Case Summaries
June 24, 2022

Case summaries are prepared by court staff as a courtesy. They are not a substitute for the actual opinions.

OPINIONS

REAL PROPERTY
Eminent Domain

***Miles v. Tex. Cent. R.R. & Infrastructure, Inc.*, — S.W.3d —, 2022 WL — (Tex. June 24, 2022) [20-0393]**

At issue in this case was whether two private entities (collectively, Texas Central) formed to construct and operate high-speed passenger rail between Houston and Dallas have statutory eminent-domain authority.

Miles, who owns property along the railway's proposed route, sued to challenge Texas Central's eminent-domain authority after it attempted to survey Miles's property. Texas Central counterclaimed, seeking a declaratory judgment that it is a "railroad company" and an "interurban electric railway company" with eminent-domain authority under Chapters 112 and 131 of the Texas Transportation Code, respectively. The trial court granted summary judgment for Miles. The court of appeals reversed, holding that Texas Central qualified as both a railroad company and an interurban electric railway company.

The Supreme Court affirmed. Chapter 131 grants eminent-domain authority to an "interurban electric railway company," which is a "corporation chartered for the purpose of constructing, acquiring, maintaining, or operating lines of electric railway between municipalities in this state for the transportation of freight, passengers, or both." TEX. TRANSP. CODE § 131.012. The Court held that Texas Central falls within the plain language of this grant of authority, as the company was chartered for the purpose of constructing and operating an electric railway between municipalities in this state—Houston and Dallas—for the transportation of passengers. The Court rejected Miles's assertion that the statute applies only to a specific kind of single-car electric railway that existed at the time the statute's predecessor was enacted in 1907 but was extinct by the 1940s. Chapter 131 places no limitations on size, speed, or distance, and the statute as a whole is consistent with the scope of the high-speed rail project at issue. Further, the Court's precedent supports interpreting statutes to embrace later-developed technologies when the text is broad enough to allow it, and the Legislature's recodification of Chapter 131 in 2009 cuts against Miles's argument that the statute applies only to a kind of train that has been extinct in Texas for over 70 years. The Court recognized that doubts about the scope of eminent-domain statutes are resolved

in favor of the landowner but held that no such doubts were presented by Chapter 131's unambiguous language.

The Court next addressed Miles's contention that under *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline–Texas, LLC*, 363 S.W.3d 192 (Tex. 2012), a private entity asserting eminent-domain authority must demonstrate a reasonable probability that the project will be completed and thus produce the public good for which authority is sought. The Court rejected that argument, explaining that although an entity may not obtain eminent-domain authority merely by claiming entitlement to it, it was undisputed that Texas Central was chartered for the requisite statutory purpose, was engaged in activities in furtherance of that purpose, and was endeavoring to construct a railway that was for public use. While such a "reasonable-probability-of-completion test" is rooted in sound public policy and would provide an additional layer of protection for landowners whose land is taken for speculative projects, it finds no support in *Denbury* or the Constitution. Rather, the Legislature has already provided numerous protections to landowners who are the subject of condemnation proceedings, and it is not the Court's role to second-guess the Legislature's balance between the rights of property owners and the benefits served by authorizing eminent domain.

Because the Court held that Texas Central qualifies as an interurban electric railway company with eminent-domain authority under Chapter 131, it did not address Texas Central's alternative argument that it also qualifies as a "railroad company" with eminent-domain authority under Chapter 112.

Chief Justice Hecht, joined by Justice Young, concurred, opining that Texas Central qualifies as both an interurban electric railway company and a railroad company.

Justice Young also concurred, opining that the Court correctly engaged in the heightened scrutiny required in interpreting statutes that confer eminent-domain authority. He explained that when a statute defines its scope by using clear words that prescribe specific conditions, as Chapter 131 does, the law reaches new developments that satisfy the statutory criteria.

Justice Devine dissented, arguing that Article I, Section 17(b) of the Texas Constitution forecloses Texas Central's contemplated taking by excluding from "public use" a taking "for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues."

