Conditionally Granted and Opinion Filed January 14, 2026

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-25-00205-CV

IN RE PILLAR INCOME ASSET MANAGEMENT, INC.; TRANSCONTINENTAL REALTY INVESTORS, INC.; AMERICAN REALTY INVESTORS, INC.; WINTER SUN MANAGEMENT, INC.; H198, LLC; TRIAD REALTY SERVICES, LTD.; REGIS REALTY PRIME, LLC; CHICKORY I, L.P.; LONGFELLOW ARMS APARTMENTS, LTD.; AND VISTAS OF VANCE JACKSON, LTD., Relators

Original Proceeding from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-13-13354

MEMORANDUM OPINION

Before Justices Clinton, Lewis, and Barbare
Opinion by Justice Lewis

Relators filed a petition for writ of mandamus to challenge the trial court's order granting a new trial based on incurable jury argument.[1] Relators assert that

[1] Relators are a group of trial defendants: Pillar Income Asset Management, Inc. (Pillar); Transcontinental Realty Investors, Inc. (TCI); American Realty Investors, Inc. (ARI); Winter Sun Management, Inc. (Winter Sun); H198, LLC (H198); Triad Realty Services, Ltd. (Triad); Regis Realty Prime, LLC (Regis); Chickory I, L.P. (Chickory); Longfellow Arms Apartments, Ltd. (Longfellow); and Vistas of Vance Jackson, Ltd. (Vistas).

Additional trial defendants TRA Midland Properties, LLC (TRA Midland), Midland Residential Investment, LLC (MRI), and TRA Apt West TX (TRA Apt) filed a response to relators' petition, characterized themselves as "interested parties," and "join[ed] and adopt[ed] the arguments and authorities" in the petition with respect to the order granting a new trial. *See* TEX. R. APP. P. 9.7.

the complained-of arguments were curable, but real parties in interest did not object and request curative instructions, and therefore, the trial court abused its discretion in granting the new trial. After reviewing the petition, the responses, the reply, and the record, we agree. Therefore, we conditionally grant the petition for writ of mandamus.

BACKGROUND

I. The Parties and the Suit

The real parties in interest are Renate Nixdorf GmbH & Co. KG (RNK) and Watercrest Partners, L.P. (WP). In December 2010, RNK obtained a $48.75 million judgment against Eric Brauss, and WP obtained a $300,000 judgment against Brauss's ex-wife, Christine Brauss Martin. Brauss and Martin were involved in real estate and owned an interest in TRA Midland, which in turn owned twenty-one apartment complexes (the Properties).

In November 2013, RNK and WP sued Pillar and others for violations of the Texas Uniform Fraudulent Transfer Act (TUFTA). TEX. CIV. PRAC. & REM. CODE §§ 24.001–.013. They alleged in part that: (1) in 2009, Brauss and Martin assigned their interests in TRA Midland to MRI for no reasonably equivalent value; (2) in 2012, MRI sold the Properties to Midland Investors, LLC (Midland Investors) in a sale that netted $40.7 million;[2] (3) MRI directed Midland Investors to pay the sale proceeds to Pillar; and (4) Pillar distributed most of the sale proceeds to other entities

[2] Midland Investors was dismissed as a named defendant after a settlement.

(the Subsequent Transferees)[3] and distributed the remainder to Pillar's creditors. In essence, real parties alleged that the defendants structured the asset transfers to hinder, defraud, and avoid satisfaction of the prior judgments against Brauss and Martin.

The TUFTA case finally went to a jury trial in February 2023, almost ten years after it was filed. Todd Harlow represented real parties. Stephen Khoury represented TRA Midland, TRA Apt, and MRI. Gregory Shamoun represented most relators and most of the Subsequent Transferees. Brian Lauten was counsel for two relators (Triad and Regis).[4]

During the multi-week trial, there were numerous tense exchanges between counsel and witnesses, and they resulted in several admonishments by the trial court.[5] During deliberations, the jury sent out four notes. The jury later returned a mixed verdict: it found in favor of real parties and against Khoury's client(s) and awarded more than $25 million in damages.[6] The jury found in favor of the other

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[3] The Subsequent Transferees are: TCI; ARI; Winter Sun; H198; Triad; Regis; Chickory; Longfellow; Vistas; Donald C. Carter; Robert T. Shaw, Sr.; and Ryan Phillips.

[4] The parties dispute whether Shamoun represented Triad and Regis during trial. The record reflects Shamoun represented Triad and Regis at voir dire, during which Shamoun made some of the comments of which real parties complain. Shamoun withdrew from representing Triad and Regis the following day, before opening statements. Real parties do not complain of trial statements or behavior by Lauten. Accordingly, our discussion is directed at conduct by Shamoun, Khoury, or both.

[5] We recount some of these exchanges in our analysis below.

[6] The parties dispute—here and at the trial court—the effect of the jury verdict and which defendants were held liable. The jury charge spanned forty pages, including twenty-eight questions, many with sub-parts. Relators contend only MRI was held liable, while real parties contend the jury found against "all three TRA Midland Defendants," i.e., TRA Midland, TRA Apt, and MRI (all Khoury's clients). We need not resolve this dispute because, at a minimum, the jury appears to have held one or more of Khoury's clients liable.

defendants, including a finding that TRA Midland did not fraudulently transfer the sale proceeds to Pillar or the Subsequent Transferees.

Real parties filed multiple post-trial motions challenging the jury's verdict, including a motion for judgment notwithstanding the verdict and a motion for new trial. The motions did not raise incurable jury argument or attorney misconduct as a basis for granting a new trial. Relators filed a motion for entry of a take-nothing judgment in August 2023. The case lingered without entry of a judgment.

II. New Trial Order

Then, in March 2024, the Fifth Circuit Court of Appeals decided *Clapper v. American Realty Investors, Inc.*, 95 F.4th 309 (5th Cir. 2024), a federal lawsuit in which Shamoun and Khoury represented some of the same defendants accused of fraudulent transfers here. The Fifth Circuit reversed the trial court's take-nothing judgment based on improper jury argument by Khoury and Shamoun.

