

Dismissed and Opinion Filed November 18, 2016



In The  
**Court of Appeals**  
**Fifth District of Texas at Dallas**

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No. 05-16-00381-CV

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**IN THE BEST INTEREST AND PROTECTION OF D.B.**

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**On Appeal from the Criminal District Court No. 2**  
**Dallas County, Texas**  
**Trial Court Cause No. F13-55489-I**

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**MEMORANDUM OPINION**

Before Chief Justice Wright and Justices Lang-Miers and Stoddart  
Opinion by Chief Justice Wright

Appellant D.B. appeals the trial court's judgment finding her incompetent to stand trial and committing her to a maximum security unit in a state mental hospital for up to 120 days to restore her competency. In a single issue, appellant contends the evidence is insufficient to support her commitment to the state hospital to restore her competency. We conclude we do not have jurisdiction to address appellant's complaint and accordingly, we dismiss the appeal.

**BACKGROUND**

Under a plea agreement, appellant pleaded guilty to aggravated assault involving family violence. *See* TEX. PENAL CODE ANN. § 22.02(a) (West 2011); TEX. FAM. CODE ANN. §§ 71.0021, 71.005 (West 2014 & Supp. 2016). The trial court deferred adjudicating guilt and placed appellant on four years' community supervision. The State filed motions to adjudicate guilt on two occasions, and the trial court modified the conditions of appellant's community supervision. After the State filed a third motion to adjudicate guilt, appellant orally moved to be

examined for competency to stand trial. The trial court granted the motion. Dr. Lisa Clayton examined appellant and issued a report to the trial court stating appellant was currently incompetent to stand trial, but appellant could be restored to competency after treatment. At an uncontested hearing, both parties waived a jury and agreed that appellant was not competent to stand trial. The trial court determined appellant was incompetent to stand trial and ordered her committed to a maximum security unit of a state mental hospital for up to 120 days pursuant to article 46B.073 (Commitment for Restoration to Competency). *See* TEX. CODE CRIM. PROC. ANN. art. 46B.073 (West Supp. 2016).

After D.B. timely filed her notice of appeal, she questioned whether this Court had jurisdiction over her appeal. We responded by letter that we had jurisdiction over the appeal under articles 46B.101 and 46B.102(d)(3)<sup>1</sup> and ordered the parties to file their briefs. In her sole issue, appellant contends the evidence is insufficient to support her commitment to the state hospital because the trial court did not have two timely certificates of medical examination for mental illness as required by section 574.009 of the Texas Health and Safety Code. The State responds that this Court does not have jurisdiction to address appellant's complaint and that section 574.009 is not applicable to this case.

#### DISCUSSION

Either party may request the trial court to determine whether a defendant may be incompetent to stand trial. TEX. CODE CRIM. PROC. ANN. art. 46B.004(a). "If after an informal inquiry the court determines that evidence exists to support a finding of incompetency, the court shall order an examination under Subchapter B to determine whether the defendant is incompetent to stand trial in a criminal case." TEX. CODE CRIM. PROC. ANN. art. 46B.005(a); *see also Queen v. State*, 212 S.W.3d 619, 620 (Tex. App.—Austin 2006, no pet.). If incompetence is

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<sup>1</sup> The letter inadvertently cited to article 46B.102(c)(3), but the parenthetical quote used the statutory language from article 46B.102(d)(3).

not contested and is shown by the evidence, a trial is unnecessary. TEX. CODE CRIM. PROC. ANN. art. 46B.005(c). Instead, the trial court is to proceed as if a jury had found the defendant incompetent to stand trial. TEX. CODE CRIM. PROC. ANN. art. 46B.054; *see also Queen*, 212 S.W.3d at 620.

A party may appeal only from judgments of conviction or orders authorized as appealable. *See* TEX. CODE CRIM. PROC. ANN. art. 44.02 (West Supp. 2016); TEX. R. APP. P. 25.2(a)(2); *see also Marin v. State*, 851 S.W.2d 275, 278 (Tex. Crim. App. 1993). We initially found that we had jurisdiction over the appeal of appellant's commitment under article 46B.102(d)(3), which is contained in subchapter E of article 46B entitled "Civil Commitment: Charges Pending." *See* TEX. CODE CRIM. PROC. ANN. art. 46B.102(d)(3). Subchapter E applies to "a defendant against whom a court is required to proceed according to article 46B.084(e) or according to the court's appropriate determination under article 46B.071." *See* TEX. CODE CRIM. PROC. ANN. art. 46B.101. Article 46B.084, entitled "Proceedings on Return of Defendant to Court," details the procedure for the trial court to follow when a defendant is returned to court after a period of commitment. Subsection (e) provides that "if the defendant is found incompetent to stand trial and if all charges pending are not dismissed, the court shall proceed under Subchapter E." *See* TEX. CODE CRIM. PROC. ANN. art. 46B.084(e). However, article 46B.084 applies when a defendant is returned to court after a period of commitment. Because appellant in this case is appealing from an initial commitment under Article 46B.073(b)(2) and has not yet been returned to court, article 46B.084 does not apply. Further, for the reasons stated below, we conclude appellant's temporary commitment to restore her competency does not come under subchapter E of article 46B.

A determination under article 46B.005 is an essential part of the competency process and starts the process of evaluation and commitment. TEX. CODE CRIM. PROC. ANN. art. 46B.005(a);

*see also Queen*, 212 S.W.3d at 623. In this case, the trial court’s judgment specifically committed appellant to a state mental hospital after finding her incompetent to stand trial under article 46B.073. Article 46B.073, which falls under subchapter D of article 46B, sets out the facility and duration of commitment for a defendant who is “not released on bail who is subject to an initial restoration period based on article 46B.071.” *See* TEX. CODE CRIM. PROC. ANN. art. 46B.073(a)(1), (2). The trial court determined, pursuant to article 46B.005, that appellant was incompetent, and no one disputed that fact. Therefore, the trial court was required to proceed under subchapter D to determine whether to release appellant on bail or commit her for further evaluation and treatment. *See id.* art. 46B.005(c); *see also* art. 46B.054 (court shall proceed in same manner as if a jury had been impaneled when both parties agree that defendant is incompetent to stand trial), art. 46B.055 (court shall proceed under subchapter D if defendant found incompetent to stand trial), and art. 46B.071 (court shall commit defendant to a facility under article 46B.073 or release defendant on bail under article 46B.072).

Appellant is attempting to appeal from a subchapter D temporary commitment order entered following the court’s initial finding of incompetence under article 46B.005 and pursuant to articles 46B.055 and 46B.071. The legislature did not provide for an interlocutory appeal from an order of temporary commitment pending re-evaluation and further proceedings pursuant to subchapter E. *See Queen*, 212 S.W.3d at 623. Neither the State nor the defendant can file an interlocutory appeal concerning an order or judgment relating to the determination of incompetency to stand trial under article 46B.005. *See* TEX. CODE CRIM. PROC. ANN. art. 46B.011; *see also Queen*, 212 S.W.3d at 620–21. Therefore, we lack jurisdiction over this interlocutory appeal. *Id.*

CONCLUSION

Accordingly, this appeal is dismissed for want of jurisdiction. *See* TEX. R. APP. P. 43.2(f).

/Carolyn Wright/  
CAROLYN WRIGHT  
CHIEF JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

IN THE BEST INTEREST AND  
PROTECTION OF D.B.

No. 05-16-00381-CV

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No. 2, Dallas County, Texas  
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Opinion delivered by Chief Justice Wright.  
Justices Lang-Miers and Stoddart  
participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

Judgment entered November 18, 2016.