

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 09-456

HOUSEHOLD RECOVERY SERVICES
CENTER

APPELLANT

V.

CASSANDRA VEGA

APPELLEE

Opinion Delivered May 5, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CIV-07-467]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

REVERSED AND REMANDED

COURTNEY HUDSON HENRY, Judge

Appellant Household Recovery Services Center appeals an order of the Sebastian County Circuit Court awarding it judgment against appellee Cassandra Vega in the amount of \$1,483.35. For reversal, appellant contends that the trial court erred in denying its motion for a new trial because the amount of the judgment does not conform to the proof presented at trial. We reverse and remand.

The record reflects that appellee purchased a 2004 Chevrolet Silverado for \$32,129.41 on August 26, 2004. Appellant provided financing for appellee's purchase of the truck. Appellee voluntarily relinquished possession of the truck to appellant when she became unable to make her payments. Appellant subsequently sold the truck for less than the amount due and then filed this suit against appellee to collect the deficiency. In its complaint, appellant stated that the amount of the deficiency was \$13,449.04, and it sought judgment in that

amount. Thereafter, appellant amended its complaint to add appellee's husband, Robert Vega, as a defendant. In the prayer for relief, the amended complaint requested judgment in the amount of \$1,483.35.

The parties tried the case before the bench. As proof of its claim, appellant introduced into evidence a document entitled "Explanation of Calculation of Surplus or Deficiency." This document reflects a deficiency owed by appellee in the amount of \$13,449.04. Appellee and her husband acknowledged receiving a copy of this document after the sale, but appellee questioned the accuracy of appellant's computation of the deficiency. At the conclusion of trial, the court dismissed appellant's claim as to appellee's husband because he had not received service of process. The court granted appellant judgment for a deficiency but limited the amount to \$1,483.35, the sum requested in the amended complaint.

Appellant filed a motion for a new trial. In this motion, appellant asserted that the prayer for relief in the amended complaint contained a typographical error and that the trial court's finding as to the amount of the judgment was contrary to the evidence presented at trial. The court denied this motion and entered judgment in the amount of \$1,483.35. This appeal followed.

On appeal, appellant contends that the amended complaint did not supercede the original complaint because it incorporated the allegations contained in the original complaint. Appellant also asserts that the judgment does not conform to the evidence presented at trial. It is well settled that a motion for new trial is addressed to the sound discretion of the trial

court, and the court's refusal to grant the motion will not be reversed on appeal unless an abuse of discretion is shown. *Cochran v. Bentley*, 369 Ark. 159, 251 S.W.3d 253 (2007). An abuse of discretion means a discretion improvidently exercised, i.e., exercised thoughtlessly and without due consideration. *Jones v. Double "D" Props., Inc.*, 352 Ark. 39, 98 S.W.3d 405 (2003).

In the case before us, the trial court determined appellee's liability for the deficiency based solely on the amount stated in the amended complaint and not the proof presented at trial. However, the statement of facts in a complaint, and not the prayer for relief, constitutes the cause of action, and the trial court may grant whatever relief the facts pleaded and proved may warrant, in the absence of surprise to the opposing party. *See Willis v. Denson*, 228 Ark. 145, 306 S.W.2d 106 (1957); *Grytbak v. Grytbak*, 216 Ark. 674, 227 S.W.2d 633 (1950). Indeed, Rule 15 of the Arkansas Rules of Civil Procedure encourages the amendment of pleadings. *Kay v. Econ. Fire & Cas. Co.*, 284 Ark. 11, 678 S.W.2d 365 (1984). Under Rule 15, a party may amend his pleadings at any time without leave of court, unless the other party objects and demonstrates prejudice, or if the amendment would cause undue delay. *See Turner v. Stewart*, 330 Ark. 134, 952 S.W.2d 156 (1997). Although pleadings are required so that each party will know the issues to be tried and be prepared to offer his proof, Rule 15 allows for the amendment of pleadings to conform to the evidence introduced at trial. *Ison Props., LLC v. Wood*, 85 Ark. App. 443, 156 S.W.3d 742 (2004).

Here, appellant introduced into evidence the “Explanation of Calculation of Surplus or Deficiency” reflecting that appellee owed \$13,449.04, the amount claimed in the original complaint. Despite the amended complaint, appellee raised no objection to the introduction of that document, nor did appellee claim surprise or assert that she was prejudiced by appellant’s claim for damages in that amount. Indeed, appellee and her husband received this document before appellant filed its complaint. In addition, appellee never presented the argument that appellant was bound by the request in the amended complaint. It thus does not appear that appellee was laboring under any misunderstanding as to the amount of the deficiency that appellant was claiming. On this record, we agree with appellant that the trial court manifestly abused its discretion by not granting the motion for a new trial on the ground that the court’s decision did not conform to the proof and was contrary to the evidence presented at trial. Accordingly, we reverse and remand for the trial court to determine the amount of the deficiency based on the testimony and evidence offered at trial.

Reversed and remanded.

GLADWIN and BROWN, JJ., agree.