IN THE SUPREME COURT OF TEXAS

NO. 06-0416

IN RE COLUMBIA MEDICAL CENTER OF LAS COLINAS, SUBSIDIARY, L.P. D/B/A LAS COLINAS MEDICAL CENTER, ANTONETTE CONNER, AND ANNA MATHEW, RELATORS

ON PETITION FOR WRIT OF MANDAMUS

Argued September 27, 2007

JUSTICE JOHNSON delivered the opinion of the Court, in which JUSTICE HECHT, JUSTICE WAINWRIGHT, JUSTICE BRISTER, and JUSTICE WILLETT joined.

JUSTICE O'NEILL filed a dissenting opinion, in which CHIEF JUSTICE JEFFERSON, JUSTICE MEDINA, and JUSTICE GREEN joined.

The Texas Constitution provides that the right of trial by jury "shall remain inviolate." TEX. CONST. art. 1, § 15. The issue before us is whether, after a jury has rendered its verdict, the trial court may disregard that verdict, grant a new trial, and explain its action only as being "in the interests of justice and fairness." We conclude that just as appellate courts that set aside jury verdicts are required to detail reasons for doing so, trial courts must give more explanation than "in the interest of justice" for setting aside a jury verdict. We conditionally grant mandamus relief directing the trial court to more specifically set out the reasons for which it set aside the jury verdict and granted a new trial.

I. Background

Donald Creech, Jr. entered Columbia Medical Center with kidney stones and died two days later while still in the hospital. As a result of Donald's death, his wife, Wendy Creech, on behalf of herself, their children, and Creech's estate (collectively, "Creech"), sued Columbia and several of its staff members. After a nearly four-week trial, the jury returned a unanimous verdict in favor of defendants.

Creech filed a motion for judgment notwithstanding the verdict, and in the alternative for a new trial. Creech urged that the trial court should grant a new trial because (1) the jury's answer to the negligence question was manifestly unjust and against the great weight and preponderance of the evidence, (2) the evidence conclusively established defendants' negligence, and (3) a new trial was warranted in the interests of justice and fairness.

The trial court granted the motion for new trial as to two nurses and as to Columbia in its capacity as their employer (collectively, "Columbia"). The order stated that a new trial was ordered "in the interests of justice and fairness." A final take-nothing judgment was entered in favor of the other defendants. The court of appeals denied Columbia's petition for a writ of mandamus challenging the trial court's failure to be specific as to the reasons for disregarding the jury's verdict and granting a new trial. ___ S.W.3d ___.

Columbia sought a writ of mandamus from this Court directing the trial court to specify why it granted a new trial and, in the alternative, directing the trial court to enter judgment on the jury verdict. After the case was briefed and argued, the trial judge who granted the new trial was succeeded in office by the Honorable Craig Smith. We abated the proceeding pursuant to Texas

Rule of Appellate Procedure 7.2(b) and remanded so Judge Smith could reconsider the order granting new trial. By order dated March 13, 2009, he reaffirmed the prior order without setting out reasons for granting the new trial:

> IT IS ORDERED, ADJUDGED and DECREED that this Court reaffirms the Order of December 8, 2004 granting Plaintiffs' Motion for New Trial.
>
> IT IS FURTHER ORDERED, ADJUDGED, and DECREED that this Court reaffirms the February 22, 2006 Order Denying Motion to Reconsider Court's Ruling Granting Plaintiffs' Motion for New Trial.

On March 27, 2009, we lifted the abatement and reinstated the petition on the Court's active docket.

Columbia argues that mandamus review of the trial court's order disregarding the jury verdict and granting a new trial is appropriate because these circumstances are extraordinary and it has no adequate remedy by appeal. It asserts that the trial court abused its discretion by (1) granting the partial new trial, (2) not specifying any grounds for granting the partial new trial other than "in the interests of justice and fairness," and (3) not entering judgment on the verdict.

Creech contends that this Court's precedent precludes appellate review of new trial orders and mandamus review should not be expanded to include review of this order. She also asserts that even if mandamus review is available, Columbia cannot show that the trial court's decision was a clear abuse of discretion or that Columbia is without an adequate remedy on appeal.

