IN THE SUPREME COURT OF TEXAS

No. 15-0046

LEONARD K. HOSKINS, PETITIONER,

v.

COLONEL CLIFTON HOSKINS AND HOSKINS, INC., RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

JUSTICE WILLETT, concurring.

The Court holds that the Texas Arbitration Act (TAA) provides the exclusive grounds for vacatur of an arbitration award where the proceedings are governed by the TAA. The plain text of the TAA compels that result, and I join the majority opinion in full.

I write briefly, however, to underscore the significance of today's decision. For decades, Texas courts and attorneys have quietly questioned whether common-law vacatur doctrines are viable alongside the TAA's vacatur grounds.[1] Manifest disregard, as featured in today's case, is one such doctrine. Gross mistake is another, and we have twice this millennium avoided addressing

[1] *See, e.g.*, *Callahan & Assocs. v. Orangefield Indep. Sch. Dist.*, 92 S.W.3d 841, 844 (Tex. 2002) (per curiam) ("Similarly, assuming without deciding that OISD may rely on the gross mistake standard under the common law to attack the arbitrator's award . . . ."); *Ewing v. Act Catastrophe-Tex. L.C.*, 375 S.W.3d 545, 550 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) ("Presuming, without deciding, that common-law grounds for vacating an arbitration award still may be used to vacate an award under the Texas Act . . . ."); *see also Campbell Harrison & Dagley, L.L.P. v. Hill*, 782 F.3d 240, 244–45 (5th Cir. 2015) (observing that "[t]he Texas Supreme Court has not spoken on [the] issue" of whether common-law vacatur doctrines remain viable vis-à-vis the TAA).

its viability.[2] We resolve that debate today. Our holding that the TAA's vacatur grounds are exclusive establishes that manifest disregard and, for all practical purposes, all other common-law vacatur doctrines are no longer viable with regard to arbitrations governed by the TAA.

The upshot of today's decision is that we avoid the sort of quagmire that surrounds the TAA's federal counterpart, the Federal Arbitration Act (FAA). In recent years, the United States Supreme Court has "cast severe doubt on, and nearly eliminated,"[3] manifest disregard as a viable common-law vacatur doctrine vis-à-vis the FAA.[4] That doubt has produced disarray in the literature and lower courts. Commentators' descriptions of manifest disregard's embattled viability have ranged from "much ado about nothing,"[5] to "alive but not well,"[6] to "dead,"[7] and triumphantly

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[2] *See E. Tex. Salt Water Disposal Co. v. Werline*, 307 S.W.3d 267, 270 n.7 (Tex. 2010) ("Although the Company did not assert any statutory basis for vacating the award, the court held that the common law, in addition to the TAA, allows an arbitration to be set aside for . . . such gross mistake as would imply bad faith and failure to exercise honest judgment. . . . We express no opinion on this issue." (quotation marks and citation omitted)); *see also Callahan & Assocs.*, 92 S.W.3d at 844.

[3] *E.g.*, Edward C. Dawson, *Speak Now or Hold Your Peace: Prearbitration Express Waivers of Evident-Partiality Challenges*, 63 AM. U. L. REV. 307, 326 (2013).

[4] *See Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 n.3 (2010) ("We do not decide whether manifest disregard survives our decision in *Hall Street* . . . as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10." (quotation marks and citation omitted)); *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 585 (2008) ("Maybe the term 'manifest disregard' was meant to name a new ground of review, but maybe it merely referred to the § 10 grounds collectively, rather than adding to them. Or, as some courts have thought, 'manifest disregard' may have been shorthand for § 10(a)(3) or § 10(a)(4), the paragraphs authorizing vacatur when the arbitrators were guilty of misconduct or exceeded their powers." (quotation marks and citations omitted)).

[5] MyLinda K. Sims & Richard A. Bales, *Much Ado About Nothing: The Future of Manifest Disregard After* Hall Street, 62 S.C. L. REV. 407 (2010); Weathers P. Bolt, Note, *Much Ado About Nothing: The Effect of Manifest Disregard on Arbitration Agreement Decisions*, 63 ALA. L. REV. 161 (2011).

[6] Kevin Patrick Murphy, Note, *Alive but Not Well: Manifest Disregard After* Hall Street, 44 GA. L. REV. 285 (2009).

[7] Albert G. Besser, *Arbitration Vacatur: The Supreme Court Bars One Route and Muddles the Other—Manifest Mistake Is Dead!*, 34 VT. B.J. 67 (2008).

to "back from the dead."[8] The courts' reactions are equally varied. Some have held that manifest disregard is no longer a viable vacatur doctrine.[9] Others have held that whether manifest disregard remains viable is an open question and have applied the doctrine assuming viability without deciding it.[10] Still others have held that manifest disregard remains viable in some form or another.[11] And so courts and commentators await a definitive answer from the Supreme Court.

