



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-09-00007-CV

IN THE ESTATE OF IVOR D. BYFORD, DECEASED

On Appeal from the 294th Judicial District Court
Van Zandt County, Texas
Trial Court No. 01-00315

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

MEMORANDUM OPINION

_____A jury found that Nona Parkerson exercised undue influence over Ivor D. Byford and that Byford did not have testamentary capacity to execute a will in 2000 naming Parkerson executrix and sole heir of Byford's estate. It further found that Parkerson did not act in good faith in defending the 2000 will. As a result, the trial court probated Byford's 1997 will. Parkerson appeals the trial court's judgment and argues that there was no evidence of undue influence, that Byford lacked testamentary capacity, and that the "overwhelming" and "uncontroverted" evidence conclusively established Byford had testamentary capacity and was not unduly influenced when executing the 2000 will. Because we find that Parkerson failed to preserve these arguments, we overrule her points of error and affirm the trial court's judgment.

The "cardinal rule for preserving error is that an objection must be clear enough to give the trial court an opportunity to correct it." *Arkoma Basin Exploration Co. v. FMF Assocs. 1990-A, Ltd.*, 249 S.W.3d 380, 387 (Tex. 2008); *see* TEX. R. CIV. P. 321 ("Each point relied upon in a motion for new trial . . . shall briefly refer [to the relevant trial proceeding] in such a way that the objection can be clearly identified and understood by the court."). A motion for new trial is a prerequisite to a complaint on appeal that the evidence is factually insufficient to support the jury's findings or that the findings are against the great weight of the evidence. TEX. R. CIV. P. 324. While this rule "does not expressly require a motion for new trial to complain of legal sufficiency in a jury trial, the Supreme Court has imposed such a requirement if the error has not been otherwise preserved."

Ramirez v. State, 973 S.W.2d 388, 390 (Tex. App.—El Paso 1998, no pet.) (citing *Aero Energy, Inc. v. Circle C Drilling Co.*, 699 S.W.2d 821, 822 (Tex. 1985)). In order to preserve a "no-evidence" point of error, it must first be presented to the trial court in: (1) a motion for instructed verdict; (2) a motion for judgment notwithstanding the verdict; (3) an objection to the submission of the issue to the jury; (4) a motion to disregard the jury's answer to a vital fact issue; or (5) a motion for new trial. *Steves Sash & Door Co. v. Ceco Corp.*, 751 S.W.2d 473, 477 (Tex. 1988).

Judicial economy requires that a trial court have the opportunity to correct an error before an appeal proceeds. *In re C.O.S.*, 988 S.W.2d 760, 765 (Tex. 1999). The purpose of a motion for new trial is to provide the trial court with such an opportunity. *Gerdes v. Kennamer*, 155 S.W.3d 523, 532 (Tex. App.—Corpus Christi 2004, pet. denied). For this reason, Rule 322 of the Texas Rules of Civil Procedure prohibits generality in motions for new trial. "Grounds of objections couched in general terms—as . . . the verdict of the jury is contrary to law, and the like—shall not be considered by the court." TEX. R. CIV. P. 322. Consequently, a motion for new trial is deficient if it merely states that the verdict is not supported by the evidence or is contrary to the evidence. *White v. Wadlington*, 78 Tex. 159, 14 S.W. 296 (1890) (finding grounds on which claim that "the verdict is contrary to the evidence" should be distinctly stated); *Murphy v. Maroney*, 456 S.W.2d 787, 788 (Tex. Civ. App.—Waco 1970, writ ref'd n.r.e.) ("The assignments in the prerequisite motion for new trial are that 'the verdict is contrary to the evidence,' and 'there is insufficient evidence' or 'no evidence' to support the verdict of the jury and the judgment. The assignments are too general to be

