Texas Civil Procedure—The Texas Supreme Court Expands Mandamus Review for Rulings on Motions for New Trial

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ABSTRACT

For more than 150 years, Texas trial courts exercised broad discretion to grant motions for new trials without interference from appellate courts, but the Texas Supreme Court curbed that discretion with the *In re Columbia* decision in July, 2009. This casenote critiques the court’s decision and proposes a better solution through rule changes or legislation.

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For more than 150 years, Texas trial courts exercised broad discretion to grant motions for new trials without interference from appellate courts, but the Texas Supreme Court curbed that discretion with *In re Columbia.*\(^1\) Overruling a long line of precedent, the court granted Columbia Medical Center mandamus relief from a new-trial motion and directed the trial court to “specify the reasons it . . . ordered a new trial.”\(^2\) The *Columbia* court accomplished by “judicial fiat” what other jurisdictions have done through rule-making and legislation.\(^3\) It expanded the scope of mandamus far beyond the practice that has existed in Texas for more than 150 years by requiring a trial court to state specific reasons for granting a new trial. First, it created a new level of uncertainty for trial courts considering new-trial orders and perhaps even other interlocutory actions. Second, it glossed over legislative intent. Third, it failed to sufficiently justify overruling its own long-standing precedent. And fourth, it mistakenly found abuse of discretion, even though the trial court followed clearly established rules, practice, and precedent.

\(^1\) *In re Columbia Med. Ctr. of Las Colinas*, 290 S.W.3d 204, 215 (Tex. 2009); *see also* Goss v. McLaren, 17 Tex. 107, 115 (1856) (“In ordinary cases the judge has a discretion to grant a new trial *whenever, in his opinion, wrong and injustice have been done by the verdict; and it is upon this ground that courts have refused to interfere* to revise the granting of new trials.”) (emphasis added).

\(^2\) *Columbia*, 290 S.W.3d at 213, 215; Wilkins v. Methodist Health Care Sys., 160 S.W.3d 559, 563 (Tex. 2005); Sweeny v. Jarvis, 6 Tex. 36, 44 (1851).

\(^3\) *Columbia*, 290 S.W.3d at 212, 215 (O’Neill, J., dissenting).
In October 2001, Columbia Medical Center admitted Donald Creech, Jr. because he suffered from kidney stones. During his stay, he received intravenous doses of the narcotic Dilaudid to control his pain, but he continued to complain of severe pain so the hospital staff increased the dosage. After two days of hospitalization, Donald died.

Wendy Creech, Donald’s widow, sued the hospital and various hospital staff for medical malpractice. After a four-week trial, the jury returned a verdict in favor of all the defendants, Creech moved for a new trial on numerous grounds, and the trial court granted the new-trial motion “in the interests of justice and fairness.” Columbia filed a petition for a writ of mandamus to compel the trial court to state specific reasons for granting the new trial, but the Dallas Court of Appeals denied the petition because granting a new trial “in the interests of fairness and justice” comported with decades of precedent. Later, Columbia filed the same petition with the Texas Supreme Court, but while the appeal was pending, Judge Craig Smith succeeded Judge Merrill Hartman as trial judge and the supreme court abated the case for Judge Smith to consider the new-trial motion. Judge Smith affirmed the new-trial order without

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4 Id. at 206; Relators’ Petition for Writ of Mandamus at viii, In re Columbia Med. Ctr. of Las Colinas, 290 S.W.3d 204 (Tex. May 23, 2006) (No. 06-0416).

5 Columbia, 290 S.W.3d at 216 (O’Neill, J., dissenting).

6 Id. at 206.

7 Id. at 216 (O’Neill, J., dissenting).

8 Id. at 206.

9 Id.; In re Columbia Med. Ctr. of Las Colinas, 290 S.W.3d 238, 238 (Tex. App.—Dallas 2006, pet. granted) (mem. op.) overruled by 290 S.W.3d 204, 215 (Tex. 2007).

