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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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WEISGRAM ET AL. v. MARLEY CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

No. 99–161. Argued January 18, 2000— Decided February 22, 2000

Bonnie Weisgram died of carbon monoxide poisoning during a fire in her home. Her son, petitioner Chad Weisgram, individually and on behalf of her heirs (hereinafter Weisgram), brought this diversity action in the District Court seeking wrongful death damages. Weisgram alleged that a defect in a heater, manufactured by defendant (now respondent) Marley Company and located in Bonnie Weisgram's home, caused both the fire and her death. At trial, Weisgram introduced the testimony of three witnesses, proffered as experts, in an endeavor to prove the alleged heater defect and its causal connection to the fire. The District Court overruled Marley's objections that this testimony was unreliable and therefore inadmissible under Federal Rule of Evidence 702 as elucidated by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579. At the close of Weisgram's evidence, and again at the close of all the evidence, Marley unsuccessfully moved under Federal Rule of Civil Procedure 50(a) for judgment as a matter of law on the ground that plaintiffs had failed to meet their burden of proof on the issues of defect and causation. The jury returned a verdict for Weisgram. Marley again requested judgment as a matter of law, and additionally requested, in the alternative, a new trial, pursuant to Rules 50 and 59; among arguments in support of its post-trial motions, Marley reasserted that the expert testimony essential to prove Weisgram's case was unreliable and therefore inadmissible. The District Court denied the motions and entered judgment for Weisgram. The Eighth Circuit panel held that Marley's motion for judgment as a matter of law should have been granted because the testimony of Weisgram's expert witnesses, the sole evidence supporting the product defect charge, was speculative and not shown to be scientifically sound, and was therefore incompetent to

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prove plaintiffs' case. The court then considered the remaining evidence in the light most favorable to Weisgram, found it insufficient to support the jury verdict, and directed judgment as a matter of law for Marley. Although recognizing its discretion to remand for a new trial under Rule 50(d), the court rejected any contention that it was required to do so, stating that this was not a close case, plaintiffs had had a fair opportunity to prove their strict liability claim, they failed to do so, and there was no reason to give them a second chance.

Held: Rule 50 permits an appellate court to direct the entry of judgment as a matter of law when it determines that evidence was erroneously admitted at trial and that the remaining, properly admitted, evidence is insufficient to constitute a submissible case. Pp. 5–16.

(a) Rule 50(d), which controls when, as here, the verdict loser appeals from the trial court's denial of a motion for judgment as a matter of law, provides: "[T]he party who prevailed on that 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 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." Rule 50 does not expressly address Weisgram's contention that, under subdivision (d), when a court of appeals determines that a jury verdict cannot be sustained due to an error in the admission of evidence, the appellate court may not order the entry of judgment for the verdict loser, but must instead remand the case to the trial court for a new trial determination. *Neely v. Martin K. Eby Constr. Co.*, 386 U. S. 317, ruled definitively that if a court of appeals determines that the district court erroneously denied a defendant's motion for judgment as a matter of law, the appellate court may (1) order a new trial at the verdict winner's request or on its own motion, (2) remand the case for the trial court to decide whether a new trial or entry of judgment for the defendant is warranted, or (3) direct the entry of judgment as a matter of law for the defendant. *Id.*, at 327–330. Pp. 5–10.

(b) The authority of courts of appeals to direct the entry of judgment as a matter of law extends to cases such as the present one in which, on the appellate court's excision of erroneously admitted testimony, there remains insufficient evidence to support the jury's verdict. Contrary to Weisgram's contention, that authority is not limited to cases exemplified by *Neely* in which judgment as a matter of law is requested based on plaintiff's failure to produce enough evidence to warrant a jury verdict. Weisgram asserts that insufficiency caused by deletion of evidence on appeal requires an "automatic remand" to the district court for consideration whether a new trial is warranted.

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His assertion draws support from Court of Appeals decisions holding that, in fairness to a verdict winner who may have relied on erroneously admitted evidence, courts confronting questions of judgment as a matter of law should rule on the record as it went to the jury, without excising evidence inadmissible under Federal Rule of Evidence 702. The decisions on which Weisgram relies are of questionable consistency with Rule 50(a)(1), which states that in ruling on a motion for judgment as a matter of law, the court is to inquire whether there is any “legally sufficient evidentiary basis for a reasonable jury to find for [the opponent of the motion].” Inadmissible evidence contributes nothing to a “legally sufficient evidentiary basis.” See *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 242. As *Neely* recognized, appellate rulings on post-trial pleas for judgment as a matter of law call for the exercise of “informed discretion,” 386 U. S., at 329, and fairness to the parties is surely key to the exercise of that discretion. But fairness concerns should loom as large when the verdict winner, in the appellate court’s judgment, failed to present sufficient evidence as when the appellate court declares inadmissible record evidence essential to the verdict winner’s case. In both situations, the party whose verdict is set aside on appeal will have had notice, before the close of evidence, of the alleged evidentiary deficiency. See Rule 50(a)(2). On appeal, both will have the opportunity to argue in support of the jury’s verdict or, alternatively, for a new trial. And if judgment is instructed for the verdict loser, both will have a further chance to urge a new trial in a rehearing petition. Since *Daubert*, moreover, parties relying on expert evidence have had notice of the exacting standards of reliability such evidence must meet. It is implausible to suggest, post-*Daubert*, that parties will initially present less than their best expert evidence in the expectation of a second chance should their first try fail. The Court therefore rejects Weisgram’s argument that allowing courts of appeals to direct the entry of judgment for defendants will punish plaintiffs who could have shored up their cases by other means had they known their expert testimony would be found inadmissible. In this case, for example, although Weisgram was on notice every step of the way that Marley was challenging plaintiffs’ experts, he made no attempt to add or substitute other evidence. Facing the Eighth Circuit’s determination that the properly admitted evidence was insufficient to support the verdict, Weisgram offered that court no specific grounds for a new trial. The Eighth Circuit therefore did not abuse its discretion by directing entry of judgment for Marley, instead of returning the case to the District Court for further proceedings. This Court’s holding adheres to *Neely*’s holding and rationale. Pp. 10–16.

169 F. 3d 514, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.