considered."); *Barton v. Davis*, 441 S.W.2d 299, 301 (Tex. Civ. App.—Beaumont 1969, writ ref'd n.r.e.) ("The point that the trial court committed error in failing to grant the defendant a new trial on the ground that the verdict of the jury had insufficient evidence to support the findings of the jury . . . was too broad a point or attempted assignment to merit consideration."); *Kolancy v. Pelech*, 201 S.W.2d 257, 259 (Tex. Civ. App.—Galveston 1947, no writ) (Appellant waived the points of error after noting "his quoted points on this feature amount to no more than saying that the judgment of the trial court was not supported by the evidence. In jury trial our authorities, with one voice, condemn such generalities."); 54 TEX. JUR.3D *New Trial* § 129 (2009); see also *Arkoma Basin Exploration Co.*, 249 S.W.3d at 387 (a single objection to all jury answers is too general); *Tex. Midland R.R. v. Johnson*, 20 Tex. Civ. App. 572, 50 S.W. 1044 (1899) ("The motion for new trial only states 'the evidence does not support the verdict,' and is too general to require notice.").¹

¹In *Arkoma Basin Exploration Co.*, the Texas Supreme Court recently held that a motion for new trial stating, "there is no evidence . . . to support the jury's answers to each part of Question 4," which was a damages question, was sufficient to preserve the issue of legal and factual sufficiency on appeal. *Arkoma Basin Exploration Co.*, 249 S.W.3d at 387. *Arkoma Basin Exploration Co.* is easily distinguished from our case. Here, the jury was presented with a question of Parkerson's good faith in defending the will in addition to questions of undue influence and testamentary capacity. While in *Arkoma* the motion for new trial was addressed to each individual section of the damages question, the trial court in this case was not in a position to determine whether Parkerson's complaint was directed to one or all questions answered by the jury. *Id.* *Arkoma Basin Exploration Co.* further pointed out that if a single jury question involves many issues, it is possible that a general objection may not tell the court where to start. *Id.* at 388. Additionally, the trial court in *Arkoma Basin Exploration Co.* conducted a post-trial hearing on the sufficiency of the damages evidence and wrote a letter granting remittitur. *Id.* at 387–88. With this in mind, the Texas Supreme Court reasoned "there is no question the trial court was aware of [Arkoma's] objection." *Id.* at 388. Thus, while *Arkoma Basin Exploration Co.* contains language that a post-trial "objection is not necessarily inadequate because it does not specify every reason the evidence was insufficient," and recites the

In this case, Parkerson attempted to preserve error by filing a motion for new trial. In its entirety, the operative portion of the motion states "[t]hat the evidence at trial does not support the jury's verdict and the judgment based thereon." This general statement is deficient because it does not specify whether it is based on legal or factual sufficiency, whether the motion is directed toward all jury issues or specific ones, and therefore preserves nothing for our review.² *Gerdes*, 155 S.W.3d at 533–34 (overruling general challenges); see *Christus Health/St. Joseph Hosp. v. Price*, No. 01-05-00210-CV, 2007 WL 1500854, at *3–4 (Tex. App.—Houston [1st Dist.] May 24, 2007, no pet.) (mem. op.); *Steves*, 751 S.W.2d at 477 ("while Steves did object to issue nine, the objection was not a 'no evidence' or 'legal insufficiency' objection"); *Marino v. Hartsfield*, 877 S.W.2d 508, 512–13 (Tex. App.—Beaumont 1994, writ denied).

rule that "specificity of post-trial objections should be construed liberally," the application of these principles in this case leads to a different result. *Id.* at 388 n.26 (citing *Clarendon Land Inv. v. McClelland*, 86 Tex. 179, 23 S.W. 1100, 1103 (1893)) ("What shall be a sufficiently special assignment of error is not susceptible of precise definition," but "remains to be determined upon the particular circumstances of each case.").

²We note that a response to the motion for new trial pointed out that Parkerson did "not allege whether the evidence was factually insufficient or legally insufficient and direct[ed] her complaint to no specific finding," in violation of Texas Rules of Civil Procedure. Yet, no response or attempt to remedy the generalities in the motion for new trial was made.

Thus, we affirm the trial court's judgment.

Jack Carter
Justice

Date Submitted: June 19, 2009
Date Decided: June 25, 2009