

CASES DETERMINED  
IN THE  
SUPREME COURT  
OF ARKANSAS

Troy L. ADAMS & Mrs. L.L. ADAMS v. Dorothy Mayo  
PARKER & Roger Kelly MAYO

85-301

708 S.W.2d 617

Supreme Court of Arkansas  
Opinion delivered May 5, 1986

1. NEW TRIAL — AVAILABILITY FOR ERROR IN ASSESSMENT OF AMOUNT OF RECOVERY. — A new trial may be granted for “any of the following grounds materially affecting the substantial rights of such party: . . . (5) error in the assessment of the amount of recovery, whether too large or too small. [Ark. R. Civ. P. 59.]
2. APPEAL & ERROR — REVIEW OF GRANTING OF MOTION FOR NEW TRIAL. — Where a motion for new trial is granted, the test on review is whether the trial court abused its discretion.
3. NEW TRIAL — TRIAL JUDGE HAS WIDE DISCRETION. — The trial judge is vested with great discretion in ruling on a motion for a new trial and will not be reversed unless there is a manifest abuse of that discretion.
4. APPEAL & ERROR — MOTION FOR NEW TRIAL — SHOWING ABUSE MORE DIFFICULT IF MOTION GRANTED. — A showing of abuse of discretion is more difficult when a new trial has been granted because there is less basis for a claim of prejudice by the beneficiary of the verdict which was set aside than by one who has unsuccessfully moved for a new trial.
5. NEW TRIAL — NO ABUSE OF DISCRETION TO GRANT — VERDICT INSUFFICIENT. — Where evidence was offered that plaintiff’s medical bills alone totalled \$2,854, it was not a manifest abuse of discretion for the trial court to find an award of \$200 was too small.

Appeal from Sebastian Circuit Court, Fort Smith District;

*John Holland*, Judge; affirmed.

*Pryor, Robinson & Barry*, for appellant.

*Gean, Gean, & Gean*, by: *Lawrence W. Fitting*, for appellee.

JACK HOLT, JR., Chief Justice. The appellant, Troy L. Adams, and the appellee, Roger Kelly Mayo, who were high school students at the time, were involved in a car accident in which both were injured. Mayo and his mother filed suit against Adams and his mother seeking \$61,875 for loss of income, loss of a college scholarship, disability, medical expenses, pain and suffering, and property damage. The case was tried before a jury which returned a verdict in Mayo's favor, fixing his damages at \$200.00. The trial judge found there was an error in the assessment of damages and granted Mayo's motion for a new trial. It is from that order that this appeal is brought. Our jurisdiction is pursuant to Sup. Ct. R. 29(1)(o). We affirm.

[1] Arkansas R. Civ. P. Rule 59 provides that a new trial may be granted for "any of the following grounds materially affecting the substantial rights of such party: . . . (5) error in the assessment of the amount of recovery, whether too large or too small."

[2-4] Where a motion for new trial is granted, the test on review is whether the trial court abused its discretion. *Ferrell v. Whittington*, 271 Ark. 750, 610 S.W.2d 572 (1981). The trial judge is vested with great discretion in ruling on a motion for a new trial and will not be reversed unless there is a manifest abuse of that discretion. *Roberts v. Simpson*, 275 Ark. 181, 628 S.W.2d 308 (1982). We have held that a showing of abuse of discretion is more difficult when a new trial has been granted because there is less basis for a claim of prejudice by the beneficiary of the verdict which was set aside than by one who has unsuccessfully moved for a new trial. *Roberts, supra*.

[5] Here, evidence was offered that Mayo's medical bills alone totalled \$2,854. From an examination of the record, we cannot say the trial court's finding, that an award of \$200 was too small, was a manifest abuse of discretion. Accordingly, we affirm the action of the trial judge in granting a new trial on that basis.

Affirmed.

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3

PURTLE, J., not participating.

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