

SOUTHWESTERN BELL TELEPHONE COMPANY *v.*  
MID-STATE CONSTRUCTION COMPANY, INC.

84-300

688 S.W.2d 278

Supreme Court of Arkansas  
Opinion delivered April 22, 1985

TRIAL — QUESTIONING SUFFICIENCY OF THE EVIDENCE TO SUPPORT A JURY VERDICT — MUST NOW BE DONE BY FILING MOTION FOR DIRECTED VERDICT OR MOTION FOR JUDGMENT N.O.V. — Questioning the sufficiency of the evidence by a motion for a new trial was formerly permissible, but that procedure was eliminated by a 1983 amendment of Rule 50(e), ARCP, which now provides that any question pertaining to the sufficiency of the evidence to support a jury verdict is waived unless a motion for a directed verdict is filed at the conclusion of all the evidence, or a motion is filed for a judgment notwithstanding the verdict, because of insufficiency of the evidence.

Appeal from Garland Circuit Court; *Walter G. Wright*, Judge; affirmed.

*Stephany Ann Slagle*, for appellant.

*Tom Lienhart*, for appellee.

GEORGE ROSE SMITH, Justice. This action was brought by the appellant, Southwestern Bell, to recover for damage to its underground cables caused by the appellee, Mid-State Construction Company. Mid-State counterclaimed for the amount of needless expenses incurred as a result of Southwestern Bell's misrepresentation of the location of the cables and negligent failure to relocate them as promised. The jury awarded Southwestern Bell \$216.34 on its complaint and Mid-State \$4,110.40 on its counterclaim. Southwestern Bell appeals on the single ground that the verdict against it is not supported by sufficient evidence. Rule 29(1)(o) brings the case to us.

We cannot reach the merits of the appeal, because the issue was not properly raised below. Counsel did not file a motion for a directed verdict on the counterclaim and

instead sought to question the sufficiency of the evidence by a motion for a new trial. That procedure was formerly permissible, but more than a year before the trial we amended Civil Procedure Rule 50(e) to eliminate that method of questioning the opposing party's proof. The change was desirable, for if a party cannot produce substantial evidence to support his claim, a new trial would be useless.

The controlling Rule, since the 1983 revision, has read as follows:

(e) Failure to Question Sufficiency of the Evidence. When there has been a trial by jury, the failure of a party to file a motion for directed verdict at the conclusion of all the evidence, or a motion for judgment notwithstanding the verdict, because of insufficiency of the evidence will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the jury verdict.

The Reporter's Notes were amended to call attention to the deletion:

Rule 50(e) is amended to omit the reference to the motion for new trial as a means of challenging the sufficiency of the evidence. Motions for directed verdict and judgment notwithstanding the verdict are used to challenge the sufficiency of the evidence.

*In Re: Amendments to the Rules of Civil Procedure*, 279 Ark. 470, 651 S.W.2d 63 (1983). The issue that Southwestern Bell seeks to present to this Court has been waived.

Affirmed.