

Opinion filed June 30, 2017



In The
Eleventh Court of Appeals

No. 11-17-00007-CV

IN RE COMMITMENT OF RONNIE LEE DECKER

**On Appeal from the 32nd District Court
Nolan County, Texas
Trial Court Cause No. 19683**

MEMORANDUM OPINION

In this appeal from a civil commitment under Chapter 841 of the Texas Health and Safety Code, a jury unanimously found that Ronnie Lee Decker is a “sexually violent predator” as defined in the Texas Health and Safety Code. *See* TEX. HEALTH & SAFETY CODE ANN. § 841.003 (West 2017). Based upon the jury’s affirmative finding, the trial court entered a final judgment and order of commitment requiring Decker to be civilly committed in accordance with Sections 841.081–.082 of the Health and Safety Code for treatment and supervision upon his release from a secure correctional facility. *See id.* §§ 841.081–.082. In a single issue on appeal, Decker contends that the trial court erred by granting the State’s motion for directed verdict and finding that he is a “repeat sexually violent *offender*,” an element of a

determination that a person is a “sexually violent *predator*.” *Id.* § 841.003 (emphasis added). We affirm.

Background Facts

The State filed an original petition alleging that Decker is a sexually violent predator. The State requested that Decker “be committed for treatment and supervision.” The State alleged in the petition that Decker was a repeat sexually violent offender based upon two convictions: (1) a 1972 conviction for “fondling” in Erath County for which Decker was incarcerated and (2) a 1998 conviction for sexual assault in Nolan County for which Decker was incarcerated.

The case proceeded to a jury trial. During trial, the trial court admitted several judgments of conviction and corresponding indictments, including a conviction for sexual assault and two convictions for indecency with a child. Decker received a sentence of confinement for twenty years on the sexual assault conviction, and he received sentences of confinement for four years and between two and ten years on the convictions for indecency with a child.

The State called Decker as a witness at trial. At the time of trial, he was near the end of serving the twenty-year sentence for the sexual assault conviction. He testified that the discharge date for the twenty-year sentence would be March 30, 2018. Decker testified that he received probation for the 1972 “fondling” conviction that he subsequently violated, resulting in his incarceration. Decker admitted to various other convictions during his testimony, including the two convictions for indecency with a child.

After the State rested its case, it moved for a directed verdict “on the issue of whether or not Mr. Decker is a repeat sexually violent offender as defined under Health and Safety Code Section 841.003(b).” The State asserted that it was entitled to a directed verdict because “reasonable minds can only draw one conclusion” from the evidence presented at trial. Decker responded to the motion by arguing that

Chapter 841 precludes a directed verdict in civil commitment proceedings brought under the chapter. The trial court rejected Decker's argument and granted the directed verdict requested by the State.

Analysis

Under Chapter 841 of the Texas Health and Safety Code, a trial court must commit a person for treatment and supervision if a factfinder determines the person is a sexually violent predator. *See* HEALTH & SAFETY § 841.081. Section 841.003(a) provides that a person is a sexually violent predator if he (1) is a repeat sexually violent offender and (2) suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence. *Id.* § 841.003(a). Section 841.003(b) provides that “[a] person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses.” *Id.* § 841.003(b).

In his sole issue on appeal, Appellant contends that Sections 841.061–.062 of the Health and Safety Code preclude a directed verdict in a civil commitment proceeding brought under Chapter 841. *See* HEALTH & SAFETY §§ 841.061–.062. Among other things, Section 841.061 provides that either the State or a respondent to a civil commitment proceeding may request a jury trial. *Id.* § 841.061(b). Section 841.062 provides that the determination that a person is a sexually violent predator must be established beyond a reasonable doubt and that a jury determination to this effect must be by unanimous verdict. *Id.* § 841.062. Appellant contends that these procedural safeguards are “over and above those in a normal civil case” and that they preclude a directed verdict on any issue in a civil commitment proceeding.

Decker was represented at trial and on appeal by the State Counsel for Offenders. *See id.* § 841.005. The State was represented at trial and on appeal by the Special Prosecution Unit. *See id.* § 841.042; *see also* TEX. GOV'T CODE ANN. §§ 41.301–.310 (West Supp. 2016). Both of these offices have done a commendable

job of apprising this court about the history of the civil commitment proceedings for sexually violent predators and the applicable case law on the issue presented in this appeal.

Until a recent legislative amendment, Chapter 841 civil commitment proceedings were initiated in Montgomery County. *See In re Commitment of Bohannon*, 388 S.W.3d 296, 299 (Tex. 2012) (noting that, under prior law, all Chapter 841 civil commitment proceedings were initiated in Montgomery County). Thus, the vast majority of appeals in Chapter 841 civil commitment proceedings were either decided by the Beaumont Court of Appeals or were decided in accordance with the Beaumont Court of Appeals's precedent as transfer cases. *See In re Commitment of Stuteville*, 463 S.W.3d 543, 556–57 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) (noting that in Chapter 841 appeals, the court was bound by the legal precedent of the Beaumont Court of Appeals); *see also In re Commitment of Wirtz*, 451 S.W.3d 462, 463–64 n.1 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (in transferred appeal, transferee court must decide case in accordance with transferor court precedent). After the recent legislative change, Chapter 841 proceedings are now initiated in the county where the alleged sexually violent predator was convicted of his most recent sexually violent offense, which in this case is Nolan County. *See* HEALTH & SAFETY § 841.041. Accordingly, other courts of appeals have only just begun to decide Chapter 841 appeals under their own jurisprudence.