On April 23, 2024, relying heavily on *Clapper*, real parties filed another motion for new trial here, arguing that Khoury and Shamoun made incurable jury arguments that rendered the jury's verdict improper. Relators responded, and after a hearing, the trial court issued a January 7, 2025 order setting aside the jury's verdict and granting a new trial based on incurable jury argument. In the order, the trial court found that Khoury and Shamoun:

- engaged in unsupported, extreme, and personal attacks on Mr. Harlow by repeatedly referring to him solely by his last name, calling him a "silver-tongued lawyer," and accusing him of dishonesty despite repeated admonishments;

- engaged in unsupported, extreme, and personal attacks on Dr. Stephen Grace—an expert witness for RNK and WP—including accusing him of being "bought and paid for" and willing to "say anything" for enough money;

- badgered real parties' corporate representatives and engaged in unsupported, extreme, and personal attacks on WP's corporate representative, Mr. Warren Harmel, by accusing him of bringing claims in bad faith;

- referenced matters outside the record when Shamoun referred to building schools in Africa and when Khoury read "critical deposition testimony" during closing argument that had not been introduced into evidence;

- repeatedly offered their personal opinions, including commenting on the veracity of witnesses;

- appealed to local bias when Khoury referred to speaking "Texas English"; and

- appealed to religious bias when Shamoun said he was raised Catholic and believes in telling the truth.

In the order, the trial court stated that the improper arguments were not invited or provoked, and that the conduct caused such prejudice to real parties that it could not be cured by instruction and likely caused an improper verdict.

Relators filed the instant petition for writ of mandamus, arguing that the challenged arguments of counsel were not incurable and therefore, the trial court abused its discretion by granting a new trial. Real parties filed a response, and relators replied.

STANDARD OF REVIEW

Entitlement to mandamus relief requires the relator to show that (1) the trial court clearly abused its discretion, and (2) there is no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable that it amounts to a clear and prejudicial error of law, or if the court clearly fails to correctly analyze or apply the law. *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). A trial court has no discretion in determining what the law is or in applying the law to the facts. *Id.* at 840.

There is no adequate remedy by appeal when a trial court issues an erroneous new-trial order. *In re Rudolph Auto., LLC*, 674 S.W.3d 289, 299 n.5 (Tex. 2023) (orig. proceeding). Mandamus review of new-trial orders is not limited to facial validity; we may go beyond the surface and review the merits of the court's decision to grant a new trial. *Id.* at 302.

ANALYSIS

Relators contend the trial court abused its discretion in granting a new trial based on incurable jury argument. They assert that their trial counsels' arguments, while admittedly improper, were not incurable. Real parties argue that counsels' arguments (and behavior) were incurably improper and that the trial court was well within its discretion to grant a new trial after observing the improper conduct firsthand. After reviewing the record and applying relevant precedents, we conclude

that, considered collectively or individually, the arguments were not incurable. Accordingly, the trial court clearly abused its discretion in granting a new trial based on incurable jury argument.

I. Applicable Law

A. New trials

A trial court may grant a new trial "for good cause," subject to mandamus review for clear abuse of discretion. *In re Space Expl. Techs. Corp.*, 716 S.W.3d 576, 581 (Tex. 2025) (orig. proceeding) (per curiam) (hereafter, *In re SpaceX*) (citing TEX. R. CIV. P. 320; *In re Rudolph Auto.*, 674 S.W.3d at 298–99 & n.5). However, "disregarding a jury's verdict is an unusually serious act that imperils a constitutional value of immense importance—the authority of a jury." *In re Rudolph Auto*., 674 S.W.3d at 302. "[T]o ensure that only valid reasons supported by the record underlie the new-trial order," trial courts must "reduce their rationales to writing." *Id*. at 300, 302. If the stated reasons are legally invalid, meritless, or unsupported by the record, the order is an abuse of discretion. *Id*. at 300.

B. Incurable jury argument

A litigant is entitled to have his counsel argue the facts of the case to the jury. *Dallas Police & Fire Pension Sys. v. Townsend Holdings, LLC*, No. 05-23-00099-CV, 2024 WL 5134654, at *3 (Tex. App.—Dallas Dec. 17, 2024, no pet.) (mem. op.) (citing *In re BCH Dev., LLC*, 525 S.W.3d 920, 928 (Tex. App.—Dallas 2017, orig. proceeding)). During closing argument, counsel is permitted to assert

reasonable inferences and deductions from the evidence, and hyperbole is generally a permissible rhetorical technique. *Id.* Counsel may also comment on the credibility of witnesses. *Id.* As a general principle, trial counsel should be given wide latitude in arguing the evidence and the reasonable inferences from the evidence to the jury. *Id.*

To preserve error as to improper jury argument, the complaining party must timely object, secure a ruling, and request a retraction or curative instruction unless the argument is so egregious as to be incurable. *In re SpaceX*, 716 S.W.3d at 582 (citing *Living Ctrs. of Tex., Inc. v. Peñalver*, 256 S.W.3d 678, 680 (Tex. 2008) (per curiam)). A complaint of incurable argument may be asserted and preserved in a motion for new trial, even without a complaint and ruling during the trial. *Dallas Police & Fire*, 2024 WL 5134654, at *4.

"Incurable argument is rare." *In re SpaceX*, 716 S.W.3d at 582. It occurs in those instances when argument is "so inflammatory and prejudicial" that its harmfulness is incurable. *Dallas Police & Fire*, 2024 WL 5134654, at *4. Examples include "[r]epeatedly telling jurors that they would align themselves with Nazis if they ruled for the defense," "remarks of racial prejudice, unsupported and extreme attacks on opposing parties and witnesses, or accusing opposing parties of witness manipulation or evidence tampering." *In re SpaceX*, 716 S.W.3d at 582 (quoting *In re Rudolph Auto.*, 674 S.W.3d at 311–12). Such arguments "strike[] at the very core of the judicial process," *Phillips v. Bramlett*, 288 S.W.3d 876, 883 (Tex. 2009), and

"damage the judicial system itself by impairing the confidence" our citizens have in the system. *Living Ctrs.*, 256 S.W.3d at 681.

However, it is not the case that anything that barely satisfies one of those requirements is inevitably fatal to the entire trial. *Dallas Police & Fire*, 2024 WL 5134654, at *4. The "amount of harm from the argument" determines whether the threshold has been breached. *Id.* The test is

> whether the argument, considered in its proper setting, was reasonably calculated to cause such prejudice to the opposing litigant that a withdrawal by counsel or an instruction by the court, or both, could not eliminate the probability that it resulted in an improper verdict.

