



Case Summaries December 17, 2021

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OPINIONS

ADMINISTRATIVE LAW

Texas Civil Commitment Office

Matzen v. McLane, — S.W.3d —, — WL — (Tex. Dec. 17, 2021) [20-0523]

This case concerned rulemaking under the Sexually Violent Predators Act (Act). In 2014, a jury found Gerard Matzen to be a sexually violent predator under the Act. Pursuant to the Act's procedures at the time, the trial court issued a civil commitment order placing Matzen in outpatient treatment. In 2015, the Legislature amended the Act. The amendments required the trial court to issue a new commitment order. The trial court issued a new commitment order after a hearing. Matzen received notice of the hearing and actively participated in it. Under the amended Act and amended commitment order, Matzen was placed in a more restrictive inpatient facility. The amended Act also required Matzen to pay for his treatment to the extent he was able. Under new rules Matzen was ordered to pay a portion of his military pension and other income to cover some of the costs of his treatment, housing, and tracking.

The Act is administered by the Texas Civil Commitment Office (TCCO), under provisions of the Government Code and the Health and Safety Code. Matzen objected to the new conditions imposed on him. He sued the TCCO and its director for numerous constitutional, statutory, and common-law violations. The State defendants filed a plea to the jurisdiction. The trial court dismissed all of these claims except for two alleged constitutional violations under the federal and state Constitutions: a procedural due process violation and a violation of the Takings Clauses. On interlocutory appeal, the court of appeals affirmed the district court ruling. Both sides appealed.

The Supreme Court affirmed in part and reversed in part, holding that all of Matzen’s claims against the State defendants should be dismissed. One of Matzen’s principal arguments was that, under the Act, only the TCCO “Office” was authorized to make regulations relevant to his commitment, and the regulations were invalid because they were promulgated by the TCCO Board instead of the Office. The Court held that Matzen was misreading the relevant statutory provisions, and that the TCCO Board, as the apex governing authority of the agency, was authorized to promulgate regulations. The Court further held that Matzen received all the process he was due because he received notice and a hearing when his commitment order was amended. Further, when the legislature enacts a law or an agency adopts a regulation that affects a general class of persons, those persons have received procedural due process by the legislative process itself.

The Court also held that Matzen had not stated a cognizable takings claim. The requirement under the new statute that Matzen pay a portion of his income to cover the costs of his treatment, housing, and tracking was not an unconstitutional taking, because the State is permitted to charge user fees for its services, including fees covering the costs of services provided to incarcerated persons.

The Court further held, in reviewing Matzen’s petition, that the courts below had not erred in dismissing some of Matzen’s claims. Again, insofar as these claims were premised on his argument that the TCCO Board lacked authority to adopt regulations, these claims failed because the Board was so authorized.

Matzen argued that the new payment and confinement requirements imposed on him by the amended Act were unconstitutional retroactive laws. The Court held that the new requirements were not unconstitutional because the new requirements were imposed prospectively after a hearing, and because Matzen’s original commitment order and the original Act informed Matzen that the conditions of his confinement were subject to change. Thus, for purposes of a retroactivity analysis, Matzen could not claim that the original terms of his commitment were “vested” in the sense that Matzen had a reasonable expectation that they could not be altered in the future. Matzen also made arguments that his commitment must be subjected to a “strict scrutiny” analysis, and that an alleged unwritten rule governing his commitment created an illegal “debtor’s prison.” The Court rejected these claims because they were not properly preserved below.

MANDAMUS

Medical Expense Affidavits

In re Flores, — S.W.3d —, 2021 WL — (Tex. Dec. 17, 2021) [20-0602]

At issue in this mandamus proceeding was whether relief was available from two orders striking controverting affidavits served under section 18.001 of the Texas Civil Practice and Remedies Code to dispute the reasonableness and necessity of a claimant’s medical expenses, along with other orders issued the same day. Jose Salsedo sued Oscar Flores and Rivas Trucking Specialty, LLC, seeking damages for injuries he allegedly suffered as a result of an auto accident. Salsedo served affidavits

from his medical providers in accordance with section 18.001, setting forth the amounts he was charged and averring those amounts were reasonable and necessary. Flores and Rivas Trucking served counteraffidavits challenging the reasonableness and necessity of some of Salsedo's alleged medical expenses. Salsedo moved to strike the counteraffidavits for not complying with section 18.001(f), and the trial court granted Salsedo's motions. The Court issued a per curiam opinion denying the petition for writ of mandamus without prejudice to give the trial court an opportunity to reconsider its orders in light of the Court's opinion in *In re Allstate Indemnity Co.*, 622 S.W.3d 870 (Tex. 2021).

GRANTS

ADMINISTRATIVE LAW

Rulemaking

Tex. Dep't of State Health Servs. v. Crown Distributing, LLC, argument granted on notation of probable jurisdiction over direct appeal, — Tex. Sup. Ct. J, — (December 17, 2021) [21-1045]

This direct appeal involves the constitutionality of a statute and related agency rule that prohibit the production of consumable hemp products for smoking.

Appellees Crown Distributing LLC, et al., sued the Department of State Health Services and its commissioner to challenge the constitutionality of Health and Safety Code subsection 443.204(4), which requires that the Department's rules regulating the sale of consumable hemp products prohibit "the processing or manufacturing of a consumable hemp product for smoking," and the validity of the Department's rule 300.104, which prohibits the "manufacture, processing, distribution or retail sale of consumable hemp products for smoking." Based on its conclusion that the statute "is not rationally related to a legitimate governmental interest" and that "the real world effect of [the statute] is so burdensome as to be oppressive in light of any governmental interest," the trial court issued a final judgment declaring the statute unconstitutional, declaring the rule invalid in its entirety, and permanently enjoining the Department from enforcing the statute and rule.

The Department filed a direct appeal in the Supreme Court. The Court may hear a direct appeal from an order of any trial court granting or denying an interlocutory or permanent injunction on the grounds of a state statute's constitutionality. In the underlying case, the trial court's judgment declares Health and Safety Code subsection 443.204(4) unconstitutional and permanently enjoins the Department and its commissioner from enforcing either. Accordingly, the Court noted probable jurisdiction to address the merits of the appeal and ordered briefing. Oral argument is set for March 22, 2022.