

An Important Litigation Tool

A Motion for Directed Verdict

By Julie I. Fershtman

Judicial resources are scarce. Counsel would be wise to consider a litigation tool that could potentially reduce legal expenses, conserve judicial resources, and narrow the issues presented to the jury. That tool is a motion for directed verdict.

Motions for directed verdict are raised when a party fails to present sufficient evidence for a jury to deliberate on a disputed question of fact. The test used to grant a motion for directed verdict is “whether from the facts in the light most favorable to plaintiff, reasonable men could honestly reach a different conclusion. If the answer to this is ‘yes,’ the question is for the jury.”¹

In essence, the grant of a directed verdict against a party means that the party failed to meet the burden of proof in a case. Motions for directed verdict require careful advance planning, attention to detail, research, and a laser-sharp focus on the evidentiary requirements of your case and your opponent’s case.

Are They Constitutional?

The Seventh Amendment to the United States Constitution and the Michigan Constitution protect the right to a trial by jury. “Michigan courts, in considering motions for a directed verdict and for judgment notwithstanding the verdict, are cognizant of the delicate balance between the constitutional right to a jury trial, on the one hand, and the proper judicial exercise of the rules of civil procedure, on the other.”²

Constitutional objections to a directed verdict require an analysis of the interplay of a party’s right to a jury trial and other fundamental protections such as due process. For example, in criminal cases, the Michigan Supreme Court has recognized that “[d]irected verdicts of guilt in criminal jury trials are forbidden by the Sixth and Fourteenth amendments” because of a defendant’s absolute right to a jury determination upon all essential elements of the offense.³

Relevant Court Rules

MCR 2.516 provides, in part, that “[a] party may move for a directed verdict at the close of the evidence offered by an opponent. The motion must state specific grounds in support of the motion.” In nonjury civil trials, these motions are brought under MCR 2.504(B)(2) as motions for involuntary dismissal. Federal Rule of Civil Procedure 50(a) contains the relevant provision for a directed verdict for federal civil trials. In criminal cases, MCR 6.419 refers to motions for directed verdict of acquittal before submission of the case to the jury and states:

After the prosecutor has rested the prosecution’s case-in-chief or after the close of all the evidence, the court on the defendant’s motion must direct a verdict of acquittal on any charged offense for which the evidence is insufficient to sustain a conviction. The court may on its

own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government’s evidence, the defendant may offer evidence without having reserved the right to do so.⁴

Federal Rule of Criminal Procedure 29 contains the counterpart of a motion for directed verdict in federal criminal trials.

Strategies

Below are some strategies to keep in mind when considering a motion for directed verdict:

- Remember to bring your motion at the close of your opponent’s proofs and outside of the presence of the jury. Typically, you will not follow the formalities normally associated with a pretrial motion practice, such as written motion filings and advance notice to counsel before the hearing. Instead, you raise your motion orally in court.
- For civil motions, be mindful of the requirement in the Michigan Court Rules to state “specific” grounds in support of your motion. Conclusory arguments, devoid of specific support, are not the proper basis for the motion.
- Before you present a motion for directed verdict, carefully consider the specific

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grounds for this motion. At trial, you should consider bringing a “score card” listing each element of the opposing party’s case. After the court admits witness testimony and trial exhibits, note which elements have been supported.

- A well-written motion for directed verdict should support your legal position at trial. Your motion should identify the appropriate authorities, the opponent’s burden of proof, and, when possible, an explanation of why the opponent’s evidence was insufficient to satisfy that burden.
- If the judge denies your motion, consider renewing it after all evidence has been submitted at the conclusion of the case.

The mere process of preparing for a motion for directed verdict is, in itself, beneficial. It focuses your attention on key elements of your opponent’s case, which can sharpen your own presentation. Namely, studying your opponent’s requisite elements and burden of proof forces you to hone in on effective strategies to present your opening and closing statements, motions in limine, and witness examinations.

In contrast, you should also anticipate that opposing counsel may file a motion for directed verdict against your case or defense. Be prepared to raise arguments to defeat such a motion, including (1) the evidence introduced at trial sufficiently supports the proof of your claims or defenses and (2) facts that rely on the credibility of witnesses should be decided by a jury.

As counsel for an insurance company defending an equine insurance coverage case, I used these strategies and moved for directed verdict. Immediately upon the plaintiff resting her case at trial, I argued that the plaintiff proffered insufficient evidence that she substantially complied with the policy’s condition precedent to give the insured horse “proper care and attention” because she ordered a veterinarian to destroy the horse rather than perform life-saving surgery. The plaintiff’s principal witness, I argued, was not competent. He was the plaintiff’s general practice veterinarian, who conceded during cross-examination that when the insured horse became a surgical candidate, several hours before its

demise, he had already referred it to a specialist veterinarian, whom the plaintiff would later instruct to put the horse down. Because the specialist had custody of the insured horse during the critical time frame, I argued, only he could support whether the plaintiff complied with the policy’s condition. Yet the plaintiff rested her case without that veterinarian’s testimony. The trial judge agreed that the plaintiff failed to support a critical element of her case, granted my motion, and excused the jury.⁵

Conclusion

General George S. Patton Jr. once said, “Accept the challenges so that you may feel the exhilaration of victory.” Motions for directed verdict are challenging to present. The exhilaration of victory is an added bonus. A few years ago, I defended two civil jury trials within weeks of each other. Though both trial court judges denied my pretrial motions for summary disposition, they granted my motions for directed verdict at trial. Each time this happened, my clients seemed stunned by the proceedings, asking, “What just happened?” as we left the courthouse without ever presenting our first witness. This clearly was not the expected

route to victory, but they were unquestionably grateful to be spared time, expense, and the uncertainty of a jury verdict. ■



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ENDNOTES

1. *Sparks v Luplow*, 372 Mich 198, 202; 125 NW2d 304, 306 (1963).
2. *Napier v Jacobs*, 429 Mich 222, 231; 414 NW2d 862, 865 (1987).
3. *People v Chamblis*, 395 Mich 408, 420; 236 NW2d 473, 479 (1975), overruled on other grounds in *People v Cornell*, 466 Mich 336; 646 NW2d 127 (2002).
4. MCR 6.419(A), effective September 1, 2013.
5. *Tezok v American Bankers Insurance Company of Florida*, Geauga County, Ohio, Court of Common Pleas, No. 02P000519 (5/11/2004) (Inderlied, J).