Alonzo v. John, 689 S.W.3d 911, 913 (Tex. 2024) (per curiam) (quoting *Tex. Emp. Ins. Ass'n v. Haywood*, 266 S.W.2d 856, 858 (Tex. 1954)). This inquiry requires an evaluation of the case as a whole, beginning with voir dire and ending with closing argument, and includes an assessment of whether the complaining party invited or provoked the argument. *Dallas Police & Fire*, 2024 WL 5134654, at *4. Stated differently, "[t]he party claiming incurable harm must persuade the court that, based on the record as a whole, the offensive argument was so extreme that a juror of ordinary intelligence could have been persuaded by that argument to agree to a verdict contrary to that to which he would have agreed but for such argument." *Id.* (quoting *Phillips*, 288 S.W.3d at 883).

A presumption exists that probable harm from improper jury argument can be remediated by retraction of the argument or curative instruction from the judge. *Id.* (citing *Alonzo*, 689 S.W.3d at 912). The complainant has the "high burden" to prove

that improper argument was incurable. *Id.* (citing *Alonzo*, 689 S.W.3d at 913; *Living Ctrs.*, 256 S.W.3d at 680–81).

II. Application

In its new-trial order, the trial court found that Shamoun and Khoury engaged in incurable jury argument by: (1) making personal attacks on real parties' lead counsel Harlow by referring to him solely by his last name and accusing him of dishonesty; (2) engaging in unsupported personal attacks on, and badgering, real parties' expert, Dr. Grace; (3) badgering and making personal attacks on real parties' corporate representatives and making accusations of bad faith; (4) referencing matters outside the record; (5) giving their personal opinions; (6) appealing to local bias; and (7) appealing to religious bias. We address each of the trial court's bases in turn.

A. Personal attacks on lead counsel

The first reason given for granting the new trial was that Shamoun and Khoury "engaged in unsupported, extreme, and personal attacks" on the integrity of real parties' lead counsel, Todd Harlow. These attacks included frequently referring to him only as "Harlow,"[7] calling him a "silver-tongued lawyer," and repeatedly accusing Harlow of dishonesty, despite repeated admonishments from the court.

[7] Real parties complained of repeated use of "Harlow," rather than "Mr. Harlow." During opening statements, Khoury initially referred to counsel as "Mr. Harlow," but referred to him as "Harlow" several times without objection from real parties' counsel. Harlow finally objected after about the sixth time, complaining that such references were improper. The trial court sustained the objection, and Khoury withdrew the statement. However, real parties did not request any curative instruction. After opening

Real parties point to counsels' statements that "[t]he claims brought against us are fraudulent claims," and describing real parties' arguments as "make-believe," a "bill of goods," a "sleight of hand," "fantasy," an attempt to "shake some money out of" defendants, and "hocus pocus." Real parties contend that Khoury and Shamoun tied those accusations to Harlow personally. They point to Khoury's statements:

- "We do not ascribe to [Harlow's] theory or his false statements." (after Harlow argued during opening that relators' own witnesses would testify there was no movement of money).
- "[W]e're entitled to make a profit, but it's nothing like Mr. Harlow distorted."
- "Harlow said—I'm just gonna use his $40 million number, which I think is hocus pocus."
- "And it ignores—either because he thinks we're stupid or y'all are stupid—that somebody isn't gonna bring that up." (referring to real parties' damages argument as related to owned interest in TRA Midland).
- During closing, stating that witnesses "were fooled by Harlow" and that the jury would be "misled" if they did not look at "all the things [Harlow] didn't show you."
- During playback of a videotaped deposition, Harlow referred to an exhibit as a "2008 10-K" form. Khoury objected, stating that the use of the exhibit was "deception" because it related to a different time period and was not compliant with the parties' agreement on exhibits.

statements, Khoury and Shamoun referred to counsel primarily as "Mr. Harlow" during most of the trial, though during witness examination the trial court sustained real parties' objection to Khoury's repeated use of "Harlow." Most of the last name references cited by real parties occurred during Khoury's closing argument. Khoury referred to "Harlow" more than a dozen times, but real parties never objected even though his previous objections on this issue were sustained and resulted in an admonishment.

- Suggesting that Harlow had a personal interest in the suit because his former law firm was counsel in unrelated litigation against Brauss.

Real parties also point to Shamoun's statements that:

- Real parties were represented by "this silver-tongued, fine, good-looking lawyer, Mr. Harlow."[8]

- Anyone can pay a $268 filing fee and "sue anybody for anything."

- During Khoury's examination of defendants' corporate representative, commenting that "[y]ou might get arrested" if Khoury followed Harlow's line of questions.

- Suggesting Harlow was dishonest by contrasting Shamoun's Catholic upbringing and his belief in telling the truth.[9]

We conclude that the foregoing arguments, while often improper, do not rise to the level of incurable jury argument. First, we note that most of the bulleted statements were made by Khoury, whose client(s) were found liable for over $25 million. This militates against a conclusion that the jury was swayed by improper argument rather than the evidence. *See Dallas Police & Fire*, 2024 WL 5134654, at *11 (mixed verdict suggested jury was not persuaded by improper jury arguments).

Second, Texas law does not categorically prohibit counsel from arguing that evidence supports an inference that a case was lawyer-driven, because counsel may make arguments involving attorney and party behavior that are supported by evidence or inferences from the evidence. *Id.* at *9 (citing *Standard Fire Ins. Co. v.*

[8] Shamoun made the "silver-tongued" lawyer reference again during witness testimony, that "the silver-tongued lawyer over there . . . misled the jury."

[9] Real parties note other comments by Khoury and Shamoun not listed here but which we have considered in our analysis.

*Rees*e, 584 S.W.2d 835, 836–37 (Tex. 1979) (concluding that jury argument was not improper where direct evidence, as well as inferences from the evidence, supported the argument that a "sham or plot" existed between the plaintiff and his attorney to inflate medical bills in a personal injury case)). And here, RNK's principal, Renate Nixdorf, admitted to lacking any personal knowledge in support of the fraud claims asserted against the Subsequent Transferees:

> Q. (BY MR. SHAMOUN) … For the record, would it be fair to say, and isn't it true, "Ladies and gentlemen of the jury, I have no personal knowledge of any facts to support my lawsuit against those named defendants"? "Yes" or "no"?
>
> A. No personal knowledge.
>
> Q. Am I correct?
>
> A. No personal knowledge, yes.

