

**CENTRAL MINING CO. V. COZART, 1969-NMSC-148, 80 N.M. 733, 460 P.2d 808 (S.
Ct. 1969)**

**CENTRAL MINING COMPANY, INC., a corporation,
Plaintiff-Appellant and Cross-Appellee,
vs.
EDITH P. COZART, Defendant-Appellee and Cross-Appellant**

No. 8836

SUPREME COURT OF NEW MEXICO

1969-NMSC-148, 80 N.M. 733, 460 P.2d 808

November 03, 1969

Appeal from the District Court of Rio Arriba County, Montoya, Judge.

COUNSEL

HENRY J. HUGHES, Santa Fe, New Mexico, Attorney for appellant.

PAUL "PABLO" MARSHALL, DAVID ELDON DOUGLAS, Socorro, New Mexico,
Attorneys for appellee.

JUDGES

TACKETT, Justice, wrote the opinion.

WE CONCUR:

Irwin S. Moise, J., J. C. Compton, J.

AUTHOR: TACKETT

OPINION

{*734} TACKETT, Justice.

{1} This action was commenced in the District Court of Rio Arriba County, New Mexico, by complaint filed on May 17, 1956, to quiet title to certain mining claims. The case was tried to the court without a jury. Final judgment was entered on September 20, 1968, in favor of plaintiff for all of Tracts 2, 3, 6 and 7, and for an undivided one-half interest in Tracts 1, 4 and 5. Plaintiff appeals.

{2} Supreme Court Rule 5(5) (§ 21-2-1(5)(5), N.M.S.A. 1953 Comp.), provided:

"Appeals, as provided by law, shall be allowed upon written application to and the **order of the district court** in which the judgment is rendered." (Emphasis added)

The above rule was amended effective March 15, 1961, to allow the filing of a notice of appeal, thereby dispensing with the court order as to all cases commenced after that date.

{3} Under appellate practice prior to the 1961 amendment, timely entry of an order allowing an appeal was jurisdictional. *Chavez v. Village of Cimarron*, 65 N.M. 141, 333 P.2d 882 (1958); *Scott v. Newsom*, 74 N.M. 399, 394 P.2d 253 (1964).

{4} The important and controlling date in this case is May 17, 1956. Appellant only filed a notice of appeal and did not obtain an order of the district court allowing the appeal. Because the rule in existence on the date of the filing of the complaint in the instant case was not complied with, this court has no jurisdiction in the matter. *Scott v. Newsom*, supra.

{5} The appeal is dismissed.

{6} IT IS SO ORDERED.

WE CONCUR:

Irwin S. Moise, J., J. C. Compton, J.