10 Columbia, 209 S.W.3d at 206, 219.
stating any reasons and the supreme court lifted the abatement.\textsuperscript{11}

The supreme court decided the question of whether a trial court may set aside a jury verdict and grant a motion for a new trial when its only stated reason is that the ruling is “in the interests of justice and fairness.”\textsuperscript{12} A closely divided court held that (1) appellate courts may review new-trial orders under “exceptional circumstances”; (2) \textit{In re Columbia} presented such circumstances because it involved the right to a trial by jury; (3) Columbia Medical Center had no adequate remedy on appeal because the new-trial order would force it to relitigate an issue it already won in front of a jury; and (4) a trial court’s discretion doesn’t include neglecting to state specific reasons for granting a new trial because the parties and public have a right to know why a judge sets aside a jury verdict.\textsuperscript{13}

Dating back to Texas’s admission into statehood, the state’s appellate courts have been extremely reluctant to review a trial court’s order for a new trial while the trial court enjoys plenary power over a case.\textsuperscript{14} As the \textit{Columbia} majority pointed out, appellate courts may undertake mandamus review of a new-trial order in only two situations: (1) when the order is void because it is made after expiration of the trial’s term; and (2) when the reason given for granting the order is that the jury’s answers to special issues conflict.\textsuperscript{15} The court acknowledged that its past decisions generally preclude review of a new-trial order and don’t require a trial

\textsuperscript{11} \textit{Id.} at 206.

\textsuperscript{12} \textit{Id.}

\textsuperscript{13} \textit{Id.} at 206, 208–11 (5-4 decision) (citing TEX. CONST. art. I, § 15).

\textsuperscript{14} Sweeny v. Jarvis, 6 Tex. 36, 39–41, 44 (1851).

\textsuperscript{15} \textit{Columbia}, 290 S.W.3d at 209 (citing Wilkins v. Methodist Health Care Sys., 160 S.W.3d 559, 563 (Tex. 2005); Johnson v. Fourth Court of Appeals, 700 S.W.2d 916, 917 (Tex. 1985)).
judge to explain the order, but it further stated that, based on two earlier holdings, “exceptional circumstances” may compel mandamus review.\(^\text{16}\) The first holding, *In re Masonite*, was a mass tort action involving an improperly denied transfer of venue motion that made mandamus necessary because of the exceptional circumstances created when “the trial court . . . wrongfully burdened fourteen other courts in fourteen other counties . . . .”\(^\text{17}\) The second, *In re Barber*, involved the failure of a successor judge to enforce a predecessor’s order to set aside a default judgment ruling.\(^\text{18}\) Based on these holdings, the *Columbia* court reasoned that Columbia Medical Center faced exceptional circumstances: Columbia had no adequate remedy on appeal because precedent barred mandamus review of a new-trial order.\(^\text{19}\) The court concluded that if Columbia *lost* the second trial, it would face the additional burden of proving that the second trial was in error, and if it *won* the second trial, it would lose the benefit of the original judgment.\(^\text{20}\) But Justice O’Neill, writing for the dissent, argued that the circumstances were not exceptional because the trial court followed well-established precedent.\(^\text{21}\) She reasoned that denying mandamus doesn’t disturb the right to a jury trial because “Columbia’s defenses will ultimately be decided by a jury” in the second trial and that a prompt retrial is preferable to a

\(^{16}\) *Id.* at 208.

\(^{17}\) *In re Masonite*, 997 S.W.2d 194, 199 (Tex. 1999).

\(^{18}\) *In re Barber*, 982 S.W.2d 364 (Tex. 1998).

\(^{19}\) *Columbia*, 290 S.W.3d at 209.

\(^{20}\) *Id.* at 209–10; see also *In re Prudential*, 148 S.W.3d 124, 138 (Tex. 2004) (holding mandamus necessary to enforce a waiver of the right to trial by jury).

\(^{21}\) *Columbia*, 290 S.W.3d at 215 (O’Neill, J., dissenting).
four-and-a-half-year appellate process.\textsuperscript{22}

But even under exceptional circumstances, mandamus \textit{relief} requires “a clear abuse of discretion or the violation of a duty imposed by law . . . .”\textsuperscript{23} The \textit{Columbia} court acknowledged that a trial court possesses broad discretion to grant new trials but pointed out that the trial court’s discretion isn’t unlimited.\textsuperscript{24} Citing procedural rules related to a \textit{party’s} motion for new trial, the court noted that “[e]ach point relied upon in a motion for new trial . . . shall briefly refer to that part of the ruling of the court . . . in such a way that the objection can be clearly identified and understood by the court.”\textsuperscript{25} And when an appellate court reverses a trial court judgment, it “must explain with specificity why it has substituted its judgment for that of the trial court.”\textsuperscript{26} The \textit{Columbia} court found that more than 40 other jurisdictions require trial courts “to specify the reasons for setting aside jury verdicts” under certain circumstances—yet it only cited one jurisdiction where that requirement was imposed by a judicial decision.\textsuperscript{27} The dissent pointed out that 39 of those jurisdictions apply the requirement only to a \textit{court’s own motion} for a new trial, not the grant of a new-trial motion made by a party, and that those jurisdictions impose the requirement only through procedural rules and statutes—not through judicial decision or mandamus.\textsuperscript{28} Justice O’Neill argued that the new requirement is unneeded because the judge

