

ELAINE WARREN, A MINOR, AND WILLIAM C.
WARREN *v.* BETTY HAYES

73-138

500 S.W. 2d 923

Opinion delivered November 13, 1973

NEW TRIAL—DISCRETION OF TRIAL COURT, ABUSE OF.—Granting a new trial because of refusal to grant a continuance in a personal injury action *held* not an abuse of discretion.

Appeal from Pulaski Circuit Court, Third Division, *Tom F. Digby*, Judge; affirmed.

Cockrill, Laser, McGehee, Sharp & Boswell, for appellants.

Howell, Price, Howell & Barron, for appellee.

CONLEY BYRD, Justice. Late in the afternoon of the day before trial of this rear end automobile collision case appellants Elaine Warren, a minor, and William C. Warren amended their general denial answer to plead contributory negligence. Over objections of appellee Betty Hayes and notwithstanding a motion for a continuance, the case was tried to a jury resulting in a \$1,000 personal injury verdict. The trial court granted appellee a new trial. We cannot say that the trial court abused its discretion under the circumstances.

Affirmed.