



**NUMBER 13-24-00042-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**IN RE SPACE EXPLORATION TECHNOLOGIES CORP.  
AND LAUREN KRUEGER**

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**ON PETITION FOR WRIT OF MANDAMUS**

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**MEMORANDUM OPINION**

**Before Justices Longoria, Silva, and Peña  
Memorandum Opinion by Justice Longoria<sup>1</sup>**

Relators Space Exploration Technologies Corp. (Space) and Lauren Krueger filed a petition for writ of mandamus asserting that the trial court<sup>2</sup> abused its discretion in granting a new trial because its new trial order lacks a sufficient explanation for the ruling

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<sup>1</sup> See TEX. R. APP. P. 52.8(d) (“When denying relief, the court may hand down an opinion but is not required to do so. When granting relief, the court must hand down an opinion as in any other case.”); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

<sup>2</sup> This original proceeding arises from trial court cause number 2020-DCL-03939 in the 444th District Court of Cameron County, Texas, and the respondent is the Honorable David Sanchez. See *id.* R. 52.2.

and because there is no valid basis to grant a new trial. We deny the petition for writ of mandamus without prejudice.

## I. BACKGROUND

As relevant here, real parties in interest Jose Ruiz, Hector Garcia Jr. (Garcia Jr.), and Humberto Garcia filed suit against relators for personal injuries sustained in an automobile accident. The case was submitted to a jury which found that Krueger was negligent but was not acting within the course and scope of her employment with Space at the time of the accident. The jury awarded \$73,500 to Ruiz, \$40,000 to Garcia, and \$10,000 to Garcia Jr. The trial court entered judgment in accordance with the jury's verdict. Ruiz and Garcia thereafter filed a motion for new trial premised on improper argument and they requested to supplement the record with demonstrative graphics used at trial. Ruiz and Garcia argued, *inter alia*, that counsel for relators attacked the integrity of real parties' counsel, questioned lay witnesses regarding the legal basis for their claims, and argued that the case was "an attorney-driven 'shakedown.'" Relators filed a response to the motion for new trial asserting that "the arguments of defense counsel during closing were proper because they were supported by the evidence" and that the real parties had not shown that the jury based its verdict on the allegedly improper arguments. After holding a hearing, the trial court granted the motion for new trial. The new trial order states merely that "the incurable arguments by defense counsel more likely than not caused the rendition of the subject verdict."

This original proceeding ensued. By two issues, relators assert that (1) the order granting a new trial does not contain a sufficient explanation, including valid reasons

supported by the record, and (2) relators' closing argument—"which addressed evidence (admitted without objection) that [real parties] followed their former lawyer's 'plan' and orders in seeking medical treatment from doctors their lawyer selected" was not improper, and if so, it was not an incurable argument that justified a new trial.

We have requested but have not received responses to the petition for writ of mandamus from the real parties in interest, and the real parties in interest have filed motions for extension of time to file their responses. See TEX. R. APP. P. 52.4, 52.8(b). Instead, Ruiz and Garcia have filed a motion to abate this original proceeding. They assert that the new trial order "articulates a legally valid reason for granting a new trial, i.e., incurable jury argument, [but] the order fails to refer to record support for its conclusion or to specify the arguments it found were incurable." They request that we abate this original proceeding "to allow the trial court to issue a new order that specifically states the reasons for granting the new trial." Ruiz and Garcia argue that abatement is authorized by Texas Rule of Appellate Procedure 44.4, and good cause for the abatement is shown because this Court "is tasked with a merits-based review of the trial court's order." See *id.* R. 44.4. Ruiz and Garcia assert that if we do not abate this original proceeding, we would be required to issue a full written opinion, then address a second petition for writ of mandamus challenging the reasons stated in the revised new trial order. They thus contend that we should abate this petition for writ of mandamus for purposes of efficiency and judicial economy.

This Court requested and received responses to the motion to abate from Garcia Jr. and relators. Garcia Jr. "agrees with and joins" the motion to abate "because the

reasons cited in the motion are legally and practically sound,” although he does not concede that the new trial order is facially invalid. Relators oppose abatement and argue that this Court should hold both that the trial court’s explanation for granting a new trial was insufficient and that the stated ground for a new trial, incurable argument, is not valid.

Ruiz and Garcia have filed a reply in support of their motion to abate. In summary, they assert that relators have provided an inadequate record insofar as they have not filed the real parties’ trial exhibits, and the exhibits that they have filed “are not part of an exhibit index certified by the court reporter, nor are they signed and dated by the court reporter.” They assert that abatement, rather than denial of mandamus relief, would best serve the parties and judicial efficiency and economy. Garcia Jr. has filed an additional pleading stating that he is in agreement with these contentions.

## II. MANDAMUS

Mandamus is an extraordinary and discretionary remedy. *See In re Allstate Indem. Co.*, 622 S.W.3d 870, 883 (Tex. 2021) (orig. proceeding); *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004) (orig. proceeding). The relator must show that (1) the trial court abused its discretion, and (2) the relator lacks an adequate remedy on appeal. *In re USAA Gen. Indem. Co.*, 624 S.W.3d 782, 787 (Tex. 2021) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 135–36; *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). “The relator bears the burden of proving these two requirements.” *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam); *Walker*, 827 S.W.2d at 840.

“A writ of mandamus shall issue to correct a clear abuse of discretion committed by a trial court in granting a new trial.” *In re Whataburger Rests., LP*, 429 S.W.3d 597, 598 (Tex. 2014) (orig. proceeding) (per curiam); see *In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d 746, 757–58 (Tex. 2013) (orig. proceeding); *In re United Scaffolding, Inc.*, 377 S.W.3d 685, 689 (Tex. 2012) (orig. proceeding). In such a case, the relator lacks an adequate remedy by appeal. *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204, 209–10 (Tex. 2009) (orig. proceeding).

### III. NEW TRIALS

Because the Texas Constitution guarantees the right to trial by jury, the trial court’s authority to grant a new trial is not “unfettered.” *In re Bent*, 487 S.W.3d 170, 175 (Tex. 2016) (orig. proceeding); see TEX. CONST. art. I, § 15. We employ a two-tier analysis to determine whether a trial court has abused its discretion in granting a new trial. See *In re Rudolph Auto., LLC*, 674 S.W.3d 289, 301 (Tex. 2023) (orig. proceeding); *In re Hightower*, 580 S.W.3d 248, 253 (Tex. App.—Houston [14th Dist.] 2019, orig. proceeding [mand. denied]). First, we examine the facial validity of the order granting a new trial. See *In re Bent*, 487 S.W.3d at 173. An order granting a new trial must provide “an understandable, reasonably specific explanation why [the parties’] expectations are frustrated by a jury verdict being disregarded or set aside, the trial process being nullified, and the case having to be retried.” *Id.* at 175–76 (quoting *In re Columbia Med. Ctr.*, 290 S.W.3d at 213). Further, the order must state a legally appropriate reason for the new trial. *Id.* at 173. Second, we perform a merits-based review of the trial court’s articulated reasons for granting a new trial. See *In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d at 758; see

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