

Lewis A. SMITH *v.* R. A. BROOKS TRUCKING CO.

83-152

660 S.W.2d 1

Supreme Court of Arkansas
Opinion delivered November 7, 1983

1. ANIMALS — VIOLATION OF STOCK LAW — OWNER LIABLE FOR DAMAGES. — The owner of livestock is liable when damage results from his intentionally and negligently permitting animals to be at large.
2. APPEAL & ERROR — STANDARD OF REVIEW. — On appeal, the Supreme Court will not reverse the trial court's finding unless it is clearly erroneous. [A.R.C.P. Rule 52.]
3. APPEAL & ERROR — ISSUES RAISED FIRST TIME ON APPEAL — APPELLATE COURT WILL NOT CONSIDER. — The Supreme Court will not consider issues raised for the first time on appeal.

Appeal from Sevier Circuit Court; *Michael Castleman*, Judge; affirmed.

Darrell F. Brown & Associates, P.A., by: *Elizabeth A. Walker*, for appellant.

Harkness, Friedman, Kusin & Britt, by: *Bruce A. Condit*, for appellee.

RICHARD B. ADKISSON, Chief Justice. The trial court, sitting as trier of fact, awarded appellee, R. A. Brooks Trucking Company, \$13,047.00 for damages to its vehicle resulting from the negligence of appellant, Lewis A. Smith, in allowing his cattle, two bulls, to run free on the highway. On appeal two points are argued for reversal: (1) that the judgment was not supported by substantial evidence; and (2) that the award of damages was based upon incompetent evidence.

There was sufficient evidence of appellant's negligence to support the verdict. The owner of livestock is liable when damage results from his intentionally or negligently permitting animals to be at large. *Favre v. Medlock*, 212 Ark. 911, 208 S.W.2d 439 (1948). On appeal we will not reverse the

trial court's finding unless it is clearly erroneous. ARCP, Rule 52.

Evidence supporting the finding of the trial court was testimony of appellant's wife that, upon being notified one bull was out, she ran it back towards the pasture but was never sure she had run the animal into the fenced area. Mrs. Smith also testified that she and her brother-in-law looked for the bull to make sure that it had gone inside the pasture but never found it; even so, her husband sent her home because "it was so bad down there that he wanted me to get out of [those] woods." There was also testimony that Mrs. Smith knew for more than eight hours prior to the collision of appellee's vehicle that at least one of the bulls was running loose. We cannot say that the trial court erred in finding substantial evidence to support his finding of negligence.

Appellant's argument that the award of damages was based upon incompetent evidence is precluded by the fact that he failed to object to the evidence in the lower court. We have consistently held that we will not consider issues raised for the first time on appeal. *Sun Gas Liquids Co. v. Helena Nat'l Bank*, 276 Ark. 173, 633 S.W.2d 38 (1982).

Affirmed.