Alabama Rules of Civil Procedure

VI. TRIALS

Rule 50.

Judgment as a matter of law in actions tried by jury; alternative motion for new trial; conditional rulings.

(a) *Judgment as a matter of law.*

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) *Renewal of motion for judgment after trial; alternative motion for new trial.* Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than thirty (30) days after entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for a judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) *Same: Conditional rulings on grant of motion for judgment as a matter of law.*

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it

should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against whom judgment as a matter of law has been entered may file a motion for a new trial pursuant to Rule 59 not later than thirty (30) days after entry of the judgment.

(d) *Same: Denial of motion for judgment as a matter of law.* If the motion for judgment as a matter of law is denied, the party who prevailed on the motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(dc) *District court rule.* Rule 50 does not apply in the district courts.

[Amended 3-1-83, eff. 7-1-83; Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

This rule is identical to Federal Rule 50 except for expansion of the time limits therein from 10 to 30 days and express retention of the scintilla evidence rule.

Rule 50(a) and 50(b) supplant Alabama procedural devices which formerly operated in this area. The motion for a directed verdict at the close of the opponent’s evidence is a complete substitute for the demurrer to the evidence, the motion to exclude the evidence, and the motion for the affirmative charge at the end of the opponent’s evidence. The motion for a directed verdict performs every function that these earlier devices did and hence, they are abolished, and it is procedurally an improvement since a party can test the sufficiency of his opponent’s evidence by moving for a directed verdict without waiving his own right to present evidence if the motion is denied. Alabama law heretofore has been to the contrary. Code 1940, Tit. 7, § 244; *McCarty v. Williams*, 212 Ala. 232,

102 So. 133 (1924); *Stewart Bros. v. Ransom*, 200 Ala. 304, 76 So. 70 (1917). But cf. *Atlantic Coast Line R. Co. v. French*, 261 Ala. 306, 74 So.2d 266 (1954).

The motion for a directed verdict at the close of all the evidence will be in all respects a substitute for the peremptory charge. Under Rule 50, a motion for a directed verdict will be granted or denied in any situation where the peremptory charge would be granted or denied under present Alabama law. See McElroy, *The General Affirmative Charge with Hypothesis*, 1 Ala.L.Rev. 151, 152 (1948).

Alabama has also had a somewhat unique procedure known as the "affirmative charge with hypothesis." Where the party having the burden of proof has made out his case by uncontradicted testimony, the case is sent to the jury but with a special direction that "if the jury believe the evidence, it must find for the plaintiff." *Allen v. Southern Coal & Coke Co.*, 205 Ala. 363, 87 So. 562 (1921). In federal courts and in most states, the case is not submitted to the jury under the circumstances described; instead the court directs a verdict. Rule 50(a) last sentence clearly provides that the order granting a motion for a directed verdict is effective without any assent of the jury. This eliminates the illogical ritual required under former practice. But the differences between the former Alabama procedure and that followed elsewhere are not as great in practice as they are in theory. Most judges regard the affirmative charge with hypothesis as a form of peremptory, and give it in such a fashion as to be construed as a peremptory charge by the jury. McElroy, *The General Affirmative Charge with Hypothesis*, 1 Ala.L.Rev. 151, 152 (1948). And if the jury finds a verdict contrary to the affirmative charge with hypothesis, the verdict must be set aside as contrary to the instructions of the court. *Piedmont Fire Ins. Co. v. Tierce*, 245 Ala. 415, 17 So.2d 133 (1944); *Penticost v. Massey*, 202 Ala. 681, 81 So. 637 (1919). Thus while the affirmative charge with hypothesis submits the credibility of the witnesses to the jury, in effect the jury is not permitted to disbelieve the witnesses. In practice the jury is not allowed to disbelieve the witnesses, and in theory there is no reason why they should be. "If the testimony delivered upon the trial is unimpeached, either by the manner of the witness, his knowledge of the facts, his connection with the parties or by contradictions, or for some other legal reason, the jury must treat it as true…. Any other course would imperil the fairness and impartiality of the trial." *Crawford v. State*, 44 Ala. 382, 386 (1870). For the reasons outlined, Rule 50(d) abolishes the affirmative charge with hypothesis.