Third, Khoury's and Shamoun's arguments and suggestions that real parties' counsel was being deceptive or dishonest and misleading the jury do not constitute the kinds of extreme and inflammatory remarks that courts have found to be incurable. *See Living Ctrs.*, 256 S.W.3d at 682 (equating opposing counsel's argument with atrocities committed against the elderly and infirm in Nazi Germany's World War II T-4 Project found incurable); *Montgomery Ward & Co. v. Brewer*, 416 S.W.2d 837, 845–48 (Tex. App.—Waco 1967, writ ref'd n.r.e.) (argument incurable when counsel repeatedly made unsupported accusations that opposing counsel, as part of a conspiracy, told lies, manufactured evidence, destroyed evidence, and persuaded witnesses to perjure themselves); *cf. Reese*, 584

S.W.2d at 836–37 (lawyer-driven case argument was not so extreme or inflammatory that it could not have been cured by an instruction); *Dallas Police & Fire*, 2024 WL 5134654, at *5–6, 11 (counsel's arguments that plaintiff and its counsel had manufactured the suit and related accusations of deceit and dishonesty were not incurably extreme, inflammatory, or prejudicial); *Metro. Transit Auth. v. McChristian*, 449 S.W.3d 846, 855 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (making reference to opposing counsel and asking "what kind of snake oil is he selling you" is not incurable jury argument); *see also Living Ctrs.*, 256 S.W.3d at 681 ("Not all personally critical comments concerning opposing counsel are incurable.").

Real parties also argue that it was improper for Khoury to suggest that opposing counsel had questioned the jury's intelligence, citing *Press Energy Services, LLC v. Ruiz*, 650 S.W.3d 23, 58 (Tex. App.—El Paso 2021, no pet.), which in turn discusses *American Petrofina, Inc. v. PPG Industries, Inc.*, 679 S.W.2d 740, 755 (Tex. App.—Fort Worth 1984, writ dism'd by agr.). However, the *Ruiz* court concluded that no incurable argument occurred. *Ruiz*, 650 S.W.3d at 58–59. And in *American Petrofina*, counsel repeatedly stated that opposing counsel was talking down to the jury and that he would resent that if he served on a jury, in addition to accusations of criminal activity. *American Petrofina*, 679 S.W.2d at 754–56. Also in *American Petrofina*, counsel's statements triggered objections, which the court recognized as necessary to prove error. *Id.* Here, while Khoury's passing statement

implied that counsel questioned the jury's intelligence, the statement did not explicitly encourage the jury's resentment. And, real parties did not object.

Similarly, as noted, real parties did not object to many instances of the use of "Harlow," and we do not view the use of the term as the kind of extreme or inflammatory attack that constitutes incurable argument.

We conclude that, considering the record as a whole, the arguments were not "of such an extreme nature as to reflect the greater probability that a juror of ordinary intelligence could have been persuaded by that argument to agree to a verdict contrary to that which he would have agreed but for the argument[s]." *See Phillips*, 288 S.W.3d at 883. Real parties did not meet their "high burden" to show that any improper arguments were incurably "extreme," "inflammatory," and "prejudicial." *See Dallas Police & Fire*, 2024 WL 5134654, at *5–12. Accordingly, we conclude the trial court abused its discretion in granting a new trial on this basis.

B. Attacks on Dr. Grace

The trial court's second basis for incurable jury argument was that Shamoun and Khoury badgered and engaged in "unsupported, extreme, and personal attacks" against real parties' expert witness, Dr. Stephen Grace.

Real parties assert that Khoury and Shamoun argued Dr. Grace was a "professional witness" who would say anything for money. While Khoury was questioning Dr. Grace about what he was being paid, the following colloquy occurred:

Q. So is there a point after which you received a certain amount of money, Mr. Grace, that the jury can just assume that you're bought and paid for?

MR. HARLOW: . . . Objection, Your Honor.

THE COURT: Sustained, Counsel.

A. (Laughed.)

Q. (BY MR. KHOURY) If they pay you enough money, will you just say anything?

MR. HARLOW: Your Honor, I object to that characterization --

MR. KHOURY: I'm not --

MR. HARLOW: -- and the harassment of this witness. That is uncalled for.

THE COURT: Okay. Sustained. Counsel, there are different ways of asking that.

MR. KHOURY: I don't know of anything more direct, Your Honor, that I have a right to impeach this, and that is --

THE COURT: Okay. And, Counsel, I am sustaining the objection. There are different ways of asking that, and if you want to, that's fine. But I sustained the objection.

Q. (BY MR. KHOURY): Is there a certain amount of money that would cause you to say anything you're asked, sir?

MR. HARLOW: Your Honor, I object.

THE COURT: I'll overrule. Just let him answer.

. . .

A. No, there's no amount.

Real parties also complain that counsel tried to intimidate Dr. Grace by wagging his finger at him, refusing to back away from the witness stand, and

generally "badgering him." Relators acknowledge that the trial court admonished Khoury not to point his finger at the witness or badger him.

During Shamoun's cross-examination, he asked Dr. Grace to confirm how much he had been paid up to that point, asking whether he was "getting close to that [million-dollar] number, am I correct?" Harlow objected, arguing that Shamoun had "made their point," but the trial court overruled the objection. Dr. Grace responded by saying "[w]ell, you're doing the math. Keep on going . . . I mean, you're doing - you tell us. You're doing the calculations. The time sheet will come out to be what it is. And that's what will get sent in."

Relators contend that Dr. Grace was treated differently than other witnesses because he was evasive and repeatedly failed to answer questions. The record reflects that during relators' examination of Dr. Grace, the trial court sustained numerous objections to Dr. Grace's answers as non-responsive. The trial court also instructed Dr. Grace numerous times to answer the question asked of him, and the trial court instructed the jury to disregard several of Dr. Grace's answers. Dr. Grace testified that he learned most facts about this case from real parties' counsel. Dr. Grace's testimony indicated that he made his living by testifying as an expert witness and that he had been paid around $1 million for his work in this case.

The trial court overruled real parties' objection to questions about this topic and allowed Dr. Grace to answer the question, and Dr. Grace denied that he would

"say anything" for the right price. When the trial court sustained real parties' other objections, real parties did not request a curative instruction.

