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BELL v. McMANUS
Cite as 294 Ark. 275 (1988)

278-A

Supplemental Opinion upon Denial of Rehearing
February 29, 1988

745 S.W.2d 140

APPEAL & ERROR — REHEARING — THE APPELLATE COURT DID NOT GRANT A REHEARING WHERE THE APPELLANTS' ARGUMENT HAD BEEN MISSTATED SINCE THERE WAS NO SUBSTANTIAL EVIDENCE UNDER EITHER ARGUMENT. — Where the appellate court had stated the appellants' third argument as that the trial court had set aside the jury verdict because there was no substantial evidence relating to compensatory or nominal damages when the appellants' actual

argument was that the trial court erred in holding that there was no substantial evidence of compensatory or nominal damages to submit to the jury, the appellate court did not grant a rehearing since under either argument there was no substantial evidence that required the giving of the appellants' requested instruction on damages.

JOHN I. PURTLE, Justice. [1] In their petition for rehearing the appellants state that this court misstated their third argument for reversal when we stated: "We do not agree with appellants' assertion in their third argument that the trial court set aside the jury verdict because there was no substantial evidence relating to compensatory or nominal damages." They are right. The third argument was: "The trial court erred in holding that there was no substantial evidence of compensatory or nominal damages to submit to the jury." Having stated their argument correctly, we refuse to grant a rehearing because there was no substantial evidence that required the giving of the appellants' requested instruction on damages.

The A.M.I. 2201 instruction offered by the appellants contained the following elements of damages:

- (1) The fair market value of their personal property immediately before the occurrence;
- (2) Any mental anguish or sense of outrage experienced by them in the past or reasonably certain to be experienced by them in the past or reasonably certain to be experienced in the future;
- (3) The infringement of their right to have their home secure and free from intruders;
- (4) The infringement of their right to have possession of their personal property, regardless of its value.

The court amended this instruction by submitting only one element to the jury, as follows:

- [1] Any mental anguish experienced by her in the past.

The proffered elements were either incorrect statements of the law or were not supported by substantial evidence.

Petition denied.
