

SINGLETON V. SANABREA, 1930-NMSC-092, 35 N.M. 205, 292 P. 6 (S. Ct. 1930)

**SINGLETON
vs.
SANABREA**

No. 3574

SUPREME COURT OF NEW MEXICO

1930-NMSC-092, 35 N.M. 205, 292 P. 6

October 02, 1930

Appeal from District Court, Lea County; Richardson, Judge.

Action by G. E. Singleton against Luz Sanabrea. Judgment for plaintiff, and defendant appeals. On defendant's motion to dismiss appeal.

SYLLABUS

SYLLABUS BY THE COURT

An order of the district court setting aside a final judgment 119 days after the entry thereof is a final order affecting a substantial right, and is appealable under section 2 of rule 2 of the Rules of Appellate Procedure.

COUNSEL

G. A. Threlkeld, of Roswell, for appellant.

W. H. Patten, of Lovington, for appellee.

JUDGES

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

AUTHOR: BICKLEY

OPINION

{*206} {1} OPINION OF THE COURT A default judgment was entered against appellee. One hundred nineteen days after the entry of the judgment he moved to set aside the

judgment for irregularity, and prevailed. He states in his brief that if he is entitled to the relief awarded by the trial court, it is by virtue of section 105 -- 846, 1929 Comp.

{2} Appeal has been taken from the order setting aside the judgment. Appellant has proceeded under the second section of Rule No. II of the Rules of Appellate Procedure, which provides that:

"Appeals shall also be allowed by the district court, and entertained by the Supreme Court, from all final orders affecting a substantial right made after the entry of final judgment."

{3} The application for allowance of appeal was made within twenty days from date of the entry of the order appealed from.

{4} Appellee has moved to dismiss the appeal upon the ground that the order setting aside a default judgment is not an appealable order.

{5} Laws authorizing appeals relate to the remedy, and should be construed liberally in furtherance of the remedy.

{6} The order does affect a substantial right and in that sense is a final order. But for such order, the plaintiff would have been entitled in law to the immediate fruits of his judgments. Of this right the order deprived him.

{7} The motion to dismiss the appeal is denied, and it is so ordered.