

**CLARK V. MAISEN, 1927-NMSC-023, 32 N.M. 246, 255 P. 404 (S. Ct. 1927)**

**CASE HISTORY ALERT:** affected by 1927-NMSC-095

**CLARK  
vs.  
MAISEN**

No. 3187

SUPREME COURT OF NEW MEXICO

1927-NMSC-023, 32 N.M. 246, 255 P. 404

January 26, 1927

Appeal from District Court, Bernalillo County, Helmick, Judge.

Action by J. Lewis Clark against H. A. Maisen. From an appeal for defendant, plaintiff appeals. On motion to strike from the transcript special findings given and refused, and a paper entitled "Statement of Facts."

**SYLLABUS**

**SYLLABUS BY THE COURT**

1. Findings of fact and conclusions of law, made and refused by the court, are not a part of the record proper, unless ordered by the court to be filed in the clerk's office.
2. A paper filed in the clerk's office purporting to be a statement of facts, but bearing no authenticity from an order of the court, cannot be considered by this court on appeal.

**COUNSEL**

John Baron Burg and J. Lewis Clark, both of Albuquerque, for appellant.

Simms & Botts, of Albuquerque, for appellee.

**JUDGES**

Parker, C. J. Bickley and Watson, JJ., concur.

**AUTHOR: PARKER**

**OPINION**

{\*246} **{1}** OPINION OF THE COURT A motion is presented to strike from the transcript the special findings given and refused, and a paper entitled "Statement of Facts," {\*247} upon the ground that they are not a part of the record proper and are not included in any bill of exceptions. The findings and conclusions of the trial court, made and refused, are not a part of the record proper, unless ordered by the court to be filed with the clerk, which was not done. Gradi v. Bachechi, 24 N.M. 100, 172 P. 188.

**{2}** The statement of facts, so called, is a paper filed by appellant in the clerk's office, and appearing in the transcript, having no authenticity whatever, was never passed on by the judge, and was never made a part of the record by any order of the district court. This paper cannot be considered by us. Loftus v. Johnson, 23 N.M. 546, 170 P. 49.

**{3}** It follows that the motion to strike the two papers mentioned should be granted, and it is so ordered.