

**ALLSUP'S CONVENIENCE STORES, INC. V. VALENZUELA, 1983-NMSC-015, 100
N.M. 84, 666 P.2d 225 (S. Ct. 1983)**

ALLSUP'S CONVENIENCE STORES, INC., Petitioner, **DONNY
SINGLETON,** Defendant,
vs.
KATY VALENZUELA, Respondent.

No. 14546

SUPREME COURT OF NEW MEXICO

1983-NMSC-015, 100 N.M. 84, 666 P.2d 225

February 04, 1983

ORIGINAL PROCEEDING ON CERTIORARI, John B. Walker, District Judge

COUNSEL

Martin & Meyer, Robert N. Meyer, Carlsbad, New Mexico, for Petitioner.

McCormick & Forbes, Don G. McCormick, Thomas L. Marek, Rosenberg Law Firm, M.
Rosenberg, M. Jane Shuler, Carlsbad, New Mexico, for Respondent.

JUDGES

Federici, J.

WE CONCUR: H. VERN PAYNE, Chief Justice, DAN SOSA, JR., Senior Justice,
WILLIAM RIORDAN, Justice, HARRY E. STOWERS, JR., Justice

AUTHOR: FEDERICI

OPINION

ORDER

FEDERICI, Justice.

{1} Petitioner, Allsup's Convenience Stores, Inc., petitioned this Court for a writ of certiorari. The petition was granted.

{2} A motion for clarification was filed by respondent and granted. Counsel for respondent, M. Jane Shuler, correctly called to our attention that our original order was incomplete.

{3} Now it is ordered that the order, filed December 15, 1982, be supplemented as follows:

1. We affirm the dismissal by the Court of Appeals, 666 P.2d 225, of respondent Valenzuela's Count 1 in common law negligence against petitioner-employer Allsup's. We note that the same result was reached by the trial court, albeit on different grounds.

2. The finding by the trial court that respondent had actual knowledge of Allsup's workman's compensation policy overcomes Allsup's failure to comply with the filing requirements of Section 52-1-4, N.M.S.A. 1978 (Cum. Supp. 1982). **See Baldwin v. Worley Mills, Inc.**, 95 N.M. 398, 622 P.2d 706 (Ct. App.), **writ quashed**, 95 N.M. 426, 622 P.2d 1046 (1981).

3. Respondent's cause of action against defendant Singleton is still pending in the district court. The dismissal of Count 1 against petitioner Allsup's has no effect upon that action under **Matkins v. Zero Refrigerated Lines, Inc.**, 93 N.M. 511, 602 P.2d 195 (1975).

4. Count 2, an action for wrongful termination of employment against Allsup's, is still pending in the district court. No order was entered by the trial court concerning this count.

{4} The Clerk of the Court shall publish this Order and the majority and dissenting opinions of the Court of Appeals. This cause is remanded to the district court for further proceedings consistent with this Order and the opinion of the Court of Appeals.

{5} IT IS SO ORDERED.

WE CONCUR: H. VERN PAYNE, Chief Justice, DAN SOSA, JR., Senior Justice, WILLIAM RIORDAN, Justice, HARRY E. STOWERS, JR., Justice