While some of Khoury's and Shamoun's statements were improper, we do not view their examination of Dr. Grace or their arguments as constituting incurable extreme personal attacks or inflammatory epithets. *See Macedonia Baptist Church v. Gibson*, 833 S.W.2d 557, 562–63 (Tex. App.—Texarkana 1992, writ denied) (argument that expert witness was a "hired gun" was curable); *cf. Clapper*, 95 F.4th at 315 (twice referring to plaintiff's expert witness as a "paid prostitute"). We do not condone badgering of witnesses, and certainly, the trial court has the right to control its courtroom and prevent such. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240 (Tex. 2001) (per curiam) (trial court has broad discretion over the conduct of a trial and may properly intervene to maintain control in the courtroom). But we are unaware of any authority supporting that witness badgering constitutes "incurable jury argument."

Even assuming the foregoing comments (and behavior) with respect to Dr. Grace were improper, we cannot agree they were so extreme that a "juror of ordinary intelligence could have been persuaded by that argument to agree to a verdict contrary to that to which he would have agreed but for such argument." *See Phillips*, 288 S.W.3d at 883. The trial court abused its discretion in granting a new trial on this second basis.

C. Attacks on corporate representatives

The trial court's third basis for incurable jury argument was that Khoury and Shamoun badgered and engaged in "unsupported, extreme, and personal attacks" against real parties' corporate representatives, Warren Harmel and Renate Nixdorf.

Real parties assert that Khoury accused Harmel, the manager of real party Watercrest, of filing the lawsuit in bad faith. Khoury inquired: "And so what you did was, without knowing anything and making a bunch of wild assumptions, you, in bad faith, filed this lawsuit as a placeholder, right?" The trial court sustained real parties' objection. A few moments later, Khoury added: "And you [filed suit just prior to running of the statute of limitations] in order to abuse the process, didn't you?" Real parties did not object nor request a curative instruction, and Mr. Harmel answered "No."

Real parties further complain that Khoury and Shamoun highlighted real parties' alleged wealth by emphasizing how much money they paid Dr. Grace. And, as with Dr. Grace, real parties complained that relators badgered the corporate witnesses by wagging fingers and approaching too close during examination.

However, as we discussed above, questions, suggestions, and arguments that this was a "bad-faith" action, an abuse of the system, an attempt at a "lotto ticket," and a "lawyer-driven" suit are the type of arguments that Texas courts have found to be curable. *In re SpaceX*, 716 S.W.3d at 582–83 (argument that the suit was a "lawyer-driven plan" to "manufacture an opportunity to cash in" was curable, as are

inferences that counsel conspired with the plaintiff to bring the suit for some malicious or fraudulent purpose); *Reese*, 584 S.W.2d at 836–40 (argument that the lawsuit was a lawyer-driven "sham" could have been cured by instruction); *Dallas Police & Fire*, 2024 WL 5134654, at *3 (accusations that opposing counsel used "deceit" and "deception" in manufacturing the lawsuit was improper but curable by instruction); *Cecil v. T.M.E. Invs., Inc.*, 893 S.W.2d 38, 48 (Tex. App.—Corpus Christi–Edinburg 1994, no writ) (any harm from characterizing the lawsuit as an "abuse of the judicial system" was curable.).[10]

We again conclude the complained-of arguments and examination were not so extreme that a juror of ordinary intelligence could have been persuaded by that argument to agree to a verdict contrary to that to which he would have agreed but for such argument. *See Phillips*, 288 S.W.3d at 883. The trial court abused its discretion in granting a new trial on this basis.

D. Evidence outside of the record

The trial court's fourth reason for granting a new trial was that Khoury and Shamoun engaged in incurable argument by referencing matters outside the record during closing argument. According to the court, this occurred when: (1) Shamoun

[10] Real parties relied heavily on *Clapper* to support their arguments. However, relators' veiled references to real parties' alleged wealth by pointing to what was paid to their expert are not similar to calling a plaintiff a "financial pimple," someone who is going after the estate of the recently deceased. *Cf. Clapper*, 95 F.4th at 315.

referenced his charitable work in Africa; and (2) Khoury referred to a portion of deposition testimony that had not been introduced into evidence.

As a threshold matter, arguing matters outside the evidence can be improper jury argument. *PopCap Games, Inc. v. MumboJumbo, LLC*, 350 S.W.3d 699, 721 (Tex. App.—Dallas 2011, pet. denied) (citing TEX. R. CIV. P. 269(e)). However, argument outside the record is "ordinarily curable by a timely objection and prompt instruction to disregard." *Haryanto v. Saeed*, 860 S.W.2d 913, 921 (Tex. App.—Houston [14th Dist.] 1993, writ denied) (en banc) (citing *Reese*, 584 S.W.2d at 840–41).

Regarding the reference to charitable work in Africa, Shamoun stated that "I have taken my son . . . to Africa on four different occasions. And we, as a family, build schools, libraries, and provide water wells for people . . . ." Shamoun then contrasted the poverty in those places with the millions of dollars spent in this case and how that money could have been used in better places. Real parties did not object or request any instruction respecting this argument. We conclude that such remarks, while outside the record, do not involve appeals to racial prejudice, extreme or personal attacks on the opposing party, unsupported charges of perjury, or inflammatory epithets. They do not rise to the level of incurable argument. *See In re Rudolph Auto*., 674 S.W.3d at 311–12.

Regarding Khoury's reference to a portion of deposition testimony that had not been introduced into evidence, this related to potential liability of TCI. One of

the issues at trial was whether TCI, as owner of MRI, was liable for the fraudulent transfers at issue. The jury found that Eric Brauss had transferred his interest in TRA Midland to MRI "with actual intent to hinder, delay, or defraud any creditor" and that MRI did not take these interests "in good faith and for reasonably equivalent value." The jury further found that MRI was "responsible for the conduct of Eric Brauss," but that TCI was not.