We agree with Columbia in part and conditionally grant relief as to part of Columbia's request. We direct the trial court to specify its reasons for disregarding the jury's verdict and granting a new trial, to the extent it did so. We deny, without prejudice, Columbia's request for mandamus relief directing the trial court to set aside its new trial order and enter judgment on the verdict.

II. Mandamus

A. General Law

Generally, mandamus will issue only to correct a clear abuse of discretion or the violation of a duty imposed by law, *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992), when an adequate remedy by appeal does not exist. *Perry Homes v. Cull*, 258 S.W.3d 580, 586 (Tex. 2008); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). Mandamus should not issue to correct grievances that may be addressed by other remedies. *See Walker*, 827 S.W.2d at 840.

Used selectively, mandamus can "correct clear errors in exceptional cases and afford appropriate guidance to the law without the disruption and burden of interlocutory appeal." *In re Prudential*, 148 S.W.3d at 138. For example, in *In re Prudential*, we determined that the issue of enforceability of a pre-suit waiver of jury trial was a circumstance justifying mandamus review:

> The issue before us in the present case—whether a pre-suit waiver of trial by jury is enforceable—fits well within the types of issues for which mandamus review is not only appropriate but necessary. It is an issue of law, one of first impression for us, but likely to recur (it has already arisen in another case in the court of appeals, also on petition for mandamus). It eludes answer by appeal. In no real sense can the trial court's denial of Prudential's contractual right to have the [real party in interest] waive a jury ever be rectified on appeal. If Prudential were to obtain judgment on a favorable jury verdict, it could not appeal, and its contractual right would be lost forever. If Prudential suffered judgment on an unfavorable verdict, Prudential could not obtain reversal for the incorrect denial of its contractual right "unless the court of appeals concludes that the error complained of . . . probably caused the rendition of an improper judgment". Even if Prudential could somehow obtain reversal based on the denial of its contractual right, it would already have lost a part of it by having been subject to the procedure it agreed to waive.

148 S.W.3d at 138 (citations omitted).

And in *In re Barber*, 982 S.W.2d 364 (Tex. 1998), we considered availability of mandamus review for a trial court's order granting a new trial when the trial court refused to enforce its own order. The plaintiff obtained a default judgment, but the parties then submitted an agreed order setting it aside and granting a new trial. *Id.* at 365. The trial court approved the subsequent order, affixed it with a rubber-stamp signature, and left the original order unsigned. *Id.* After the sitting judge suffered a heart attack, another judge presided over the case and determined that the rubber-stamped order was invalid and that the trial court's plenary power had expired, making the default judgment final. *Id.* In granting mandamus relief, this Court held that the rubber-stamped order was signed during the trial court's plenary power within the meaning of Texas Rule of Civil Procedure 329b, and was effective to grant a new trial. *Id.* at 368. While recognizing that mandamus is not an appropriate means to review a final default judgment after the time for appeal has expired, this Court also determined that relator's complaint focused not on the default judgment but on the trial court's refusal to acknowledge the validity of the new trial order. *Id.* Because relator had no other realistic means of obtaining review for the specific set of circumstances, we held that mandamus relief was appropriate. *Id.*

Likewise, in *In re Masonite Corp.*, 997 S.W.2d 194 (Tex. 1999), we considered whether a trial court's improper venue transfer orders could be reviewed by mandamus. The trial court denied defendants' motions to transfer venue even though plaintiffs agreed that venue was improper and that defendants' motion was properly pled and proven. *Id.* at 196. At the time, venue determinations were not subject to mandamus review. *Id.* at 197 & n.9. We concluded the trial court "ignored the pleadings, the facts, and the law," and the record reflected "a clear abuse of discretion." *Id.* at 197.

We further noted that the trial court's actions showed "'such disregard for guiding principles of law that the harm . . . is irreparable.'" *Id.* at 198 (quoting *Nat'l Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 776 (Tex. 1995) (orig. proceeding)). Thus, this Court again recognized that, in certain cases, "exceptional circumstances" can justify mandamus relief. *Id.* at 198-99.

