

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

In re Arturo Perez and Texas Materials Group, Inc.

No. 04-25-00617-CV (Tex. App.—San Antonio June 24, 2026) · No. 04-25-00617-CV · Decided June 24, 2026

SUMMARY

The Fourth Court of Appeals of Texas conditionally granted mandamus relief after concluding that the trial court abused its discretion by setting aside a unanimous defense verdict and granting a new trial. The appellate court held that the parties' right-of-way stipulation did not establish negligence as a matter of law, that the evidence regarding the traffic officer and proximate cause was disputed, and that the asserted evidentiary grounds were either unpreserved or contradicted by the record. The trial court was directed to vacate its new-trial order and enter judgment based on the jury's verdict.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Lori I. Valenzuela; Irene Rios; Lori Massey Brissette
JURISDICTION	Fourth Court of Appeals of Texas, San Antonio
DECIDED	June 24, 2026
DOCKET	04-25-00617-CV
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original mandamus proceeding challenging the trial court's order granting Rios's motion for new trial and setting aside a unanimous take-nothing jury verdict.
STANDARD OF REVIEW	Mandamus requires the relator to show that the trial court clearly abused its discretion and that the relator lacks an adequate remedy by appeal. Review of an order granting a new trial extends to the underlying merits of the articulated reasons, including whether those reasons are legally erroneous or unsupported by the record.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Arturo Perez, Texas Materials Group, Inc. v. Brandon C. Rios

TOPICS

- writ of certiorari
- appellate procedure
- standard of review
- preservation of error
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

personal injury

negligence

remedies

QUESTIONS PRESENTED

1. Whether the trial court clearly abused its discretion by granting a new trial on the ground that the jury's verdict was contrary to the great weight and preponderance of the evidence.
2. Whether the right-of-way stipulation established Perez's negligence or proximate cause as a matter of law.
3. Whether alleged evidentiary error concerning an undesignated traffic officer could support a new-trial order when Rios did not make a contemporaneous substantive objection and introduced or developed the same evidence.
4. Whether relators lacked an adequate remedy by appeal from the erroneous new-trial order.

HOLDINGS

1. A new-trial order cannot stand when its articulated factual basis is contradicted by the trial record and its legal premise is invalid. The trial court clearly abused its discretion by characterizing the evidence as overwhelming and undisputed when the evidence on negligence and proximate cause was sharply disputed.
2. A stipulation that the plaintiff's vehicle had the right-of-way, together with the occurrence of a collision, does not establish negligence as a matter of law and does not establish proximate cause or causation of a particular injury.
3. A new-trial order may not rest on alleged trial error that was not preserved. When evidence is admitted without a contemporaneous objection, any error is waived and cannot support a new trial; a motion in limine alone generally does not preserve error.
4. A party may not obtain a new trial based on evidence that the party itself introduced or developed, or to which the party later allowed the same or similar evidence without objection.
5. Relators lack an adequate remedy by appeal when an erroneous new-trial order sets aside a unanimous jury verdict and forces the parties to undergo a second trial.

KEY QUOTATIONS

“Disregarding a jury’s verdict “is an unusually serious act that imperils a constitutional value of immense importance—the authority of a jury.”” (at 5)

“A new trial order cannot rest on error that was not preserved.” (at 9)

“If evidence is thereafter admitted at trial without objection, any error is waived and is not a valid basis for a new trial.” (at 9)

“A party on appeal should not be heard to complain of the admission of improper evidence offered by the other side, when he, himself, introduced the same evidence or evidence of a similar character.” (at 10)

“We conditionally grant the petition for writ of mandamus.” (at 13)

FACTUAL BACKGROUND

Rios was injured when a vehicle in which he was riding collided with a dump truck operated by Perez while the truck was exiting a construction zone and merging onto a roadway. Two off-duty officers were directing traffic, and the trial evidence disputed whether Perez reasonably interpreted the flagger's signals as permitting him to proceed. The parties stipulated to Perez's employment relationship, the construction-zone setting, Rios's vehicle's right-of-way, and TMG's vicarious responsibility for any negligence by Perez, but did not stipulate to negligence, proximate cause, or causation of a specific injury. After a two-week trial, the twelve-member jury returned a unanimous take-nothing verdict.

