

TRIAL COURTS MUST SPECIFY A REASON FOR GRANTING A NEW TRIAL, BUT CAN THOSE ORDERS NOW BE REVIEWED BY MANDAMUS?

Texas courts have historically treated as absolute a trial court's inherent power to grant a new trial after a jury's verdict. Recently, however, the Texas Supreme Court held that there are limits as to why a trial court can grant a new trial. Last year, the Court granted mandamus relief and ordered a trial court to explain why it had granted a new trial. *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204 (Tex. 2009) (orig. proceeding). The Court first explained that new-trial orders are generally not appealable, but it held that they may be reviewable by mandamus under certain circumstances. The Court stated that a trial court can grant a new trial only for "good cause." Though the Court did not define "good cause," it stated that trial courts should not set aside jury verdicts "for less than specific, significant, and proper reasons." *Id.* at 211 n.3. The Court explained that courts of appeals must detail reasons for affirmance or reversal, and it held that a trial court should similarly have to explain why it is granting a new trial and overturning a jury verdict. The Court stated,

Parties and the public generally expect that a trial followed by a jury verdict will close the trial process. Those expectations may be overly optimistic, practically speaking, but 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 nullified, and the case having to be retried.

Id. at 213. Accordingly, a trial court must specify a reason for granting a new trial. The Texas Supreme Court recently granted mandamus relief based on this ruling. *In re United Scaffolding Inc.*, ___ S.W.3d ___, No. 09-0403, 2010 WL 144019 (Tex. January 15, 2010) (orig. proceeding) (per curiam).

Narrowly read, these cases stand only for the proposition that a trial court must state why it is granting a new trial, and they do not require any additional appellate scrutiny of new-trial orders. But that is too narrow of a reading. If the merits of the trial court's decision don't matter, why make trial courts specifically state them in their orders? It would be far worse to make a trial court state an incorrect reason and then not be able to correct it than for a trial court to state no reason at all.

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One case impliedly supports the position that a party can seek review of the grounds on which a trial court bases its new-trial order. *In re E.I. Du Pont de Nemours & Co.*, 289 S.W.3d 861 (Tex. 2009) (orig. proceeding). In that case, the Court issued mandamus relief and ordered a trial court to explain why it had granted a new trial. The party seeking mandamus relief requested that the Court review the merits of the issues in the underlying motion for new trial, decide that those issues were meritless, and order the trial court to deny the motion for new trial. The Court stated,

We decline to do so. We do not presume [that] the trial court limited its consideration of grounds for granting the motion to only the grounds asserted in the motion; it may have granted the motion on other grounds. Accordingly, we deny, without prejudice, any relief beyond directing the trial court to specify its reasons for granting the new trial.

Id. at 862 (emphasis added & citation omitted). The Court stated that it would not review the merits of the motion for new trial because it did not know on which ground the trial court ruled. But it left open the possibility of reviewing, in a subsequent proceeding, the grounds

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actually ruled on by the trial court in the new-trial order.



The Fifth Circuit has reasoned that a trial court's discretion in granting a new trial is not "impenetrable" and that "careful scrutiny given to orders granting new trials is intended to assure that the court 'does not simply substitute [its] judgment for that of the jury, thus depriving the litigants of their right to trial by jury.'"

Scott v. Monsanto Co., 868 F.2d 786, 791 (5th Cir. 1989) (citation omitted). The Texas Supreme Court has adopted this reasoning. *In re Columbia Med. Ctr.*, 290 S.W.3d at 212.

A trial court's discretion to grant a new trial "should not, and does not, permit a trial judge to substitute his or her own views for that of the jury without a valid basis." *Id.*

Accordingly, because of the rights to a jury trial and due process, in exceptional cases, an appellate court may be able to review a new-trial order based on the merits of the motion. Additionally, the Texas Supreme Court has appointed a committee to review and redraft the Texas Rules of Civil Procedure that deal with new trials and other post-trial motions, and those new rules, when redrafted, may also provide guidance as to the bases of new-trial orders and appellate options.

NOTICE
U. S. District Court,
Northern District of Texas
SPECIAL ORDER
NO 2-74
amending amendments to local
civil rules - Public comments
deadline June 1, 2010
Effective September 1, 2010
To review full order, go to
www.txnd.uscourts.gov