B. Application

1. Exceptional Circumstances

Our decisions have approved the practice of trial courts failing to specify reasons for setting aside jury verdicts. *E.g., Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 918 (Tex. 1985). And our decisions preclude, for the most part, appellate review of orders granting new trials. *See Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 563 (Tex. 2005) (noting that we have recognized only two instances in which new trial orders are reviewable on appeal: when the trial court's order was void or the trial court erroneously concluded that the jury's answers to special issues were irreconcilably in conflict). Neither party claims that this case involves either a void order or a conflict in jury answers.

Citing authorities such as *Cummins v. Paisan Construction Co.*, 682 S.W.2d 235, 236 (Tex. 1984), Creech argues that this Court's prior decisions prevent a new trial order rendered during the time a trial court has plenary power from being reviewed by a higher court. In *Cummins*, a default judgment was entered against Paisan, and Paisan filed a motion for new trial. *Id.* at 235. Following a hearing on the motion, the trial court set aside the default judgment and granted Paisan's motion. *Id.* Judgment was entered in Paisan's favor based on the jury verdict from the new trial. *Id.* On appeal, Cummins challenged the trial court's granting of Paisan's new trial motion. *Id.* The court

of appeals examined the evidence introduced at the hearing on the motion and held that based on the evidence, the trial court did not abuse its discretion in granting the new trial. *Id.* This Court affirmed the court of appeals decision, but for a different reason. We held that because the motion for new trial was timely filed and the motion was granted during the trial court's plenary power, the order granting a new trial was not reviewable on appeal, either by direct appeal from the order or from a final judgment rendered after further proceedings in the trial court. *Id.* at 235-36; *see also Johnson*, 700 S.W.2d at 918.

We agree with Creech's interpretation of the authorities she cites. But the holdings of those cases support our conclusion that the circumstances here are exceptional ones. According to the authorities she cites, Columbia has no avenue to appeal the trial court's action.

Creech also argues that appellate review of orders granting new trials is inconsistent with legislative intent because the Legislature once passed a law allowing appeals from such orders[1] but repealed it two years later.[2] However, the Legislature's consideration of whether orders granting new trials are or should be appealable does not encompass the issue of whether such orders are subject to the extraordinary remedy of mandamus review. *See Walker*, 827 S.W.2d at 840 (noting that mandamus is an extraordinary remedy, available only when an adequate remedy by appeal is not).

On balance, the significance of the issue—protection of the right to jury trial—convinces us that the circumstances are exceptional and mandamus review is justified. *See In re Prudential*, 148 S.W.3d at 136. Further, we disagree with both Creech and the dissent that granting relief will

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[1] Act of Feb. 23, 1925, 39th Leg., R.S., ch. 18, 1925 Tex. Gen. Laws 45.

[2] Act of Feb. 21, 1927, 40th Leg., R.S., ch. 52, § 1, 1927 Tex. Gen. Laws 75.

expand the use of mandamus review. The standards we employ do not expand mandamus principles nor go beyond principles we have previously identified as justifying mandamus review. And, mandamus review remains discretionary, not of right.

2. Adequate Remedy by Appeal

As discussed above, this Court's prior decisions indicate that only in two instances have new trial orders rendered during the time a trial court has plenary power been reviewable by an appellate court: when the trial court's order was void and when the trial court erroneously concluded that the jury's answers to special issues were irreconcilably in conflict. *Wilkins*, 160 S.W.3d at 563; *Johnson*, 700 S.W.2d at 918; *see Cummins*, 682 S.W.2d at 236. The parties do not contend that either of those circumstances exist. Thus, absent mandamus review, Columbia will seemingly have *no* appellate review of the orders granting new trial.

Moreover, if Columbia could obtain appellate review of the new trial orders following a second trial, it would be in much the same situation as the relator in *In re Prudential*. If Columbia suffered an unfavorable verdict, it could not obtain reversal unless it convinced an appellate court that the granting of the new trial was error and that the error either prevented Columbia from properly presenting its case on appeal or probably caused entry of an improper judgment. *See In re Prudential*, 148 S.W.3d at 138. And even if an unfavorable verdict were reversed and rendered in Columbia's favor, Columbia would have lost the benefit of a final judgment based on the first jury verdict without ever knowing why, and would have endured the time, trouble, and expense of the second trial. Under the circumstances, Columbia does not have an adequate appellate remedy. *See Perry Homes*, 258 S.W.3d at 586; *In re Prudential*, 148 S.W.3d at 138.