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\textsuperscript{22} \textit{Id.} at 216, 221 (O’Neill, J., dissenting).
\textsuperscript{23} \textit{Id.} at 207 (citing Walker v. Packer, 827 S.W.2d 833, 839 (Tex. 1992)).
\textsuperscript{24} \textit{Id.} at 210.
\textsuperscript{25} \textit{Id.} at 210 (quoting Tex. R. Civ. P. 321).
\textsuperscript{26} \textit{Id.} at 211 (citing Citizens Nat’l Bank in Waxahachie v. Scott, 195 S.W.3d 94, 96 (Tex. 2006)).
\textsuperscript{27} \textit{Id.} at 212 (citing Quick v. Crane, 727 P.2d 1187, 1199–1200 (Idaho 1986)).
\textsuperscript{28} \textit{Id.} at 217 (O’Neill, J., dissenting).
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granted the new-trial motion “presumably on the grounds urged in the . . . motion.”

Without citing any authority, the majority rejected Justice O’Neill’s argument, saying that her “presumption may not be correct.”

Even so, Justice O’Neill noted that the trial court did exactly what precedent required—so it could not possibly have abused its discretion.

Because it found granting a new trial “in the interest of justice” too vague an explanation, the Columbia court overruled the line of precedent holding that reason sufficient.

Though Justice O’Neill argued that nothing in the case outweighed a “strong presumption against overruling . . . precedent” because none of the compelling reasons for doing so existed, the majority concluded that setting aside a jury verdict could undermine respect for the justice system, reduce transparency, and fail to satisfy the reasonable needs of the parties and the public.

The dissent insisted that altering the procedural rules “would be for more appropriate” than creating new mandamus law, and it expressed concern that other trial court actions—such as impaneling jurors challenged for cause, summary judgment rulings, rulings on discovery motions, evidentiary rulings, and the like—might now be subject to appellate review.

Nevertheless, the majority held that a trial court must state “clearly identified and reasonably specific” reasons for granting a motion for a new trial—not “[b]road statements such as ‘in the

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29 Id. (O’Neill, J., dissenting); see also Sweeny v. Jarvis, 6 Tex. 36, 44 (1851) (“The ground on which the new trial was sought in the present case was specified in the motion.”).

30 Columbia, 290 S.W.3d at 213.

31 Id. at 217 (O’Neill, J., dissenting).

32 Id. at 213.

33 Id. at 213, 218 (O’Neill, J., dissenting).

34 Id. at 216, 218 (O’Neill, J., dissenting).
The Columbia court claimed it was not expanding mandamus because it said it applied the same mandamus principles it had always applied—but then it disapproved of the precedent that restricted mandamus review of new-trial orders. It primarily relied on three cases that are easily distinguishable from Columbia. The Masonite case involved a venue motion that impacted fourteen other courts and all their attendant resources—not just a single court and the parties to one case. The Barber case fit one of the established circumstances allowing mandamus review because it involved a void order for a new trial. And the Prudential case turned on whether a party was entitled to a jury trial in the first place after contracting to waive its right to one. The court applied circular logic when it reasoned that the inability to appeal a new-trial order precluded an adequate remedy on appeal. In the past, the supreme court made mandamus available “only in situations involving manifest and urgent necessity and not for grievances that may be addressed by other remedies.” And Columbia had a remedy: a new trial—certainly a less onerous remedy than four-and-a-half years of appeals. The future impact of the Columbia opinion is difficult to gauge, but the fact that the court decided three cases in a

35 Id. at 215.

36 Id. at 209, 213.

37 In re Masonite, 997 S.W.2d 194, 199 (Tex. 1999).

38 In re Barber, 982 S.W.2d 364, 365 (Tex. 1999); see also Johnson v. Court of Appeals, 350 S.W.2d 330, 331 (Tex. 1961) (holding that appellate review of a new-trial order is appropriate when the order is void because it was not entered during the trial’s term).


