No. 13-24-00042-CV

In the Thirteenth Court of Appeals
Corpus Christi–Edinburg, Texas

IN RE SPACE EXPLORATION TECHNOLOGIES CORP.
AND LAUREN KREUGER

ORIGINAL PROCEEDING FROM CAUSE NO. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

REAL PARTIES IN INTEREST JOSE RUIZ'S AND HUMBERTO GARCIA'S MOTION TO ABATE

TO THE HONORABLE THIRTEENTH COURT OF APPEALS:

Real Parties in Interest Jose Ruiz and Humberto Garcia file this motion to abate and respectfully show in support:

On January 11, 2024, Relators filed their petition for writ of mandamus challenging the issuance of a new trial order entered by the Honorable David A. Sanchez on December 12, 2023. On January 12, 2024, this Court requested a response be filed by January 22, 2024.

The first ground for Relators' petition is that the new trial order signed by the trial court is facially invalid because it does not sufficiently explain the reasons for granting the new trial. While the trial court's order articulates a legally valid reason

for granting a new trial, i.e., incurable jury argument, the order fails to refer to record support for its conclusion or to specify the arguments it found were incurable.

Texas Rule of Appellate Procedure 44.4 authorizes this Court to abate this proceeding to allow the trial court to issue a new order that specifically states the reasons for granting the new trial. It provides:

(a)   Generally. A court of appeals must not affirm or reverse a judgment or dismiss an appeal if:

(1)   the trial court's erroneous action or failure or refusal to act prevents the proper presentation of a case to the court of appeals; and

(2)   the trial court can correct its action or failure to act.

(b)   Court of Appeals Direction if Error Remediable. If the circumstances described in (a) exist, the court of appeals must direct the trial court to correct the error. The court of appeals will then proceed as if the erroneous action or failure to act had not occurred.

TEX. R. APP. P. 44.4; *see Bella Palma, LLC v. Young*, 601 S.W.3d 799, 801 (Tex. 2020) (allowing abatement to clarify intent of trial court's order); *Green v. State*, 906 S.W.2d 937, 940 (Tex. Crim. App. 1995) (abating appeal and directing trial court to issue statutorily required findings of fact and conclusions of law); *Gonzalez v. Gonzalez*, No. 13-20-00532-CV, 2022 WL 2163881, at *3 (Tex. App.—Corpus Christi–Edinburg June 16, 2022, pet. denied) (mem. op.) (noting court abated appeal to allow trial judge to clarify final judgment); *Stevens v. State*, No. 08-14-00042-CR, 2016 WL 3563977, at *1 (Tex. App.—El Paso June 29, 2016, pet. ref'd) (mem. op.;

not designated for publication) (noting court abated appeal to allow "the trial court to consider whether it should correct" its new trial orders); *In re A.P.*, No. 07-10-00481-CV, 2011 WL 780525, at *3 (Tex. App.—Amarillo Mar. 7, 2011, Order) (abating to allow trial court to determine whether orders accurately reflected court's decision and whether orders could be corrected).

Because this Court is tasked with a merits-based review of the trial court's order, good cause exists to abate this original proceeding to allow the trial court to amend its order to provide a sufficient explanation for its grant of a new trial. *See In re Rudolph Automotive, LLC*, 674 S.W.3d 289, 301 (Tex. 2023) (orig. proceeding) (order that provides no basis for parties and appellate court to confirm court's determination was the result of careful assessment of actual evidence in case is conclusory).

Sarah Durham, counsel for Real Party in Interest Hector Garcia, Jr., has indicated she is not opposed to the relief requested in this motion. The undersigned counsel has also conferred with counsel for Relators, who stated they are opposed to an abatement. Counsel for Relators suggested that instead, the undersigned counsel should simply ask the Court to issue the extraordinary writ of mandamus against the trial court, which pursuant to the Rules of Appellate Procedure, would require this Court to issue a full written opinion. TEX. R. APP. P. 52.8(d). And the result would be to order the trial court to issue a revised order stating the reasons for granting a

new trial, followed by another mandamus proceeding challenging the reasons stated in the revised order. *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204, 215 (Tex. 2009) (orig. proceeding) (directing trial court to "specify the reasons it refused to enter judgment on the jury verdict and ordered a new trial as to Columbia"); *see, e.g., In re Kirby Offshore Marine Operating, LLC,* No. 13-22-00377-CV, 2023 WL 3568902, at *3 (Tex. App.—Corpus Christi–Edinburg May 19, 2023, orig. proceeding) (mem. op.) (second mandamus proceeding after court amended new trial order at Real Party In Interest's request). In the interest of efficiency and judicial economy, this Court should instead abate this proceeding for 30 days to allow the trial court time to craft a revised order, and then proceed as directed in Texas Rule of Appellate Procedure 44.4. *See Meachum v. State*, 273 S.W.3d 803, 806 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (holding abatement was a more efficient remedy).

For the foregoing reasons, Real Parties in Interest respectfully request that the Court abate this proceeding and instruct the trial court to amend the new-trial order to state sufficient explanation for its reason granting a new trial.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that I conferred with William Peterson and D. Alan Erwin, Counsel

for Relators, who advised that Relators oppose the relief requested in this Motion.

Counsel for Real Party in Interest Hector Garcia, Jr. is not opposed to the relief

requested in this Motion.

/s/ *Brandy Wingate Voss*
Brandy Wingate Voss

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