

Janice BELCHER *v.* John Russell BELCHER

CA 02-1014

91 S.W.3d 108

Court of Appeals of Arkansas
En Banc

Opinion delivered December 4, 2002

1. NEW TRIAL — TRIAL COURT'S DISCRETION TO GRANT — TRIAL COURT'S ABILITY TO MODIFY OR SET ASIDE JUDGMENT. — The trial court has the discretion to grant a new trial pursuant to Ark. R. Civ. P. 60(c)(1) for up to one year after discovery of the grounds or one year after a judgment is filed with the clerk of the court, whichever is earlier; the trial court retains the ability to modify, set aside or vacate its judgment to allow a new trial even after the case has been appealed to the supreme court or court of appeals and affirmed.
2. NEW TRIAL — MATTER REMANDED TO DECIDE APPELLANT'S MOTION — APPEAL HELD IN ABEYANCE. — Where no briefs had yet been filed, the appellate court concluded, based on the allegations raised, that the trial court should be given the opportunity to act on the motion for new trial prior to submission of the case; the appellate court accordingly remanded the matter to the trial court to decide appellant's motion for new trial and directed that the appeal be held in abeyance pending the trial court's decision.

Appeal from Garland Circuit Court; *David B. Switzer*, Judge; Motion for Leave to File Motion for New Trial; granted.

Law Offices of Charles M. Kester, P.L.C., by: *Charles Kester*, for appellant.

Wisely Law Offices, by: *William R. Wisely*, for appellee.

PER CURIAM. The appellant, Janice Belcher, has moved for leave to file a motion for new trial based upon newly discovered evidence, pursuant to Ark. R. Civ. P. 60(c)(1). Belcher asks that her appeal be held in suspension while the trial court entertains the motion for new trial.

[1] The trial court has the discretion to grant a new trial pursuant to Rule 60(c)(1) for up to one year after discovery of the grounds or one year after a judgment is filed with the clerk of the court, whichever is earlier. In this instance, the judgment appealed was entered on June 7, 2002. The trial court retains the

ability to modify, set aside or vacate its judgment to allow a new trial even after the case has been appealed to the supreme court or court of appeals and affirmed. *Davis v. Davis*, 291 Ark. 473, 725 S.W.2d 845 (1987); *Garrett v. Allstate Ins. Co.*, 26 Ark. App. 199, 762 S.W.2d 3 (1988).

[2] This court denied the appellant's identical motion for remand in *Garrett v. Allstate Ins. Co.*, *supra*, citing that the briefs had all been filed and the case was ready for decision as a basis for the denial. The case before us is distinguishable in that no briefs have yet been filed; and we conclude based on the allegations raised that the trial court should be given the opportunity to act on the motion for new trial prior to submission of the case. Accordingly, we remand this case to the trial court to decide Belcher's motion for new trial, and direct that this appeal be held in abeyance pending the trial court's decision.

Motion granted.

ROBBINS, J., not participating.
