

City of BENTON v. Mrs. Arthur CONNERLY
and Mrs. Frances K. WOOD

76-336

547 S.W. 2d 432

Opinion delivered March 14, 1977
(Division II)

1. PLEADING & PRACTICE — UNIFORM RULES OF CIRCUIT & CHANCERY COURTS — COMPLIANCE WITH REQUIRED. — Where appellant did not file a response to appellee's motion for judgment notwithstanding the verdict and a brief supporting statement of the legal and factual reasons in support thereof within 10 days after the serving of the motion upon him, as required by Rule 2c of the Uniform Rules of Circuit and Chancery Courts, Vol. 3A, Ark. Stat. Ann. (Supp. 1975), he is in no position to complain on appeal concerning the entry of the judgment by the trial court pursuant to appellee's timely motion.
2. APPEAL & ERROR — ISSUES RAISED FOR FIRST TIME ON APPEAL — REVIEW.—Issues which are not presented to the trial court cannot be raised for the first time on appeal.

Appeal from Saline Circuit Court, *Henry B. Means*, Judge; affirmed.

Richard L. Mattison, for appellant.

House, Holmes & Jewell, for appellees.

JOHN A. FOGLEMAN, Justice. On this appeal, appellant questions the propriety of a judgment notwithstanding the verdict in an eminent domain proceeding. The judgment for the amount of compensation to the landowner was based upon the testimony of the only value expert witness who testified for the appellee landowners. The testimony of appellant's only value expert had been stricken by the trial judge during the course of the trial upon the landowners' motion. The verdict was for an amount less than that determined by either expert. The judgment was rendered on May 27, 1976, on appellee's timely motion filed December 8, 1975.

Appellant is in no position to question the action of the trial court on appeal. Rule 2c of the Uniform Rules for Cir-

cuit and Chancery Courts, Vol. 3A, Ark. Stat. Ann. (Supp. 1975) requires that, if a respondent opposes a pleading as defined by Rule 2, he shall file a response, including a brief supporting statement of the legal and factual reasons in support thereof within ten days after the service of the pleading upon him. Even though appellees' motion was filed in strict compliance with Rule 2a and 2b, no response was ever filed by appellant. Appellant makes some rather persuasive arguments here, which, so far as the record discloses, have never been presented to the trial court. Consequently, these issues are raised for the first time on appeal. Since this is so, we cannot consider them. *Hendrix v. Hendrix*, 256 Ark. 289, 506 S.W. 2d 848.

The judgment is affirmed.

We agree. HARRIS, C.J., and ROY and HICKMAN, JJ.
