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September/October 2009

## Texas Supreme Court Holds that Trial Courts Must Give Reasons for Granting New Trials

By Edward C. Dawson

In a sharply divided decision, the Texas Supreme Court recently made a major change in Texas law when it ruled that trial courts must articulate their reasons for granting new trials and a failure to comply with this requirement is grounds for mandamus. This article summarizes the background of this issue, explains the court's decision, and offers some thoughts on the implications of the decision for new-trial practice in Texas courts.

### Traditionally, the Judge's Decision Was Rarely Reviewable

Historically, Texas trial courts have had few constraints on their ability to decide to grant a new trial, and their decisions to grant new trials have been nearly unreviewable. The Texas Rules of Civil Procedure give trial judges discretion to grant new trials for a number of enumerated reasons, as well as for "good cause."<sup>1</sup> A statement by the trial court granting a new trial "in the interests of justice and fairness" has long been considered sufficient to establish the need for a new trial, and trial courts have not been required to enumerate their reasons for granting a new trial.<sup>2</sup>

Moreover, traditionally there have only been two circumstances in which the grant of a new trial could be reviewed by an appellate court. The first is when the order is void (e.g., the trial court lacked jurisdiction),<sup>3</sup> and the second is when the trial court has erroneously concluded that the jury's answers are irreconcilably in conflict.<sup>4</sup> If neither of these conditions are met, the appellate court had no power to review the new-trial order.<sup>5</sup> Even in these limited circumstances, review was only by mandamus, and not by appeal. Texas courts had no jurisdiction to perform interlocutory review of new-trial orders,<sup>6</sup> and an order granting a new trial was essentially unreviewable on appeal from an eventual final judgment because the second trial cured the error, making it harmless.

Texas's system was criticized by some, including two justices of the Texas Supreme Court, who argued that it gave trial court judges too much power to override a jury verdict and too little respect to a jury's findings.<sup>7</sup> Spurred by criticisms, the Court Rules Committee and the Subcommittee on Rules 300-330, both recommended that the Rule 320 be amended to require that trial judges give reasons for their new-trial orders.<sup>8</sup> However, the rule was not changed, and trial courts remained largely unfettered in their ability to grant new trials.

### Now, Judges Must Explain Their Decisions

On July 3, 2009, the Texas Supreme Court changed how appellate courts will look at decisions to grant new trials. The lead decision was *In re Columbia Medical Center of Las Colinas*, No. 06-0416 (Tex. Jul. 3, 2009).<sup>9</sup> The Court ruled 5-4 that a trial court must give more explanation for setting aside a jury verdict than merely stating that doing so is "in the interest of justice and fairness."

*In re Columbia Medical Center* involved a medical-malpractice dispute involving a patient named Donald Creech and whether he died because of a negligent overdose of a pain medication. The patient's wife, Wendy Creech, sued Columbia in the 192nd District Court, and after a nearly four-week trial, the jury returned a unanimous verdict in favor of the defendants. Creech filed for a judgment notwithstanding the verdict and, in the alternative, for a new trial. The trial court ordered a new trial "in the interests of justice and fairness" giving no other reason for its decision. Columbia petitioned the 5th Court of Appeals for a writ of mandamus based on the trial court's failure to explain its reasoning for granting a new trial, which was denied. Columbia then sought mandamus in the Texas Supreme Court, which was granted.

The majority opinion was written by Justice Johnson and was joined by Justices Hecht, Wainwright,

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Brister and Willett. They held that mandamus is available to redress a trial court's failure to articulate specific reasons for granting a motion for a new trial. They reasoned that mandamus was a proper avenue to challenge the trial court's decision because, without it, *Columbia* was effectively barred from seeking appellate review of the trial court's decisions to order a new trial. The Court also relied on a previous decision from *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004) which stated that if "[u]sed selectively, mandamus can 'correct clear errors in exceptional cases and afford appropriate guidance to the law without the disruption and burden of interlocutory appeal.'"<sup>10</sup>

Applying the principle from *In re Prudential Insurance Company of America*, the majority concluded that the case presented "exceptional circumstances" that warranted mandamus relief. The majority noted, and relied heavily on, the Texas Constitution's provision that the right of trial by jury "shall remain inviolate."<sup>11</sup> The majority explained that a trial court should be required to detail its reasons for ordering a new trial because of the substantial costs that discarding a jury verdict imposes on the parties and jury. The parties have endured substantial "personal and financial inconveniences" in order to have their case heard by a jury and are entitled to know why the verdict was discarded. Citizens serving on the jury, having sacrificed their own time, also deserve an explanation.

