

WILLIAMS V. KEMP, 1927-NMSC-019, 32 N.M. 233, 252 P. 1000 (S. Ct. 1927)

WILLIAMS et al.

vs.

KEMP et al.

No. 3136

SUPREME COURT OF NEW MEXICO

1927-NMSC-019, 32 N.M. 233, 252 P. 1000

January 20, 1927

Appeal from District Court, Torrance County; Mechem, Judge.

Action by H. C. Williams and others against W. C. Kemp and others. From an adverse judgment, defendants appeal, and plaintiffs move for a writ of certiorari and to dismiss the appeal.

SYLLABUS

SYLLABUS BY THE COURT

1. The requirement that a praecipe for the record shall be filed within 30 days from the taking of an appeal, as provided in section 36, c. 43, Laws 1917, is applicable only in case an extension of time to settle the bill of exceptions is desired.

2. Where a partial record is brought to this court by an appellant, it is the duty of the appellee if he so desires to have embodied in the transcript such additional portions of the record as he may desire, and a motion by him in this court for a writ of certiorari to bring up such portions of the record will be denied.

COUNSEL

E. P. Davies and W. N. Birdsall, both of Santa Fe for appellants.

G. W. Prichard, of Santa Fe, for appellees.

JUDGES

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

AUTHOR: PARKER

OPINION

{*233} {1} OPINION OF THE COURT 1. A motion was made to dismiss the appeal upon the ground that the praecipe for the transcript of record was not filed with the trial court within 30 days from the date of the allowance of the appeal. There is confusion in the mind of counsel who filed this motion in regard to this matter. The requirement that a praecipe be filed within 30 days after the taking of an appeal, as provided by section 36, c. 43, Laws 1917, is a provision which is applicable only in case an extension of time within which to have the bill of exceptions settled and signed is desired. Otherwise, there is no requirement as to the filing of the praecipe within said 30 days. {*234} 2. Counsel for appellee has filed a motion for certiorari to supply a portion of the record not contained in the transcript. This application will be denied. The record in this case is not a complete record, and in such cases by the provisions of section 32, c. 43, Laws 1917, if the appellee desires additional parts of the record, it is his duty to require the clerk to certify such additional portions of the record with the transcript to this court.

{2} It follows that the motion to dismiss this appeal should be denied, and the motion for the writ of certiorari should also be denied, and it is so ordered.