40 Holloway v. Fifth Court of Appeals, 767 S.W.2d 680, 684 (Tex. 1989) (emphasis added).
single day based on the Columbia holding is telling.\textsuperscript{41} The dissent rightfully pointed out that the range of the opinion’s impact is unknown because it’s now uncertain what other types of trial court rulings appellate courts may subject to mandamus review.\textsuperscript{42}

Perhaps even more disturbing is the court’s disregard for legislative intent. “The primary rule in statutory interpretation is that a court must give effect to legislative intent.”\textsuperscript{43} The Columbia court admitted that the legislature repealed a statute providing for review of new-trial orders after only two years on the books—but it said the repeal did not apply to mandamus.\textsuperscript{44} Even so, the dissent pointed out that “the Legislature has only seen fit to impose such a requirement in criminal cases.”\textsuperscript{45} And in an earlier case, the supreme court decided that when the legislature repeals a statute without a savings clause, the repeal “operates to immediately deprive the party of all rights that have not become vested or been reduced to final judgment.”\textsuperscript{46} The repeal of the court’s statutory authority to review a new-trial order combined with the legislature’s subsequent grant of that kind of authority only in criminal cases evinces a clear intent that the legislature does not approve of new-trial-order review in civil cases.

Overturning precedent—especially precedent that has endured for so long—is extreme and unwarranted. The dissent wisely advocated changing the procedure for appellate review of

\textsuperscript{41} Columbia, 209 S.W.3d at 215; In re Baylor Medical Center at Garland, 289 S.W.3d 859, 861 (Tex. 2009); In re E.I. du Pont de Nemours & Co., 289 S.W.3d 861, 861 (Tex. 2009).

\textsuperscript{42} Columbia, 290 S.W.3d at 216 (O’Neill, J., dissenting).

\textsuperscript{43} In re Hecht, 213 S.W.3d 547, 564 (Tex. 2006).

\textsuperscript{44} Columbia, 290 S.W.3d at 209.

\textsuperscript{45} Id. at 215 (O’Neill, J., dissenting).

\textsuperscript{46} PPG Indus., Inc. v. JMB/Houston Ctrs. Ltd. P’ship, 146 S.W.3d 79, 103 (Tex. 2004).
new-trial orders through rule-making or legislation because those processes are more deliberate and better suited to making significant changes in the reach of appellate courts. Even though federal rules require a trial court to specify its reasons for a new-trial order, the United States Supreme Court stated that “[a] trial court’s ordering of a new trial rarely, if ever, will justify the issuance of a writ of mandamus.” And the Texas Supreme Court has held that “the general rule, with a few mostly statutory exceptions, is that an appeal may be taken only from a final judgment” and a new-trial order is not among those exceptions. Justice O’Neill correctly argued that Columbia presented none of the circumstances that require overturning precedent—such as unconstitutionality, conflicting precedent, inconsistency, or unjust results.

And finally, the Columbia court misapplied the abuse of discretion standard of review. Abuse of discretion occurs when a trial court “reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law” and, as the dissent pointed out, the trial court complied with decades of precedent. The supreme court changed the rules in the middle of the game. Though it used the words “clearly identified and reasonably specific” in its direction to the trial court, that direction is still vague—especially in light of the fact that the court left the

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47 Columbia, 290 S.W.3d at 218 (O’Neill, J., dissenting).


50 Columbia, 290 S.W.3d at 218 (O’Neill, J., dissenting).

51 Id. at 218 (O’Neill, J., dissenting); Johnson v. Fourth Court of Appeals, 700 S.W.2d 916, 917 (Tex. 1985).
door open to future review of the sufficiency of the reason. So now, uncertainty exists about what might constitute a sufficient reason to grant a motion for a new trial. If the supreme court allows review of a trial court’s reason for sufficiency, then it has created a false economy for the parties. When an appellate court decides that a trial court gave an insufficient reason, it might direct the trial court to be more specific, creating an additional round trip in the appellate process. But a needless appeal and review occur when the appellate court affirms the trial court. In either case, the trial court and parties must suffer more delay and expense.

In this case, it’s unreasonable to expect a successor trial judge to be able to disclose the original judge’s specific reason for granting a new trial. The second judge was not present for the proceedings and the need for a new trial may not be readily apparent in the trial record. Though the Columbia court rejected the presumption that the judge granted the party’s motion for the grounds stated in the motion, such a presumption can be inferred from the fact that the trial court could have granted a new trial on its own motion if there was another reason.

Despite the court’s assurances to the contrary, it expanded mandamus review in Texas and left open the possibility of mandamus review for other traditionally insulated trial court activities. It looked askance at legislative intent, bypassed the normal rules for overturning precedent, and misapplied the abuse of discretion standard of review. The decision created a vague, uncertain standard for the reason a trial court must give when it orders a new trial. And it created the strong possibility of the further expansion of mandamus to allow review of a trial court’s reason for granting a new trial. The court should pursue more traditional rule-making or legislative avenues to accomplish its goals: fiat prout fieri consuevit, nil temere novandum—let it be done as it is normally done and make no change rashly.

52 Columbia, 290 S.W.3d at 214–15.