Justice Huddle, joined by Justice Devine and Justice Blacklock, dissented, arguing that Chapter 131, read in its historical context, conferred eminent-domain authority to facilitate construction of small electric railways traveling short distances, not high-speed rail requiring massive infrastructure and traversing hundreds of miles. Justice Huddle would hold that serious doubts exist about whether Texas Central and its high-speed rail project fall within Chapter 131's scope, requiring that doubt to be resolved in the landowner's favor.

JURISDICTION

Eminent Domain

***In re Breviloba, LLC*, — S.W.3d —, 2022 WL — (Tex. June 24, 2022) [21-0541] (per curiam)**

At issue in this case was whether, in an eminent domain case, counterclaims exceeding the amount-in-controversy cap on a county court at law's additional jurisdiction require a transfer to the district court.

Breviloba, LLC sued H & S Hoke Ranch, LLC in a county court at law to condemn a 50-foot-wide pipeline easement across Hoke Ranch's property. Hoke Ranch counterclaimed, arguing that Breviloba was a sham entity that lacked eminent domain authority. Hoke Ranch sought ownership of the portion of pipeline crossing its land or $13 million in damages.

Hoke Ranch moved to transfer its counterclaims to the district court, arguing that they exceeded the county court at law's $250,000 jurisdictional limit. The county court at law denied the motion. A divided court of appeals granted Hoke Ranch's mandamus relief and ordered the entire case be transferred to the district court. Breviloba sought mandamus relief from the Supreme Court.

Without hearing oral argument, the Supreme Court conditionally granted Breviloba's writ of mandamus, agreeing that the county court at law retained jurisdiction over the entire eminent domain case. Under the Texas Property Code, district courts and county courts at law have concurrent jurisdiction over eminent domain proceedings, with no amount-in-controversy cap. The Texas Government Code provides a jurisdictional grant to county courts at law for civil cases up to a $250,000 amount-in-controversy limit. But this is *in addition to* other jurisdiction provided by law, and the $250,000 cap does not limit a county court at law's jurisdiction over eminent domain cases specifically granted in the Property Code.

The Court then concluded that Hoke Ranch's counterclaims were in fact part of an eminent domain case and therefore not subject to an amount-in-controversy cap. Hoke Ranch's counterclaims challenged Breviloba's condemnation authority—a clear issue of eminent domain. The court at law therefore maintained its jurisdiction.

Accordingly, the Court held that the court of appeals erred and conditionally granted mandamus relief, directing the court of appeals to vacate its mandamus order.

CONSTITUTIONAL LAW

Property Interests

***Tex. Dep't of State Health Servs. v. Crown Distrib.*, — S.W.3d —, 2022 WL — (June 24, 2022) [21-1045]**

The question in this case was whether the plaintiffs had a constitutionally protected interest in processing and manufacturing of smokable hemp products.

The plaintiffs in this case (the Hemp Companies) are Texas-based entities that manufacture, process, distribute, and sell hemp products—including smokable hemp products—in Texas. They sued the Department of State Health Services and its commissioner to challenge the constitutionality of Health and Safety Code section 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."

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 Department argued in the trial court and continued to argue in this Court that the due-course clause does not protect the Hemp Companies' interest in manufacturing or processing smokable hemp products. The Hemp Companies asserted that the state's ban against the manufacturing and processing of smokable hemp products in Texas violates the Constitution's due-course clause because the ban has no rational connection to any possible government interest and its real-world effect is so burdensome as to be oppressive in light of any governmental interest.

The Court held that the Texas Constitution's due-course clause does not protect the Hemp Companies' asserted interest. The Court noted that the due-course clause is not so broad as to protect every form and method in which one may choose to work or earn a living, and some work-related interests do not enjoy constitutional protection at all. And some occupational interests exist only because the government has created them or made them available. Furthermore, a person's property interest in that occupation is only constitutionally protected when it is "vested." A property interest is not vested when a person has a mere unilateral expectation that his occupation will remain legal.

