

**GILMER V. GILMER, 1966-NMSC-225, 77 N.M. 137, 419 P.2d 976 (S. Ct. 1966)**

**J. H. GILMER, Plaintiff-Appellee,  
vs.  
LITA L. GILMER, JAMES B. GILMER, and MARGARITA (aka  
Marquita) E. GILMER, a minor, Defendants-Appellants,  
L. R. GILMER and G. A. GILMER  
Defendants-Appellees**

No. 7953

SUPREME COURT OF NEW MEXICO

1966-NMSC-225, 77 N.M. 137, 419 P.2d 976

October 31, 1966

Appeal from the District Court of Dona Ana County, Zimmerman, Judge

Motion for Rehearing Denied November 17, 1966

#### **COUNSEL**

WHATLEY & RIORDAN, J. B. NEWELL, Las Cruces, New Mexico, Attorneys for  
Plaintiff-Appellee.

WILLIAM B. DARDEN, EDWARD E. TRIVIZ, Las Cruces, New Mexico, Attorneys for  
Defendants-Appellants.

#### **JUDGES**

HENSLEY, JR., Chief Judge, wrote the opinion.

WE CONCUR:

David W. Carmody, C.J., J. C. Compton, J.

**AUTHOR:** HENSLEY

#### **OPINION**

{\*138} HENSLEY, JR., Chief Judge, Court of Appeals.

{1} This action was brought in the district court of Dona Ana County to quiet the title to certain lands and to partition the same among those persons found to be the owners.

{2} The facts from which this controversy arose may be summarized thus. George F. Gilmer and his first wife had three sons, J. H., L. R., and G. A. Gilmer. Following the death of the mother, George F. Gilmer, on July 27, 1942, conveyed the lands in controversy to the three sons. On the next day the sons joined by their wives reconveyed the same land to their father. On August 14, 1942, George F. Gilmer married Lita L. Gilmer and from that marriage two children James B. Gilmer and Margarita E. Gilmer came into being. In August, 1949, George F. Gilmer quit-claimed the same lands to the three sons of his first marriage. George F. Gilmer died intestate in 1964. Thereafter, J. H. Gilmer instituted this action as plaintiff against his two brothers, the widow of his father and the two children of that marriage as defendants. The trial court found and concluded that the title to the land was vested solely in J. H. Gilmer, L. R. Gilmer and G. A. Gilmer. From a judgment consistent with the decision the defendants' Lita L. Gilmer and her two children have now appealed.

{3} Appellants' sole contention is that the evidence is insufficient to support the finding of facts and conclusions of law made by the district court.

{4} The general rule is that the findings of fact and judgment of the trial court will not be disturbed if supported by substantial evidence. *Candelaria v. Miera*, 13 N.M. 360, 84 P. 1020, and numerous decisions thereafter including *Manufacturers and Wholesalers Indemnity Exchange v. Valdez*, 75 N.M. 363, 404 P.2d 562. We {<sup>\*</sup>139} have examined the record and conclude that there is substantial evidence to support the judgment of the trial court.

{5} The judgment will be affirmed. IT IS SO ORDERED.

WE CONCUR:

David W. Carmody, C.J., J. C. Compton, J.