residence... [and other prohibitions].

## **Summary**

Section 85.022 presupposes that a protective order's restrictions and mandates may be imposed only on a "person found to have committed family violence." This reinforces that operative protective orders under Chapter 85 are contingent on a judicial finding of family violence. If the proceeding was nonsuited and no finding was made, there is no basis for asserting the existence of an "active" protective order with the attendant restrictions described in §85.022. Thus, misrepresenting that such an order exists or that a family-violence finding was made contradicts the statutory framework and supports the argument that the Petitioner's representations are false and abusive of process.

### [Tex. Fam. Code § 81.001 Tex. Fam. Code § 81.001 Entitlement to Protective Order](#)

## **Extract**

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

## **Summary**

Texas Family Code § 81.001 establishes a prerequisite for issuance of a protective order: a court must find that family violence has occurred. Therefore, if the record reflects no such finding (and especially if the protective-order proceeding was nonsuited), there can be no valid "active protective order" premised on a family-violence finding. Any contrary representations to the court about the existence of an active protective order with a family-violence finding are inconsistent with § 81.001's requirement and support the argument that such statements are false and used improperly to obtain relief.

### [Tex. Fam. Code § 85.001 Tex. Fam. Code § 85.001 Required Findings and Orders](#)

## **Extract**

At the close of a hearing on an application for a protective order, the court shall find whether family violence has occurred. If the court finds that family violence has occurred, the court: shall render a protective order as provided by Section FAMILY CODE 85.022 applying only to a person found to have committed family violence; ... A protective order that requires the first applicant to do or refrain from doing an act under Section FAMILY CODE

85.022 shall include a finding that the first applicant has committed family violence.

## **Summary**

Protective orders under Chapter 85 require the court to make a finding on whether family violence occurred. If family violence is found, a protective order issues and must reflect that finding; without such a finding, an order under § 85.022 cannot issue, and the order would not exist as claimed. Thus, if the protective-order proceeding was nonsuited or resulted in no family-violence finding, there is no valid “active protective order” with such a finding. Repeated claims to the contrary misstate the legal predicate required by § 85.001.

### [Tex. Fam. Code § 85.025 Tex. Fam. Code § 85.025 Duration of Protective Order](#)

## **Extract**

Except as otherwise provided by this section, an order under this subtitle is effective: for the period stated in the order, not to exceed two years; or if a period is not stated in the order, until the second anniversary of the date the order was issued. ... The court may render a protective order ... 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 ... [or] caused serious bodily injury ... [or] was the subject of two or more previous protective orders rendered ... after a finding by the court that the subject of the protective order has committed family violence.

## **Summary**

The statute establishes that a protective order is only “effective” if one was issued and remains within its statutory duration. It also ties extended duration to explicit court findings (including findings of family violence). Thus, if the protective order proceeding was nonsuited and no order with the requisite findings was issued, there can be no “active” order. Claims of an active order or findings of family violence are contradicted by §85.025’s requirement that effectiveness depends on an issued order and, in some cases, explicit findings for extended duration.

### [Tex. Civ. Prac. and Rem. Code § 10.004 Tex. Civ. Prac. and Rem. Code § 10.004 Violation; Sanction](#)

## **Extract**

A court that determines that a person has signed a pleading or motion in violation of Section CIVIL PRACTICE AND REMEDIES CODE 10.001 may

impose a sanction on the person, a party represented by the person, or both. ... The sanction must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated. ... A sanction may include any of the following: a directive to the violator to perform, or refrain from performing, an act; an order to pay a penalty into court; and an order to pay to the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney's fees. ... The court may not award monetary sanctions against a represented party for a violation of Section CIVIL PRACTICE AND REMEDIES CODE 10.001. ... The court may not award monetary sanctions on its own initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party or the party's attorney who is to be sanctioned.

## **Summary**

Section 10.004 authorizes sanctions when a person signs a pleading or motion in violation of § 10.001 (which prohibits filings that are groundless, brought in bad faith, or for improper purpose, including false factual contentions). When a party or counsel repeatedly asserts false representations in pleadings or motions—such as claiming an “active protective order” with a finding of family violence when none exists—§ 10.004 permits the court to deter that misconduct through sanctions, directives to cease the conduct, and fee-shifting. This supports the proposition that such false statements are an abuse of process and warrant court intervention and sanctions.

## [Tex. Civ. Prac. and Rem. Code § 10.001 Tex. Civ. Prac. and Rem. Code § 10.001 Signing of Pleadings and Motions](#)

## **Extract**

The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry: the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation; each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument...; each allegation or other factual contention in the pleading or motion has evidentiary support...; and each denial in the pleading or motion of a factual contention is warranted on the evidence...

## **Summary**

Section 10.001 imposes a certification on every signed pleading/motion that factual contentions have evidentiary support and are not filed for improper purposes. If Petitioner or counsel signed filings asserting an “active protective order” with a family-violence finding when the record shows no

such finding and the case was nonsuited, those filings lack evidentiary support and may have been presented for improper purposes (e.g., to obtain ex parte relief or restrict access). This supports sanctions and underscores the seriousness of making false representations to the court.

