IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-14863
Non-Argument Calendar

D.C. Docket No. 5:07-cv-00946-VEH

ALIREZA A. NASSERI,

Plaintiff-Appellant,

versus

CITY OF ATHENS, ALABAMA, et al.,

Defendants,

FRED MILLWARD,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

Before: HULL, MARTIN, and FAY, Circuit Judges.

PER CURIAM:

Alireza A. Nasseri, proceeding *pro se*, appeals a jury verdict in favor of the defendant, Fred Millward, in his counseled civil rights action filed pursuant to 42

U.S.C. § 1983. On appeal, Nasseri appears to challenge the sufficiency of the evidence to support the jury's verdict in favor of Millward, which rejected Nasseri's claims of excessive force and deliberate indifference. For the reasons set forth below, we dismiss the appeal.

I.

In May 2007, Nasseri, a non-prisoner, filed a counseled § 1983 complaint against several defendants, including Millward, a police officer. Among other things, the complaint alleged that, on May 26, 2005, Millward locked Nasseri in a police car for an extended period of time immediately after another officer pepper sprayed Nasseri in the face. When Officer Millward saw that Nasseri was struggling to breathe, Officer Millward left the area and did not return for an extended period of time. Thereafter, Nasseri was not allowed to shower, wash his face, or receive medical treatment. Based on these allegations, Nasseri brought excessive force and deliberate indifference claims against Millward.

After filing an answer, the defendants moved for summary judgment, and the district court granted the motion. On appeal, we affirmed, in part, and reversed, in part. Specifically, we reversed as to the district court's grant of summary judgment to Officer Millward on Nasseri's claims of excessive force and deliberate indifference.

On remand, the district court conducted a jury trial, and Nasseri was represented by counsel. After the conclusion of the evidence, Nasseri did not move for a judgment as a matter of law under Rule 50(a). Ultimately, the jury entered a special verdict finding that Millward did not use excessive force, nor did he exhibit deliberate indifference to a serious medical need. The district court entered judgment in favor of Millward, and, subsequently, the district court granted Nasseri's attorney leave to withdraw. After the verdict was entered, Nasseri did not file a Rule 50(b) motion for a judgment notwithstanding the verdict.

II.

"Federal Rule of Civil Procedure 50 sets forth the procedural requirements for challenging the sufficiency of the evidence in a civil jury trial and establishes two stages for such challenges—prior to submission of the case to the jury, and after the verdict and entry of judgment." *Unitherm Food Sys., Inc. v. Swift–Eckrich, Inc.,* 546 U.S. 394, 399, 126 S.Ct. 980, 985, 163 L.Ed.2d 974 (2006). Under Rule 50(a), a party may challenge the sufficiency of the evidence before the case is submitted to the jury; and Rule 50(b) "sets forth the procedural requirements for renewing a sufficiency. . . challenge after the jury verdict and entry of judgment." *Id.* at 399-400, 126 S.Ct. at 985. A motion under Rule 50(b) must be filed no later than 28 days after the entry of judgment. Fed.R.Civ.P. 50(b).

When a party fails to file a post-verdict motion pursuant to Rule 50(b), appellate courts are "without power to direct the [d]istrict [c]ourt to enter judgment contrary to the one it had permitted to stand." *Unitherm Food Sys., Inc.*, 546 U.S. at 400-01, 126 S.Ct. at 985. A post-verdict motion is necessary because a decision regarding whether a party is entitled to such relief "calls for the judgment in the first instance of the judge who saw and heard the witnesses and has the feel of the case which no appellate printed transcript can impart." *Id.* at 401, 126 S.Ct. at 985-86. Thus, applying *Unitherm*, we have held that appellate review of a jury verdict is precluded in cases where a party has filed a Rule 50(a) motion prior to the submission of the case to the jury, but fails to file a post-verdict motion for a judgment notwithstanding the verdict or a new trial. *Hi Ltd. P'ship v. Winghouse of Fla., Inc.*, 451 F.3d 1300, 1301-02 (11th Cir. 2006). While the pleadings of *pro se* litigants are held to a less stringent standard than pleadings drafted by attorneys, *Tannenbaum v. United States*, 148 F.3d at 1263 (11th Cir. 1998), *pro se* litigants still must comply with procedural rules, including the Federal Rules of Civil Procedure, *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

In his brief, Nasseri does not expressly state that the evidence at trial was insufficient to support the jury's verdict or allege that the district court should have entered a verdict in his favor. However, he appears to reassert the merits of his excessive force and deliberate indifference claims against Millward without

discussing how the evidence was contrary to the jury's verdict, and he asks us to enter a judgment in his favor. Thus, liberally construing Nasseri's brief, he appears to challenge the sufficiency of the evidence to support the jury's verdict. *See Tannenbaum*, 148 F.3d at 1263.

We lack the power to review the sufficiency of the evidence or to enter a verdict in Nasseri's favor because he failed to comply with the requirements of Rules 50(a) and (b). After the close of evidence, Nasseri's trial counsel did not file a Rule 50(a) motion for a judgment as a matter of law. Further, Nasseri, while proceeding *pro se* or represented by counsel, did not file a post-judgment motion under Rule 50(b) for a judgment notwithstanding the verdict. Absent a post-judgment Rule 50(b) motion, we are without power to review the sufficiency of the evidence or enter a judgment in Nasseri's favor. *See Unitherm,* 546 U.S. at 400-01, 126 S.Ct. at 985; *Hi Ltd. P'ship*, 451 F.3d at 1301-02.

For the foregoing reasons, we dismiss the appeal.

DISMISSED.