

MARSHALL v. SNYDER.

4-7683

190 S. W. 2d 291

Opinion delivered October 29, 1945.

Rehearing denied December 3, 1945.

1. APPEAL AND ERROR.—Where there is substantial evidence, when viewed in the light most favorable to appellee, to support the verdict of the jury, it will not be disturbed on appeal.
2. APPEAL AND ERROR.—Where the testimony on the issue submitted to the jury was in irreconcilable conflict and the jury accepted appellee's version of the controversy, the findings having substantial evidence to support them cannot be said to be erroneous.

Appeal from Ouachita Circuit Court, Second Division; *Tom Marlin*, Judge; affirmed.

Appellant *pro se*.

C. M. Martin, for appellee.

HOLT, J. Appellant, Mrs. L. Marshall, secured a default judgment against appellee, Maudell Snyder, in a court of a justice of the peace, for \$137, as balance alleged to be due appellant on tuition for a business course. Appellee in apt time appealed. She contended that she had paid appellant \$128, which was all that was due her. Upon a jury trial, a verdict was returned in favor of appellee, and this appeal followed.

Appellant, in her motion for a new trial, assigned errors as follows: "1. That the verdict of the jury is contrary to law. 2. That the verdict of the jury is contrary to the evidence. 3. That the verdict of the jury is contrary to the law and evidence." No error was alleged as to any of the instructions.

The issue presented was one of fact for the jury's determination and it is our duty to affirm the judgment on the jury's verdict if we find any substantial evidence when viewed most favorably to appellee to sustain the jury's finding (*Arkansas Motor Coaches, Ltd., v. Williams*, 196 Ark. 48, 116 S. W. 2d 585).

After reviewing all of the testimony, we find it to be in irreconcilable conflict and no useful purpose would be

served in detailing it here. Appellant testified that under her oral agreement with appellee, appellee owed the amount sued for, and appellee testified that she had paid appellant all that was due. The jury has accepted appellee's version of the matter, and since her testimony was substantial, the judgment is affirmed.
