

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-08-318 CV

IN RE E.I. DUPONT DE NEMOURS AND COMPANY

Original Proceeding

MEMORANDUM OPINION

In this petition for writ of mandamus, relator E.I. DuPont de Nemours and Company (“DuPont”) contends the trial court abused its discretion by granting a motion for new trial filed by the plaintiffs/real parties in interest after a jury rendered a verdict in relator’s favor in the underlying proceeding. In their motion for new trial, plaintiffs argued two bases for granting a new trial: that the jury’s failure to find DuPont negligent was against the great weight and preponderance of the evidence, and that the jury was potentially influenced by a local publication’s coverage of the trial.

Specifically, relator argues the trial court abused its discretion by failing to state in its order its reason for granting a new trial, and that on this record, neither of the plaintiffs’

asserted bases for new trial was sufficient to justify a new trial. Under the Texas Rules of Civil Procedure, a trial judge has broad discretion to grant a motion for new trial. *See* TEX. R. CIV. P. 320 (“New trials may be granted and judgment set aside for good cause, on motion or on the court’s own motion on such terms as the court shall direct.”). The Texas Supreme Court has stated that generally “an appellate court will not review by mandamus an action of the trial court granting a new trial while it still has jurisdiction of the cause. The discretion and judgment of the trial court in granting a new trial cannot be controlled or directed by mandamus.” *Johnson v. Court of Civil Appeals for the Seventh Supreme Judicial Dist.*, 162 Tex. 613, 350 S.W.2d 330, 331 (Tex. 1961). While exceptions to the general rule exist, DuPont does not demonstrate that they are similar to the circumstances upon which the trial court exercised its discretion here. *See id.* In light of the Texas Supreme Court’s precedent, we deny the petition for writ of mandamus.

PETITION DENIED.

PER CURIAM

Opinion Delivered July 24, 2008
Before McKeithen, C.J., Kreger and Horton, JJ.