

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

**SARAH L. BIRCHFIELD,
PLAINTIFF,**

v.

CIVIL ACTION NO. 15-C-733

**ZEN'S DEVELOPMENT, LLC,
a West Virginia Limited Liability Company;
UPTOWN PROPERTIES, LLC,
a West Virginia Limited Liability Company; and
KENNETH W. MCBRIDE, JR.,
an individual,
DEFENDANTS.**

**ORDER DENYING MOTION FOR RELIEF FROM JUDGEMENT, DENYING
MOTION TO CERTIFY QUESTIONS, AND GRANTING MOTION TO STAY
PENDING APPEAL**

On the 3rd day of January 2020, came the plaintiff, Sarah L. Birchfield by her counsel, Mark A. Saad, Esq. and Angela C. Ramsey, Esq.; Zen's Development, LLC by counsel, Daniel J. Burns, Esq.; and Uptown Properties, LLC, by counsel, Jared C. Underwood, Esq. for the purpose of a hearing on Plaintiff's *Rule 60(B) Motion for Relief from Judgement or, in the Alternative, Her Motion to Certify Questions*.

Upon consideration of the Motion, the responses, the arguments of counsel, and pertinent legal authorities, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. In advance of trial, the Court issued its *Order Pertaining to Pretrial Motions and Motion for Summary Judgment* on December 13, 2019.
2. The decision issued in the aforesaid Order was adverse to the Plaintiff with regard to the issue and duties related to the party wall in that it denied *Plaintiff's Motion for Summary Judgment Against All Defendants on Party Wall Liability*, denied *Plaintiff's Motion for*

Partial Summary Judgment Against Zen's Development, LLC on Negligence Liability, granted Defendant Uptown Properties' Renewed Motion for Summary Judgment and dismissed this Defendant, granted Defendant Kenneth McBride's Renewed Motion for Summary Judgment and dismissed this Defendant, and lastly granted Zen Development's Renewed Motion for Summary Judgment.

3. Thereafter, the Plaintiff filed her *Rule 60(B) Motion for Relief from Judgment or, in the Alternative, Her Motion to Certify Questions.*
4. As contained within her Motion, the Plaintiff asserts that Rule 60(b)(6) provides the Court an opportunity to provide relief from the recently issued Order.

CONCLUSIONS OF LAW

1. That Rule 60(b)(6) of the West Virginia Rules of Civil Procedure provides:

“On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect, or unavoidable cause; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.”
2. That Plaintiff has failed to establish any of the foregoing reasons that would justify relief pursuant to Rule 60(b)(6).
3. Accordingly, Plaintiff’s motion is not the appropriate provision or method to address the Court’s adverse ruling.

4. With respect to Plaintiff's alternative request for the certification of questions of law pursuant to *West Virginia Code* §51-1A-3, seeking answers on the nature and scope of party wall rights and obligations under West Virginia law, such motion could have been presented to the Court at any point in time during the last four years.
5. Rather, subsequent to the Court's adverse ruling, Plaintiff has now chosen to request the Court certify questions that have now been addressed by this Court.
6. Accordingly, Plaintiff's alternative motion to certify questions to the Supreme Court of Appeals of West Virginia is hereby denied as being untimely.
7. The Court further concludes that the appropriate process of addressing this Court's adverse ruling is to appeal the matter to the Supreme Court of Appeals of West Virginia on appropriate issues that are appealable.
8. Accordingly, the Court concludes that this action should be stayed at this time pending a decision of the West Virginia Supreme Court of Appeals with regard to this Court's recently issued Order.

Wherefore, based upon these findings and conclusions, the court **ORDERS** that this matter shall be STAYED pending a decision from the Supreme Court of Appeals of West Virginia or alternatively, Plaintiff's failure to perfect an appeal that would allow this case to proceed.

The Clerk shall mail certified copies of this order to all counsel of record in this matter.

ORDER:

Entered this the 3rd day of January, 2020.


DARL W. POLING, JUDGE

The foregoing is a true copy of an order
entered in this office on the 6 day
of Jan, 2020.
PAUL H. FLANAGAN, Circuit Clerk of Raleigh Co., WV
By adw Deputy