

SMITH V. KAPICH, 1927-NMSC-103, 33 N.M. 116, 263 P. 510 (S. Ct. 1927)

**SMITH
vs.
KAPICH et al.**

No. 3285

SUPREME COURT OF NEW MEXICO

1927-NMSC-103, 33 N.M. 116, 263 P. 510

December 31, 1927

Appeal from District Court, Colfax County; Kiker, Judge.

Rehearing Denied January 20, 1928.

Action by William H. Smith, Sr., against Bill Kapich, alias Vuko Kapich, and others, in which the National Cash Register Company intervened. From an adverse judgment, the intervener appeals.

SYLLABUS

SYLLABUS BY THE COURT

Under the provisions of section 32, c. 43, Laws 1917, it is necessary to state in the praecipe for the record the questions desired to be reviewed, and, upon a failure so to do, no question is presented to this court for decision, and upon motion an appeal will be dismissed.

COUNSEL

L. S. Wilson, of Raton, for appellant.

J. Leahy, of Raton, for appellee.

JUDGES

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

AUTHOR: PARKER

OPINION

{*117} {1} OPINION OF THE COURT A motion to dismiss the appeal has been filed by appellee, based upon the proposition that the praecipe for the transcript of record calls for a partial record, and the praecipe contains no statement of the questions sought to be reviewed.

{2} The praecipe in the case at bar calls for only such matters as affect the National Cash Register Company's petition and intervention, and names eight record entries to be certified. The record here filed clearly discloses that the praecipe only called for a partial record. The praecipe does not contain a statement of the questions sought to be reviewed.

{3} This question was directly passed upon by this court in the following cases: Southern Surety Co. v. Colburn, 32 N.M. 243, 255 P. 405; Norment et ux. v. Mardorf et al., 26 N.M. 210, 190 P. 733; Savage v. Nesteroff, 31 N.M. 88, 240 P. 987. In these cases the court held that a failure to state in the praecipe the questions desired to be reviewed, when perfecting appeal under section 32, c. 43, Laws of 1917, presented nothing for this court to decide.

{4} Appellee's motion to dismiss appeal is therefore sustained, and the appeal is hereby dismissed, and it is so ordered.