Real parties deposed Daniel Moos, TCI's CEO, and at trial read deposition excerpts to the jury. During that deposition, real parties' counsel incorrectly referred to TCI's list of subsidiaries, including MRI, as being listed on an exhibit to an annual 10-K report for the year ending December 31, 2008. Real parties contend that, in his deposition testimony, Moos then mistakenly referred to the list of subsidiaries as being an exhibit to that 2008 report (rather than to a 2007 report) due to counsel's previous reference. The parties argued extensively before and during trial about which portions of Moos's deposition should be heard by the jury. But because of the mistake, real parties purposely omitted this passage from the deposition excerpts played at trial because it might confuse or mislead the jury. However, in his closing argument Khoury referred to the omitted portion of Moos's deposition:

> MR. KHOURY: And so ask for these if you've got a question about whether these people really knew what they were talking about and whether most of it was guesswork, like when Mr. Moos was asked at page 47 in January of 2008, did MRI get money from TCI, he says, I have no knowledge.
>
> If there is a question about what Moos thought the parent structure of these entities were, I will submit to you that on page 47, line 19 of the

> deposition, Mr. Moos was shown the 2007 exhibits to the 10-K that showed MRI owned by TCI. But he was told, as Mr. Landess was and other witnesses that were fooled by Harlow, that it was the 2008 10-K.
>
> MR. HARLOW: Your Honor, he's reading testimony that was not part of the trial. Now I know this is just stuff he's pulling out of the deposition.
>
> MR. KHOURY: I disagree.
>
> THE COURT: Okay, Counsel.

Real parties contend this argument improperly accused Harlow of dishonestly misconstruing the evidence and called Moos's credibility into question. Real parties assert that relators did this to buttress their contention that TCI did not own or control MRI at the time of its alleged mortgage fraud on one of Brauss's creditors. Relators contend that Khoury's reference to deposition testimony outside the record could have been addressed by an instruction from the trial court to disregard it.

We addressed a comparable situation in *PopCap Games*, 350 S.W.3d at 721. There, during closing, PopCap's counsel argued evidence that had been previously excluded by the trial court. *Id.* at 720. MumboJumbo objected but did not secure a ruling from the trial court. *Id.* MumboJumbo later argued that PopCap's argument was improper because it referred to evidence not in the record and because it implied that MumboJumbo's executive had testified falsely. *Id.* Because MumboJumbo had not secured a ruling, we determined that it had to show the argument was incurable. *Id.* at 721. We then held that the argument did not involve appeals to racial prejudice, extreme or personal attacks on the opposing party, unsupported charges of perjury,

or inflammatory epithets, and as such, did not rise to the level of incurable argument. *Id.*

The same is true here. Real parties did not secure a ruling on their objection to Khoury's argument. And, while the dispute about the proper deposition excerpts may have called into question the credibility of witnesses and counsel, the argument did not involve extreme or personal attacks, charges of perjury, or inflammatory epithets. *See id.* Based on the record, we cannot conclude that these arguments were incurable.[11] The trial court abused its discretion in granting a new trial on this basis.

E. Personal opinions

The trial court's fifth reason for granting a new trial was its conclusion that Shamoun and Khoury engaged in improper jury argument by repeatedly offering their personal opinions, including opinions on the veracity of witnesses, examples of which include:

- During his opening statement, Khoury offered his opinion as to witness Christine Brauss: "And Christine Brauss is going to be here, and quite frankly, she's one of the nicest ladies I've ever met. And one of most cordial and, I think, honest ladies I've ever met. And here's what she's gonna say to you."

- After real parties' case-in-chief, Shamoun made his opening statement during which he argued, in reference to Dr. Grace and the amount he was paid: "And we've got to expect more as a society than a guy that's coming

[11] Jurors rely on their memories to determine what evidence was presented during trial. Indeed, here the jurors were instructed: "Each of you should rely on your independent recollection of the evidence." The jury was further instructed: "Base your answers only on the evidence admitted in court . . . Do not consider or discuss any evidence that was not admitted in the courtroom." We presume that the jury followed these instructions. *See Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 862 (Tex. 2009).

in here paying a million dollars and can't identify a single fact to support a claim. I hope and we pray that y'all feel the same way we do."

- During closing, Khoury stated: "I don't know about you all, but I didn't think that any of those gentlemen said anything definitive." (referring to deposition witnesses).

Real parties did not object to any of the foregoing statements.

Regarding Khoury's opinions as to Ms. Brauss's honesty, we cannot view his statements as entirely unprovoked. During opening, real parties' counsel stated: "We are here today because the defendants in this case *participated*, arm in arm, *with* a disgraced real estate developer named Eric Brauss and *Eric Brauss's ex-wife, Christine, in a massive fraud* . . ." and "[w]e will show that the Brausses had assets . . . that they . . . transferred . . . *with intent to defraud* . . . ." (emphasis added). Khoury's statement could be viewed as a response to such accusations of dishonesty. *See Reese*, 584 S.W.2d at 839 (complaining party must show that argument was improper, uninvited, and unprovoked).[12]

As to Shamoun's comment regarding Dr. Grace or the real parties and expecting more of society, by that point, the jury had seen examination and cross-examination of Dr. Grace. The jury had already heard testimony regarding Dr. Grace's fees and counsel's suggestions that Dr. Grace had no facts to support the

[12] While real parties correctly indicate that prosecutors may not vouch for a witness's credibility in a criminal case, real parties have not cited, nor have we located, any Texas state civil case holding that attorneys are categorically barred from offering their personal opinions regarding the witnesses or the evidence.

case. This argument, if improper, relates to relators' theory that the case was meritless and lawyer-driven, which, as we have discussed, is not incurable argument.

Finally, regarding the comment on the credibility of the deposition witnesses, we have recognized that counsel may comment on the credibility of witnesses during closing. *In re BCH Dev.*, 525 S.W.3d at 928 (citing *PopCap Games*, 350 S.W.3d at 722 (argument that jury should accept one witness's opinion over another's was not improper)).[13]

Considering the record, we cannot conclude that the foregoing statements, if improper, constituted incurable jury argument. The trial court abused its discretion in granting a new trial on this basis.

F. Local bias

The trial court's sixth reason for granting a new trial was its conclusion that Khoury engaged in improper jury argument by appealing to local bias with reference to his speaking only "Texas English."

An appeal to local prejudice or unity is usually considered a curable impropriety for which an objection is required. *Ramsey v. Grizzle*, 313 S.W.3d 498, 512 (Tex. App.—Texarkana 2010, no pet.). The statement at issue was made during Khoury's questions to Dr. Grace about his accounting experience:

[13] We note that Harlow also opined on the credibility of these witnesses in his closing argument: "Daniel Moos and Stephen Shelley were the witnesses with personal knowledge of what happened. Their testimony is entitled to far more weight than the testimony of [other witnesses]." "Daniel Moos has no reason to lie to you. He is disinterested . . . ."

> Q. (BY MR. KHOURY) And if you would, Dr. Grace, I mean, the only thing I know how to speak is Texas English. Is there something about my Texas English that you don't understand?
>
> A. I think not. You have to remember, I'm an economist. So I tend to be clarifying, making assumptions about things. That's my normal mode of operation that I carry over. So I may be impairing our communications.