PROCEDURAL HISTORY

After a two-week jury trial, the jury unanimously found that Perez's negligence did not proximately cause Rios's injury, and the trial court signed a take-nothing final judgment. The trial court later granted Rios's motion for new trial based on factual sufficiency and alleged improper presentation of an undesignated responsible-third-party defense. Perez and TMG petitioned for mandamus relief, arguing that the new-trial order was legally invalid, unsupported by the record, and not based on preserved error. The court of appeals conditionally granted mandamus.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court must vacate its July 2, 2025 order granting a new trial and sign a final judgment based on the jury's unanimous verdict. The writ will issue only if the court of appeals is advised that the trial court has not complied within fifteen days of the opinion.

CASES CITED

- In re Toyota Motor Sales, U.S.A., Inc., 407 S.W.3d 746 (Tex. 2013) (orig. proceeding)
- In re Reece, 341 S.W.3d 360, 364 (Tex. 2011) (orig. proceeding)
- In re Prudential Ins. Co. of Am., 148 S.W.3d 124, 135-37 (Tex. 2004) (orig. proceeding)
- Walker v. Packer, 827 S.W.2d 833, 840 (Tex. 1992)
- In re Ill. Nat'l Ins. Co., 685 S.W.3d 826, 835 (Tex. 2024)
- In re Facebook, Inc., 625 S.W.3d 80, 86 (Tex. 2021) (orig. proceeding)
- In re Space Expl. Techs. Corp., 716 S.W.3d 576, 581-84 (Tex. 2025) (per curiam) (orig. proceeding)
- In re Rudolph Auto., LLC, 674 S.W.3d 289, 298 n.5, 301-02, 307 (Tex. 2023) (orig. proceeding)
- In re United Scaffolding, Inc., 377 S.W.3d 685, 689 (Tex. 2012)
- Catholic Diocese of El Paso v. Porter, 622 S.W.3d 824, 833 (Tex. 2021)
- Dillard v. Tex. Elec. Co-op., 157 S.W.3d 429, 433 (Tex. 2005)

- Venegas v. Argueta, No. 01-20-00285-CV, 2021 WL 1679543, at *3 (Tex. App.—Houston [1st Dist.] Apr. 29, 2021, no pet.)
- Middleton v. Palmer, 601 S.W.2d 759, 765 (Tex. App.—Dallas 1980, writ ref'd n.r.e.)
- Williams v. Mutia, No. 01-19-00340-CV, 2021 WL 3729312, at *5-7 (Tex. App.—Houston [1st Dist.] Aug. 24, 2021, no pet.)
- Melvin v. Jimenez, No. 04-00-00746-CV, 2002 WL 21963, at *1 (Tex. App.—San Antonio Jan. 9, 2002, no pet.)
- In re Ellis, No. 04-25-00052-CV, 2025 WL 1949741, at *5-7 (Tex. App.—San Antonio July 16, 2025, no pet.)
- Givens v. Anderson Columbia Co., 608 S.W.3d 65, 70 (Tex. App.—San Antonio 2020, pet. denied)
- Lozada v. Posada, 718 S.W.3d 262, 267 (Tex. 2025) (per curiam)
- Osterberg v. Peca, 12 S.W.3d 31, 55 (Tex. 2000)
- In re Spotted Lakes, LLC, No. 04-23-00815-CV, 2024 WL 463348, at *4 (Tex. App.—San Antonio Feb. 7, 2024, orig. proceeding)
- Pool v. Ford Motor Co., 715 S.W.2d 629, 637 (Tex. 1986)
- GTE Sw., Inc. v. Bruce, 998 S.W.2d 605, 619 (Tex. 1999)
- Sw. Elec. Power Co. v. Burlington N. R.R., 966 S.W.2d 467, 473 (Tex. 1998)
- McInnes v. Yamaha Motor Corp., 673 S.W.2d 185, 188 (Tex. 1984)
- Volkswagen of Am., Inc. v. Ramirez, 159 S.W.3d 897, 907 (Tex. 2004)
- In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P., 290 S.W.3d 204, 209-10 (Tex. 2009) (orig. proceeding)

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