MARTIN V. HOT SPRINGS, 1929-NMSC-090, 34 N.M. 411, 282 P. 273 (S. Ct. 1929)

MARTIN et al.
vs.
VILLAGE OF HOT SPRINGS et al.

No. 3260

SUPREME COURT OF NEW MEXICO

1929-NMSC-090, 34 N.M. 411, 282 P. 273

November 06, 1929

Appeal from District Court, Sierra County; Ryan, Judge.

Action by Robert Martin and another, doing business under the firm name and style of Hot Springs Water Company, against the Village of Hot Springs and others. From the judgment, plaintiffs appeal.

See, also, 268 P. 568.

SYLLABUS

SYLLABUS BY THE COURT

1. It is not error to reject evidence or contentions directed to questions foreign to the issues.

2. Findings of the trial court supported by substantial evidence will not be disturbed on appeal.

3. Questions not raised in the trial court will not be considered for the first time on appeal.

4. Certain documents excluded from evidence not having been incorporated in the record, we are unable to review the rulings.

5. There being sufficient competent evidence to support the findings and judgment, the admission of incompetent evidence not shown to be prejudicial is not reversible error.

COUNSEL

E. D. Tittmann, of El Paso, Texas, and E. L. Medler, of Los Angeles, California, for appellants.

James G. Fitch, of Socorro, for appellees.

JUDGES

Catron, J. Watson and Simms, JJ., concur. Bickley, C. J., and Parker, J., did not participate.

AUTHOR: CATRON

OPINION

*{*412}* **{1}** OPINION OF THE COURT Plaintiffs being the owners of a water plant and system, by which, under franchise, the inhabitants of defendant village were served, contracted with the village to sell to it, the latter agreeing to buy:

> "All such portion of the plant now owned by party of the first part (plaintiffs) erected for the purpose of supplying water to the Village of Hot Springs, and consisting of all equipment now in use to supply water to the inhabitants of said Village of Hot Springs, to which the party of the first part has title, at the present value of the property hereby agreed to be sold, which actual value shall be determined by three appraisers."

{2} The contract provided for payment in cash of the "actual value" within a reasonable time after it had been determined. With consent of plaintiffs, the village took immediate possession, and has since operated the plant and retained the revenues. Its reasonable value at the date of the contract was $ 3,945.78.

{3} Upon these facts, here stated in their substance as found by the trial court, plaintiffs recovered, and now appeal from, a judgment for the amount stated, with interest from date of recovery, and without costs.

{4} Certain assignments of error are predicated upon the contention that there was an award by reason of a claimed agreement by two of the appraisers upon a sum larger than that recovered. The trial court properly refused to admit the contention, since plaintiffs had alleged in the complaint "that the * * * appraisers were unable to agree," and had sought recovery of the value of the property, alleging it to be $ 12,500.

{5} We find no error in the findings made or refused, having tested them by the substantial evidence rule. The *{*413}* numerous assignments of this class are therefore overruled.

{6} Plaintiffs contend that they should have had interest from the date of the "breach" of the contract, and as the prevailing parties, should have recovered costs. They failed to raise these questions below, and so cannot be heard upon them here.

{7} Certain documents excluded from evidence have not been included in the record before us. Thus we are unable to review the rulings.

{8} The admission of incompetent evidence is complained of. But no prejudice is shown, there being sufficient competent evidence to support the findings and judgment.

{9} We conclude that the judgment should be affirmed and the cause remanded, and it is so ordered.