The Hemp Companies argued that their right had vested because it has always been legal to manufacture and process products from certain parts of hemp plants. But the Court noted that the Hemp Companies do not make products from the historically legal part of hemp plants, but from the flowers, buds, and leaves, which were considered to be "marihuana" and therefore illegal under prior law. Neither did the Court consider it relevant that the Hemp Companies legally manufactured smokable hemp products for a few months before section 443.204(4) became effective. Such a brief window of legality existed only by a temporary administrative quirk in the process of the substance's partial decriminalization. Such a fleeting "right" was in no sense "vested" in the Companies, which had, at most, a mere anticipation that the government would allow a right it created to continue in existence. Nor would the uncertain state of the law for a few months transform the long-prohibited manufacture of smokable cannabis flower into the kind of "lawful calling" to which courts have afforded constitutional protection.

The Court therefore held that the manufacture and processing of smokable hemp products is neither a liberty interest nor a vested property interest the due-course clause protects. The Court therefore reversed the trial court's judgment.

Justice Young filed a concurring opinion, in which Chief Justice Hecht, Justice Devine, and Justice Blacklock joined. Justice Young agreed that the due-course clause does not protect the Hemp Companies' interests as they asserted them. But he expressed concern that the state of the jurisprudence on the due-course clause was muddled. He thus provided a textual, historical, and structural analysis of the clause that he hoped would aid future inquiry.

JURISDICTION

Standing

***Abbott v. Mexican Am. Legis. Caucus, Tex. House of Representatives,* — S.W.3d —, 2022 WL — (Tex. June 24, 2022) [22-0008]**

This direct appeal arises from two consolidated suits challenging the constitutionality of the Legislature's recently enacted laws reapportioning the State's senatorial and representative districts based on the 2020 census. The census data was not released until September 2021, after the conclusion of the Legislature's 2021 regular session, and the Legislature then passed the reapportionment laws during a special session called by the Governor.

In one of the suits, the Mexican American Legislative Caucus (MALC) sued the Governor and the Secretary of State for declaratory and injunctive relief. MALC claims that H.B. 1, which reapportioned the representative districts, is unconstitutional because it violates Article III, Section 26 of the Texas Constitution—the "county line rule"—by providing only one district wholly contained within Cameron County even though the county's population is sufficient to support two such districts. In the other suit, two state senators, a registered voter and candidate for House District 37, and the Tejano Democrats (collectively, the Gutierrez plaintiffs) sued the State of Texas challenging the validity of both H.B. 1 (for the same reason as MALC) and S.B. 4, which reapportioned the Texas senatorial districts. The Gutierrez plaintiffs allege that both bills violate Article III, Section 28 of the Texas Constitution because they were enacted during a special session of the Legislature rather than during "the first regular session" after publication of the census, as Section 28 requires.

Both cases were transferred to and consolidated before a special three-judge district court. The defendants filed pleas to the jurisdiction, arguing the plaintiffs lacked standing and their claims were barred by sovereign immunity. The trial court denied the pleas except as to the Gutierrez plaintiffs' claim for injunctive relief. The defendants appealed, reiterating their standing and immunity arguments and also contending that the plaintiffs' claims are moot because they have disclaimed any request for relief with respect to the 2022 election, and the current district maps will not apply to the 2024 election because the Legislature is constitutionally required to undertake reapportionment again in 2023.

The Supreme Court reversed in part, dismissed in part, and remanded in part. As an initial matter, the Court held that the plaintiffs had not disclaimed their request for relief as to the 2022 election and that their claims were not moot. Although the likelihood of obtaining relief relating to the 2022 election is low, such relief is not impossible.

Turning to MALC's suit, the Court held that MALC lacked associational standing to challenge Section 26. To establish associational standing, MALC had to show, among other things, that its members would otherwise have standing to sue in their own right and that the interests it seeks to protect are germane to its purpose. MALC identified only one member, a representative and resident of Cameron County. The Court assumed without deciding that MALC had met its initial burden as to its individual members' standing, agreeing that if MALC's interpretation of Section 26 is correct, Cameron County's residents are being deprived of their constitutional right to two representatives, not just one, fully devoted to serving the interests of those residents rather than the residents of both Cameron County and a neighboring county. However, the interest that MALC claims gives some of its members individual standing as

Cameron County residents to challenge H.B. 1 for violating Section 26 is unrelated to MALC's organizational purpose—maintaining and expanding Latino representation across elected offices in Texas. Accordingly, MALC failed to meet the second prong of associational standing.