[Tex. Fam. Code § 261.504 Tex. Fam. Code § 261.504 Required Findings; Issuance of Protective Order](#)

### **Extract**

At the close of a hearing on an application for a protective order under this subchapter, the court shall find whether there are reasonable grounds to believe that: the child: (A) is a victim of abuse or neglect; or (B) has a history of being abused or neglected; and there is a threat of: (A) immediate or continued abuse or neglect to the child; (B) someone illegally taking the child from the home in which the child is placed; (C) behavior that poses a threat to the caregiver with whom the child is placed; or (D) someone committing an act of violence against the child or the child's caregiver. ... If the court makes an affirmative finding under Subsection (a), the court shall issue a protective order that includes a statement of that finding.

### **Summary**

The statute mandates that, to issue a protective order under this subchapter, the court must make specified abuse/neglect findings and the issued order must include a statement of those findings. Thus, claims of an “active protective order” necessarily imply the court made and memorialized required findings. If there is no such order or findings in the record (e.g., the proceeding was nonsuited), assertions to the contrary are inconsistent with the statutory requirement and support the argument that representations of an active order with findings are false and abusive of process.

[Tex. Fam. Code § 85.005 Tex. Fam. Code § 85.005 Agreed Order](#)

### **Extract**

An agreed protective order is enforceable civilly or criminally, regardless of whether the court makes the findings required by Section FAMILY CODE 85.001.

### **Summary**

The passage confirms that an agreed protective order can be entered and enforced without the court making the Section 85.001 findings of family violence. This distinction supports the proposition that claiming an “active protective order” implies, inaccurately, that there was a judicial finding of family violence when the order may have been merely agreed, or the

proceeding was nonsuited. Mischaracterizing an agreed order (or a nonsuited action) as an adjudicated finding of family violence can mislead the court and supports arguments about false representations and abuse of process.

[Tex. Civ. Prac. and Rem. Code § 10.002 Tex. Civ. Prac. and Rem. Code § 10.002 Motion For Sanctions](#)

## **Extract**

(a) A party may make a motion for sanctions, describing the specific conduct violating Section CIVIL PRACTICE AND REMEDIES CODE 10.001. (b) The court on its own initiative may enter an order describing the specific conduct that appears to violate Section CIVIL PRACTICE AND REMEDIES CODE 10.001 and direct the alleged violator to show cause why the conduct has not violated that section. (c) The court may award to a party prevailing on a motion under this section the reasonable expenses and attorney's fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may award to the prevailing party all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.

## **Summary**

Section 10.002 authorizes a motion for sanctions and permits the court, sua sponte or on motion, to address conduct violating § 10.001, including false or unsupported factual contentions. It allows fee-shifting and additional costs where lack of due diligence is shown. In a case where a party and counsel repeatedly misrepresent the existence or basis of a protective order to secure ex parte relief, § 10.002 supplies a procedural vehicle for sanctions and cost recovery tied to those misrepresentations, supporting the proposition that such conduct is a serious abuse of process and warrants court intervention.

[Hit Me Baby Just One Time – But Not in Texas: How the 2023 Texas Legislative Update to Family Violence Protective Orders Will Affect Divorce and Custody Litigation](#)

## **Extract**

Title 4 of the Texas Family Code has provided victims of domestic violence for decades the opportunity to apply for and secure family violence protective orders... The same has been espoused by Texas courts for years, finding that these necessary vehicles carry "significant collateral repercussions and a social stigma" and special gravity not found in other civil contexts. ... Up until this year, to be entitled to a family violence protective order, the applicant had to prove not only that family violence had occurred but that it was likely to occur in the future. ... As of September 1,

2023... if a court finds that one, single act of family violence has occurred, it will be required to issue a family violence protective order.

## **Summary**

Title 4 (Texas Family Code § 81.001 et seq.) governs family-violence protective orders and that issuance requires a judicial finding that family violence occurred (previously plus likelihood of future violence; after 9/1/2023, a single act suffices). It also emphasizes the severe, far-reaching consequences of such orders. This supports the proposition's premise that an "active protective order" necessarily rests on a judicial finding and that misrepresenting the existence/basis of such an order is serious given the orders' gravity. While the article does not address fraud-upon-the-court directly, it bolsters the argument that false representations about protective orders are material and abusive because these orders carry significant collateral repercussions.

### [The Unconstitutionality of Protective Orders Under the Texas Family Code – Part II](#)

## **Extract**

Tex. Fam. Code § 85.001(a) requires: (a) At the close of a hearing on an application for a protective order, the court shall find whether: family violence has occurred; and family violence is likely to occur in the future. ... To enter a final civil protective order, the Court is required to find that the defendant's actions intended to result in physical harm, bodily injury, assault, or sexual assault or were a threat that reasonably placed the family member in fear of imminent physical harm, bodily injury, assault, or sexual assault. ... in a civil protective order trial, the Court must only find that the defendant has committed family violence and is likely to commit family violence in the future by a preponderance of the evidence. *Roper v. Jollife*, 493 S.W.3d 624, 638 (Tex. App.—Dallas 2015, pet. denied).

## **Summary**

The passages confirm that a protective order requires specific findings that "family violence has occurred" and is likely to occur again. If the protective-order case was nonsuited and no such findings were made, then claims of an "active protective order" with a family-violence finding are contrary to the statutory requirement. This supports the argument that misrepresentations about the existence or basis of a protective order are false and abused for ex parte relief and restrictions.

This memo was compiled by Vincent AI based on vLex materials available as of December 07, 2025. [View full answer on vLex](#)