3. Abuse of Discretion

The Texas Rules of Civil Procedure specifically address new trials. Rule 320 provides, in part, that:

> New trials may be granted and judgment set aside for good cause, on motion or on the court's own motion on such terms as the court shall direct. New trials may be granted when the damages are manifestly too small or too large.

TEX. R. CIV. P. 320. As the rule specifies, new trials may be granted for good cause on motion of a party or on the trial court's own motion. When a motion for new trial is filed by a party, the motion must be in such form that the bases for the motion can be clearly identified and understood by the trial court:

> Each point relied upon in a motion for new trial or in arrest of judgment shall briefly refer to that part of the ruling of the court, charge given to the jury, or charge refused, admission or rejection of evidence, or other proceedings which are designated to be complained of, in such a way that the objection can be clearly identified and understood by the court.

TEX. R. CIV. P. 321. Generality in motions for new trial must be avoided because objections phrased in general terms shall not be considered by the court. TEX. R. CIV. P. 322. Not more than two new trials may be granted for either party in the same cause because of insufficiency or weight of the evidence. TEX. R. CIV. P. 326.

Texas trial courts have historically been afforded broad discretion in granting new trials. *See Johnson*, 700 S.W.2d at 917. But that discretion is not limitless. In *Larson v. Cactus Utility Co.*, 730 S.W.2d 640 (Tex. 1987), we noted that a trial court cannot grant a new trial conditioned on a party's refusal to accept a remittitur if factually sufficient evidence supported the jury's verdict. We held that a trial court may order a remittitur only when the evidence is factually insufficient to

support the verdict, which is the same limitation as is imposed on the court of appeals. *Id.* at 641. We reasoned that both trial courts and courts of appeals should be subject to the standard that no court is free to simply substitute its judgment for that of the jury and that applying different standards for trial courts and courts of appeals could lead to inconsistent results because a trial court's decision as to remittitur could stand when the same conclusion by a court of appeals would not. *Id.* And as previously noted, granting of a new trial is error if the trial court's order is void, or if the trial court specifically based its new trial order on an irreconcilable conflict in answers to jury questions when the answers were not in conflict. *See Wilkins*, 160 S.W.3d at 563; *Johnson*, 700 S.W.2d at 918.

These decisions, coupled with the clear import of the Texas Rules of Civil Procedure, indicate that the amount of discretion Texas trial courts possess to overturn jury verdicts and grant new trials is broad but has limits. For example, and as demonstrated by the Rules of Civil Procedure quoted above, new trials may be granted to a party for sufficiency or weight of the evidence, when damages are "manifestly" too small or too large, and for "good cause." TEX. R. CIV. P. 320, 326.[3]

Jury trials are essential to our constitutionally provided method for resolving disputes when parties themselves are unable to do so. *See* TEX. CONST. art. I, § 15, art. V, § 10; *Wal-Mart Stores, Inc. v. Seale*, 904 S.W.2d 718, 722 (Tex. App.—San Antonio 1995, no writ) (recognizing that a jury's decision is not to be tampered with lightly, regardless of whether it favors the plaintiff or the defendant). Parties to a dispute who choose to have the dispute resolved by a jury and endure the

[3] The good cause for which Rule 320 allows trial courts to grant new trials does not mean just any cause. If it did, the rule would not have specified "good" cause. Our rules of procedure do not define "good cause" in this context, and we do not now undertake to do so. But 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.

personal and financial inconvenience of such a trial are entitled to know why the verdict was disregarded, regardless of whether the verdict was disregarded by one judge or a panel of judges. So are the jurors whose lives were interrupted so they could serve, and the public that finances the judicial system and depends on its open operations to assure fair processes for dispute resolution. We require appellate courts to explain by written opinion their analyses and conclusions as to the issues necessary for final disposition of an appeal. *See* TEX. R. APP. P. 47.1, 63. If a court of appeals affirms a challenged jury verdict as being supported by factually sufficient evidence, the court need not detail all the evidence in support of the verdict. *Ellis County State Bank v. Keever*, 888 S.W.2d 790, 794 (Tex. 1994). But if the court holds that the verdict is not supported by factually sufficient evidence and effectively sets aside the jury verdict by reversing the trial court's judgment, the court must detail all the relevant evidence and explain how it outweighs evidence supporting the verdict or how the verdict is so against the great weight and preponderance of the evidence that it is manifestly unjust. *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998); *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986); *see also Citizens Nat'l Bank in Waxahachie v. Scott*, 195 S.W.3d 94, 96 (Tex. 2006) (holding that an appellate court may not reverse a lower court judgment by "merely saying that the court has reviewed all the evidence and reach[ed] a conclusion contrary to that of the trier of fact" but must explain with specificity why it has substituted its judgment for that of the trial court).