By contrast, the Court held that one of the Gutierrez plaintiffs, a Cameron County resident, sufficiently alleged a particularized injury with respect to H.B. 1's alleged violation of Section 26. Another Gutierrez plaintiff, a state senator who was elected in 2020 for a four-year term but is required to run for reelection in 2022 because all senators must run for reelection after apportionment, sufficiently alleged a particularized injury with respect to S.B. 4's alleged violation of Section 28. Specifically, he alleged that Section 28 prohibits reapportionment until the 2023 regular session and that absent the unconstitutional apportionment during an earlier special session, he would not have been deprived of his four-year term. Notwithstanding these particularized injuries, the Court held that they were not traceable to the State of Texas, the only named defendant in the Gutierrez plaintiffs' suit, because there was no enforcement connection between the challenged laws and the State itself. However, the Court explained that it could remand for the plaintiffs to replead their claims against a proper state defendant absent incurable jurisdictional defects.

To determine whether remand rather than dismissal was a proper remedy, the Court evaluated the State's assertion that the claims were facially invalid and thus barred by sovereign immunity. First, the Court held that the Section 26 claim was not facially invalid. The provision states that a county with a sufficient population for "more" than one representative is entitled to be apportioned "such . . . representatives." Then, any "surplus of population" is joined with a "contiguous county or counties." At the plea-to-the-jurisdiction stage, the plaintiffs met their burden by alleging that Cameron County had a sufficient population for more than one representative and that it was entitled to two districts wholly within its borders, absent conflict with the one-man, one-vote principle.

However, the Court agreed with the State that the Section 28 claim was facially invalid and thus barred by immunity. Section 28 states in part that "[t]he Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts." The Court held that in requiring reapportionment at that first regular session, Section 28 does not prohibit reapportionment at other times. The Legislature is vested with all legislative power—the power to make, alter, and repeal laws—not expressly or impliedly forbidden by other constitutional provisions. Further, the plaintiffs' interpretation would foreclose reapportionment despite the fact that, following the census, the existing maps on their face violate the U.S. Constitution.

Accordingly, the Court dismissed MALC's claims and the Gutierrez plaintiffs' Section 28 claim for lack of jurisdiction and remanded the Gutierrez plaintiffs' Section 26 claim to give them an opportunity to replead against a proper State defendant.

Chief Justice Hecht, joined by Justice Boyd and Justice Blacklock, dissented, opining that the claims were moot as to the 2022 election. As to the 2024 election, the claims are not yet ripe and may never germinate because reapportionment before that election is a virtual certainty. Accordingly, the dissent would have dismissed both suits for lack of jurisdiction.

PROCEDURE—APPELLATE

Preservation of Error

***Browder v. Moree,* — S.W.3d —, 2022 WL — (Tex. June 24, 2022) (per curiam) [21-0691]**

At issue in this case was whether a party, after obtaining an adverse ruling on his request for a jury trial, must also object to that adverse ruling to preserve the issue for appellate review. Bramlette Holland Browder sought conservatorship and possession of Kelly, the biological daughter of Rachel Moree and Clarence Dean Hinds, Jr. Although Browder is not related to Kelly, he lived with her and became a father figure to her during the course of his six-year relationship with Moree.

On November 26, 2018, Hinds appeared before the trial court and requested a continuance. The trial court agreed to recess the case until early March 2019, and on February 1, 2019, Browder filed a written demand for a jury trial. In a letter ruling, the trial court denied Browder's demand, concluding that Browder had waived his jury demand by failing to make it before the bench trial began in November 2018. The court of appeals affirmed, but it did so for a different reason. According to the court of appeals, Browder did not preserve the jury issue for appeal because he failed to object to the trial court's denial of his request or to the trial court's decision to proceed with a bench trial.

The Supreme Court denied Browder's petition for review, and Browder filed a motion for rehearing. In a per curiam opinion, the Supreme Court denied Browder's motion for rehearing. After determining that the trial court did not abuse its discretion in denying Browder's demand as untimely, the Court disapproved the court of appeals' holding that Browder needed to object to the trial court's denial of his jury demand to preserve the jury issue for appeal. Because Browder had already obtained an adverse ruling from the trial court on his jury demand, he did not need to object to that ruling to preserve his complaint.