

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-804

JAMES W. STANLEY, JR., and
AUDREY BURTRUM-STANLEY,
APPELLANTS

V.

MIKE HOGAN,

APPELLEE

Opinion Delivered 3 FEBRUARY 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CV-2006-8324]

THE HONORABLE CHRISTOPHER
CHARLES PIAZZA, JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

This is a case between neighbors. The Stanleys sued Hogan alleging that he had removed a portion of their chain-link fence, destroyed some large bushes and a flower bed full of irises and lilies, and taken a decorative boulder. The Stanleys pleaded three causes of action: trespass, conversion, and negligence. The jury found in Hogan's favor. The Stanleys appeal.

The Stanleys' first three points on appeal relate to the jury instructions. Our Rules of Civil Procedure are clear about how to properly preserve a jury-instruction challenge.

No party may assign as error the giving or the failure to give an instruction unless he objects thereto before or at the time the instruction is given, stating distinctly the matter to which he objects and the grounds

of his objection, and no party may assign as error the failure to instruct on any issue unless such party has submitted a proposed instruction on that issue.

Ark. R. Civ. P. 51. Rule 51 requires the appellant to object to an unwanted instruction and to proffer a refused instruction in order to preserve the issue for appeal.

Fisher v. Valco Farms, 328 Ark. 741, 746–47, 945 S.W.2d 369, 372 (1997). In the case of a refused instruction, “[a]n instruction that is not contained in the record is not preserved and will not be addressed on appeal.” *Ibid.*

The Stanleys first argue that the circuit court erred in failing to give a trespass instruction. The Stanleys’ attorney, however, never asked for or proffered a trespass instruction. The Stanleys also argue that the circuit court erred by refusing to give AMI Civil 210 (admitted liability). The Stanleys proposed this instruction based on Hogan’s responses to their pre-trial requests for admissions. The circuit court decided against giving the instruction because Hogan “contested that liability.” The Stanleys, however, never proffered the admitted liability instruction. Because of their failures to proffer the instructions below, the Stanleys have not preserved either of these issues for our review. *Fisher*, 328 Ark. at 746–47, 945 S.W.2d at 372.

The Stanleys also argue that the circuit court erred by instructing the jury only on negligence. But the Stanleys agreed to submit the case on the negligence instructions. The Stanleys’ failure to object when their trespass claim was about to

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drop out of the case prevents us from reaching this issue on appeal. Ark. R. Civ. P. 51; *Fisher, supra*.

Last, the Stanleys seem to argue that the circuit court erred in using a general verdict form. The Stanleys failed to raise this issue below too. We do not address arguments raised for the first time on appeal. *McCoy v. Montgomery*, 370 Ark. 333, 342–43, 259 S.W.3d 430, 437 (2007).

Affirmed.

GLADWIN and BAKER, JJ., agree.