Adding support to the new rule, the majority concluded that a trial court's decision to grant a new trial should be held to similar standards to an appellate court's decision setting aside a jury verdict by reversing the trial court's judgment. An appellate court setting aside a jury verdict must specify all relevant evidence and explain how the reversal outweighs the evidence supporting the verdict, or show how the verdict was unjust. The majority hedged this point by noting that trial judges should have more discretion than appellate judges and that the standards should be somewhat different. Ultimately, the majority relied on the position that "there is no meaningful difference to the parties between an appellate court reversing a judgment based on a jury verdict and a trial court setting the verdict aside or disregarding it." Also, the majority noted, the rule on new-trial motions, Tex. R. Civ. P. 321, requires movants to identify with specificity their reasons for seeking a new trial. And, the overwhelming majority of other states, as well as the federal system, require judges in certain circumstances to state reasons for granting a new trial. All of these comparisons, in the majority's view, argued in favor of requiring trial judges to state reasons for granting a new trial.<sup>12</sup>

Having summarized its reasons, the majority concluded that "the parties and public are entitled to an understandable, reasonably specific explanation why their expectations are frustrated by a jury verdict being disregarded or set aside, the trial process being nullified, and the case having to be retried." It reversed the prior cases holding that a statement that a new trial was "in the interest of justice and fairness" would suffice. And, based on these reasons, the majority held that the trial court's failure to give reasons for disregarding the verdict as to *Columbia* was arbitrary and an abuse of discretion.

In dissent, Justice O'Neill was joined by Chief Justice Jefferson, Justice Medina and Justice Green. The dissent's position was fairly simple: since there is no statutory or procedural rule in Texas that requires the trial court to reveal its reasons for granting a new trial, "no jurisprudential imperative compels us to overturn more than a century of clear precedent and erode the broad discretion we have traditionally afforded trial courts." In support of their position, the dissenters first criticized what they viewed as the majority's improper expansion of mandamus procedure to encompass reviewing new-trial rulings, arguing that the majority opinion "ventures far beyond the boundaries" of Texas mandamus jurisprudence, and that the decision leaves "no principled basis for denying mandamus review of any potentially dispositive but unexplained interlocutory ruling." Moreover, if the standard is to be changed, the change should be effected through amendments to the rules of civil procedure and not by mandamus, which should not be used as a vehicle to overturn longstanding precedents. The dissenters noted that, since the rule-making process had not been employed, and the majority opinion did not specify, it is unclear going forward how detailed a trial court must be in articulating its reasons.

From a policy perspective, the dissent argued that trial courts should have wide discretion to grant new trials because trial judges are best situated to decide whether the trial was fair. They believe that this new requirement is inefficient, shows a lack of trust and will not prevent intentional abuses of the power.

The court's decision in *In re Columbia* has important and immediate implications, while also creating a number of questions that remain to be answered.

It will require attorneys who move for new trial to ensure that the trial court's order articulates all possible reasons, so that the decision is well justified and not arbitrary or improper under the "good cause" standard. Conversely, counsel for the party opposing a new trial should be ready to seek mandamus review.

### **Future Issues**

One major question that will need to be addressed in the aftermath of *In re Columbia* is how much a trial court must say to support an order granting a new trial. The majority's opinion stated that the

language “in the interest of justice and fairness” is not enough and that a trial court must explain its reasoning. But, they did not provide guidance. Instead, the majority dropped a footnote to say that it would not undertake to define the “good cause” required under the rules but would simply note that “the fact that the right to jury trial is of such significance as to be provided for in both the Federal and State Constitutions counsels against courts setting aside jury verdicts for less than specific, significant, and proper reasons.” The majority also hinted that trial courts should apply similar standards as appellate courts when considering new-trial arguments at the appellate stage, but it did not hold or explain how this standard of review should be filtered through the lens of mandamus.

