

NO. 07-04-0067-CV  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL E  
MARCH 23, 2004

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ZELLA WADE, APPELLANT

V.

DEERE CREDIT SERVICES, INC., APPELLEE

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FROM THE 286TH DISTRICT COURT OF HOCKLEY COUNTY;  
NO. 01-09-18,552; HONORABLE HAROLD PHELAN, JUDGE

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Before QUINN and REAVIS, JJ. and BOYD, S.J.<sup>1</sup>

### **MEMORANDUM OPINION**

Appellant Zella Wade filed a notice of appeal challenging the trial court's judgment. Notwithstanding the trial court's announcement that it intended to grant a new trial,

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<sup>1</sup>John T. Boyd, Chief Justice (Ret.), Seventh Court of Appeals, sitting by assignment.

appellee Deere Credit Services, Inc. also filed a notice of appeal prior to the deadline out of an abundance of caution. Pending before this Court is Deere Credit's unopposed motion to dismiss this appeal following the trial court's corrected order granting a new trial on liability and damage claims in Wade's breach of contract action. We grant the motion.

The legal effect of an order granting a new trial vacates the original judgment and returns the case to the trial court as if no previous trial had been conducted. *Old Republic Ins. Co. v. Scott*, 846 S.W.3d 832, 833 (Tex. 1993); see *a/so Markowitz v. Markowitz*, 118 S.W.3d 82, 88 (Tex.App.–Houston [14th Dist.] 2003, pet. denied); *Long John Silver's, Inc.*, 850 S.W.2d 773, 777 (Tex.App.–San Antonio 1993, writ *dism'd w.o.j.*). Thus, there is no final judgment from which an appeal may be prosecuted.

Accordingly, the appeal is dismissed.

Don H. Reavis  
Justice