Real parties did not object and request a curative instruction.

While Khoury's reference to "Texas English" could be viewed as merely an expression of frustration at Dr. Grace for adding information nonresponsive to Khoury's questions, even if Khoury was attempting to appeal to local bias or impugn Dr. Grace, it was not incurable. *See Cottman Transmission Sys., L.L.C. v. FBLR Enters., L.L.C.*, 295 S.W.3d 372, 380 (Tex. App.—Dallas 2009, pet. denied) (counsel's reference to defendant's president and witness as a "Philadelphia lawyer" was not an inflammatory epithet or personal attack on witness and therefore not incurable argument); *Ramsey*, 313 S.W.3d at 512 (counsel's statement that "I trust the testimony of these people down here in Red River County more so than I do a man that's sitting down in Houston" was not incurable); *UMLIC VP LLC v. T & M Sales & Env't Sys., Inc.*, 176 S.W.3d 595, 617 (Tex. App.—Corpus Christi–Edinburg 2005, pet. denied) (counsel's argument to jury to not let a corporation from out of state treat businesses in "the Valley" the way defendant treated plaintiffs was not

incurable and therefore required objection).[14] Accordingly, we conclude the trial court abused its discretion in granting a new trial on this basis.

G. Religious bias

The final reason given by the trial court for granting a new trial was its conclusion that Shamoun engaged in incurable jury argument by making an improper appeal to religious bias.

Generally, a person's religious beliefs have no place in determining the merits of a dispute. *See Moss v. Sanger*, 12 S.W. 619, 620 (Tex. 1889). However, not every statement or mere mention of religious affiliation constitutes incurable argument. *See Khan v. Chai Rd., Inc*., No. 05-16-00346-CV, 2017 WL 3015727, at *3 (Tex. App.—Dallas July 17, 2017, no pet.) (mem. op.).

In Shamoun's closing argument, he stated, in relevant part:

> Now, Mr. Harlow mentioned that I got a little upset and the sheriff stood up the other day when I objected to Mr. Harlow questioning Mr. Bertcher. And I did. I did get upset.
>
> And I apologize to everybody for getting upset. But why did I get upset? You know, I grew up Catholic. I went to Mass every Sunday. I still do. I go to confession. I'm not perfect.
>
> My uncle is Monsignor Milam Joseph. I go to his Mass every Sunday at Perkins Chapel. And I try to better myself as a person, as we all do.
>
> . . . .

[14] Khoury's question is readily distinguishable from those in *Clapper*, where counsel mentioned several times that the plaintiff was from Michigan and suggested that Michiganders have lower moral standards. *Clapper*, 95 F.4th at 316.

> And as I told you all in voir dire, I believe in telling the truth and not misleading and not distorting. Whether you're a lawyer representing a plaintiff or a lawyer representing defendants, I believe in the judicial system.

Real parties did not object to these arguments.

First, we note that Shamoun's Catholic reference was made as part of his apology for getting upset earlier in trial. His statement about "telling the truth," however, related to what he believed was a mischaracterization of the evidence by real parties' counsel.

Assuming Shamoun's Catholic reference was improper in this context, it does not rise to the level of arguments that have been held incurable. *See Moss*, 12 S.W. at 620 (argument that lawsuit was a scheme to swindle and defraud concocted by a Jew, a Dutchman, and a lawyer, describing witness as "the old he-Jew of all, who no doubt planned the whole thing. All Jews, or Dutch Jews, and that is worse"); *Tex. Emps.' Ins. Ass'n v. Jones*, 361 S.W.2d 725, 727 (Tex. Civ. App.—Waco 1962, writ ref'd n.r.e.) (derogatory reference to witness as "that Jew" and implication witness would testify falsely for money was inflammatory and incurable argument). The record does not show that the harm, if any, from the reference to religion was incurable by instruction. *See Reese*, 584 S.W.2d at 840 (noting that "even strong appeals to prejudice become harmless when a jury is instructed to disregard them").

And, like our discussion above regarding the disputed deposition excerpts, Shamoun's statement about "telling the truth," while calling into question the credibility of witnesses and counsel, did not involve extreme attacks, charges of

perjury, or inflammatory epithets. Having considered the record, we cannot conclude that the foregoing statements constituted incurable jury argument. The trial court abused its discretion in granting a new trial on this last basis.

H. *Clapper*

As we indicated, real parties relied heavily on *Clapper v. American Realty Investors, Inc.* 95 F.4th 309 (5th Cir. 2024) to support their motion for new trial. Real parties argued that the arguments and behavior of Khoury and Shamoun here are cumulatively incurable for the reasons discussed in *Clapper*. We, therefore, briefly address that case in more detail.

In *Clapper*, David Clapper sued American Realty Investors, Inc. and other entities, claiming that they transferred assets to avoid paying a judgment from a previous lawsuit in violation of TUFTA and the doctrine of alter ego liability. *Id.* at 312. The jury rendered a verdict in favor of the defendants on all claims. *Id*. Clapper appealed, contending in part that defendants' counsel, Khoury and Shamoun, made numerous improper and highly prejudicial statements in closing argument. *Id.*

The Fifth Circuit set aside the jury's take-nothing judgment and granted a new trial based on improper, prejudicial jury argument. *Id.* The court stated that together, Khoury and Shamoun had "employed nearly every category of what we have previously held to be improper closing argument." *Id*. at 314. Among other things, they made numerous "personal attacks" on the plaintiff and opposing counsel, appealed to "local bias," and argued matters not in evidence. *Id*. at 317.

To start, Shamoun threw a box of tissues at opposing counsel during closing argument, stating that they had a "potentiality of crying," and Shamoun spoke of "kick[ing] his butt" and "whoop[ing] his a--." *Id*. at 315, 317. Shamoun accused opposing counsel of hiding evidence and called him an "embarrass[ment] for the profession." *Id.* at 315. Shamoun suggested that opposing counsel must think that each juror was "an idiot." *Id.* He called opposing counsel's actions "low class," "classless," "ruthless," and "disgusting." *Id.*

Meanwhile, Khoury called opposing counsel a "dishonest broker" who was "deceitful and deceptive." Khoury also implied that Clapper had paid a witness to testify and referred to Clapper as a "financial pimple." *Id.* Khoury also referred to one of Clapper's expert witnesses as a "paid prostitute from Michigan." *Id.*

In granting the new trial, the *Clapper* court noted that this improper conduct, "considered collectively, extend[ed] far beyond permissible hyperbole or 'expressive language,' and were designed to bias the jury against Clapper and his counsel." *Id.* at 316. Further, counsels' conduct "abandoned all 'dignity, order, and decorum[,]' which we have described as the 'hallmarks of all court proceedings in our country.'" *Id*. at 316–17 (citation omitted).

