

Opinion No. [30-35]

May 22, 1930

BY: M. A. OTERO, JR., Attorney General

TO: Mr. Saul Padilla, Justice of the Peace, Precinct No. 12, Wagon Mound, New Mexico.

JUSTICE OF THE PEACE -- Appeals from; by whom docketed in District Court.

OPINION

I am just in receipt of a letter from Mr. Adelaido C. De Baca, Post Office Box 112, Wagon Mound, New Mexico, propounding a legal question and requesting that I write the answer to you. Mr. De Baca states as follows:

"In a civil action where the judgment from the Justice Court is appealed to the District Court, and the appellant fails to file his appeal, that is to put up the money for the filing of the appeal, and the plaintiff in the case fails to do so, will the judgment of the Justice prevail?"

There is a contention that if the appellant does not file, then the plaintiff must file, now if neither file what is to be done with the judgment of the Justice Court?"

From the foregoing, I am unable to determine whether the person who appealed from the decision of the Justice of the Peace Court perfected his appeal by filing his bond with the Justice of the Peace and having it duly approved, in other words, whether or not he perfected his appeal in the Justice of the Peace Court, or whether it was simply a case of his having failed to put up the necessary costs in the District Court.

If the appellant failed to perfect his appeal in the Justice of the Peace Court by filing his bond and having it approved, then of course he is out of luck.

On the other hand, if he has actually perfected his appeal in the Justice of the Peace Court, but has failed to do anything further about it in the District Court, then, according to a recent ruling by our Supreme Court, the appellee may come into court and himself perfect the appeal and move that the judgment of the Justice of the Peace Court be affirmed, which will automatically be done. If the appellee desires to do that, of course it will be up to him to perfect the appeal by paying the costs of the District Court.