



NUMBER 13-20-00238-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE PEDRO S. MONTANO

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Longoria¹**

Relator Pedro S. Montano filed a second amended petition for writ of mandamus in the above cause through which he asserts that the trial court abused its discretion by granting a motion for new trial filed by the real party in interest, Jose Humberto Garcia Cubria, because (1) Cubria failed to establish meritorious grounds for a new trial or reinstatement; and (2) Cubria's motion for new trial did not "recite the threshold elements necessary for a new trial." The trial court's order granting Cubria's first amended motion

¹ 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).

for new trial set aside a summary judgment in Montano's favor on his claims for declaratory judgment, rescission of contract, breach of contract, statutory fraud, common law fraud, conversion, and a request for attorney's fees. The new trial order states that Cubria failed to receive notice of the motion for summary judgment or notice of the hearing date for the motion for summary judgment. This Court requested and received a response to the petition for writ of mandamus from Cubria. See TEX. R. APP. P. 52.2, 52.4, 52.8.

Mandamus is both an extraordinary remedy and a discretionary one. *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam). For mandamus to issue, the relator must show that the trial court abused its discretion and that no adequate appellate remedy exists to cure the error. *In re N. Cypress Med. Ctr. Operating Co.*, 559 S.W.3d 128, 130 (Tex. 2018) (orig. proceeding); *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Garza*, 544 S.W.3d at 840; *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re H.E.B. Grocery Co.*, 492 S.W.3d at 304; *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding) (per curiam); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding).

The trial court has discretion to grant a new trial for “good cause,” however this discretion has limits. *In re Davenport*, 522 S.W.3d 452, 456 (Tex. 2017) (orig. proceeding); see TEX. R. CIV. P. 320; *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204, 210 (Tex. 2009) (orig. proceeding). An appellate court may by mandamus direct a trial court to vacate a new trial order in one of three ways: (1) when a merits-based review of the record establishes that the trial court abused its discretion, (2) when the trial court’s order was void, or (3) when the trial court erroneously finds that the jury’s answers to special issues are irreparably conflicting. *In re Davenport*, 522 S.W.3d at 456; *In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d 746, 758–59 (Tex. 2013) (orig. proceeding). However, this court and others have generally not applied mandamus review to new trial orders following non-jury dispositions. See *In re FDB Pools, Inc.*, 541 S.W.3d 391, 394–95 (Tex. App.—Amarillo 2018, orig. proceeding) (per curiam) (declining mandamus relief while assuming, but not deciding, that principles regarding new trial review by mandamus “are even applicable to a new trial in a default judgment entered by a trial court after a bench trial”); see also *In re PandaLand Holding (HK) Ltd.*, No. 05-19-01259-CV, 2020 WL 255685, at *1 (Tex. App.—Dallas Jan. 17, 2020, orig. proceeding) (mem. op.) (denying mandamus review); *In re Amaya*, No. 08-18-00192-CV, 2018 WL 6039697, at *1 (Tex. App.—El Paso Nov. 19, 2018, orig. proceeding) (mem. op.) (same); *In re J.C.*, No. 14-18-00904-CV, 2018 WL 5797366, at *2 (Tex. App.—Houston [14th Dist.] Nov. 6, 2018, orig. proceeding) (per curiam) (mem. op.) (same); *In re Procesos Especializados en Metal, S.A. de C.V.*, No. 04-14-00543-CV, 2014 WL 4347724, at *3 (Tex. App.—San Antonio Sept. 3, 2014, orig. proceeding [mand. denied]) (mem. op.) (same); *In re Old Am. Cnty. Mut. Fire Ins. Co.*, No. 13–13–00644–CV, 2014 WL 1633098,

*11 (Tex. App.—Corpus Christi—Edinburg Apr. 23, 2014, orig. proceeding) (mem. op.) (same). These cases have generally considered that the “exceptional circumstances” that support mandamus review is not present in non-jury cases. See *In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d at 748–49 (“Without . . . an explanation [for setting aside a jury verdict and granting a new trial], parties in the case can only speculate about why the court ostensibly circumvented a critical constitutional right.”); see *id.* at 762–63 (Lehrmann, J. concurring) (noting that concerns regarding transparency in setting aside a jury verdict are not present with regard to orders issued after bench trials); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136 (stating that mandamus review of incidental, interlocutory rulings “unduly interferes with trial court proceedings, distracts appellate court attention to issues that are unimportant both to the ultimate disposition of the case at hand and to the uniform development of the law, and adds unproductively to the expense and delay of civil litigation”).

The Court, having examined and fully considered the second amended petition for writ of mandamus, the response, and the applicable law, is of the opinion that the relator has failed to meet his burden to obtain mandamus relief. Accordingly, we deny the petition for writ of mandamus.

NORA L. LONGORIA
Justice

Delivered and filed this
20th day of July, 2020.