

Susan Lynn CROWDER et al v.
Carl FLIPPO et al

77-358

565 S.W. 2d 138

Opinion delivered May 8, 1978
(Division II)

1. CIVIL PROCEDURE — ERRONEOUS INSTRUCTION AS GROUND FOR NEW TRIAL — INSTRUCTION MUST BE OBJECTED TO WHEN GIVEN. — Although trial courts have broad discretion in granting new trials, it was improper under Ark. Stat. Ann. § 27-1901 (Repl. 1962) and was an abuse of discretion for the trial court to grant a new trial on the basis of an erroneous instruction, an error of law, which was not objected to at the time it was given.
2. CIVIL PROCEDURE — GROUNDS FOR NEW TRIAL — OBJECTIONS NECESSARY TO MAKE ERRORS OF LAW GROUNDS FOR NEW TRIAL. — Ark. Stat. Ann. § 27-1901 (Repl. 1962) requires that errors of law be objected to at trial by the party seeking a new trial before his application can be granted on those grounds.

Appeal from Pulaski Circuit Court, Third Division, *Perry Whitmore*, Special Judge; reversed.

Laser, Sharp, Haley, Young & Huckabay, P.A., for appellants.

Patterson & Welch, by: *Morgan E. Welch*, for appellees.

DARRELL HICKMAN, Justice. The only issues on appeal of this circuit court involving an automobile accident is whether the trial court abused its discretion in granting a new trial.

This case was tried before a jury that returned a verdict refusing to award any of the parties damages. The appellees filed a motion for judgment notwithstanding the verdict, or in the alternative for a new trial. The grounds set forth in the motion were that the verdict could not be supported by the evidence. The trial court set aside the verdict and granted a new trial because it was convinced an improper instruction

had been given. The appellants argue on appeal that the trial court exceeded its authority because there was no objection made to the instruction at the time it was given. We agree.

Trial courts have broad discretion in granting new trials. *Security Insurance Co. v. Owen*, 255 Ark. 526, 501 S.W. 2d 229 (1973). The authority for such action is contained in an Arkansas statute which sets forth the grounds or reasons for setting aside a verdict. Ark. Stat. Ann. § 27-1901 (Repl. 1962). The only reason stated in the motion was that the verdict was not supported by the evidence. The trial court, on its own, decided that an instruction given was erroneous. However, it is undisputed there was no objection to the instruction at the time it was given. An erroneous instruction is an error of law. Since the statute requires that errors of law be objected to by the party at trial, the granting of a new trial in this case was improper.

Therefore, we feel that the trial court abused its discretion and, consequently, reverse its decision.

Affirmed.

We agree. HARRIS, C.J., and BYRD and HOWARD, JJ.