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[8] Leigh F. Gill, Note & Comment, *Manifest Disregard After* Hall Street*: Back from the Dead—The Surprising Resilience of a Non-Statutory Ground for Vacatur*, 15 LEWIS & CLARK L. REV. 265 (2011).

[9] *See, e.g.*, *S. Commc'ns Servs., Inc. v. Thomas*, 720 F.3d 1352, 1358 (11th Cir. 2013) ("In light of the Court's decision in *Hall Street*, we held that the judicially-created bases for vacatur we had formerly recognized, such as where an arbitrator behaves in manifest disregard of the law, are no longer valid." (quotation marks omitted)); *Air Line Pilots Ass'n Int'l v. Trans States Airlines, LLC*, 638 F.3d 572, 578 (8th Cir. 2011) ("We have since explained the Supreme Court's decision in *Hall Street* . . . eliminated judicially created vacatur standards under the FAA, including manifest disregard for the law."); *Citigroup Glob. Mkts., Inc. v. Bacon*, 562 F.3d 349, 358 (5th Cir. 2009) ("In the light of the Supreme Court's clear language that, under the FAA, the statutory provisions are the exclusive grounds for vacatur, manifest disregard of the law as an independent, nonstatutory ground for setting aside an award must be abandoned and rejected. . . . Thus from this point forward, arbitration awards under the FAA may be vacated only for reasons provided in § 10 [of the FAA]."); *see also Cunningham v. LeGrand*, __ S.E.2d __, 2016 WL 1118962, at *5 (W. Va. Mar. 15, 2016); *Visiting Nurse Ass'n of Fla., Inc. v. Jupiter Med. Ctr., Inc.*, 154 So. 3d 1115, 1132 (Fla. 2014); *Tucker v. Ernst & Young, LLP*, 159 So. 3d 1263, 1273–75 (Ala. 2014) (all foreclosing manifest disregard).

[10] *See, e.g.*, *Whitehead v. Pullman Grp., LLC*, 811 F.3d 116, 120–21 (3d Cir. 2016) ("Whether this standard survived the Supreme Court's conclusion in *Mattel* that the Federal Arbitration Act provides the 'exclusive grounds' for vacating an arbitral award is an open question. A circuit split has since developed, and this Court has not yet weighed-in. We decline the opportunity to do so now." (footnotes omitted)); *Raymond James Fin. Servs., Inc. v. Fenyk*, 780 F.3d 59, 64–65 (1st Cir. 2015) ("Whether the manifest-disregard doctrine remains good law, however, is uncertain. . . . We need not resolve the uncertainty over 'manifest disregard' here. As we explain below, even assuming the doctrine remains available, it would not invalidate the award in this case."); *see also Worman v. BP Am. Prod. Co.*, 248 P.3d 644, 648 (Wyo. 2011) (stating "we are inclined to conclude that manifest mistake of law is no longer a valid basis for vacating an arbitration award under the Federal Arbitration Act," but conducting a manifest-disregard analysis anyway, given the "uncertainty in the federal authority").

[11] *See, e.g.*, *In re Wal-Mart Wage and Hour Emp't Practices Litig.*, 737 F.3d 1262, 1267 n.7 (9th Cir. 2013) ("Courts may also vacate arbitration awards on the basis of an arbitrator's manifest disregard for law. . . . 'Although the words "manifest disregard for law" do not appear in the FAA, they have come to serve as a judicial gloss on the standard for vacatur set forth in FAA § 10(a)(4).'" (quoting *Johnson v. Wells Fargo Home Mortg., Inc.*, 635 F.3d 401, 414 (9th Cir. 2011))); *Wachovia Secs., LLC v. Brand*, 671 F.3d 472, 483 (4th Cir. 2012) ("We read this footnote [in *Stolt-Nielsen*] to mean that manifest disregard continues to exist either as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10." (quotation marks omitted)); *Affymax, Inc. v. Ortho-McNeil-Janssen Pharm., Inc.*, 660 F.3d 281, 285 (7th Cir. 2011) ("Except to the extent recognized in *George Watts & Son*, 'manifest disregard of the law' is not a ground on which a court may reject an arbitrator's award under the Federal Arbitration Act.").

No such uncertainty exists with regard to the exclusivity of the TAA's vacatur grounds. Participants in arbitrations governed by the TAA now know that an award can be vacated *only* under the TAA's enumerated grounds.[12] No glosses on those statutory bases, no smuggling common law in through the back door—and no judicial intermeddling with the Legislature's carefully circumscribed bases for judicial review of an arbitration award. Exclusive means exclusive.

Don R. Willett
Justice

OPINION DELIVERED: May 20, 2016

[12] Indeed, even if participants agree to "limit[] the authority of an arbitrator in deciding a matter and thus allow[] for judicial review of an arbitration award for reversible error," *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84, 97 (Tex. 2011), review would still be conducted under the statutory provision requiring vacatur when "arbitrators [have] exceeded their powers," *see* TEX. CIV. PRAC. & REM. CODE § 171.088(a)(3)(A).