Given the newness of the rule and how sharply divided the court was, there is some question whether *In re Columbia Medical Center* will work a broad and permanent change in new trial practice in Texas courts. It remains to be settled how much and what a trial court must say to guarantee that grant of a new trial is insulated from mandamus review.

Also debatable are this ruling’s wider implications for mandamus practice in general. For several years, the Texas Supreme Court has been increasing the scope of mandamus review beyond its origins as a remedy designed to correct clear abuses of discretion.<sup>13</sup> *In re Columbia Medical Center* represents another step in that direction and perhaps a significant progression, since in this case mandamus issued to correct a decision by a trial court that was fairly clearly proper under extant cases on new-trial orders, rather than being a clear abuse of discretion under existing law. Thus, this decision appears to widen the scope of availability of mandamus by the Texas Supreme Court.

Finally, it remains to be seen whether the Court Rules Committee or the Texas legislature will get involved. A majority of states and the federal courts already have rules requiring trial judges in certain circumstances to provide explanations in new-trial decisions. The Court Rules Committee had made suggestions about enacting similar rules to reduce the trial judges’ discretion, but they were never enacted.

The Texas Supreme Court’s decision to change 150 years of precedent on new trials is guaranteed to have implications for Texas new-trial practice at both the trial and appellate levels. With this decision, it is unclear how far reaching these implications will be or its effects, but the new availability of mandamus review for new trial orders will certainly change the procedures and strategies for seeking, granting and reviewing new-trial motions.

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## Endnotes

1. Tex. R. Civ. P. 320.
2. See, e.g., *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 918 (Tex. 1985).
3. *Missouri-Kansas-Texas R.R. v. Brewster*, 78 S.W.2d 575, 576 (Tex. 1934).
4. *Johnson v. Seventh Court of Civil Appeals*, 350 S.W.2d 330, 331 (Tex. 1961).
5. See *Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 565 (Tex. 2005).
6. The Texas Legislature did briefly confer interlocutory jurisdiction to review new trial grants in 1925, see Act of Feb. 23, 1925, 39th Leg., R.S., ch. 18, § A, 1925 Tex. Gen. Laws 45, codified as TEX. REV. CIV. STAT. ANN. art. 2249 (Vernon 1925), but repealed the statute within two years. Act of Feb. 21, 1927, 40th Leg., R.S., ch. 52, § 1, 1927 Tex. Gen. Laws 75.
7. See, e.g., *In re Bayerische Motoren Werke, AG*, 8 S.W.3d 326 (Tex. 2000) (Hecht, J, joined by Owen, J, dissenting from denial of petition to rehear denial of mandamus).
8. See *Report of the Subcommittee on Texas Rules of Civil Procedure 300-330*, 77th Session (Oct. 19, 2000) (noting that the Court Rules Committee had specifically recommended that mandamus review be extended to new-trial orders).
9. In two other cases, *In re Baylor Medical Center at Garland*, No. 06-0491 (Tex. Jul. 3, 2009) and *In Re E.I. Du Pont de Nemours and Co.*, No. 08-0625 (Tex. Jul. 3, 2009), the Court confronted the same issue and granted relief to the petitioners based on the opinion in *In Re Columbia*, by the same 5-4 majority.
10. Slip Op. at 4 (quoting *In re Prudential*, 148 S.W.3d at 138).
11. TEX. CONST. art. 1, § 15.
12. *In re Columbia* had also raised arguments that the failure to give reasons for granting a new trial violated both the Texas and federal constitutions, but the majority declined to reach those arguments since it could, and did, rule for the petitioners on nonconstitutional grounds.
13. See, e.g., *In re Prudential*; 148 S.W.3d 124; *In re McAllen Medical Center, Inc.*, 275 S.W.3d 458 (Tex. 2008).

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