The standards by which trial judges and appellate judges may set aside or overturn a jury verdict are different. The Rules of Civil Procedure afford a trial court considerable discretion to set aside a jury verdict, even on its own motion. *See* TEX. R. CIV. P. 320, 326, 327. Appellate judges

have much less discretion because they are limited to the issues urged and record presented by the parties and because appellate courts are specifically limited to reversing judgments only for errors that probably resulted in entry of an improper judgment or precluded a party from properly presenting its case on appeal. TEX. R. APP. P. 44.1, 61.1; *but see Living Ctrs. of Tex., Inc. v. Peñalver*, 256 S.W.3d 678, 681 (Tex. 2008) (noting that no harm analysis is required for certain incurable jury argument); *In re J.F.C.*, 96 S.W.3d 256, 291 (Tex. 2002) (noting that a harm analysis is not conducted for jurisdictional fundamental-error review). And, of course there are differences between the review that can be accomplished by appellate judges who have only the record to consider and trial judges who have seen the parties and witnesses and sensed the affect of certain evidence or occurrences on the trial. Nevertheless, 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. The end result is that the prevailing party loses the jury verdict and the judgment, or potential judgment, based on it.

More than forty other states and the District of Columbia require trial courts, in certain circumstances, to specify the reasons for setting aside jury verdicts.[4] Most have statutes or rules of procedure that embody the requirement, although the requirement in at least one of those states was

[4] *See* ALA. R. CIV. P. 59(d); ALASKA R. CIV. P. 59(e); ARIZ. R. CIV. P. 59(m); ARK. R. CIV. P. 59(e); CAL. CIV. PRO. CODE § 657; COLO. R. CIV. P. 59(c); DEL. SUPER. CT. CIV. P. R. 59(c); D.C. R. CIV. P. 59(d); FLA. R. CIV. P. 1.530(f); GA. CODE ANN. § 5-5-51 (2007); HAW. R. CIV. P. 59(d); IDAHO R. CIV. P. 59(d); ILL. COMP. STAT. ANN. ch. 725 § 5/116-1(c) (2006); IND. R. TRIAL P. 59(J)(7); IOWA R. CIV. P. 1.1008(3); KAN. STAT. ANN. § 60-259(e); KY. R. CIV. P. 59.04; ME. R. CIV. P. 59(d); MD. RULE 4-331(e); MASS. R. CIV. P. 59(d); MI. R. CIV. PRO. 2.611(c); MINN. R. CIV. P. 59.05; MISS. R. CIV. P. 59(d); MO. REV. STAT. § 510.370; MONT. R. CIV. P. 59(f); NEV. R. CIV. P. 59(d); N.J. R. 4:49-1(c); N.M. DIST. CT. CIV. PRO. R. 1-050(c)(1); N.C. CIV. PRO. 59(d); N.D. R. CIV. P. 59(f); OHIO CIV. R. 59(a); OR. REV. STAT. § 19.430 (2007); PA. R. CIV. P. 227.1(e); R.I. R.C.P. 59(d); S.C. R. CIV. P. 59(d); S.D. CODIFIED LAWS § 15-6-59(g); TENN. CIV. PRO. R. 59.05; UTAH R. CIV. P. 59(d); VT. R. CIV. P. 59(d); WASH. SUPER. CT. CIV. R. 59(f); W. VA. R. CIV. P. 59(d); WIS. STAT. § 805.15(2) (2006); WYO. R. CIV. P. 59(d).

