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CASE COMMENTS

APPEAL AND ERROR: DISCRETION OF TRIAL JUDGE IN GRANTING A NEW TRIAL

Urga v. State, 36 So.2d 421 (Fla. 1948)

The defendant was convicted of attempting to procure an abortion. Conviction was confirmed on appeal,¹ but a writ of error coram nobis was later granted. In the trial of the new fact pursuant to the writ, sharply conflicting evidence was presented. A verdict for the defendant was set aside by the trial judge's order granting the state's motion for a new trial. On appeal from this order, HELD, there was substantial evidence to support the verdict. Order reversed, Justice Sebring dissenting.

In ruling this an appealable order the Court agreed that a writ of error coram nobis is civil in nature,² since, by statute,³ a defendant in a criminal case may appeal from a final judgment only. Furthermore, a civil case is relied upon as authority for reversing the order.⁴

In civil procedure a motion for a new trial is addressed to the sound judicial discretion of the trial judge, and his ruling will not be disturbed unless he abuses that discretion.⁵ When conflicting evidence is properly presented to and acted upon by a jury, one of two general principles is applied in determining whether a ruling constitutes abuse. When a new trial is *denied*, there is no abuse if there was legally sufficient evidence to support the verdict,⁶ or if reasonable men could have made such a finding,⁷ or if the question is purely one of credibility of the witness,⁸ or if there is not a preponderance of evidence against the verdict.⁹ When

¹*Urga v. State*, 155 Fla. 86, 20 So.2d 685 (1944).

²*Smith v. State*, 245 Ala. 161, 16 So.2d 315 (1944).

³FLA. STAT. §924.06 (1941).

⁴*Hart v. Held*, 149 Fla. 33, 5 So.2d 878 (1941).

⁵*Henderson v. State*, 135 Fla. 548, 185 So. 625 (1938); *Aberson v. Atlantic C. L. R. R.*, 68 Fla. 196, 67 So. 44 (1914).

⁶*Holstun v. Embry*, 124 Fla. 554, 169 So. 400 (1936); *Wilson v. Jernigan*, 57 Fla. 277, 49 So. 44 (1909).

⁷*Wilson v. Maddox*, 97 Fla. 489, 121 So. 805 (1929).

⁸*Wilson v. Maddox*, 97 Fla. 489, 121 So. 805 (1929); *National Union Fire Ins. Co. v. Cone*, 80 Fla. 265, 85 So. 913 (1920); *Shaw v. Newman*, 14 Fla. 128 (1872).

⁹*Greiper v. Coburn*, 139 Fla. 293, 190 So. 902 (1939); *Brandt v. Brandt*, 138

a new trial is *granted*, there is no abuse unless it is clearly shown that the evidence preponderates in favor of the verdict.¹⁰

It follows that when the trial judge agrees with a verdict based upon legally sufficient evidence it will be upheld unless the evidence preponderates against such verdict. But when the trial judge disagrees with the verdict, even though it may be based upon legally sufficient evidence, it will not be upheld unless there is then a preponderance of such evidence to support it.

The reason for this is the peculiar respect afforded a trial judge's opinion by virtue of his presence at the trial.¹¹

Cases not infrequently use contrary language in reversing an order granting a new trial, but close analysis shows that the verdict was required by the evidence,¹² or no other verdict could have been rendered,¹³ or the judge granting the new trial was not the same one presiding at the trial,¹⁴ or the verdict was correct because of an application of a principle of law¹⁵ or statutory construction¹⁶ to established facts.

The Court bases its reversal here upon the fact that there was substantial evidence, if believed by the jury, to support the verdict, and that therefore the trial judge should not have invaded the province of the jury by substituting his conclusions for their verdict. In addition to being a departure from the latter of the two principles previously stated, this holding seriously endangers the well-recognized right of the party receiving an adverse verdict to have the trial judge review it in the light of the evidence and to secure a new trial when the judge is unable to reconcile the verdict with the justice of the cause.¹⁷ A jury verdict cre-

Fla. 243, 189 So. 275 (1939); *Police & Firemen's Ins. Ass'n v. Hines*, 134 Fla. 298, 183 So. 831 (1938).

¹⁰*Kight v. American Eagle Fire Ins. Co.*, 131 Fla. 764, 179 So. 792 (1938); *Lockhart v. Butt-Landstreet, Inc.*, 91 Fla. 497, 107 So. 641 (1926); *Ruff v. Georgia, S. & F. Ry.*, 67 Fla. 224, 64 So. 782 (1914); *Farrell v. Solary*, 43 Fla. 124, 31 So. 283 (1901).

¹¹*Farrell v. Solary*, 43 Fla. 124, 31 So. 283 (1901).

¹²*Hart v. Held*, 149 Fla. 33, 5 So.2d 878 (1941); *Motor Transit Co. v. Studstill*, 129 Fla. 769, 176 So. 769 (1937).

¹³*Seaboard A. L. Ry. v. Wester*, 94 Fla. 259, 114 So. 242 (1927).

¹⁴*Wolkowsky v. Goodkind*, 153 Fla. 267, 14 So.2d 398 (1943).

¹⁵*Seaver v. Stratton*, 133 Fla. 183, 183 So. 335 (1937); *Du Boise Construction Co. v. South Miami*, 108 Fla. 362, 146 So. 833 (1933); *Phillips v. Lowenstein*, 91 Fla. 89, 107 So. 350 (1926).

¹⁶*Charlotte County v. Chadwick*, 102 Fla. 163, 135 So. 502 (1931).

¹⁷*Carney v. Stringfellow*, 73 Fla. 700, 74 So. 866 (1917); *Aberson v. Atlantic C. L. R. R.*, 68 Fla. 196, 67 So. 44 (1914).