

GARCIA V. LUCERO, 1917-NMSC-035, 22 N.M. 598, 166 P. 1178 (S. Ct. 1917)

**GARCIA
vs.
LUCERO**

No. 2020

SUPREME COURT OF NEW MEXICO

1917-NMSC-035, 22 N.M. 598, 166 P. 1178

July 30, 1917

Appeal from District Court, Mora County, D. J. Leahy, Judge.

Election contest by Jose Garcia against Juan J. Lucero. Judgment for contestee, and contestant appeals.

SYLLABUS

SYLLABUS BY THE COURT

Under the provisions of section 2070, Code 1915, it is the duty of the district court in an election contest to accept as true the facts alleged in the notice, and not denied by the contestee in his answer, filed within 20 days, and no proof is required to support such undenied allegations.

COUNSEL

W. J. Lucas of East Las Vegas, for appellant.

Chester A Hunker, of Las Vegas, for appellee.

JUDGES

Roberts, J. Hanna, C. J., and Parker, J., concur.

AUTHOR: ROBERTS

OPINION

{*598} {1} OPINION OF THE COURT. Appellant instituted a contest in the district court of Mora county to contest the election of the appellee to the office of school director of school district No. 25, in the county of Mora, this state His petition was filed within the

time required by section 2070, Code 1915, and that the same stated facts sufficient is not questioned. Section 2073, Code 1915, reads as follows:

"The respondent shall file his answer to the notice of contest, and serve a copy thereof on the contestant within twenty days from and after the service of such notice of contest upon him, exclusive of the day of such service; and any material fact alleged in the notice of contest, not specifically denied by the answer, within the time aforesaid, shall be taken and considered as true."

{*599} {2} Appellee filed an answer, which upon motion was stricken. Thereupon appellant asked the court to enter judgment for him upon notice of contest. This the court refused to do, holding that it was incumbent upon appellant to introduce proof to support the allegations of his notice. In view of the language of the statute, this was error. The statute says that:

"Any material fact alleged in the notice of contest not specifically denied by the answer within the time aforesaid, shall be taken and considered as true."

{3} Where the material facts alleged in the notice of contest are not denied by the answer, it is not incumbent upon the contestant to introduce proof to sustain such allegations, but such facts so alleged must be accepted as true by the court as provided by section 2070, supra.

{4} For the reason stated the judgment will be reversed, and the cause remanded, with instructions to the district court to enter judgment for the contestant; and it is so ordered.