The Beaumont Court of Appeals has addressed the same issue and argument presented in this case on multiple occasions. *See In re Commitment of Lemmons*, No. 09-13-00346-CV, 2014 WL 1400671, at *3 (Tex. App.—Beaumont Apr. 10, 2014, pet. denied) (mem. op.); *In re Commitment of Martinez*, No. 09-12-00452-CV, 2013 WL 5874583, at *5 (Tex. App.—Beaumont Oct. 31, 2013, no pet.) (mem. op.); *In re Commitment of Scott*, No. 09-11-00555-CV, 2012 WL 5289333, at *2 (Tex.

App.—Beaumont Oct. 25, 2012, no pet.) (mem. op.);. The Beaumont Court of Appeals has determined that the jury trial provisions of Chapter 841 do not preclude the entry of a partial directed verdict on the issue of whether a person is a repeat sexually violent offender. *Lemmons*, 2014 WL 1400671, at *3. As stated by the court in *Lemmons*:

In cases involving a jury trial, we have held that a civil commitment proceeding is generally subject to the rules of procedure for civil cases, and the trial court may grant a partial directed verdict to remove a certain portion of a case from the factfinder. In a civil case, the right to a jury trial only applies when there are issues of fact to be resolved. A directed verdict does not violate the right to a trial by jury because it is a procedure that depends on a trial court's conclusion that there are no issues of fact to be determined. Accordingly, we perceive no conflict between the SVP statute and the Rules of Civil Procedure that precludes the granting of a directed verdict in a jury trial when no evidence of probative value raises an issue of material fact on the question presented.

Id. (citations omitted).

Two other courts of appeals have recently addressed the issue presented in this appeal. See *In re Commitment of Talley*, No. 01-16-00572-CV, 2017 WL 1536478 (Tex. App.—Houston [1st Dist.] April 27, 2017, no pet. h.); *In re Commitment of Black*, No. 04-16-00423-CV, 2017 WL 993094 (Tex. App.—San Antonio March 15, 2017, no pet. h.). In *Black*, the San Antonio Court of Appeals agreed with the holding in *Lemmons* that Chapter 841 does not preclude the trial court from granting a directed verdict on the undisputed issue of whether an offender is a repeat sexually violent offender. 2017 WL 993094, at *3.

In *Talley*, the First District Court of Appeals in Houston also cited opinions from the Beaumont Court of Appeals in support of its conclusion that Chapter 841 does not preclude a directed verdict on the question of whether an offender is a repeat sexually violent offender. 2017 WL 1536478, at *5–6. The First District Court of Appeals cited the Texas Supreme Court's opinion in *Bohannon* in support of its

holding. In *Bohannan*, the court stated: “In SVP¹ commitment proceedings, the only fact issue to be resolved by the trier-of-fact is whether a person has the behavioral abnormality required for an SVP.” *Bohannan*, 388 S.W.3d at 305. The court of appeals cited this statement for the proposition that a person’s status as a sexually violent offender is a legal determination appropriate for partial directed verdict in the absence of evidence challenging the offender’s convictions for sexually violent offenses.² *Talley*, 2017 WL 1536478, at *5–6. We also note Justice Jennings’s dissenting opinion in *Talley* in which he disagrees with the precedent of the Beaumont Court of Appeals. *Id.* at *6–8 (Jennings, J., dissenting); *see also Stuteville*, 463 S.W.3d at 559–60 (Jennings, J., concurring) (disagreeing with the Beaumont Court of Appeals but concurring with the majority because, at the time, the court was bound by the precedent of the Beaumont Court of Appeals).

We agree with the holdings of our sister courts that Chapter 841 does not preclude a directed verdict on the issue of whether a person is a repeat sexually violent offender. Section 841.146(b) provides that, “[e]xcept as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. To the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, this chapter controls.” HEALTH & SAFETY § 841.146(b). Rule 268 of the Texas Rules of Civil Procedure authorizes a motion for directed verdict. *See* TEX. R. CIV. P. 268. The critical question to resolve under Section 841.146(b) is whether any provision of Chapter 841 conflicts with a directed verdict under Rule 268. This is a matter of statutory construction that we review de novo. *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625 (Tex. 2008).

¹In the *Bohannan* opinion, “SVP” means “sexually violent predator.” 388 S.W.3d at 298.

²In *Bohannan*, the supreme court did not address the issue presented in this appeal. Instead, the court addressed the qualifications for experts to testify in a Chapter 841 proceeding.

A directed verdict is warranted when the evidence is such that no other verdict can be reached and the moving party is entitled to judgment as a matter of law. *See Blackstone Med., Inc. v. Phoenix Surgicals, L.L.C.*, 470 S.W.3d 636, 645 (Tex. App.—Dallas 2015, no pet.). We agree with the Beaumont Court of Appeals that a directed verdict does not violate the right to a trial by jury set out in Chapter 841 because it is a procedure that depends on a trial court’s determination that there is not an issue of fact for the jury to determine. *See Lemmons*, 2014 WL 1400671, at *3. The question of whether a person is a “repeat sexually violent offender” under Section 841.003(b) is a straightforward question depending on the person’s convictions and sentences. *See HEALTH & SAFETY § 841.003(b)*. We conclude that Chapter 841 does not preclude the trial court from granting a directed verdict on the question of whether a person is a repeat sexually violent offender under Section 841.003(b) when the evidence on this matter is undisputed. *See Black*, 2017 WL 993094, at *3. In this circumstance, there is no evidence raising a fact issue that warrants submission of the “repeat sexually violent offender” issue to the jury for determination. *See Lemmons*, 2014 WL 1400671, at *3. We overrule Appellant’s sole issue on appeal.

This Court’s Ruling

We affirm the judgment of the trial court.

JOHN M. BAILEY
JUSTICE

June 30, 2017

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.