The motion for judgment notwithstanding the verdict tests the sufficiency of the evidence in just the same way as does the motion for directed verdict at the close of all the evidence. In a doubtful case the court may prefer to deny the motion for a directed verdict, and consider the attack on the sufficiency of the evidence subsequently on motion for judgment n.o.v. This course gives the court more time to consider the matter, the verdict of the jury, if in accord with the

judge's own ideas as to the sufficiency of the evidence, may settle the matter, and after verdict the court may grant a new trial on the ground that the verdict is contrary to the great weight of the evidence, instead of directing judgment. See 9 Wright & Miller, *Federal Practice and Procedure*, § 2533, n. 98 (1971).

A party must make a motion for a directed verdict in order to be entitled to a judgment notwithstanding the verdict. A motion for judgment n.o.v. without having moved for a directed verdict at the proper time will be denied. See *Starling v. Gulf Life Ins. Co*., 382 F.2d 701 (5th Cir.1967); 9 Wright & Miller, *Federal Practice and Procedure*, § 2537, n. 31 (1971).

Rule 50(c) covers simultaneous or alternative motions for judgment n.o.v. and new trial. Under Rule 50(b), the trial court has several alternatives available when confronted with a motion for judgment n.o.v. The court may either 1) let the verdict stand and deny the motion; 2) reopen the judgment and order a new trial; 3) reopen the judgment and direct entry of a judgment as if the verdict had been directed in behalf of the movant.

The amendments seek to codify certain procedures that have developed from various cases, particularly, *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 61 S.Ct. 189, 85 L.Ed. 147 (1940) and *McIlvine Patent Corp. v. Walgreen Co*., 138 F.2d 177 (7th Cir.1943). In an effort to eliminate unnecessary remands and evidentiary review by stale or unfamiliar minds, Rule 50(c) was devised. The procedure, in effect, requires the judge who has granted judgment n.o.v. to also render an advisory opinion on any alternative motion for a new trial so the appellate court might have the benefit of this view in the event they reverse him on his grant of a judgment n.o.v. Thus, the appellate court can have an answer to the question, "Now that you have found out you erred in giving the verdict-loser a judgment n.o.v., would you give him a new trial?" Note that the new trial ruling if conditionally granted, is not binding on the appellate court.

1971 F.R.C.P. 50(c)(2) deals with the verdict-winner who has seen the trial court grant judgment n.o.v. against him. He may then seek a new trial which, if granted, suspends finality of the order granting judgment n.o.v.

Subdivision (d) deals with the verdict-winner who has also successfully resisted a motion for judgment n.o.v. As appellee, he is permitted to urge new trial grounds in the event the appellate court concludes that judgment n.o.v. should have been entered.

Subparagraph (e) expressly abolishes the Demurrer to the Evidence, the Motion to Exclude the Evidence, and the Affirmative Charge with or without Hypothesis. This subdivision further retains the scintilla evidence rule and, therefore, while Federal cases will be helpful in understanding the procedure this Rule provides, they are not authoritative as to when the case can be withdrawn from the jury, since the scintilla rule is not followed in Federal Court.

Committee Comments to October 1, 1995,
Amendment to Rule 50

Subdivision (a). This amendment incorporates recent amendments and a proposed amendment to F.R.Civ.P. 50(a). It renames the motion for a directed verdict as a motion for a judgment as a matter of law. This nomenclature facilitates a generic reference to a course of action that also resolves cases at the summary judgment stage. This revision articulates the standard in terms consistent with prevailing law. It also contemplates entry of judgment at any time before submission of the case to the jury.

Subdivision (b). This amendment incorporates recent amendments to F.R.Civ.P. 50(b) but preserves the thirty- (30-) day time in which to file a post-judgment motion.

Subdivisions (c) and (d). This amendment incorporates recent amendments to F.R.Civ.P. 50(c) made necessary by changes in nomenclature.

This amendment also deletes as obsolete former subdivision (e), which abolished the demurrer to the evidence, the motion to exclude the evidence, and the affirmative charge with or without hypothesis and which retained the scintilla rule.