first made by judicial decision. *E.g.*, IDAHO R. CIV. P. 59(d); *Quick v. Crane*, 727 P.2d 1187, 1199-1200 (Idaho 1986). The Idaho Supreme Court held that such a requirement is necessary when a trial court exercises any discretion that "has a substantial impact on the litigants." *Quick*, 727 P.2d at 1200. In responding to the argument that requiring trial judges to state their reasons for granting new trials imposes a burden on their ability to handle dockets, the court reasoned that:

> "Where proceedings at trial clearly have gone awry, the reasons for granting a new trial can be readily identified and stated. In cases where the proceedings outwardly seem regular, but the judge nevertheless feels that an injustice has been done, it may be more difficult to identify and to state the reasons. However, these hard cases are precisely the cases where the discipline of stating reasons is most needed."

Id. at 1200-01 (quoting *Sheets v. Agro-West, Inc.*, 664 P.2d 787, 796 (Idaho Ct. App. 1983)).

Federal Rule of Civil Procedure 59(d) requires that a trial court, in granting a new trial on its own initiative, "must specify the reasons in its order." FED. R. CIV. P. 59(d). In *Scott v. Monsanto Co.*, 868 F.2d 786, 791 (5th Cir. 1989), the Fifth Circuit 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.'" *Id.* at 791 (quoting *Conway v. Chem. Leaman Tank Lines, Inc.*, 610 F.2d 360, 363 (5th Cir. 1980)).

We are of the opinion that such reasoning is applicable to the issue presented. We do not retreat from the position that trial courts have significant discretion in granting new trials. *Johnson*, 700 S.W.2d at 917. However, such discretion 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. A trial court's actions in refusing to disclose the reasons it set aside or disregarded a jury verdict is no less arbitrary to the

parties and public than if an appellate court did so. *See Scott*, 195 S.W.3d at 96; *Gonzalez v. McAllen Med. Ctr., Inc.*, 195 S.W.3d 680, 682 (Tex. 2006) (noting that plaintiffs were entitled to a written opinion from the court of appeals stating why the jury's verdict can or cannot be set aside). The trial court's action in failing to give its reasons for disregarding the jury verdict as to Columbia was arbitrary and an abuse of discretion.

In *Johnson*, we held that a trial court may, in its discretion, grant a new trial "in the interest of justice." 700 S.W.2d at 918. We have reaffirmed that decision. *See, e.g.*, *Champion Int'l Corp. v. Twelfth Court of Appeals*, 762 S.W.2d 898, 899 (Tex. 1988). However, for the reasons stated above, we believe that such a vague explanation in setting aside a jury verdict does not enhance respect for the judiciary or the rule of law, detracts from transparency we strive to achieve in our legal system, and does not sufficiently respect the reasonable expectations of parties and the public when a lawsuit is tried to a jury. 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 being nullified, and the case having to be retried. To the extent statements or holdings in our prior cases conflict with our decision today, we disapprove of them.

III. Response to the Dissent

The dissent says the trial court had any number of proposed reasons for granting Creech's motion for new trial. The motion challenged the testimony of Columbia's expert, advanced twenty-eight evidentiary points, challenged the jury's answer to the negligence question as manifestly unjust

and against the great weight and preponderance of the evidence, asserted the evidence conclusively established defendants' negligence, and asserted a new trial was warranted in the interests of justice and fairness. But that only restates Columbia's complaint: the jury verdict as to Columbia has been disregarded and no one other than the trial judges who issued the new trial orders know the specific reasons why. The dissent says the orders were presumably based on one of the grounds in the motion for new trial, but that presumption may not be correct. The judges may have based the orders on other reasons not even urged by Creech and still unknown to both parties. Columbia should be told why the trial court granted the new trial.

