GARCIA V. CHAVEZ, 1949-NMSC-069, 54 N.M. 22, 212 P.2d 1052 (S. Ct. 1949)

GARCIA
vs.
CHAVEZ

No. 5225

SUPREME COURT OF NEW MEXICO

1949-NMSC-069, 54 N.M. 22, 212 P.2d 1052

December 19, 1949

Josephine Garcia, a minor, by Rosalie Garcia Silva, mother and next friend of the minor, brought action against Manuel Chavez to recover for injuries resulting from a dog bite. The District Court of Sierra County, Charles H. Fowler, J., rendered a judgment for plaintiff, and the defendant appealed.

COUNSEL

Nils T. Kjellstrom, Hot Springs, for appellant.

Wm. F. Cheek, Hot Springs, for appellee.

JUDGES

Lujan, Justice. Brice, C.J., and Sadler, McGhee, and Compton, JJ., concur.

AUTHOR: LUJAN

OPINION

*{*23}* **{1}** From a judgment for $840.70 in favor of appellee (plaintiff below), in a suit against appellant (defendant below) to recover damages resulting from a dog bite, this appeal has been prosecuted.

{2} The two points relied upon for reversal are, that the evidence is insufficient to establish the scienter required both at common law and under the statute of New Mexico, relating to the viciousness of the dog; and that the court erred in failing to take into consideration the question of the plaintiff's negligence.

{3} The case was tried to the court without a jury. It was not requested to make findings of fact or conclusions of law and none, of any kind whatsoever, were submitted to the court by either party. It was the duty of counsel to have requested such findings as he

believed the evidence warranted favorable to his contention so that the court could have passed on them.

{4} This case is controlled by our decision in Alexander Hamilton Institute v. Smith, 35 N.M. 30, 289 P. 596, 597, wherein we said:

"Most of appellant's assignments of errors resolve themselves into this, that the judgment should have been for the defendant on the evidence. But it was for the district judge, and not for this court to determine what conclusions the evidence would warrant. If the defendant desired a review of the whole case in this court, he should have had the facts found, as well as the conclusions of law dependent upon them, and we could then have determined whether the conclusions were well founded. This court sits, not to try cases de novo, but as a court for the correction of errors. See Murphy v. Hall, 26 N.M. 270, 191 P. 438; Morrow v. Martinez, 27 N.M. 354, 200 P. 1071; Merrick v. Deering, 30 N.M. 431, 236 P. 735; Board of Trustees of Town of Torreon v. Garcia, 32 N.M. 124, 252 P. 478. * * *"

{5} For other cases holding to the same effect, see Damon v. Carmen et al., 44 N.M. 458, 104 P.2d 735 and Veale v. Eavenson, 53 N.M. 102, 192 P.2d 312.

{6} The judgment is affirmed, and it is so ordered.