There are key differences between *Clapper* and the present case. First and most importantly, the standards for granting a new trial based on improper jury argument between Texas and the Fifth Circuit are different. In the federal court, "[i]f the tactics used during trial, taken together, tarnish the badge of evenhandedness

and fairness that normally marks our system of justice, then a new trial is warranted," particularly when employed during closing arguments. *Id.* at 314 (citations omitted).

Meanwhile, the Texas Supreme Court has imposed stricter standards for *incurable* jury argument, requiring "extreme" or "inflammatory" comments, and recognizing that such arguments are "rare." *See In re SpaceX*, 716 S.W.3d at 582–83. "The party claiming incurable harm must persuade the court that, based on the record as a whole, the offensive argument was *so extreme* that a 'juror of ordinary intelligence could have been persuaded by that argument to agree to a verdict contrary to that to which he would have agreed but for such argument.'" *Phillips*, 288 S.W.3d at 883 (emphasis added) (quoting *Goforth v. Alvey*, 271 S.W.2d 404, 404 (Tex. 1954)). The "amount of harm from the argument" determines whether that threshold has been breached. *Alonzo*, 689 S.W.3d at 913 (quoting *Living Ctrs.*, 256 S.W.3d at 681). And again, the test is

> whether the argument, considered in its proper setting, was reasonably calculated to cause such prejudice to the opposing litigant that a withdrawal by counsel or an instruction by the court, or both, could not eliminate the probability that it resulted in an improper verdict.

Id. (citation omitted).

Under the Texas standard, the actions of counsel in this case, while unprofessional and often improper, do not rise to the extreme and outrageous behavior necessary to qualify as incurable jury argument.

Second, we note that the actions of counsel in this case are not at the same level as those found in *Clapper*. While a counsel's behavior need not match that

exhibited in *Clapper* to constitute extreme or outrageous behavior, real parties cite no instances of items being thrown, threats of physical attack, an opposing witness being labeled a "prostitute," or behavior of similar magnitude.

Finally, in *Clapper*, the jury returned a take-nothing judgment in favor of all of Khoury's and Shamoun's clients—supporting that the jury might have been swayed by their improper argument. In contrast, here the jury returned a mixed verdict. The fact that the jury returned a mixed verdict indicates that the jury was not swayed by the improper arguments. *See Dallas Police & Fire*, 2024 WL 5134654, at *11 (discussing similar facts militating against a finding of incurable argument: jury sent notes to the trial court during deliberations, spent considerable time deliberating, and returned a mixed verdict).

By the time it heard closing arguments, which included some of the more controversial comments and arguments in the case, the jury had experienced over two weeks' worth of arguments, testimony, and exhibits. The jury spent more than a full day deliberating. During that deliberation, the jury sent four notes to the judge, asking about the proper predicate for certain jury questions, the applicability of jury instructions regarding corporate formalities, and how to monetarily value corporate entities and their members. All of this suggests the jury was considering the evidence deliberately and conscientiously and was not persuaded by improper argument or claims that the case was manufactured when it found against Khoury's client(s) and awarded over $25 million in damages. *See id*.

CONCLUSION

We do not condone the conduct of relators' trial counsel. Unprofessional practices like those in this case disserve our citizens, harm clients, and demean our profession. *See* TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM (adopted by the Texas Supreme Court and Texas Court of Criminal Appeals, November 7, 1989). We empathize with the trial court's frustration at counsels' conduct throughout trial, and we generally defer to trial courts in controlling their courtrooms.

However, "[w]hile this Court is deferential to the determinations of trial courts with respect to the conduct of their trials, discretion cannot override every other consideration." *In re Rudolph Auto.*, 674 S.W.3d at 313. "[D]isregarding a jury's verdict is an unusually serious act that imperils a constitutional value of immense importance—the authority of a jury. Such a step may be taken only when clearly supported by sound reasons." *Id.* at 302.

We do not believe "sound reasons" support the trial court's grant of a new trial. Texas precedent demands that the offensive arguments be "so extreme that a juror of ordinary intelligence could have been persuaded by that argument to agree to a verdict contrary to that to which he would have agreed but for such argument." *Phillips*, 288 S.W.3d at 883. We cannot conclude that counsels' arguments or behavior, whether considered discretely or collectively, were reasonably calculated to cause such prejudice. *See Alonzo*, 689 S.W.3d at 913.

After conducting the evaluation that our precedents prescribe, we conclude that the trial court abused its discretion in granting a new trial based on incurable jury argument. We therefore conditionally grant mandamus relief and direct the trial court to: (1) vacate the January 7, 2025 order granting real parties' motion for new trial based on incurable jury argument, within fourteen (14) days of the date of our opinion and order; and (2) file with the Clerk of the Court, within twenty-one (21) days of the date of our opinion and order, a copy of the trial court's order showing such compliance. The writ will issue only if the trial court fails to comply.[15]

/Jessica Lewis/
JESSICA LEWIS
JUSTICE

[15] As noted above, TRA Apt, TRA Midland, and MRI filed a response as "interested parties," wherein they joined relators' arguments with respect to the order granting a new trial. They also asserted that the trial court abused its discretion by signing the order granting a new trial without first ruling on their previously filed "counter motion to enter judgment and for judgment NOV," and ask us to order the trial court to rule on their post-judgment motions. However, these parties did not file a petition for writ of mandamus or corresponding record with this Court. The party seeking mandamus relief has the burden of filing a proper petition and providing this Court with a sufficient record to establish his right to mandamus relief. *See In re Moore*, No. 05-21-00178-CV, 2021 WL 1206622, at *1 (Tex. App.—Dallas Mar. 31, 2021, orig. proceeding) (mem. op.). Furthermore, with respect to the interested parties, the trial court implicitly denied their post-trial motions by granting the motion for new trial. Accordingly, we decline to grant the interested parties' separate request to order the trial court to rule on their post-judgment motions.