As to the procedural history of this case, the appeal was abated because an appellate procedural rule requires successor judges to be afforded an opportunity to reconsider orders such as the one at issue. *See* TEX. R. APP. P. 7.2(b). We recognize that in certain circumstances, including situations such as this, successor judges will be disadvantaged in making rulings on motions such as the one involved here. But successor trial judges are disadvantaged in many, if not most, instances when they are called upon to step into pending cases. For example, in *Deere v. Ingram*, ___ S.W.3d ___, ___ (Tex. 2009), the jury found that a joint venture existed between Deere and Ingram and awarded damages to Deere for Ingram's breach of the agreement and breach of fiduciary duty. *Id.* The trial court entered judgment in Deere's favor based on the verdict but then granted Ingram's motion for judgment notwithstanding the verdict in part. *Id.* Following entry of the new, reduced judgment, the judge who tried the case recused himself. *Id.* The case was assigned to another judge, and Ingram filed a second motion for judgment notwithstanding the verdict or, in the

alternative, for a new trial. *Id.* The second judge stepped in, considered the post-trial motion, granted it, and entered judgment that Deere take nothing. *Id.*

Whether a change of judges is due to recusal, such as in *Deere*, because a new judge is elected, as here, or for any other reason, successor judges almost invariably face at least some decisions similar to those involved here and in *Deere*. Part of being a trial judge is having to make difficult rulings in pending matters.

Pursuant to our decision in *In re Baylor Medical Center at Garland*, 280 S.W.3d 227, 232 (Tex. 2008), the original order by which the jury verdict as to Columbia was disregarded and a new trial granted was interlocutory. In accordance with Texas Rule of Civil Procedure 7.2(b), the successor judge has now considered Creech's motion, held a hearing, and entered his own order reaffirming the grant of the motion. That order is effectively an order refusing to enter judgment on the jury verdict and affects the rights of the parties no less than did the orders of the original judge. We presume the successor judge had specific reasons for entering the order he entered. Columbia is entitled to know those reasons just as much as it would be entitled to know the reasons for the orders entered by the former trial judge.

We agree with the dissent that trial judges are allowed great discretion in matters such as these. But we reject the suggestion that our decision is motivated by an underlying fear that some trial courts might abuse the privilege of their discretion. We have faith in the integrity of our trial bench as well as that of the appellate bench. Both have discrete constitutional and statutory places and duties in the judicial structure. We are not blind to the practicality that a trial judge might "game" the system by stating plausible reasons for setting aside a verdict when the real reasons might

be otherwise. We choose not to attribute such attitudes and motives to trial judges absent some reason for doing so in individual circumstances supported by a record. Nevertheless, we believe it important enough to the transparency of our judicial system and to its apparent fairness to the public that even if a trial judge on occasion gives specious reasons for setting aside a jury verdict, the balance still weighs heavily in favor of requiring trial courts to give their reasons for setting aside or disregarding verdicts.

Finally, we might agree with the dissent's assertion that any change to the existing status should be through the rule-making process if the current status were the product of the rule-making process. It is not. As both we and the dissent have noted, the current status is the product of appellate decisions, not the least of which are decisions from this Court. We do not lightly alter a status established by our prior decisions. But when the status shields decisions affecting rights such as those relating to jury trials from the view of the parties and the public, we should not hesitate to reconsider it.

IV. Entry of Judgment on the Verdict

The trial court has not stated its specific grounds for refusing to enter judgment on the jury verdict and granting a new trial. Thus, we decline to consider whether mandamus relief is available as to the trial court's action in disregarding the jury verdict. We deny, without prejudice, Columbia's request for a writ of mandamus directing the trial court to enter judgment on the verdict.

V. Columbia's Constitutional Arguments

Columbia also urges that the federal and state constitutions require trial courts to specify reasons for disregarding jury verdicts. *See* TEX. CONST. art. I, § 15, art. V, § 10; *Golden Eagle*

Archery, Inc. v. Jackson, 24 S.W.3d 362, 374 (Tex. 2000) (noting that "a state's civil jury system must comport with federal due process"). We need not and do not reach the constitutional issues. *See In re B.L.D.*, 113 S.W.3d 340, 349 (Tex. 2003) ("As a rule, we only decide constitutional questions when we cannot resolve issues on nonconstitutional grounds.").

VI. Conclusion

We conditionally grant relief. We direct the trial court to specify the reasons it refused to enter judgment on the jury verdict and ordered a new trial as to Columbia. The reasons should be clearly identified and reasonably specific. Broad statements such as "in the interest of justice" are not sufficiently specific.

We are confident the trial court will comply. The writ will issue only if it fails to do so.

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Phil Johnson
Justice

OPINION DELIVERED: July 3, 2009